

Neglected or Protected?

The protection of victims of trafficking forced into prostitution in Hungary and the Netherlands

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Abstract

This thesis deals with human trafficking and particularly with the protection of victims of this gross violation of human rights. As the concept of human trafficking is very broad, this work focuses on the protection of trafficked women who are forced into prostitution in two countries of destination. Protection measures for victims of trafficking include: residence permits; safety protection; housing; medical and psychological care; legal assistance; financial support; and return and reintegration programmes. International and national bodies increasingly realise the dimension of this offence to the dignity and the integrity of human beings and their responsibility to prevent and combat human trafficking and protect the victims of this crime. The aim of this thesis is to explore whether and to what extent international and national legislation provides effective protection for victims of trafficking. It first describes and analyses the legislation of the United Nations, the Council of Europe and the European Union. Subsequently, it focuses on the national legislation of Hungary and the Netherlands, which are both countries of destination of human trafficking. Finally, this work tries to answer the question whether and how laws and policies on protection measures are implemented in reality in order to see if trafficked women are effectively protected in the two countries.

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Appendix:

List of abbreviations, acronyms and names of organisations

BÁH: Bevándorlási és Állampolgársági Hivatal (Office of Immigration and Nationality)

Baptista Szeretetszolgálat (Hungarian Baptist Aid Association)

BlinN: Bonded Labour in Nederland (Bonded Labour in the Netherlands)

COA: Centraal Orgaan Opvang Asielzoekers (Reception of Asylum Seekers Agency)

CoE: Council of Europe

Comensha: Coordinatie Centrum Mensenhandel (Coordination Centre Human Trafficking)

ECHR: European Convention of Human Rights

EEM: Expertise Centrum Mensenhandel (Expertise Centre Human Trafficking)

EU: European Union

Europol: European Police Office

GRETA: Group of Independent Experts

HCC: Hungarian Criminal Code

ICCPR: International Covenant of Civil and Political Rights

IGO: Inter-governmental Organisation

ILO: International Labour Organisation.

IND: Immigratie en Naturalisatie Dienst (Immigration and Naturalisation Service)

Interpol or ICPO: International Criminal Police Organisation

IOM: International Organisation for Migration

KMAR: Koninklijke Marechaussee (Royal Netherlands Marechaussee)

Magyarországi Prostituáltak Érdekvédelmi Egyesülete (Hungarian Prostitutes' Interest Protection Association)

NANE: Nők a Nőkért Együtt az Erőszak Ellen (Women for Women Against Violence)

National Bureau of Investigation, Organised Crime Division, Trafficking in Human Beings Department or International Trafficking Unit under the National Police (International Trafficking Unit)

NGO: Non-Governmental Organisation

NRM: Nationaal Rapporteur voor Mensenhandel (National Rapporteur of Human Trafficking of the Netherlands)

OHCHR: Office of the United Nations High Commissioner of Human Rights

OPEX: Operationeel Expertisecentrum (Operational Expertise Centre)

OSCE: Organisation for Security and Co-operation in Europe

RC: Convention relating to the Status of Refugees

STV: Stichting Tegen Vrouwenhandel (Foundation Against Women Trafficking). STV changed its name; from 17 December 2007 the name of the organisation is Comensha

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

White Ring Public Benefit Association (FEHÉR GYŰRŰ)

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1. Introduction

One of the first things many foreigners tell me when they find out I am Dutch is that they like Holland so much because of the red light district. I cannot say I am proud of the fact that one of the main tourist attractions of my country is prostitution. Hungary may not be as famous as the Netherlands, but its sex industry has been growing since the '90s. When I came to Budapest, the first thing I saw was that my apartment was right above a table dance/striptease club. Soon I noticed this kind of dodgy clubs are spread all around the city. I often wonder where these women come from, how many women behind those doors are not there out of free will and forced to prostitute themselves. If they had any dreams about a better future, they must have lost them. Many (if not most) of them are beaten, raped, mistreated and exploited and there is little they can do. If they cannot protect themselves anymore, who does?

Human trafficking is not only a worrying phenomenon, among other continents in Europe, but also a complex issue regarding its socio-legal aspects. It combines legal and illegal activities and issues of criminal and public administrative law (in some respect even private law). This complexity makes the protection and support of victims as well as the prevention of this human rights violation more difficult and I presume that the restrictive European Union (EU) immigration policies will, at great likelihood, only make the problems bigger and more complex. Now borders become less porous, the trafficking industry is becoming a more attractive venture as there are greater economic possibilities. This increases the responsibility of international and national bodies for the prevention of and combating human trafficking and for the protection of the victims of this crime and gross violation of the dignity and integrity of human beings.

From the broad concept of trafficking, this research focuses on the trafficking of women, which involves labour and sexual exploitation. As a large proportion of trafficked women end up working in the sex industry¹, the emphasis of this thesis will be on women who are forced into prostitution. This choice can be reasoned by the country of my origin (the

¹ Comensha, 2007. Although the sex industry includes other forms of sex work than solely prostitution, such as striptease; table dance; and sexual massage, many trafficked women who are forced to these other forms of sex work are often forced to prostitute themselves as well.

Netherlands), and the country where I have resided during the writing of my thesis (Hungary) where big markets for prostitution exist. Chapter 2 will provide the main definitions, causes and figures of human trafficking and related concepts.

Human trafficking has been put on the agenda of various organisations, amongst them the United Nations (UN) and the EU, but the question that remains is how much attention is being given to the protection of women that have been trafficked. The aim of this thesis is to investigate whether victims of trafficking are protected under international and national legislation, and if laws and policies are in fact implemented at the national level. Protection measures for victims of trafficking include residence permits, safety protection, housing, medical and psychological care, legal assistance, financial support, return and reintegration programmes.

Chapter 3 will describe and analyse the legislation of the UN, the Council of Europe, and the EU and will also give a brief summary about the role of the intergovernmental organisation (IGO) the International Organisation of Migration. Chapter 4 intends to examine the domestic legal systems of solely countries of destination. The reasoning for this is that I assume protection measures are mainly implemented by States where women have been trafficked to. In particular, the chapter will describe and analyse the national legislation of the countries Hungary and the Netherlands. Even though these two countries also function as source and transit countries, both are destination countries for human trafficking. Where the Netherlands is a founding Member of the EU (1993), Hungary only became a Member State in 2004. Another major difference between the countries concerns the legalisation of prostitution. Whereas in the Netherlands prostitution has never been illegal, Hungary has legalised prostitution for nearly 10 years. It will be interesting to see whether these differences influence human trafficking legislation and its implementation. Chapter 4 will compare the different national legal systems in relation to the status of trafficked women and their protection. It is not only important to look at the laws for the protection of trafficked persons, but also at the immigration laws, criminal procedures and return policies. Chapter 5 will deal with the main question of this thesis, namely: ‘whether laws and policies are implemented and what the main problems are in the implementation of protection measures for trafficked women’. Chapter 6 will provide concluding remarks.

In order to answer the main question of this thesis I have looked into international conventions, national laws and policies, publications of (inter)governmental bodies, and reports of NGOs. Discovering that the amount of information available from published literature is limited, I decided to collect information directly through interviews with NGOs

and trafficking departments of the national police. Data from interview sources are included in chapter 4, but are mainly used in chapter 5. Due to a lack of (public) information that was available on this topic some explanations, descriptions and data sources, such as U.S. State Department's reports and interviews, are used more frequently. In some cases these were the only sources giving information about certain aspects of human trafficking.

2. Definitions and background information

Before looking into the international and national regulations related to protection measures for trafficked women, it is necessary to understand what we mean by trafficking in human beings. In the first section one can find the definitions of trafficking and some terms related to this phenomenon. Then, in section 2.2 the most important causes for the existence of trafficking will be described. Finally, section 2.3 will have a look at the numbers relating to the phenomenon in order to see how many human beings we are actually talking about.

2.1 Definition of trafficking, forced labour and smuggling

2.1.1 Definition Human Trafficking

Various definitions of human trafficking have been given by different international organisations. This thesis will draw primarily on the international definition given by the United Nations in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime (hereafter the Palermo Protocol (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.”²

This definition of the Palermo Protocol includes all the main features of trafficking in human beings and it is widely used by different organisations.³ However, I believe that one element is missing, which can be found in the definition of the International Labour Organisation (ILO).⁴ The ILO defines trafficking slightly differently than the United Nations (UN),

² UN Protocol to prevent, suppress and punish trafficking in persons, especially in women and children, supplementing the UN Convention against Transnational Organised Crime, General Assembly Resolution 55/25, Palermo 15 December 2000, pp.54-55 (Palermo Protocol (a)).

³ Most organisations, like the International Organisation for Migration (IOM) and the Organisation for Co-operation and Security in Europe (OSCE) adhere to this definition and that is why I do not list their definitions separately.

⁴ The ILO is the United Nations agency which is charged with addressing labour standards, employment, and social protection issues (ILO, About the ILO, available at: http://www.ilo.org/global/About_the_ILO/lang-en/index.htm).

regarding this phenomenon as “*a degrading misuse of human resources resulting in undignified and unproductive work*”.⁵ It not only places more focus on aspects relating to labour, but it also seems that by using this definition, the ILO applies a more ‘human approach’ than the UN. It includes human dignity which proves more sensitivity towards the phenomenon of trafficking.

Moreover, as mentioned in the Palermo Protocol, human trafficking goes hand in hand with forced labour. Therefore, we need to know the definition of forced or compulsory labour. We can find this in the ILO’s Forced Labour Convention of 1930, under article 2: “*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.*”⁶

2.1.2 Illegal immigration and smuggling

Furthermore, according to organisations, amongst them the UN and the International Organisation for Migration (IOM), trafficking can involve both legal and illegal migration.⁷ Persons can enter a country legally with all the acquired documents, so the migration itself is not illegal - afterwards, people will be displaced internally by traffickers and stay longer than their visa allows and become illegal. Alternatively, trafficked persons can enter destination or transit countries illegally by for example using fraudulent travel or identity documents. When trafficked persons enter the country illegally this often happens with the help of smugglers. Smuggling of migrants means: “*the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.*”⁸ However, smuggling is not necessarily a part of trafficking. It is important to differentiate these two phenomena. First of all, migrant smuggling involves crossing a border, whereas trafficking in human beings can take place without transporting the victim to another country.⁹ Whereas migration through smuggling rings is primarily voluntary and initiated by the potential migrant, trafficking implies ‘deceiving and forcing the person into the trafficking process (although trafficked persons

⁵ ILO, 2002, p.5

⁶ ILO, Convention concerning forced and compulsory labour, Geneva, adopted by General Conference of the ILO on 28 June 1930

⁷ IOM, 2004 (I), pp.20-22

⁸ UN Protocol Against the Smuggling Migrants by land, sea and air, supplementing the United Nations Convention against the Transnational Organized Crime, General Assembly Resolution 55/25, Palermo 15 December 2000, p.2

⁹ Staring, 2006, p.6 and Ministry of Justice and Law Enforcement, 2008

may also give their consent to being smuggled across borders). The trafficked victim, unlike the smuggled person, does not buy criminal actors' services to assist her/him into the country.¹⁰ Nevertheless, persons who are smuggled and other irregular migrants are often not aware of the circumstances they will be confronted with, so it does not always involve voluntary action by these persons either. Another important feature of smuggling of migrants is that persons are left to their own devices once they are at their final destination. Trafficked persons will generally be exploited and end up in forced labour. In other words, the focus of smuggling is entry into the destination country, while the focus of trafficking is the exploitation of the person upon arrival. A final important difference between the two phenomena is that in the vast majority of cases, smuggled adult migrants are male, while trafficked adult migrants are female.¹¹ Once again, it must be emphasised that the boundaries of the two concepts are rather vague.

2.1.3 The 'victim approach'

As definitions of human trafficking and its related issues have been given, it is important to discuss the term 'victim' of this phenomenon as well.

The concept of human trafficking involves the term "victim" - often used in documents of international and non-governmental organisations. The complexity of the phenomenon, however, requires some caution when applying this term. Its use supposes that a person is in a situation entirely powerless to control that situation. According to significant views, until the 1970s the literature classified persons as 'powerful' and 'powerless' attributing total power or lack of power to them. In the years that followed, writers reacted upon this by developing a relational assumption of power. Since then, power is not seen as an object anymore; you cannot own power anymore.¹²

Foucault explains that power is never to be found in one place or in one person, but that "*power is employed and exercised through a net-like organisation.*"¹³ This does not mean that one person has all resources at his/her disposal and the other has none, but rather that different parties have different kind of resources. In relation to human trafficking, one can say that women are not just victims at all times. In some ways and at certain times, women do

¹⁰ Goodey, 2003, p.158

¹¹ Shearer Demir, 2003, p.7

¹² Elias, 1976, p.81, p.101

¹³ Foucault, 1980, p.98

have the opportunity to make choices. Kempadoo (2005) claims that women are able to make choices for themselves and they are not totally dependent on others for their decisions (unlike children). They have a certain ability to make major life choices.¹⁴

Furthermore, according to Pearson (2002), one of the main problems in identifying trafficked persons and treating them as such is that often they do not see themselves as 'victims'. Despite their experience of being trafficked they generally see themselves as migrants or workers who have had some bad luck as a result of a bad decision or a bad contract. In this sense a victim approach may not be appropriate in all cases. Pearson further states that although the term 'trafficked person' also has shortcomings because it seems somewhat neutered, it seems to be the only expression that effectively conveys the degree of exploitation involved in being trafficked (that distinguishes it from the general experience of migrant workers).¹⁵

While on the other hand, we can refer to trafficked women as victims. Human trafficking has to be distinguished from migration by saying that human trafficking involves persons taking control over others and exploitation, usually taking place via using force and violence. In many cases women get involved in the trafficking process because they decide to migrate. Women have the ambition to work abroad and gain money with this, but do not decide what happens afterwards - it is not their aim to be trafficked and have power exercised over them. In other words, they become victims of their circumstances. There comes a point in time when women lose their personal autonomy. The options they seemed to have and the decisions they thought they could make are not real, and traffickers take control of them. Once more, in many cases women voluntarily help traffickers or smugglers to go from one place to another. But what occurs afterwards is not their choice and happens without their consensus.

Another question that remains is when one stops categorizing these women as victims. Does the victim status come to an end when a trafficked woman goes to the authorities, when she testified against the perpetrator, after she is 'socially recovered', when she has returned to her home country, or when she is granted with a permanent residence permit in the country of destination? There is no simple answer to this. According to an expert on human trafficking of the national police in the Netherlands, women who are victims of these crimes are usually strong women and 'survivors', the term victim refers to something weak so it does not correspond with each other. It can be stigmatising and have a negative impact for the person

¹⁴ Kempadoo, 2005, p.36

¹⁵ Pearson, 2002, p.32-33

who is involved.¹⁶ A question relating to this is what, if these women are labelled in this way, consequences it has if one continues to call trafficked women victims for the rest of their lives. What we have to consider is that a victim role does not necessarily apply to them when the trafficking process has come to an end.

Overall, the term ‘victim’ can be used when we talk about trafficking, though not through the whole process. Women have the opportunity to choose to migrate and work abroad and this is how they can get involved into the trafficking process. A trafficked woman becomes a victim when she is not able to make her own decisions anymore and is forced to engage in certain activities. The difficulty herein is pinpointing where the actual stage of coercion of women by traffickers starts. Furthermore, it is hard to say when women regain their autonomy, but at a certain moment women can make their own decisions again. We should be cautious to use the term ‘victim’ for trafficked women after the trafficking process has come to an end, during and after the victim’s recovery period.

To conclude, in order to prevent and combat human trafficking and to protect the persons who are trafficked in the most effective way, the correct definition which should be applied depends on each individual case.

2.2 Causes of Trafficking

Now the definition of human trafficking has been given, it is necessary to know why people are being trafficked. As this work is mainly about the protection mechanisms of women who have been trafficked and not about the prevention and the combating of the phenomenon, this section will only list the major causes of this element of the phenomenon. Dealing with the protection of trafficked women, it is necessary to write briefly about the causes in order to understand where they come from and why specifically these women have become involved in trafficking. Causes of trafficking can be found at international and national levels, both in the countries of origin and in the countries of destination. Besides, as the thesis deals with the trafficking of women, this section focuses on the reasons why particularly women are being trafficked.

¹⁶ Interview Werson (EMM/OPEX) 10 April 2008

2.2.1 Poverty and migration

As we have seen above, trafficking in human beings is related to migration. Migration is often triggered by poverty and unemployment. People make the choice to migrate because of the economic hardship they face and if they are not the poorest of the poor they hope for a better life and to attain work abroad. Although there is a high demand for migrant labour in the Western European States, the legal channels and possibilities of entry are limited. Some people seem to be ready to take risks and use illegal channels to escape the poverty, and that is where human traffickers come in. International trafficking in human beings is one of the most profitable business branches of organised crime (besides drugs and arms trade), which is another important factor which influences the phenomenon.¹⁷ Apart from the trade coming from South-East Asia, Latin-America and Africa, trafficking within Europe (from Eastern Europe to Western Europe) has significantly increased since the 1990s. Since then, people are also being trafficked from the economically poorer countries to the ones that are comparatively better-off in Eastern and Central Europe.¹⁸ Hungary and Poland have become transit and destination countries instead of solely countries of origin.¹⁹ After the collapse of communism that began in 1989, political and economic liberalization started and this created new opportunity structures. At the same time, this created economic uncertainties and social inequalities, producing both a demand for and a supply of sex workers in and from Eastern Europe.²⁰

2.2.2 Poverty of women

Apart from men, more and more women are participating in migration. A reason why women leave their home countries, which is also related to poverty, is vast sex discrimination.²¹ Women often encounter bigger social and economic problems than men and are therefore a vulnerable group. Firstly, in many countries women encounter domestic violence. Besides that, there is absence of equal opportunity. Globally, women are disproportionately affected

¹⁷ IOM, 2004 (I), p.21

¹⁸ As the next section focuses on the amount of numbers of trafficked cases, I will not discuss this issue here.

¹⁹ IOM, 2004 (I), p.21/pp.27-28

²⁰ Kligman, 2005, pp.1-2 and Staring, 2006, p.5

²¹ The concept of discrimination against women is defined by the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) as follows: any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), General Assembly Resolution 34/180, 18 December 1979).

by poverty and limited economic options, which is called the ‘feminization of poverty’. Various gendered practices in primary sending countries often lead to higher women’s unemployment rates than men’s, or they push women to lower-paid and part-time work. For the same reason women are excluded from some occupations and become more concentrated in others. This all contributes to high poverty rates and leaves them vulnerable to the allurements of traffickers.²² Furthermore, rural poverty has grown dramatically since 1989 and rural women are believed to be over-represented among trafficked women. As many women have uncertain or even hopeless future prospects, they think about attractive careers abroad. And as a method of recruitment, traffickers promise women they will become rich quickly if they cooperate with them. Naturally, there are also women who know that they are going to work as prostitutes, but they still see this as a chance to earn more and live in better circumstances than in their home countries.

2.2.3 The demand side

As long as there is the demand for women to provide sexual services, trafficking will not stop. Traffickers would not keep trafficking people to the territories of the EU Member States were it not for the strong demand for cheap and/or forced labour.²³

In my opinion prostitution should not be abolished (immediately) as I believe that putting prostitution under criminal law status effectively forces those involved in prostitution outside the rule of law. This makes it impossible for women to seek help from authorities when they have faced exploitation by traffickers. It also supports a social stigma that women in prostitution are evil or bad. According to Rhode (1989) prostitution is not a victim-less crime, but criminalising its most immediate victims is not the answer. She further states that: *“the best legal strategy is decriminalising the sale of sexual services, while retaining prohibitions against vexatious public solicitation, brokerage, recruitment, and advertising. Removing all criminal sanctions is likely to increase the market for sexual services.”*²⁴ Moreover, in my view, clients of women who are forced into prostitution should be punished, just like persons who use trafficked persons for other types of forced labour, like domestic workers.

Furthermore, a more productive strategy would involve diverting resources now spent on punishment to prevention, counselling, job-training, and health care. Moreover,

²² Kligman, Limoncelli & Hughes et al., 2005, p.4

²³ IOM, 2004 (I), pp.27-30

²⁴ Rhode, 1989, p.262

prostitution reflects a form of sexuality in which male dominance has been eroticised, commercialised, and institutionalised.²⁵ States can and should play a role in promoting gender equality. In addition, States should develop policies on reduction and even elimination of the demand for prostitutes.²⁶ This subsection will not discuss how states should develop policies for these issues as the focus of this thesis is on protection measures for women who have yet been trafficked.

The reasons mentioned in subsections 2.2.1 to 2.2.3 are in part identical with the reasons of prostitution, however, these reasons (poverty, vast difference in the position of men and women) at the same time contribute to the difference between countries – qualifying them at large as importing or exporting country (both title degrading the dignity of the country).

2.2.4 Corruption and border control

Other factors that influence trafficking are corruption and deficiencies of border control. Corruption not only applies to countries of origin, but also to countries of destination, both at the low as the high level by mainly law enforcement authorities. It is not the only cause of trafficking which can be found in destination countries. Restrictive immigration laws and policies and strict border control play a role in people's reliance on trafficking. Obokata (2006) states that these restrictions have supported illegal markets and opened up economic opportunities for traffickers.²⁷ After 11 September 2001, not only the United States but also the European Union (EU) has been promoting a tougher approach to immigration control than before, in the name of the fight against terrorism and the concern about the security of the nation.²⁸ For this reason it may seem that tightening immigration control is a logical reaction, as there is a close link between terrorism and organised crime. However, immigration policies and programmes adopted at the EU level raise a series of concerns. Measures which are developed by the EU and its Member States to protect people who flee from persecution and thus qualify as refugees under the Refugee Convention of 1951²⁹, seem in practice to be created to prevent asylum seekers and refugees coming to the Member States. This creates a

²⁵ Idem

²⁶ I would like to see the termination of prostitution because in my view women (just like men) want to have sexual relationships with the ones they choose and/or love. I also assume that there one can find more equal sex rights in a society where prostitution is eliminated than in one where prostitution still takes place.

²⁷ Obokata, 2006, pp.45-47

²⁸ Staring, 2006, p.3

²⁹ See Chapter 3 for information on the Refugee Convention

problem not only for people who have been trafficked and qualify as refugees, but also for those who are not refugees but suffer from human rights abuses.

Partially due to these restrictive immigration policies and programmes, the growth of trafficking business is being encouraged. In other words, these policies limit the opportunities for legal migration to the Member States. So the discourse of terrorism has as a consequence that the space for migrants is being reduced. Criminalizing and victimizing those who cross borders forces these people to continue to move through illegal channels, and to remain vulnerable, stigmatized and unlawful. Furthermore, not all of those trafficked enter and stay illegally in the EU territory. This means that enforcement against illegal migration does not necessarily lead to the curtailment of trafficking in human beings.³⁰

2.3 Data on the trafficking of women

A wide range of estimates exists on the scope and magnitude of forced labour and human trafficking. The exact number of trafficked persons is not known due to the invisibility of the criminal organisations and the reluctance of victims to admit they have been trafficked. However, there are reports that include estimates of the amount of persons who have been trafficked. Subsection 2.3.1 starts with giving some numbers of persons who are trafficked and exploited worldwide and how many women are trafficked to Western European countries. Subsections 2.3.2 and 2.3.3 discuss the annual amount of women who are trafficked to (and in) Hungary and the Netherlands.

2.3.1 Trafficking and forced labour worldwide and in Europe

First of all, an IOM study of 2004 revealed that there are an estimated 15 to 30 million irregular migrants worldwide.³¹ Hereby must be noted that not all trafficked persons are irregular and many irregular migrants are not victims of trafficking. Besides that, the ILO estimates there are 12.3 million people in forced labour, bonded labour, forced child labour, and sexual servitude at any given time. Forced commercial sexual exploitation represents 11 percent of all cases (1.390.000 persons).³² The ILO further states that there are approximately 2.5 million victims of trafficking for the purpose of forced labour around the world, generating an estimated \$32 billion in annual profits. 44 percent of these victims, mostly

³⁰ Kempadoo, 2005, p.33, Obokata, 2006, pp.99-100 and Pieters, 2006, pp.27-28

³¹ IOM Budapest, 2003-2004, pp.4-5

³² ILO, STAT, available at: <http://www.ilo.org/stat/index.htm>

women, are trafficked for sexual exploitation. It is often difficult to distinguish workers who have entered forced labour as a result of trafficking and those who have been smuggled.³³ So the other 10 million persons have either been smuggled into the country or are illegal immigrants who became victims of forced labour during their stay in the country of destination. Another scenario is that they are being exploited in their country of origin, which can also involve trafficking, though internally.

Furthermore, according to U.S. Government-sponsored research completed in 2006, approximately 800,000 to 900,000 people are trafficked across international borders annually, which does not include the millions internally trafficked. In its report we can also read that the majority of the transnational trafficked persons (approximately 80 percent) are females trafficked into commercial sexual exploitation.³⁴ The Dutch National Rapporteur of Human Trafficking (NRM) reported that annually between 700,000 and 2,000,000 women and children are being trafficked worldwide.³⁵

According to the European Police Office (Europol)³⁶ approximately 200,000 migrants enter into member states of the EU each year assisted by traffickers.³⁷ The Office further states that western European countries are the main destination for migration connected with traffic in women and prostitution. In 2002 the NRM reported that about 175,000 to 200,000 of the trafficked women and children who come from Central and Eastern Europe end up in the sex industry of Western Europe.³⁸ Likewise, Interpol³⁹ estimates that there are some 300,000 women from eastern European countries engaged in prostitution in Western Europe.⁴⁰ According to IOM's data there are more than 500,000 Central-European women in the western world as a result of trafficking.

2.3.2 Trafficking in Hungary

It is difficult to say how many women are being trafficked to Hungary as this State does not have a central agency for gathering statistics on this issue. Detailed collection of figures related to the victims is missing. The IOM tells us that 10,000 illegal immigrants enter

³³ ILO, 2005, p.46

³⁴ U.S. State Department, 2007, p.8

³⁵ More information about the Dutch National Rapporteur can be found in subsection 3.3.1.

³⁶ Europol is a multinational research organisation and the cooperative undertaking of police services of the EU.

³⁷ Obokata, 2006, pp.86-87

³⁸ NRM, 2002, p.6

³⁹ Interpol is an international organisation that supports police organisations with the prevention and combating crimes.

⁴⁰ Musacchio, 2004, p.1024

Hungary each year of which 70 percent of all people who escaped through the borders were assisted by smugglers.⁴¹ As we have seen smuggling differs from trafficking, but we may assume that a part of these 7000 immigrants are trafficked. According to the available domestic statistics in Hungary there were 153 prosecution cases involving trafficking in human beings between 2000 and 2005.⁴² The US State Department also published reports about the prosecution cases. According to the US State Department, police and border guards conducted a total of 22 trafficking investigations in 2006, while there were 28 investigations the year before. Authorities prosecuted 23 traffickers in 2006, compared with 27 in 2005. Convictions were obtained against 21 traffickers in 2006; conviction data were unavailable for 2005.⁴³

The prosecution statistics fail to capture the scope and gravity of Hungary's trafficking problem. Prosecution statistics do not reflect the fact that a large number of trafficking cases are never detected, and those that are detected are rarely prosecuted.⁴⁴ Moreover, the data does not reveal the number of victims of trafficking. Nevertheless, the U.S. State Department reports that 23 victims were referred for assistance in 2006, compared with 12 in 2005, and 45 trafficking victims were assisted in 2007.⁴⁵ According to the International Trafficking Unit of the National Police there were many victims in the prosecution cases of the recent years, but how many is unknown.⁴⁶ Furthermore, the Hungarian government estimates that 150.000 victims of human trafficking pass through its country each year.⁴⁷ However, this number may be too high as it conflates smuggling and trafficking and the prosecution data did not distinguish between sex labour and other forms of trafficking.⁴⁸ The International Trafficking Unit stated that 99 percent of the cases involve forced prostitution.⁴⁹ NANE, a non-governmental organisation known as most active in the field of protection of women against violence, is convinced that the amount of trafficked persons is probably very high but they do not have an estimate either. Nevertheless, there are estimations of the numbers of prostitutes in Budapest. Galiana estimates that about 2000 women, but also men, work in this industry.⁵⁰ However, other sources state that there are about 7000-9000 full-time prostitutes in Hungary,

⁴¹ IOM, 2004 (III), p.36

⁴² ERÜBS (Uniform Police and Prosecutor's Criminal Statistics), Ministry of Justice and Law Enforcement, 2008

⁴³ U.S. State Department, 2007, p.116

⁴⁴ Choudhury, Dimitrova & Johnson et al., 2005, pp.7-8

⁴⁵ U.S. Department of State, 2007, p.115 & 2008, p.138

⁴⁶ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

⁴⁷ U.S. State Department, 2007, p.116

⁴⁸ Choudhury, Dimitrova & Johnson et al., 2005, p.7

⁴⁹ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

⁵⁰ Galiana, 2000, p.67

and up to 20.000 during the summer tourist season, fifty percent of whom are Hungarian.⁵¹ How many of these women are victims of trafficking is unknown.

2.3.3 Trafficking in the Netherlands

We can find more information on this topic for the Netherlands. The sex trade in the Netherlands is said to constitute a one-billion-dollar industry. The country now has around 2,000 brothels and 30,000 prostitutes of both genders. Reportedly, 40 percent to 80 percent of this prostitution is the result of force or coercion.⁵² The NRM once estimated the total number of humans trafficked in the Netherlands annually to be 3500.⁵³

The Coordination Centre of Trafficking in Human Beings (Comensha) refrains from making estimations as, in its opinion, this is impossible. This non-governmental organisation (NGO) registers the victims via reports of the (military or alien) police, other NGO's, social care institutions and private persons like clients, and only bases the numbers of victims on their registration. Comensha acknowledges that the real amount of victims is probably much higher as many victims fear to go to the authorities.⁵⁴

The total amount of reports is still rising, but this does not necessarily mean that the number of victims of trafficking is increasing. The rising numbers are probably due to higher alert and detection of human trafficking by police, military police and the general information service. In table 1 we can find the numbers of registered victims from the year 1992 to 2006. In 2008 the NGO published figures for 2007 - in this year 716 victims were registered. In Comensha's victim registration system one can see that the number of female victims is always the highest. In 2007, 667 of the 716 victims were women and in 2006 there were 549 women out of 579 victims. Moreover, most women were exploited in the prostitution sector.

⁵¹ Gorondi, 2007 and Interview Tóth (NANE) 16 April 2008

⁵² Kligman, Limoncelli & Hughes et al., 2004 and Kamerman & Wittenberg, 2008

⁵³ Ramesar, 2008

⁵⁴ Comensha, Vragen en Antwoorden over Mensenhandel, 19 May 2008, available at: <http://www.mensenhandel.nl/>

Year	Number	Index	Growth percentage with respect to applications (1992 =100) of the year before
2006	579	827	36,5 %
2005	424	605	5 %
2004	405	578	57 %
2003	257	367	-25 %
2002	343	490	21 %
2001	284	406	-17 %
2000	341	487	18 %
1999	287	410	26 %
1998	228	326	27 %
1997	180	257	49 %
1996	121	173	-25 %
1995	161	230	-3 %
1994	166	237	89 %
1993	88	126	26%
1992	70	100	- -

Table 1: Applications victims of human trafficking (Source: STV, 2006, p.6)

Distinctions due to nationalities also arise. In 2006, 25 percent of the victims were Dutch, defined as being born in the Netherlands and holding a Dutch passport. The number of Dutch victims increased in 2007 by 5 percent, which means that last year 30 percent of victims held the Dutch nationality.⁵⁵ Besides that, 70 percent of the victims came from abroad, mostly from Nigeria, Bulgaria and China.⁵⁶ Figures of the top 10 countries of origin of trafficked persons are given in table 2.

Countries top 10

Countries of origin	Amount
The Netherlands	254 (of whom 202 are registered as victims of loverboys)
Nigeria	102
Bulgaria	49
China	33
Sierra-Leone	29
Romania	28
Guinea	15
Poland	13
Morocco	13
Hungary	12

Table 2: figures of human trafficking 2007 (Source: Comensha, 2008)

⁵⁵ Kamerman & Wittenberg, 2008

⁵⁶ Ramesar, 2008

As we can see in table 2, the Netherlands remains the country with the highest amount of victims. Here we can also see an increase in the number of victims, as in 2006 there were 157 victims registered. Bulgaria and Nigeria interchange as second country of origin for victims.⁵⁷

This chapter attempted to show in figures (as much as available) the differences between migration, smuggling, and trafficking and to explain the advantages and the difficulties associated with the victim approach of the phenomenon. Section 2.2 gave various reasons why women get involved in trafficking. Finally, section 2.3 showed the statistics on women trafficking throughout the world, in Europe and the EU, and for the specific cases studied in this paper, Hungary and the Netherlands. Knowing the estimated scale and reasons of women forced to work in prostitution after being trafficked underlines the importance of investigating what international law and policies exist to protect this vulnerable group, which will be presented in the next chapter.

⁵⁷ Comensha, 2008

3. International law and policies on human trafficking

The history of international treaty law against the suppression of slavery and trafficking is extensive. As this thesis is about the protection measures for persons who have been trafficked, this chapter will only mention the international documents and the provisions that relate to this particular issue. This means that it will not cite the Conventions and provisions which are about the prevention and combating of human trafficking. The first section will look at the United Nations (UN) which has developed many documents on trafficking in human beings. Then, section 3.2 will look into an important Convention of the Council of Europe. Next, the most important texts on protection measures of the European Union (EU) are discussed in section 3.3. The last section will briefly look into the aims and reports on the issue of the International Organisation for Migration (IOM).

3.1 The United Nations

3.1.1 The New York Convention 1949

One of the first Conventions that raised the issue of the protection of victims of human trafficking was the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which was drafted in 1949 and entered into force in 1951 (hereafter the New York Convention). Two articles of the New York Convention refer to the protection of persons who have been trafficked. The first one is article 17 under which ‘State parties, in connection to immigration and emigration, must undertake to adopt or maintain measures to check the traffic in persons of either sex for the purpose of prostitution’. Moreover, under article 17 (1) ‘State parties should undertake to make regulations that are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route’. Furthermore, in the Convention under article 19 ‘the Parties have to undertake, in accordance with the conditions laid down by domestic law ..., to make suitable provisions for their temporary care and maintenance of destitute victims of international traffic in persons for the purpose of prostitution pending the completion of arrangements for their repatriation and to repatriate persons who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law’.⁵⁸

⁵⁸ UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others. General Assembly Resolution 317 (IV) of 2 December 1949

Even though the protection for victims of human trafficking is mentioned in two provisions, no independent body was established to receive reports on the implementation of the provisions of the Convention after the enforcement of this treaty.⁵⁹ Parties to the Convention were reminded to submit regular reports to the Sub-Commission on the promotion of human rights only in 1989. The UN should have, but did not, focussed on strengthening the reporting procedures, making recommendations about them and overseeing their implementations. Consequently, the actual implementation of the provisions has failed.

3.1.2 The UN Convention on Transnational Organized Crime and Palermo Protocols 2000

In 2000 the UN Convention on Transnational Organized Crime was drafted and entered into force on 29 September 2003. The main purpose of this Convention is to prevent and combat transnational organized crime. There are only a small number of provisions for the protection for victims of crime. Article 24 describes the measures that each State Party should take to provide (physical) protection for witnesses in criminal proceedings who give testimony concerning offences mentioned in this Convention.⁶⁰ These provisions shall also apply to victims insofar as they are witnesses. Under article 25 ‘State Parties shall take appropriate measures to provide assistance and protection for victims of offences concerning the Convention’. Lastly, in article 29 (1.i) one can find the obligation for State Parties of initiating, developing, or improving specific training programmes for law enforcement personnel and other personnel charged with the prevention, detection, and control of the offences covered by the Convention. Such programmes include, amongst others, methods used in the protection of victims and witnesses.⁶¹

More important for the protection for victims of trafficking is the UN Protocol to prevent, suppress, and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Crime, or in other words the Palermo Protocol (UN Palermo Protocol 2000 (a)).⁶² One of the main purposes of this

⁵⁹ Caughlin, 2000, p.26

⁶⁰ These are the offences established in accordance with articles 5, 6, 8 and 23 of this Convention (UN Convention Against Transnational Organized Crime, General Assembly Resolution 55/25, 15 November 2000).

⁶¹ UN Convention Against Transnational Organized Crime, General Assembly Resolution 55/25, 15 November 2000

⁶² UN Protocol to prevent, suppress and punish trafficking in persons, especially in women and children, supplementing the UN Convention against Transnational Organised Crime, General Assembly Resolution 55/25, Palermo 15 December 2000 (hereinafter UN Palermo Protocol 2000 (a))

instrument, stated in article 2 (b), is to protect and assist victims of trafficking with full respect for their human rights.

Under article 6 (1) each State Party is obliged to protect the privacy and identity of victims of trafficking in persons. Moreover, each State Party is required to ensure that its domestic legal or administrative system contains measures that provide victims of human trafficking with information on relevant court and administrative proceedings, and with assistance to enable their views and concerns to be heard ... at appropriate stages of criminal proceedings against offenders. Furthermore, each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons. Finally, article 6 cites that each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory. Under article 7 each State Party shall consider adopting measures that permit victims of trafficking to remain in its territory, temporarily or permanently, and that each State Party shall give appropriate consideration to humanitarian and compassionate factors. The last article of the protocol in regard to protection is article 8, which gives all the conditions laid down for the repatriation of victims of trafficking in persons, including safety guarantees for people who are being repatriated and the provision of facilitation of return.

A document that deals, although to a lesser extent, with the protection mechanisms for undocumented migrants who have been smuggled into the country is the UN Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention Against Transnational Organised Crime (hereafter UN Palermo Protocol (b)).⁶³ Even though the main issue is the fight against the smuggling of persons, we can find two interesting provisions with regard to international human rights law that also deal with the protection of trafficked persons. After all, many victims of trafficking are undocumented migrants who have been smuggled as well.

Under article 6 State Parties are obliged to cooperate with each other and with other competent international organisations, non-governmental organisations (...) to protect the rights of migrants. This includes trafficked persons who have been the object of conduct set forth in article 6 of this protocol.⁶⁴ These rights are the ones set in international law, namely

⁶³ UN Protocol Against the Smuggling Migrants by land, sea and air, supplementing the United Nations Convention against the Transnational Organizes Crime, General Assembly Resolution 55/25, Palermo 15 December 2000 (hereinafter UN Palermo Protocol 2000 (b)).

⁶⁴ Criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit: (a) The smuggling of migrants; (b) When committed for the purpose of enabling the smuggling of migrants: (i) Producing a fraudulent travel or identity document; (ii) Procuring, providing or possessing such a document; (c) Enabling a person who is not a national or a permanent resident to remain in the

the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including for exploitation of such migrants.⁶⁵ Furthermore, the protection and assistance measures are set forth in article 16 of the Protocol. This article says that rights should be preserved and protected and that States should assist migrants whose life is endangered. In addition, under 16 (4) the State party shall take into account the special needs of women and children.⁶⁶

Neither the Convention nor both protocols give detailed information concerning the issue of protection measures for victims of trafficking by State Parties. Obokata (2006) argues that some human rights obligations stipulated in the Protocol are weak. In the Palermo Protocol 2000 (a) article 6, for example, provides that States “shall consider” implementing measures for physical, psychological and social recovery for victims of trafficking. Another vague obligation is that State Parties shall give appropriate consideration to humanitarian and compassionate factors. It is not clarified how these measures for recovery should be shaped at the domestic level of each State Party or what is meant by appropriate consideration. Furthermore, the protocol entitles states to hold their own rights when deciding on the temporary residency status of victims of trafficking. In addition, article 7 obliges States to consider, but not to adopt, legal measures to allow victims to remain in their territories at least on a temporary basis.⁶⁷ Moreover, the UN Palermo Protocol (b) does not specify the meaning of the protection for migrants in and the three treaties do not clarify how countries should implement measures for protection. To conclude, I argue that provisions and obligations under this Protocol are too weak, easy to ignore and not specific enough to be realised and implemented. I believe that the protection mechanisms would rarely work in practice. Due to weak obligations, a set of measures that are described too broadly and a wide margin of discretion of states, we can assume that the desirable results will be poor and persons who have been trafficked are not sufficiently protected.

State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means (UN Palermo Protocol 2000 (b)).

⁶⁵ Article 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR) 1966

⁶⁶ UN Palermo Protocol 2000 (b)

⁶⁷ Obokata, 2006, p.164

3.1.3 The UNHCR

This subsection discusses one of the UN key agencies which have been at the forefront in dealing with the trafficking of human beings. This is the Office of the United Nations High Commissioner for Refugees (UNHCR) that was established on December 14, 1950 by the United Nations General Assembly and began its work on 1 January 1951. The agency is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. The agency uses the Convention relating to the Status of Refugees, which was approved by a special UN conference at 28 July 1951. The Convention clearly spells out who is a refugee and the kind of legal protection, other assistance and social rights he or she should receive from the states that have signed up to it.⁶⁸

A refugee status can be granted when a person has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, or membership of a particular social group.⁶⁹ Persecution on one of these grounds can be carried out by States, but also by non-state actors (for example traffickers and the criminal organisations behind them). If States are unable or unwilling to protect their citizens against non-state actors by punishing them, the obligation to grant refugee status by the given State still holds.

The UNHCR recognised that being trafficked can be gender-based persecution by non-state actors. So, if States of origin seem unable or unwilling to protect women from traffickers, these women should be able to get refugee recognition based on one of the Convention's grounds. In other words; women can be seen as members of a particular social group and can apply for refugee status. If such a position is widely accepted, more female victims can be protected in the future.⁷⁰

Another important example of a protection measure for trafficked persons is article 33 of the Refugee Convention; the principle of *non-refoulement* or non-return/expulsion. This principle means that no contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion. Again, persecution on one of these grounds can be carried out by States, but also by non-state actors. If States are unwilling or unable to protect their citizens by punishing non-state actors, the obligation of the *non-refoulement* principle still stands.⁷¹

⁶⁸ UNHCR, Protecting the world's vulnerable people, available at: <http://www.unhcr.org/protect.html>

⁶⁹ UN Convention relating to the status of refugees. General Assembly Resolution 429, 28 July 1951

⁷⁰ Shearer Demir, 2003, pp.1-2

⁷¹ UN Convention relating to the status of refugees. General Assembly Resolution 429, 28 July 1951

One measure which should be taken to secure the principle of *non-refoulement* is to issue temporary or permanent residence permits so that those trafficked persons can legally reside in a given State. A problem may arise in that it could be hard for a victim to prove that her or his life would be threatened when he or she returns to the country of origin.

3.1.4 The OHCHR

Another important agency dealing with human trafficking is the Office of the United Nations High Commissioner of Human Rights (OHCHR). The international community has given the mandate to the OHCHR to promote and protect human rights norms and principles through the General Assembly. With regard to trafficking, it does this through several human rights monitoring mechanisms; including the Human Rights Council and Sub-Commission on promotion and protection of human rights (UN Charter-based bodies), and bodies created under the international human rights treaties such as the Human Rights Committee and the Committee on the Elimination of Discrimination Against Women (CEDAW). In relation to human rights instruments, the obligation to protect can be deduced from a general duty to secure, ensure, or restore rights, and to provide remedies. Under article 2.3.(a) of the International Covenant of Civil and Political Rights (ICCPR) States have the obligation to ensure that ‘any person whose rights and freedoms as herein recognised as violated shall have an effective remedy’. An instrument such as the European Convention of Human Rights (ECHR) also establishes a similar obligation. The obligation to protect also arises when States fail to take positive steps to prevent non-State actors from committing illegal acts, which corresponds with the obligations under the Refugee Convention.⁷²

An important - non-binding - document of the OHCHR is the report on recommended principles and guidelines on human rights and human trafficking which was submitted to the Economic and Social Council in 2002.⁷³ Besides addressing the prevention of trafficking, it sets forth the most important issues in relation to protection measures for States. The report contains a long list of recommended protection measures and this subsection will briefly look into the most important ones.

The OHCHR reports that ‘States shall not detain, charge or prosecute trafficked persons for the illegality of their entry into countries of transit and destination, and that States

⁷² Obokata, 2006, pp.154-155

⁷³ UN, Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the OHCHR to the Economic and Social Council, 2002

shall ensure that trafficked persons are protected from further exploitation and harm, threats or intimidation from traffickers. The identity of trafficking victims and their privacy should also be respected and protected, and victims should have access to adequate physical and psychological care. Legal and other assistance shall be provided to trafficked persons for the duration criminal and civil proceedings and information should be given in a language that trafficked persons understand'. Furthermore, 'States shall provide protection and temporary residence permits to victims and witnesses during legal proceedings'. States and, where applicable, intergovernmental and non-governmental organizations, 'should consider to ensure, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available'. Additionally, 'States should consider ensuring, in partnership with non-governmental organizations, that trafficked persons are given access to primary health care and counselling. Trafficked persons should not be subject to mandatory testing for diseases and safe return of victims shall also be guaranteed. Trafficked persons shall be offered alternatives to repatriation in cases where repatriation would pose a serious risk to their safety and/or to the safety of their families. It should be ensured that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking'. Finally, the OHCHR requests that 'measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficking victims'.⁷⁴

Compared to treaties we have discussed before, this report seems to focus more on the rights of the victims and to a lesser extent on combating trafficking. One can see this at the beginning of the publication wherein the OHCHR states that the human rights of trafficked persons shall be at the centre of all efforts to prevent and to combat trafficking and to protect victims. Therefore, the report contains a lot of elements concerning the protection of trafficked persons. Although its guidelines and recommendations sound very promising, I consider these are not sufficient means for the realisation of protection mechanisms. After all, it is not a legally binding document - States are not obliged to follow the measures mentioned above and therefore protection is not guaranteed. However, in the next chapter we may see that some of these guidelines can be found at the domestic level.

⁷⁴ UN, Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the OHCHR to the Economic and Social Council, 2002, pp.3-11

Now the most important treaties, documents and agencies of the UN that deal with the protection of victims of trafficking have been discussed, we will have a look at what has been developed at the regional level. The next section describes the role of the Council of Europe and its most recent Convention and in section 3.3 the European Union will be considered.

3.2 The Council of Europe

The aim of the Council of Europe (CoE) is to promote European unity by safeguarding the freedom of the individual, democracy and the rule of law, its guiding principle being the promotion and protection of human rights, based on the European Convention of Human Rights (ECHR). One of the aims of the CoE is to search for solutions to challenges facing Europe, one of which is the trafficking of human beings. Currently the Council has 47 member and 5 observer countries.⁷⁵

In 2005 the CoE has adopted the Convention on Action against trafficking in Human Beings (hereafter the CoE Warsaw Convention). The Convention entered into force at the 1st of February 2008 and so far 17 Member States have ratified it. Furthermore, 22 Member States have signed but not ratified the Convention and 9 Member States have not yet signed. The Warsaw Convention takes as a starting point the Palermo Protocol, but applies it to all forms of trafficking in human beings. It also gives a separate definition for “victim” emphasising the victim-oriented approach of the Convention.⁷⁶ This comprehensive treaty sets out measures not only to prevent trafficking in human beings and to prosecute the traffickers but should also to give real protection to victims of trafficking and safeguard their human rights.⁷⁷

The purpose of the document is to both protect the human rights of the victims of trafficking and to design a comprehensive framework for the protection and assistance of victims and witnesses, whilst guaranteeing gender equality and ensuring effective investigation and prosecution (article 1 (b)).⁷⁸ Chapter 3 sets forth the measures to protect and promote the rights of victims. Article 10 concerns the identification of victims, stating that countries shall provide the authorities with trained and qualified persons in order to identify

⁷⁵ Council of Europe, About the Council of Europe, 3 January 2008, available at: http://www.coe.int/T/e/Com/about_coe/

⁷⁶ Ministry of Justice and Law Enforcement, 2008

⁷⁷ Council of Europe, Action Against Trafficking in Human Beings, 1 February 2008, available at: http://www.coe.int/t/dg2/trafficking/campaign/default_EN.asp?

⁷⁸ Council of Europe, Convention on action against trafficking in human beings and its explanatory report, CETS No.197, Warsaw 16 May 2005 (hereafter the CoE Warsaw Convention), p.8

and help victims, wherein the special situation of women and children should be taken into account. Under article 12 countries must adopt measures to assist victims in their recovery, which includes: accommodation; material and psychological assistance; access to emergency medical treatment; translation services; counselling; information and assistance to uphold rights and interests during criminal proceedings against offenders. Under article 13 a Party is obliged to provide in its internal law a recovery and reflection period of at least 30 days. Article 14 concerns residence permits, stating that either the stay is necessary owing to their personal situation or for the purpose for their cooperation with the authorities. Article 15 covers compensation and legal redress that shall be issued by each State Party. There is the obligation to provide victims with information on proceedings. Article 16 is about repatriation and return of victims; return of victims to their countries of origin should be carried out without unreasonable delay and with due regard for his/her rights and to the safety and dignity of every individual. Under article 17 State Parties should promote gender equality.⁷⁹ Finally, under article 28 in chapter 5 each Party should protect victims, witnesses and collaborators from potential retaliation and intimidation, especially during and after investigation and prosecution of perpetrators.⁸⁰

The human rights approach to trafficking is one of the Convention's important angles. Trafficking in human beings is considered a violation of human rights and an offence to the dignity and the integrity of human beings. This makes it plausible that the protection of trafficked persons is one of the aims of this treaty. Furthermore, chapter 7 explains that the Convention provides a group of experts (GRETA) who shall monitor the implementation of the Convention by the Parties.⁸¹ Member States are obliged to supply information to GRETA, after which the latter will publish a report analysing their implementation. However, the Dutch National Rapporteur on trafficking in human beings states: *“Because the Convention does not provide any procedure for enforcing the implementation of recommendations, the main impetus providing this monitoring mechanism with persuasive force would be the ‘public pillory effect’.”*⁸²

The Convention on Action against Trafficking in Human Beings is a legally binding document, therefore those countries which have ratified it should adhere to it. Its intention is again promising but as we have seen, only one-third of the Member States (17 out of 47

⁷⁹ CoE Warsaw Convention 2005, pp.10-14

⁸⁰ *Idem*, pp.16-17

⁸¹ *Idem*, p.20

⁸² Dutch National Rapporteur, 2007, p.34. See subsection 3.3.1 for more information on the Dutch National Rapporteur.

countries⁸³) have ratified this Convention. Although Hungary and the Netherlands have not yet ratified the Convention, they may have implemented similar measures to the ones given in the Convention in the next chapters.

3.3 European Union

First of all, it is important to mention that in the EU the individual who engages in migrant prostitution is not in fact regarded as committing a crime. In all countries except Spain and the Netherlands, procuring in any form is an offence.⁸⁴ But, as with all the international organisations discussed above, the EU considers the trafficking of human beings and the exploitation of sex-workers to be crimes and to constitute violations of human rights. To support this view, the Parliament and the Commission have created and adopted various documents on this issue. The most important with regard to the protection of trafficked persons are listed below.

3.3.1 Resolutions, declarations and proposals

The European Parliament adopted the *Resolution in Trafficking in Human Beings* in 1995. Those who have been trafficked were now regarded as victims and trafficking of human beings was acknowledged as a serious violation of human rights. The Parliament called upon Member States to take measures to ensure the dignity and safety of victims, including the issuing of residence permits, the provision of social and legal assistance and witness protection during proceedings. The first document adopted by the Commission to the Council and the European Parliament on trafficking was the Communication on Trafficking of women for the purpose of sexual exploitation in 1996. It recognised trafficking as a human rights issue. The protection of victims, inclusive temporary residence permits, social and other assistance was considered necessary, and the Commission suggested that the EU should reach agreement on this matter.⁸⁵ Even though the Parliament called upon member states to take action in relation to the protection of trafficked persons, there was limited action.

Then, the EU Ministerial Conference adopted *The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for*

⁸³ Number of parties on 24 March 2008

⁸⁴ Sweden is the only country where the purchase of sexual services is completely outlawed (Musacchio, 2004, p.1024).

⁸⁵ Goodey, 2003, p.158 and Obokata, 2006, pp.88-89

the Purpose of Sexual Exploitation in 1997. The Declaration set out a number of measures against trafficking to be taken at national and regional levels. Furthermore, the provision of assistance to victims of trafficking of human beings was regarded as important and the Declaration proposed a list of measures for this purpose. Moreover, one of the recommendations of this Declaration was to appoint national rapporteurs. Their main tasks would be to report on the nature and extent of human trafficking and on the effects of anti-trafficking policies.⁸⁶ The Dutch government appointed the first Dutch National Rapporteur on Trafficking in Human Beings on 1 April 2000. So far, it has not resulted in appointments of more national rapporteurs in other countries.⁸⁷

A Declaration on guidelines is not a binding document. The Declaration did much to recognise the human rights element of sex trafficking as a gendered phenomenon but it could only encourage and not enforce its suggestions. States do not have to adhere to it. This makes efforts to protect victims an issue of political will rather than an obligation. Unfortunately, neither has there been a follow-up to the Hague Declaration.⁸⁸

In 2001 the Council of the EU adopted the Framework Decision on Standing of Victims in Criminal Proceedings. The Council's Framework Decision is applicable to those who participate in criminal proceedings against traffickers, such as legal aid, witness protection and compensation. The evidence from trafficked persons is necessary to punish traffickers and therefore providing protection to those who are willing to cooperate may be a reasonable and justified step from the point of view of the Member States.

3.3.2 EU Directives

Another more recent EU initiative is the Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal migration and who cooperate with the competent authorities. Its legal basis is article 63(3)(b) of the EC Treaty, which allows the Council to adopt measures in relation to illegal immigration and residence. To begin with, the Directive obliges Member States to give victims a so-called "reflection period" that would allow them to decide whether or not they wish to cooperate with the authorities. The Directive also states that the authorities should give a short-term residence permit of at least six months

⁸⁶ EU, The Hague Ministerial Declaration on European Guidelines for Effective Measures to prevent and combat trafficking in women for the purpose of sexual exploitation, Ministerial Conference under the Presidency of the European Union, The Hague 24-26 April 1997

⁸⁷ National Rapporteur of Trafficking in Human Beings in the Netherlands, available at: <http://english.bnrm.nl/about/about/index.aspx> & Boermans, 2006, p.33

⁸⁸ Goodey, 2003, p.164

to victims, which is subject to renewal if they are willing to cooperate. Member States are also to ensure access to, among other things, accommodation, emergency medical and psychological treatment, and social welfare during the reflection period, and additional measures such as access to the labour market (education) and rehabilitation for those who hold the short-term residence permits are stipulated. However, the Directive makes it clear from the start that its main purpose is to frame a common immigration policy and to combat illegal migration. Protection of national security seems to be the most important goal of this Directive. Therefore, the protection of human rights is not a primary objective.⁸⁹

A way to get a residence permit and at the same time to escape cooperating with law enforcement authorities is the regime of subsidiary protection. This condition is set in the Qualification Directive 2004/83/EC. Subsidiary protection is granted to those who do not strictly fit into the definition of refugees under the Refugee Convention of 1951. The status of subsidiary protection catches all, as it incorporates human suffering such as human rights violations. It can be granted to people if there is substantial ground to a real risk of suffering serious and unjustified harm, including serious and individual threat by reason of indiscriminate violence and other violations of human rights. If one qualifies for subsidiary protection, a Member State is obliged to issue a residence permit lasting at least one year. The major difference between the Qualification Directive and the Directive on Residence Permit is that the former does not require those in need of subsidiary protection to cooperate with law enforcement authorities. As a result, the categories of people to be protected are expanded.⁹⁰ The question is whether this directive has been implemented at the national levels so that victims of trafficking can really use it.

Some critical remarks can be made about some adopted decisions and directives of the EU. The Council's Framework Decision only applies to victims who participate in criminal proceedings, and does not oblige Member States to provide wider support outside these proceedings. The same is true for the Directive on Residence permits, and there is a danger that victims are used as a tool to achieve EU's main objective: enhancement of law enforcement against trafficking. When proceedings are terminated or completed, a Member State can withdraw all support as there is no further value to be gained from the criminal justice viewpoint. Another problem is that those who choose not to cooperate with the authorities do not get any protection. Clear binding initiatives on the issue of protection for

⁸⁹ EU Council Directive on Residence Permit, 2004/81/EC, 29 April 2004, adopted by the European Council.

⁹⁰ EU Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, 2004/83/EC, 29 April 2004, adopted by the European Council.

victims (outside proceedings) are thus necessary. In conclusion, the protection of victims of trafficking seems not to be a priority of the EU and its Member States. While the Commission and the European Parliament have expressed the views that the protection of human rights of those trafficked be an integral part of the EU policy on trafficking, the question remains whether they are followed in practice. In the next chapters we will see which of the guidelines, principles and obligations under the directives are implemented in Hungary and the Netherlands.

3.4 International Organisation for Migration

This section briefly talks about an important intergovernmental organisation that, in certain aspects, deals with the rights and the protection of trafficked person as well. This is the International Organisation for Migration (IOM). It does not develop or create treaties but promotes and protects the rights of, amongst others, victims of trafficking. The IOM was established in 1951 for the purpose of facilitating the organised transfer of migrants by providing assistance to those who would otherwise be unable to migrate.⁹¹ It has been dealing with the trafficking of human beings since 1994. The resolution No. 908 of the Council formulated an objective of the IOM in relation to trafficking, which is to “curtail migrant trafficking and protect the rights of migrants caught up in the practice”. The mandate to deal with the trafficking of human beings was extended by Council Resolution No. 923 in 1995. This Resolution, among others, specifies that the ‘IOM is committed to the principle that humane and orderly migration benefits migrants and society and acts to work towards effective respect of the human dignity and well-being of migrants’. Trafficking of human beings is therefore clearly regarded as a human rights issue.⁹²

In short, IOM's primary aims with regard to trafficking are to prevent trafficking in persons, and to protect victims of the illegal trade while offering them options of safe and sustainable reintegration and/or return to their home countries. Examples of the support of the IOM are the arrangement of flights and the provision of medical, psychological and social assistance to the victims in countries of destination and origin. Furthermore, the IOM provides

⁹¹ Article 1 of the Constitution of the International Organisation for Migration 1987. Its processor was known as the Intergovernmental Committee for European Migration. The original constitution was adopted in 1987 and the IOM became into being in 1989. (IOM, Constitution and Governance, available at: <http://www.iom.int/jahia/Jahia/pid/10>

⁹² IOM, Constitution and Governance, available at: <http://www.iom.int/jahia/Jahia/pid/10> and Obokata, 2006, pp.107-108

health services which are needed for those affected by trafficking.⁹³ Finally, the international and regional offices publish reports regarding the issue of human trafficking, providing guiding tools for all types of organisations who are already acting or who are intending to develop programs in the field of combating trafficking and providing protection mechanisms.⁹⁴

This chapter has given an overview of the most important conventions, directives and reports considering the protection measures for persons who have been trafficked. Some conclusions that can be drawn from these. First of all, the main interests of the organisations and State Parties are combating organised crime and preventing illegal immigration, partially because of national security concerns. I do not want to argue that these interests are not important, but I believe more attention needs to be given to the people who have been trafficked and exploited. Trafficked persons are the ones who suffer and their rights have been violated. It is true that there have also been a reasonable amount of efforts to create protection mechanisms for persons who have been trafficked. However, questions remain over both the realization and implementation of regulations.

Many provisions, obligations, guidelines and recommendations are rather vague and weak. Because of statements like: “State shall consider measures”, “States should try to cooperate” and “States shall take appropriate measures”, I wonder if we can really see the different provisions and regulations in practice. Further, it seems that States still have a wide margin of discretion in implementing measures stated under the different provisions.

In chapters 4 and 5 we will see how Hungary and the Netherlands deal with the issue of protection measures. We will see whether national mechanisms are in place in order to follow up the agreements and whether the provisions and measures for the protection of victims of traffickers have been implemented. Some questions which will be looked at are: Which policies are in place at the national level? Do practitioners know how to implement those? Are they qualified and trained enough? What problems exist in the field of dealing with trafficked persons? Are persons sufficiently protected?

Because the scope of this research is limited, the focus in this thesis will only be on certain aspects of protection measures. Within the two case studies Hungary and the Netherlands I will look at the aspects of protection measures which are highlighted most frequently in the various documents. These include the provision of residence permits;

⁹³ Obokata, 2006, pp.110-111

⁹⁴ Baráth & Da Victoria Lobo & Hoxha-Beganovic, 2004, p.9 and IOM, 2004 (I-IV)

witness protection; information on proceedings; assistance with psychological and social recovery and return and reintegration strategies. Chapter 4 and 5 will investigate whether these aspects of protection measures are present in the national legal systems and whether they have been implemented.

4. Legislation in Hungary and the Netherlands

This chapter focuses on the laws and policies on the protection of victims of trafficking, as laid down by Hungary and the Netherlands. Their similarities and differences will be shown below. Firstly, section 4.1 will explain the general situation concerning the occurrence of human trafficking in both countries. Section 4.2 will summarise the existing laws and policies on the phenomena prostitution and human trafficking. Then, the different protection mechanisms for victims of trafficking will be explained and discussed in the following order; residence permits in section 4.3, witness protection in section 4.4 and return and reintegration strategies in section 4.5. The focus is on these three types of protection measures only as in both countries all other forms of protection are granted to those who have some kind of residence permit. Without a residence permit, victims cannot apply for protections such as medical care and legal assistance. Finally, the roles and objectives of the most important (non-)governmental organisations and institutions in both countries will be described.

4.1 General Situation of illegal immigration and human trafficking

4.1.1 Illegal immigration

In the mid 1990s illegal immigration into Hungary was common practice, with 27 to 30 thousand arrested along the borders each year. In the years that followed these numbers decreased, partially due to lifting of the visa requirement for Romanian citizens travelling to EU countries. The number of illegal migrants caught at the borders has now stabilised at approximately 8 to 10 thousand people per year.

The Netherlands has been an attractive destination country for migrants from all over the world for many years. The annual number of illegal immigrants arriving to the country is estimated between 8 and 10 thousand during the last ten years.⁹⁵

In recent years connections between illegal migration and other forms of criminal behaviour have become increasingly common. Illegal migration is now frequently linked to the trafficking of human beings, which has become one of the fastest growing problems for many EU countries, including both Hungary and the Netherlands.⁹⁶ Both in Hungary and in

⁹⁵ EU, 2003

⁹⁶ EU, 2005

the Netherlands trafficking for sexual exploitation is more prevalent than for other forms of forced labour.⁹⁷

4.1.2 Human trafficking

Because of its geographical situation and its general economic context, Hungary functions primarily as a transit state, and to a lesser extent as a source and destination country for the trafficking of women. However, since 1989, Budapest has gradually become a sex trade capital, where both Hungarian and foreign women (and men) prostitute themselves.⁹⁸ The non-governmental organisation NANE also argues that Hungary is increasingly becoming a destination country, especially during the tourist season.⁹⁹ Women from Slovakia, Romania, Ukraine, Moldova, Poland, the Balkans, and China are trafficked for the purpose of commercial sexual exploitation to Austria, Slovenia, Germany, Spain, the Netherlands, Italy, France, and the United States.¹⁰⁰ Hungarian women are trafficked, primarily to Western Europe and to North America. Hungary is known as a destination country for trafficked women mainly from Romania, Russia and Ukraine, and the occurrence of women being trafficked into Hungary has significantly increased since 1990.¹⁰¹ The responsibility to both recognise and assist victims of trafficking has further increased since Hungary became an EU member in 2004, which makes it part of the outer borders of the EU. Moreover, since 2007 Hungary is party to the Schengen agreements¹⁰², and performs the first and last border check to EU entry.

The Netherlands is mainly a destination country, but also functions as a source and to a limited extent a transit country. With the introduction of stricter regulations for immigration into the Netherlands after September 11, human trafficking now probably takes place on a larger scale. As mentioned in chapter 2, most women and girls are trafficked to the Netherlands from Nigeria, Bulgaria and China. Some of the trafficked women enter the

⁹⁷ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008 and U.S. Department of State, 2007, p.156

⁹⁸ Kligman, 2005, p.2

⁹⁹ Interview Tóth (NANE) 16 April 2008

¹⁰⁰ U.S. Department of State, 2007, p.114 & Apap & Medved, 2002, p.55

¹⁰¹ Apap & Medved, 2002, p.55

¹⁰² The first Schengen agreement between the five original group members was signed on 14 June 1985. A further convention was drafted and signed on 19 June 1990. When it came into effect in 1995, it abolished checks at the internal borders of the signatory States and created a single external border where immigration checks for the Schengen area are carried out in accordance with identical procedures. Common rules regarding visas, right of asylum and checks at external borders were adopted to allow the free movement of persons within the signatory States without disrupting law and order (EU, 2007).

Netherlands illegally. Other women arrive legally on tourist visas, but become illegal once they have been in the country for more than three months without a valid residence permit.¹⁰³

4.1.3 Internal Trafficking

Additionally, internal trafficking takes place in Hungary and the Netherlands. This subsection shortly draws attention to some methods of trafficking in countries of destination. In many countries internal trafficking takes place on a rather large scale as well. Firstly, in countries like Hungary and the Netherlands, traffickers often get their victims at detention and refugee centres where undocumented/illegal migrants and refugees temporarily stay.¹⁰⁴ The traffickers and pimps take advantage of the vulnerable position of women in these centres as the future of many is very uncertain. Traffickers try to convince girls and women to start working for them so they can make money and stay in the country. Another method, at least used by traffickers in Hungary is visiting orphanages and youth institutions and abusing the vulnerable and often hopeless circumstances these girls and women are in.¹⁰⁵ Traffickers also target (poor) rural women and to a lesser extent ethnic Roma women. Pimps use social and romantic manipulation techniques. In the Netherlands we can find a similar phenomenon. An invented term which is now used in all documents about internal trafficking in the Netherlands for guys or pimps who use romantic manipulation to lure girls into prostitution is ‘loverboys’. The general scenario is that loverboys go to schools or bars (mainly in rural areas) and convince (often insecure and vulnerable) girls of their love and give them many (expensive) gifts. After gaining a girl’s trust, the loverboy forces the girl to prostitute herself.

4.2 Laws and policies on prostitution and human trafficking

While the topic of this thesis is trafficking and not prostitution, however the national laws do not separate them, therefore their presentation in this paper necessarily address them together.

4.2.1 Prostitution

Hungary – restricted legalization of prostitution – ban on brothels

Before 1999 prostitution was treated as a criminal offence and later as a civil contravention in Hungary. In 1999 the Hungarian government adopted a new law; Act LXXV of 1999 on “the

¹⁰³ Galliana, 2000, p.54

¹⁰⁴ Staring, 2006, p.13

¹⁰⁵ Interview Tóth (NANE) 16 April 2008 and EU, 2005

norms of combating organized crime and some phenomena associated with it as well as on related legislative amendments” (also known as the “anti-maffia” law). The law legalised prostitution as much as it laid down the preconditions of lawful prostitution. Pimping and running brothels are still entirely prohibited in Hungary. The adoption of Act LXXV is remarkable because Hungary has ratified the New York Convention of 1949 and herein it is stated that State parties are required to take measures to prevent prostitution.¹⁰⁶ Article 6 of the Convention states that; ‘each Party to it agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification’. Article 16 stipulates that the ‘Parties to the New York Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution’.¹⁰⁷ So, on the one hand the government agrees upon the aim of this Convention to abolish prostitution and on the other hand it promotes it by legalising the sex industry. The explanation explaining the draft bill submitted to the Parliament claimed to make a balance between the “fully abolitionist” and “fully prohibitionist” attitudes and therefore it aimed at “localization” of prostitution instead of full prohibition.

There are some restrictions on prostitution in Hungary. Prostitution is limited to certain zones within each municipality in which prostitution appears.¹⁰⁸ Moreover, zones where prostitution is present should be registered. The practice of prostitution or any related activities outside the designated zones carries penalties with it. Furthermore, prostitutes are required to have regular medical examinations. This is not in accordance with the UN recommended guidelines and principles, where it is stated that trafficked persons should not be subject to mandatory testing for diseases.¹⁰⁹

¹⁰⁶ Hungary ratified the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others. General Assembly Resolution 317 (IV) of 2 December 1949 (New York Convention) on 29 September 1955.

¹⁰⁷ UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others. General Assembly Resolution 317 (IV) of 2 December 1949

¹⁰⁸ These zones include public roads; zones at up to 100 m distance from motorways and up to 50 m distance from main roads; public institutions like churches and schools and public places and 300 m distance around them; any kind of structure, cars in public places, etc. (Interview Lazár (IOM) 4 March 2008 & Fehér, 2001, p.5).

¹⁰⁹ UN, Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the OHCHR to the Economic and Social Council, 2002. In the Netherlands prostitutes do not have to participate in medical tests.

The Netherlands – full legalization of prostitution, no prohibition on brothels

Unlike Hungary, the Netherlands is not a party to the New York Convention. Neither has prostitution ever been illegal in the Netherlands - it was seen as a private affair between the sex worker and the client, including the place where an agreement between a sex worker and a client took place. However, running a brothel was prohibited, but tolerated. After discussions about total decriminalisation of prostitution the ban on brothels was lifted on 1 October 2000.¹¹⁰ The core of the amendment of this law is that those forms of prostitution in which adult prostitutes are voluntarily engaged are no longer illegal. The ban was assumed to allow better control over and regulation of (legal) prostitution so as to strengthen initiatives against the organisation of involuntary prostitution (exploitation) and to protect minors from (commercial) sexual abuse.¹¹¹ Further, the legalisation provided the owners and managers with labour regulations which they were bound to comply and to with the preconditions that local authorities set for obtaining a licence. There is no national prostitution law but the government leaves the formulation and maintenance to the municipalities, so the specific circumstances at the local level can be taken into account. The municipalities set the conditions under which brothels are permissible and can function.¹¹² Furthermore, just like in Hungary, pimping is illegal in the Netherlands.

However, a recent study revealed that escort services still make use of illegal prostitutes. The Dutch government therefore submitted a proposal to the parliament whereby escort services also need to have a permit. In some municipalities escort services are already obliged to have such a permit, but as other municipalities do not have this law, these businesses move to other municipalities where a permit is not required. Logically, this does not solve the problem of this illegal industry. The new requirement to possess a permit will be operative in all municipalities. Furthermore, clients of illegal prostitutes will be punished.¹¹³

In the Netherlands prostitution has become a political issue. According to the NGO BlinN, the emphasis of the Dutch government's agreement of 2006 is on combating crime and on tackling the problem of abuses in the prostitution sector by means of strict control rather than on the assistance and support for victims. Moreover, in the recent government's agreement extra assistance, care and protection for victims who want to leave the sex industry

¹¹⁰ Daalder, 2004

¹¹¹ Apap & Medved, 2002, p.69. Mussacchio (2004) writes that one of the first outcomes of an evaluation of the new Act in the Netherlands showed that there had been no confirmation for an often assumed large-scale escape of prostitutes into the unregulated sector (Musacchio, p.1022).

¹¹² Kamerman & Wittenberg, 2008

¹¹³ de Volkskrant, Klanten illegale prostituees worden strafbaar, 16 May 2008 available at: http://www.volkskrant.nl/binnenland/article537924.ece/Klanten_illegale_prostituees_worden_strafbaar. On the 16th of May 2008 the Dutch government has decided that soon clients of illegal prostitutes will be punishable.

is guaranteed. BlinN argues that this phrase is worrying, because many victims who are not able - due to various reasons - to leave this sector are then excluded from protection and support.¹¹⁴

4.2.2 Human trafficking

Regulation in Hungary on trafficking in human beings

In 1998 human trafficking was for the first time regulated by the Hungarian Criminal Code¹¹⁵ (HCC) among the crimes directed against ‘personal freedom and human dignity’.¹¹⁶ Hungary prohibits all forms of trafficking through article 175/b of Act number IV of 1978 on the HCC. Penalties prescribed under article 175/b range from one to fifteen years imprisonment, which correspond with those prescribed for other serious crimes. Each form of the crime of trafficking in human beings stipulated in article 175/b falls under the jurisdiction of county police headquarters (Budapest), except crimes with international relevance. In this latter case it is the Trafficking in Human Beings Department of the Hungarian National Bureau of Investigation (hereafter the International Trafficking Unit) that performs the investigation.¹¹⁷

In its Criminal Code the description of facts had been modified in accordance with the requirements defined in the Palermo Protocol in 2000 (a)¹¹⁸, as this international document required that certain types of behaviour of commission be punishable that had not been punishable before.¹¹⁹

Comparing the facts of the crime with the definition of trafficking in the Palermo Protocol, we can see that according to the Hungarian law for the realisation of the basic elements of the crime the perpetrator does not need to use physical force, threat, coercion, fraud, misrepresentation, or the abuse of official power. Nevertheless, Hungarian law attaches greater legal consequences to the acts committed if one of these measures are used.¹²⁰

But whereas in other European countries certain evidences can prove a case of trafficking, in Hungary this remains very difficult. To prove a case of trafficking in human beings the police needs evidence of the commercial act. Without evidence of the actual

¹¹⁴ Kroon, email 31 March 2008

¹¹⁵ Act IV of 1978 on the HCC

¹¹⁶ IOM, 2004 (I), p.76 and HCC 2005

¹¹⁷ This unit was created in 2004

¹¹⁸ Hungary signed the Palermo Protocols in 2000 (a/b), and ratified them on 22 December 2006.

¹¹⁹ Lázár, email 4 March 2008

¹²⁰ IOM, 2004 (I), p.79

purchase they can only prove pandering, which is organising persons for prostitution.¹²¹ This means that law enforcement officials expect victims to provide evidence that they have been bought and sold, so they need evidence that they have seen traffickers exchanging money or goods for her. Logically, traffickers and criminal organisations rarely do business in front of the victim so it is almost impossible for a victim to deliver such evidences.¹²² Although the time-frame and research opportunities available for the thesis have not provided a thorough possibility to collect statistics on latency and successful prosecution of trafficking, the poor case-law on the relevant article (175/b) of the HCC suggests that there might be a certain rate of latency and impunity.¹²³

The Ministry of Justice and Law Enforcement, the trafficking department and NANE say that judges, who interpret the law, play a role in this as well.¹²⁴ It is difficult to convince them they are dealing with a trafficking case. We may assume that many cases that are registered as cases of pandering, rape and maltreatment are in fact cases of human trafficking.

In 2004 the Hungarian-American Working Group against trafficking in human beings was set up on the initiative of the Ministry of Foreign Affairs and has been in operation since the second half of 2004. The aim of this body is to improve the efficiency of governmental actions taken against trafficking in human beings. In addition, in 2008 the Hungarian government has approved the National Strategy of the Ministry of Justice and Law Enforcement against Trafficking in Human Beings for the years of 2008-2012. The national strategy against trafficking in human beings provides the foundation of combating trafficking in human beings. It lays down its main principles and identifies those participating and involved in prevention, prosecution and victim support. It includes a state-level analysis, a selection of strategies and their aims, priorities and implementation. The Hungarian government has called upon the Minister to propose the action plan to implement the national strategy until August 31, this year.¹²⁵

¹²¹ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008 and Ministry of Justice and Law Enforcement, 2008

¹²² Interview Tóth (NANE) 16 April 2008

¹²³ The official legal database on Hungarian Law annexes only one single court case to the article, the rest of published cases are mainly on procedural.

¹²⁴ Interviews Tóth (NANE) 16 April and Pörtl & Kiripovszky (International Trafficking Unit), and Ministry of Justice and Law Enforcement, 2008

¹²⁵ Ministry of Justice and Law Enforcement, 2008

Regulation on human trafficking in the Netherlands

Since a change to the Dutch Criminal Code (DCC) in 2001, human trafficking; the exploitation of a person; and forced prostitution no longer constitute offences against morality, but do constitute crimes against personal freedom and personal integrity as with Hungarian law.¹²⁶ Under the article 273f of the Dutch Criminal Code the offences mentioned above are punishable by a maximum of six years' imprisonment and under aggravating circumstances punishment can increase from 8 to 15 years.¹²⁷

In November 2007 the Dutch Ministry of Foreign Affairs presented a Human Rights Strategy paper through which the government has prioritised human rights. The government states that all aspects of human rights are well considered during all phases of combating human trafficking.¹²⁸ However, in the stipulations about shelters in the government agreement, victims of trafficking are not specifically mentioned.

4.2.3 Issues of identification as victim of trafficking

At the international level there are no obligations concerning the signalling and identification of victims. At the national level it is not much different. The national strategies mention this first stage of protection of victims but so far there are no clear laws, policies or guidelines for signalling and identifying victims of trafficking in both countries. The identification of victims of trafficking is closely related to their protection and thus indispensable.

Moreover, there are no clear obligations for law enforcement officials concerning the referrals of victims to other organisations or institutions that they should adhere to when they have evidence of victims of trafficking.

The members of the Hungarian-American working group signed a framework agreement on 30 September 2005 with the aim of setting up a referral system. The system of support includes the support provided to Hungarian victims in the horizon of foreign authorities and to foreign victims appearing in Hungary.¹²⁹ The necessity of preparing the national strategy as quickly as possible, the improvement of efficiency in the identification of victims and the setting up of robust data collection systems – these steps amongst others are formulated in the report as requirement in order to maintain the positive evaluation expressed.

¹²⁶ Pieters, 2006, p.17 and Wetboek van Strafrecht 2008

¹²⁷ Musacchio, 2004, p.1022 & Wetboek van Strafrecht 2008 (Article 273f)

¹²⁸ Kroon, email 31 March 2008

¹²⁹ Ministry of Justice and Law Enforcement, 2008

The Netherlands has a more structured referral system, specified in the B9 Regulation which is explained below. Chapter 5 will deal with possible problems which can be found in the signalling and identification procedures and referral mechanisms, possibly because of non-existing or unclear rules and policies.

4.3 Residence Permits

First of all, both in Hungary as in the Netherlands, victims of trafficking have the right to a temporary residence permit when they are willing to cooperate with law enforcement authorities. An important feature of the residence permits for victims of trafficking is that criminal and administrative proceedings are under the same regulation.

4.3.1 The duty to cooperate and granting “reflection period” in the Netherlands

The Netherlands was the first country to adopt this kind of policy for persons trafficked into the sex industry. The main regulation in this respect is the B9 Regulation (2000)¹³⁰, which is in accordance with the later adopted EU Directive 2004/81/EC.¹³¹ The first main objective of the B9 Regulation is to facilitate the investigation and prosecution in trafficking cases and the second is to provide protection to the victims.¹³²

Under the B9 Regulation trafficked persons can have a 3-month reflection period, so they are able to recover from their experiences, and decide whether or not they choose to collaborate with law enforcement authorities and/or to press charges. The law states that the reflection delay is granted because victims of sexual violence can often only describe their experiences after a period of recovery.¹³³ Hereafter victims should be able to make an informed decision whether they wish to cooperate or not. Without a reflection period, there is inadequate time for trafficked persons to consider the realities of returning home, such as the likelihood of being re-trafficked (especially if they still owe a debt to their traffickers or others), reprisals by traffickers and possible stigmatisation by the family and/or community, particularly in the case of women trafficked into prostitution. They may also not yet

¹³⁰ B9 was formerly B17 (1998). The procedure is named after the Chapter B of the Circular of Immigrants in which the criteria for such a residence permit are laid down (Pieters, 2006, p.18).

¹³¹ EU Council Directive on Residence Permit, 2004/81/EC, 29 April 2004, adopted by the European Council. See also chapter 3.

¹³² Apap & Medved, 2002, p.70

¹³³ Pearson, 2002, p.66 & Interview Werson (EMM/OPEX) 10 April 2008

understand the consequences of what will happen to them if they decide to stay, nor be aware that support and assistance will be provided to them.¹³⁴

The reflection period under the B9 Regulation can be used by aliens who have been caught during a police operation related to human trafficking, by persons who go to the police themselves, and by those who are already in the Netherlands without a residence permit and who have not been forced into prostitution yet but have been victims of trafficking in another country.¹³⁵ Persons who are not eligible to apply for the B9 Regulation are those who have been refused entry into the country, but who claim they have been victims of trafficking in other countries. For example, victims who are identified at Schiphol airport and who do not have permission to enter the Netherlands do not have the right to use the reflection period. It is expected from them to press charges right away.¹³⁶

The process starts with either the police, a (non-) governmental organisation, the victim him/herself or a private person, who inform the NGO Coordination Centre of Human Trafficking (Comensha) and the Expertise Centre of Human Trafficking and Smuggling of the National Police (EMM) about a (possible) victim and whether s/he wants to make use of the reflection period. In the B9 Regulation it is written that police should inform any undocumented migrant working in the sex industry of this right. Since June 2007 victims no longer have to pay fees for everything which is under the scope of the B9 Regulation. Both Comensha and the EMM register the numbers of (possible) cases. The issuing of the resident permit under the B9 Regulation is handled by the Immigration and Naturalization Service (IND).¹³⁷ In 2005 the IND received 77 B9-applications and granted 61 B9-permits. In 2006 there were 180 applications of which 150 were granted.¹³⁸ Following the issue of the B9 permit the file is transferred to the Reception of Asylum Seekers Agency (COA), which provides financial assistance, pays insurance for medical costs and can enable them to be housed in a shelter.¹³⁹ Comensha is also responsible for coordinating 'reception and accommodation' for the person, as well as arranging a case manager for the trafficked person. This person ensures medical assistance and legal aid are available.¹⁴⁰ During the reflection period a person is neither allowed to work, nor can take up education or training

¹³⁴ Pearson, 2002, p.42

¹³⁵ Circular for Immigrants 2000

¹³⁶ Interview van Neerbos (Comensha) 2008

¹³⁷ The IND cooperates with the police and the public prosecutor. The decision to grant the reflection delay is dependent upon a police officer or lawyer interviewing the individual concerned. However, the ultimate decision is made by the senior police officer (Circular for Immigrants 2000).

¹³⁸ NRM, 2007, p.291

¹³⁹ Pearson, 2002, pp.66-67

¹⁴⁰ All persons who make use of the reflection period have the duty to take a test for Tuberculosis.

opportunities, though some shelters organize language courses or allow people to carry out voluntary work. There is no specific shelter for trafficked women.

The reflection period comes to an end if either the trafficked person disappears without further notice, if the person decides not to cooperate with the law enforcement authorities, if the person decides to cooperate by giving either a testimony or some other form of assistance to the investigation, or if the person applies for another type of residence permit (for example based on humanitarian grounds). Victims of trafficking are no longer obliged to testify against their traffickers in order to get a temporary residence permit. Since 14 November 2007 other forms of cooperation and assistance in investigations are sufficient to get a temporary residence permit.¹⁴¹

If the victim presses charges against the trafficker or makes a declaration before the reflection delay expires, s/he is entitled to a temporary permit to stay for the duration of the criminal investigation and trial. According to the text of B9, the moment the trafficked person presses charges or declares s/he will cooperate their report must also be considered as an application for a temporary residence permit. In principle, the Immigration and Naturalization Service (IND) must make a decision within 24 hours whether to grant the permit. This means that the issue of the temporary permit is not dependent on the prosecutor's decision to start a criminal investigation, although the permit can be withdrawn if the prosecutor decides not to start criminal proceedings.¹⁴² A person is not obliged to stay in the Netherlands upon pressing charges or cooperating in an investigation. A residence permit is valid for one year, and can be prolonged when an investigation or trial is still proceeding. If the proceedings take longer than three years a person can apply for a permanent residence permit which is usually being granted.¹⁴³ When a case is dismissed by the prosecutor (for example due to a lack of evidence) or the judge, or when the criminal trial is completed, the person has to leave the country. The person can appeal and the permit will be extended until a decision is made.¹⁴⁴ A permanent residence permit will be granted to the victim if a perpetrator has been prosecuted in the case.¹⁴⁵

¹⁴¹ Interviews Werson (EMM/OPEX) 10 April and Kroon, 13 May 2008 and NRM, 2008, p.3

¹⁴² In practice the IND or police often consider the issue of the temporary permit to stay dependent on the decision of the prosecutor to initiate proceedings against the trafficker (Pearson, 2002, pp.71-72).

¹⁴³ Interview Kroon (BlinN) 13 May 2008

¹⁴⁴ Circular of immigrants 2000

¹⁴⁵ Interview Werson (EMM/OPEX) 10 April 2008

4.3.2 The duty to cooperate and granting “reflection period” in Hungary

A first regulation important to note regarding this issue is Act No. XXXIX of 2001 on an alien’s entry into and residence in Hungary. This Act provided 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.¹⁴⁶ Act No. II of 2007 on the Entry and Stay of Third Country Nationals replaced Act No. XXXIX of 2001. This new act entered into force on 1 July 2007 and enables the full implementation of the 2004/81/ EU Directive.¹⁴⁷

Under Act No. II victims of trafficking are granted the so-called “reflection period”. The legislation has improved in the sense that Act No. II offers the reflection period, which was not possible under Act. No. XXXIX of 2001. However, in comparison to the Netherlands the reflection time victims are offered is shorter as victims are granted only one month. Subsequently they can apply for a six-month temporary residence permit if they choose to cooperate with the law enforcement authorities.¹⁴⁸ In this most recent Act authorities are obliged to interview the applicant for this residence permit and they have to ensure access to legal assistance for victims¹⁴⁹. Since a restructuring of governmental competencies in 2006, the Office of Immigration and Nationality (BÁH) of the Ministry of Interior is responsible for alien policing, asylum and naturalization affairs.¹⁵⁰ The BÁH is in charge of issuing the residence permits. This is similar to the Dutch system, but different in that the issuing of the residence permit is triggered by a proposal from the crime prosecution authorities.¹⁵¹

A criticism of the Act is that victims are supposed to pay fees for the application of the temporary residence permit. This was abolished in the Netherlands in 2007. In addition, the rules and guidelines on the procedures and the responsibilities of all actors in this protection mechanism of the temporary residence permits are not as specified as in the Netherlands. Chapter 5 will show whether we can see a difference in practice regarding the protection of trafficked persons between the residence permits.

¹⁴⁶ Apap & Medved, 2002, p.58

¹⁴⁷ Lazár, email 4 March 2008.

¹⁴⁸ U.S. Department of State, 2007, pp.114-115

¹⁴⁹ Gyulai, 2007, pp.16-17

¹⁵⁰ Interview Tóth (NANE) 16 April 2008

¹⁵¹ Idem

4.3.3 Permanent residence permits

In both countries victims of trafficking are entitled to apply for a permanent residence permit based on humanitarian grounds.

Chapter VI of the Hungarian Asylum Act 2007¹⁵² covers the beneficiaries of subsidiary protection, which is in accordance with the European Qualification Directive 2004. In Article 12 (1) it is stated that:

“The Republic of Hungary shall grant subsidiary protection to a foreigner who does not satisfy the criteria of recognition as a refugee but there is a risk that, in the event of his/her return to his/her country of origin, s/he would be exposed to serious harm and is unable or, owing to fear of such risk, unwilling to avail himself/herself of the protection of his/her country of origin.”¹⁵³

In chapter 3 we have already seen that when people qualify for subsidiary protection they should not be obliged to cooperate with law-enforcement authorities.

Whether a person is entitled to apply for a permanent residence permit on humanitarian grounds in the Netherlands, its granting is dependent upon the risk of reprisals, risk of prosecution in the country of origin, for example for prostitution, parental duties of women, and a low possibility of reintegration into society in the country of origin.¹⁵⁴ The trafficked woman has to prove that she will encounter a combination of these factors. The IND is responsible for deciding whether to issue a permanent residence permit. On 18 October 2007 Parliamentary Undersecretary Albayrak announced that in abrading cases where a victim is legitimately afraid of cooperating with the authorities, she would exercise her discretion in granting permits, which may result in more permits being successfully applied for.¹⁵⁵

In chapter 3 we have seen that the principle of *non-refoulement* has to be applied to refugees in all EU Member States, so that those trafficked can legally reside in a given State. Indeed, this principle can be applied in Hungary and the Netherlands. If the authorities have concluded that a person is a victim of trafficking, the person shall not be expelled from the country before a full investigation into the risks the person could face in the country of origin

¹⁵² Act LXXX 2007 on Asylum, Hungarian Parliament 25 June 2007, entered into force at 1st of January 2008

¹⁵³ Act LXXX 2007 on Asylum, article 12 (1)

¹⁵⁴ Pearson 2002, p.66 and van Neerbos, email 1 April 2008 and U.S. Department of State, 2007, pp.156-157, Circular of Immigrants 2000 and Apap & Medved 2002, p.70

¹⁵⁵ Kroon, email 31 March 2008

or a third country has been completed, regardless whether the legal proceedings are complete.¹⁵⁶ The question is whether this principle is implemented in the two States.

Furthermore, even though there is the possibility of getting a permanent residence permit on humanitarian grounds, and that a person cannot be returned or expelled in case of persecution based on several grounds, the person still has to declare and prove that there is a real risk of persecution in both Hungary as the Netherlands. This is a form of cooperation with the authorities as well. There is no real difference between declaring the necessity of a permanent residence permit, and the evidence the authorities demand from a victim and cooperation with the law enforcement authorities. Chapter 5 will discuss whether persons do get a permanent residence permit and if countries apply the principle of *non-refoulement*.

4.4 Witness Protection

In the fight against trafficking it is in the State's and victims' interest to punish the perpetrators. During the criminal proceedings the victim-witnesses suffer from a real risk of reprisals and therefore they should get all the necessary protection. Besides protection under the various regulations mentioned above, victims can be protected by other laws during criminal procedures. This type of protection differs from what we have seen in the last section as it directly relates to witnesses to criminal investigations and trials. Witness protection does not only apply to trafficked persons but to witnesses to all kinds of crimes.

4.4.1. Witness protection in Hungary

The Witness Protection Act LXXXV of 2001 on the Programme of Protection of Participants of Criminal Procedures and Persons cooperating with the criminal justice introduced the first ever witness protection programme in Hungary (2001, entered into force in 1 April 2002).¹⁵⁷ It is implemented by the police's Witness Protection Unit. The purpose of the programme is to provide protection to the participants of the criminal proceedings and to the persons close to them, who may be in danger because of their relations and require increased state protection. Foreign nationals may be included in the programme. Another purpose of this Act

¹⁵⁶ *Idem*

¹⁵⁷ The regulation of victim-witness protection has been implemented in several stages. The first related documents date back to 1999, namely the Government Decree No. 34/1999 on personal protection and the Government Resolution 1074/ 1999 on protection of victims of crime and their relatives touches on the issue of sexual exploitation of women and children (Apap & Medved, 2002, p.58).

is to promote the social reintegration of the person in question, by providing mental, social, economic, human and legal support (article 1 (1)).¹⁵⁸

The Witness Protection Programme Act provides for a range of safety measures, namely: physical protection; psychological, social, financial, humanitarian and legal assistance; protection of home and property; rapid assistance in case of danger; change of identity and documentation, relocation and in-court protection for witnesses giving evidence. The Protection Programme may be applied during as well as after the close of criminal proceedings.¹⁵⁹

In Hungary, another regulation which can apply to victim-witnesses of trafficking is the Act CXXXV of 2005 on supporting the victims of crimes and on state mitigation of damage. It came into force on 1st January 2006 and is aimed at implementing Council Directive 2004/80/EC of 29 April 2004 relating to the compensation of crime victims.¹⁶⁰ This Act sets the conditions of receiving assistance from the state¹⁶¹. It is to be emphasised that the victim of trafficking in human beings can be entitled to receive victim support.¹⁶²

4.4.2 Witness protection in the Netherlands

During criminal investigations and proceedings in the Netherlands, victims who cooperate get a (temporary) residence permit, the right to a lawyer in criminal proceedings, the right to information on court proceedings, protection from reprisals and police protection, court evidentiary protection, financial assistance, shelter, access to medical services, the right to employment and education and the right to return to the country of origin. When the victim is an adult the care is on a voluntary basis. The rights of foreign victims depend on the availability of the criminal proceedings. As mentioned before, a victim has the right to apply for a permanent residence permit in case a trafficker is prosecuted or a criminal proceeding takes longer than three years.¹⁶³ These protection measures are included in the B9 Regulation.

The witness protection programme depends upon an assessment of 'urgent need' for protection, made by the Prosecutor General's Office. This is regulated through the Code for Criminal Procedure by the Prosecutor's Office. However, this is hardly ever applied, as protection is largely through the residency procedure itself. In several cases it has been

¹⁵⁸ U.S. Department of State, 2004, section 6.f and Apap & Medved, 2002, pp.55-61, Ministry of Justice and Law Enforcement, 2008

¹⁵⁹ Idem

¹⁶⁰ Ministry of Justice and Law Enforcement, 2008

¹⁶¹ Lazár, email 4 March 2008

¹⁶² Article 1 (1) (e) of CXXXV 2005 (Ministry of Justice and Law Enforcement, 2008)

¹⁶³ Apap & Medved, 2002, pp.69-75 and van Neerbos, email 1 April 2008 and Circular of Immigrants 2000

possible for trafficked persons to bring their children to the Netherlands in order to protect them during and sometimes even after the trial.¹⁶⁴ According to the Dutch legal system, a victim provides a written statement to the police. The witness may then testify at the pre-trial stage. Once these two procedures are completed the person generally does not have to be heard again in court. The victim's pre-trial statement is used as evidence in court. Several protection measures can be arranged, but will only be used if there are other forms of evidence besides the witness testimony. Protection measures include: confidentiality, anonymity, testimony 'in camera' to a closed courtroom without the presence of the defendant or other persons considered a danger to the witness.¹⁶⁵ The protection measures offered under this programme are in principle offered to witnesses in Hungary as well.

4.5 Return and reintegration

Combat of and protection against trafficking – and even optimal assistance to the victims of trafficking – can only be an incomplete protection of the human rights of the trafficked persons without an institutional and functioning mechanism to promote their return and safe reintegration into their home environment. To make the return a freely chosen, desired as well as a viable option.

Unfortunately - as we have seen in chapter 3 there are no international binding documents for the return and reintegration of trafficking victims. The only instrument which deals with this issue is the report on recommended guidelines and principles on human rights and human trafficking, a non-binding document submitted to the Economic and Social Council in 2002.¹⁶⁶ The UN herein merely declares that: “it should be ensured that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking”.¹⁶⁷ This seems to establish a primary responsibility of the countries of destination in protecting these victims, however, no legal obligations are deriving from this declaration.

Due to the lack of legal obligations neither Hungary nor the Netherlands have adopted laws or clear policies on the protection and assistance of women for and during the return and

¹⁶⁴ Pearson, 2002, p.74

¹⁶⁵ Idem, pp.74-75

¹⁶⁶ See also: sub-section 3.1.4

¹⁶⁷ UN, Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the OHCHR to the Economic and Social Council, 2002, pp.3-11

reintegration processes. The only law granting some (meagre) protection to victims of trafficking is the Witness protection Act, providing for that protection for victims who cooperated with law enforcement authorities should be prolonged after the procedures if there still exists a danger for these persons.

Return and reintegration processes are interrelated. Reintegration strategies should start in the countries of destination and continue in the countries of origin. Limanowska describes a wide variety of measures such as psychological assistance; security protection; vocational training; job referral; subsidised employment; and micro-credits in the country of origin¹⁶⁸, not all of them are viable in Hungary or the Netherlands. Education and employment continue to be crucial factors for successful recovery. Financial independence is a *sine qua non* for reintegration and education, training and employment are crucial for ensuring financial independence, emotional stability and empowerment of the individual. In spite of this obvious interrelationship, neither the Netherlands nor Hungary enables trafficked persons to work or enter any formal education and/or training programmes when they have a temporary residence permit.

Furthermore, there is a fair chance that if you let victims return to countries of origin you place them at risk. Galliana (2000) states that many women do not want to return home for fear of reprisals by traffickers.¹⁶⁹ Moreover, the return and reintegration stage is a very important one in terms of helping the victim and of preventing the victim to be re-trafficked. At the same time return and reintegration strategies are difficult areas within the anti-trafficking process, especially in cases where women return after being exploited in the sex industry. Family and other community members could reject a woman whom they know has been working as a prostitute. Women are sometimes treated as outcasts upon arrival in their home countries.¹⁷⁰ Furthermore, Pearson (2002) argues that relocation of victims (and of their family members) either in their own country or in the country of destination is problematic, because not all families are likely to want to be relocated, and their wishes need to be considered.¹⁷¹ Assistance should be given on an individual case by case basis, and in order to manage with related complex issues professional and trained staff and a high amount of economic resources are needed.

The only actor relating to the government that actually provides assistance to victims of trafficking who voluntarily return home in Hungary and the Netherlands is the IOM. This

¹⁶⁸ Limanowska, 2002, p.12

¹⁶⁹ Galliana, 2000, p.21

¹⁷⁰ Idem

¹⁷¹ Pearson, 2002, pp.48-49

IGO coordinates programmes which provide support in the area of the return and rehabilitation of victims of trafficking, who were forced into prostitution and uses therefore a holistic approach to return and recovery.¹⁷² These programmes can be found in Hungary and the Netherlands.

Furthermore, the circular of immigrants of the Netherlands recommends NGOs and police to get in contact with local organisations and police in the countries of origin.¹⁷³ However, a recommendation is probably not enough. Nevertheless, various NGO and the IOM have laid down agreements in a Convention about the assistance for victims of trafficking who return to their home countries. This is the Convention for return and reintegration. The partners of the Convention regularly meet and discuss the help and support victims need when they return to their home countries. In their opinion the focus should be on accommodation, schooling, social and medical care and employment. In 2004, 44 of the registered victims returned home, in 2005 and in 2006 there were 69 and 54 victims who returned home.¹⁷⁴ The partners of the Convention are also discussing the possibility of adding the necessary information about the security situation in various countries of origin.¹⁷⁵

To conclude, I argue that initiatives of IGOs and NGOs are very helpful for return and reintegration strategies and programmes should definitely continue, but, in addition, States should be obliged to assist and support victims of trafficking who would like to return home. Furthermore, authorities should question whether return, reintegration in the countries of origin and relocation programmes are reasonable and realistic.

4.6 Non-governmental organisations and associations

International and national treaties and reports state that NGOs play an important role in implementing protection measures for victims of trafficking. They can assist victims during the reflection period, the (temporary) residency and the return and reintegration stage.

4.6.1 Hungary

However, there is no Hungarian NGO that deals with human trafficking specifically. Nevertheless, some Hungarian NGOs deal with this issue, but only do so as a side activity.

¹⁷² Apap & Medved, 2002, pp.58-59

¹⁷³ Circular of Immigrants 2000

¹⁷⁴ STV, 2006, p.19

¹⁷⁵ NRM, 2007, p.93

One of them is NANE (Nők a Nőkért Együtt az Erőszak Ellen)¹⁷⁶, whose main objective is combating violence against women and children, and aims to assist trafficked women as well. Another NGO is the White Ring Association, which is member of the European Forum for Victim Protection; it directly supports victims of all types of crimes, in the form of legal, psychological, financial and other assistance. It has dealt with trafficking since 2002.¹⁷⁷ Furthermore, the Hungarian Baptist Aid Association carries out humanitarian missions on a religious basis; these missions include assisting victims of trafficking. Since 2005, this association has run 'the shelter' for amongst others women who have been forced to prostitute themselves.¹⁷⁸ The final organisation which can be mentioned regarding the protection of trafficked women is the Hungarian Prostitutes Protection Association, which has dealt with trafficking victims since 2000.¹⁷⁹

The U.S. Department of State states that in the year 2006 the government allocated more than \$50,000 to NGOs for victim protection.¹⁸⁰ In 2008 it reported that the government provided \$132,000 in funding for NGOs providing victim assistance including shelter, medical care, legal assistance and psychological counselling in 2007.¹⁸¹ However, NANE states that the government does not make a distinction between NGOs, IGOs and religious associations. Officers of the International Trafficking Unit of the national police in Budapest did not make a distinction between the IOM, religious associations and NGOs either, which in a way confirms the statement of NANE.¹⁸² As a result of the 'confusion' about the definition of NGOs, a high amount of the NGO money was received by the IOM. An action plan which is included in the national strategy says that more facility should be given to NGOs. According to the International Trafficking Unit this means more funding shall go to NGOs. The national strategy is under construction and is expected to be issued on 31 August 2008.¹⁸³

¹⁷⁶ Women for Women Against Violence

¹⁷⁷ Apap & Medved, 2002, pp.55-61

¹⁷⁸ Hungarian Baptist Aid Association. (Baptista Szeretetszolgálat), help for abused women, available at: <http://english.baptistasegely.hu/node/334>

¹⁷⁹ Hungarian Prostitutes' Interest Protection Association. (Magyarországi Prostituáltak Érdekvédelmi Egyesülete), introduction, available at: www.prostituáltak.hu. There is also the Escape Association which deals with victims of trafficking since its foundation in 1995. This organisation, besides developing projects in relation to the prevention of trafficking, assists prostitutes who want to step out of prostitution. Unfortunately I have not been able to find more information about this organisation.

¹⁸⁰ U.S. Department of State, 2007, pp.114-115

¹⁸¹ U.S. Department of State, 2008, p.138

¹⁸² Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

¹⁸³ Idem and the Ministry of Justice and Law Enforcement, 2008

4.6.2 The Netherlands

In contrast to Hungary there are a fairly large number of NGOs dealing with protection and assistance for trafficked women in the Netherlands. Some of these have been mentioned in the (sub)chapters above. The main organisation is the Coordination Centre for human trafficking (Comensha). Comensha has been the coordinating NGO on trafficking in the Netherlands for over 20 years. It registers the numbers of trafficked persons and provides this information to the National Rapporteur of Human Trafficking. Comensha receives victims' reports and registers the victims on request of the Dutch Ministry of Justice. It registers all victims' reports; all women and men who are covered by the B9 Regulation, but also the reports of those who are not covered for various reasons. For example, prostitutes who do not want to testify or cooperate and wish to return home. Furthermore, Comensha is designated to provide support services to trafficked persons and to coordinate the different channels of support. Various NGOs in the Netherlands are supported by Comensha and are organized in regional networks to provide shelter and assistance.¹⁸⁴

Another important NGO which provides assistance to victims is Programme Bonded Labour in the Netherlands (BlinN). This NGO was set up in 1999 to support persons (mainly women) who are affected by trafficking in human beings in the Netherlands. Its objective is to empower these women through a combination of activities. The global aim of BlinN is to strengthen the position of victims of trafficking in human beings in Dutch society, so that they are better equipped for the future in general and for education and employment in particular. Strategies used to achieve this goal are extending the social network of the women, improving their practical knowledge in different areas and improving their social skills as well as empowering them. Moreover, it has been engaged in signalling and identifying victims of illegal immigrants who are in alien detention since 2005. Further, it supports victims in developing an integrated plan to facilitate a successful return. Activities include helping the victim make preparations, contacting family, undertaking a risk analysis, looking for education and employment possibilities (mostly in the Netherlands), providing assistance during the journey and support with housing and reintegration. To accomplish the latter, BlinN cooperates with the IOM.¹⁸⁵

The Foundation of the Religious against Trafficking in Women (SRTV) is another NGO which deals with the trafficking of women. One of its objectives is to contribute to the creation of a respectable future for the victims of this trade. One of the activities is offering

¹⁸⁴ Comensha, Vragen en Antwoorden over Mensenhandel, 19 May 2008, available at: www.mensenhandel.nl and Apap & Medved, 2002, p.75

¹⁸⁵ BlinN, available at: <http://www.blinn.nl/?c=blinn3>

practical support to victims in the Netherlands. The foundation supports victims of trafficking when they have been through the traumatic experience in the Netherlands and want to return. They mediate by finding safe shelter for victims in the Netherlands, and cooperate with women's projects in various countries.¹⁸⁶

The last organisation that is important to talk about in this respect is the Foundation de Rode Draad (Red Thread). It was founded in 1985 by (ex) sex workers with the aim to fight for the rights of all the sex workers, who work in the Netherlands. The foundation regularly visits the workers in the sex industry and tries to inform as many sex workers as possible about working conditions, taxation, rights and privacy regulations. The Rode Draad does not, in contradiction to the other NGOs, cooperate with the police. In doing so it aims to get a fairly complete picture of the conditions under which sex workers do their jobs.¹⁸⁷ The next chapter explains how activities of NGOs can contribute to the implementation of protection policies for women who have been trafficked and the difficulties the various NGOs encounter.

¹⁸⁶ STRV, available at: http://www.srtv.info/engels/srtv/index_uk.html and Interview van den Nouland (SRTV) 2008

¹⁸⁷ De Rode Draad (Red Thread), General Information, available at: www.rodedraad.nl

5. Implementation: problems and concerns

In the last chapter we have seen that there have been some good developments in designing and, to some extent, implementing laws and policies with regards to the protection of trafficked persons. Moreover, these existing laws and policies are continuously developing. However, problems in the implementation of the legislation in Hungary and the Netherlands can still be encountered in various areas due to different causes. This chapter gives an insight in the causes and an analysis of the main areas where the implementation is problematic or not existent. The areas, types and the scope of problems in the implementation of protection measures vary between Hungary and the Netherlands, but we can also find similarities herein. The sections 5.1 to 5.6, will look at the implementation of policies and measures in the following areas: the legalisation of prostitution; the signalling and identification procedures; referral systems; issuing residence permits and offered protection to those who are granted with these permits; legal assistance; and finally granting residence permits on humanitarian grounds and return and reintegration strategies

5.1 Legalisation of prostitution?

In the prostitution debate I feel convincing the arguments on behalf of the opinion that legalising prostitution and consequent transparency improves the safety and health of those working as prostitutes. In addition, I believe that by legalising this sector prostitutes will be less stigmatised. Another advantage of legalising the prostitution sector is that victims of trafficking may be localized more easily. If prostitution is illegal, everything happens ‘underground’ and it is hard to influence the circumstances under which prostitutes have to work. In other words, legalisation safeguards the rights of persons who are working in the sex industry - including of those who have been trafficked - to a bigger extent than if prostitution were illegal.

Even though the Hungarian government has, in principle, legalised prostitution, we cannot see this in practice. The law requires local governments to establish so-called “zones of tolerance” in the territory of the municipalities wherein prostitution is permitted. The local governments fail to designate these zones. At the moment there is only one tolerance zone in Hungary. Even police officers of the International Trafficking Unit in Budapest were uncertain if and where tolerance zones exist in Hungary.¹⁸⁸ Therefore, in lack of sites of

¹⁸⁸ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

lawful pursuing it, prostitution is mostly an illegal profession in Hungary. This has a negative effect on the protection for prostitutes in general, and especially for trafficked women who are forced to work in prostitution. Both prostitutes as clients can be arrested and punished when they are caught outside the designated zones. So basically, this can happen at any given moment and place. Both the International Trafficking Unit and NANE said that it is more likely that prostitutes get arrested than the clients. Though, the police say that they only check on those prostitutes whom they believe can help in the investigation when they are working on a case of trafficking. Because they do not know any cases wherein clients could help, they do not engage in checking on clients.¹⁸⁹

But a major factor why only prostitutes are caught and brought to police offices is that many of them do not possess valid documents, where clients generally do have a passport. Moreover, in Hungary prostitutes are obliged to undergo medical checks and need a medical certificate if they want to work in this sector. Due to a lack of zones of tolerance, only few persons possess such papers. This is another reason prostitutes can get arrested.¹⁹⁰

In comparison with Hungary, the Netherlands has successfully implemented its policies on the legalisation of prostitution. Furthermore, the ban on brothels has made it possible to own brothels and to work in these businesses. Even though these policies are implemented, illegal prostitution still takes place in non site-specific prostitution businesses such as escort services and in for example businesses clandestinely offering sexual services like; (Thai) massage salons, saunas, and Turkish coffee houses.¹⁹¹

5.2 Victim identification and registration

The protection of victims starts with recognising the signals of human trafficking and victims of trafficking. Signalling and identification procedures are very important, because if a victim of trafficking is not recognised as such, no protection can be given. At the same time, this is the area wherein many improvements can be made. In most cases, law enforcement officials – mainly (alien) police officers - are the first ones who come into touch with victims of trafficking. Thus, they should be sufficiently aware of the possibility encountering victims of trafficking within the prostitution sector. The (alien) police have a big responsibility in matters of signalling cases of trafficking of women and the identification of victims. This is a hard job because out of fear for the police and perpetrators and extradition of the country,

¹⁸⁹ Interviews Tóth (NANE) 16 April and Pörtl & Kiripovszky (International Trafficking Unit) 2008

¹⁹⁰ Fehér, 2001

¹⁹¹ Dutch National Rapporteur, 2007, p.84

many victims try everything they can not to be identified by the police. Under article 10 of the Warsaw Convention of 2005 countries are obliged to provide the authorities with trained and qualified persons in order to identify and help victims, wherein the special situation of women and children should be taken into account.¹⁹² Hungary and the Netherlands have not ratified this Convention and problems in this regard can be encountered in both countries.

5.2.1 Hungary

Historically, failure to identify potential victims of trafficking has been an issue among street and low-level police in Hungary.¹⁹³ Nevertheless, in the Trafficking in Persons report of 2007, the U.S. Department of State has written that Hungary improved its victim assistance the last couple of years. In January 2006 the Hungarian National Police issued a directive to all districts providing amongst other information, guidance on the identification and treatment of victims and potential victims for police officers. Furthermore, the government has given sensitivity training for police, prosecutors, and judicial officers throughout the year 2006.¹⁹⁴

However, during an interim assessment by the U.S. Department of State in 2008, it became clear that the established identification procedures for potential trafficking victims remain unimplemented and thus not utilized.¹⁹⁵ The International Trafficking Unit of the police noted that guidelines of identification procedures do still not seem to reach all police stations in the country as other police offices are not specialised in human trafficking.¹⁹⁶ The Ministry of Justice and Law Enforcement also admits its biggest challenge and difficulty in victim protection and support is the identification of victims.¹⁹⁷

Reasons for insufficient identification procedures and treatment of victims are among others lack of capability and knowledge of law enforcement authorities. Firstly, victims of trafficking are not signalled and identified as such, because many law enforcement officials do not know that trafficking and domestic prostitution are interlinked.¹⁹⁸ A consequence of this is that victims of trafficking who were forced into prostitution – despite the recommendations of international agreements that are signed by Hungary – are treated as perpetrators of various offences by authorities.¹⁹⁹ For example, some women are not

¹⁹² CoE Warsaw Convention 2005, art.10

¹⁹³ U.S. Department of State, Trafficking in Persons Report, 2007, p.115

¹⁹⁴ *Idem*, pp.114-115

¹⁹⁵ US Department of State, Trafficking in Persons Interim Assessment, February 2008

¹⁹⁶ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

¹⁹⁷ Ministry of Justice and Law Enforcement, 2008

¹⁹⁸ Choudhury, Dimitrova & Johnson et al., 2005

¹⁹⁹ IOM, 2003-2004, p.46

identified as victims of trafficking but are seen as prostitutes who work outside the tolerance zones, and/or women who do not possess a valid passport or visa are seen as undocumented migrants and extradited for being illegal in the country. Furthermore, Choudhury, Dimitrova & Johnson et al. (2005) and NANE argue that many low level police officers just assume that all foreign women are in Hungary out of their free will. According to the director of NANE, reports and testimonies are often not recognised as trafficking at the high level either.²⁰⁰

Logically, women do not go to the police and claim they are victims of trafficking. If a woman goes to the authorities she would say she was beaten, raped, forced to prostitution or list something else. She would tell the things that have happened to her, but would not say she was trafficked. It is the task of police officers to recognise this kind of violations as features of women trafficking. Again, symptoms like minor injuries, rape, pimping, and infringing control of free movement are hardly categorised as trafficking. NANE argues that there still exists a lack of education on the side of the police regarding this issue. But this also has to do with the way the law is interpreted and the role of the judges, which is explained in chapter 4.²⁰¹ This opinion is shared by the U.S. Department of State, which concluded that police and immigration officials often treat trafficking victims as criminals and that they refuse to believe reports of kidnapping of young women.²⁰²

The (alien) police are the main actors for the identification of trafficking victims. Besides that, the Information Helpline under the control of the Ministry of Social Affairs and Labour was established in 2005. This helpline could play a role in identification of victims as well. A filtering interview done by amongst others social workers and police officers should clarify whether a person who calls is a victim of trafficking or not. The Ministry of Justice and Law Enforcement claims that 35 persons have been identified so far.²⁰³ NANE ran a hotline from 2001 for (possible) victims of trafficking as well, but due to lack of financial resources it terminated this programme. All the funding came from abroad because the Hungarian government did not provide the NGO with financial support for its helpline. The director of NANE claims that the government's helpline is unknown by victims of trafficking in contrary to its own helpline. In any case anonymous help lines can be useful for the signalling and identifying of victims of trafficking. Unfortunately one line is out of function and the question remains if the other one functions like it should.

²⁰⁰ Choudhury, Dimitrova & Johnson et al., 2005, p.22 and Interview Tóth (NANE) 16 April 2008

²⁰¹ Interview Tóth (NANE) 16 April 2008 and Ministry of Justice and Law Enforcement, 2008

²⁰² U.S. Department of State, 2004

²⁰³ Ministry of Justice and Law Enforcement, 2008

5.2.2 The Netherlands

Problems in the signalling and identification of victims of trafficking can also be found in the Netherlands. According to BlinN “the identification by the police is a bottleneck”.²⁰⁴ Although we can also find some positive developments herein. In the first place the police have improved signalling and registration procedures.²⁰⁵ Some time ago the police drew up a list of symptoms of exploitation in the sex industry. The list is still effectively used, not only by the police but also by other institutions. Furthermore, the ‘Foundation Report Crime Anonymously’ ran a public campaign in 2006. The goal of this campaign was to help clients and prostitutes recognising and reporting symptoms of human trafficking. The campaign was successful, and will probably continue at national level.²⁰⁶ Serious symptoms have to be reported to the expertise centre human trafficking and smuggling (EMM). The EMM reaches more and more police forces throughout the country and provides them with trainings about the problems and responsibilities in the area of human trafficking. This stimulates early recognising of victims. There is no data yet, but police and lawyers believe these trainings have a big influence.²⁰⁷

Despite these initiatives signalling (symptoms) of human trafficking is not optimal. Even though there is a lot of attention for human trafficking at the law enforcement authorities, the practice is staying behind.²⁰⁸ This has various causes. Primarily, it is a difficult task to detect women who try everything to stay away from the authorities. But at the same time, women who do want to escape from their situation are not being recognised or are not given any assistance by law enforcement authorities.²⁰⁹ One reason here for is that the police do not carry out sufficient controls in the illegal sex industry – wherein one can probably find more victims than in the legal sector – and therefore the police does not come into touch with this group.

Another reason is a lack of knowledge on these issues of all actors who deal with aliens. These actors are the police, Royal Netherlands Marechaussee (KMAR), the Immigration and Nationalisation Service (IND), staff in alien detention, and in youth care institutions.²¹⁰ Furthermore, the different actors are subjected to the way priorities are set. Because some actors are obliged to achieve a certain amount of quotas, the emphasis is on

²⁰⁴ Interview Kroon (BlinN) 13 May 2008

²⁰⁵ NRM, 2007 & Interview Werson (EMM/OPEX) 10 April 2008

²⁰⁶ NRM, 2007, p.127 & p.133

²⁰⁷ Boermans, 2006, p.27 and Interview Werson (EMM/OPEX) 10 April 2008

²⁰⁸ Kamerman & Wittenberg, 2008

²⁰⁹ NRM, 2007, p.128

²¹⁰ Kroon, email 31 March 2008

arresting and expelling of illegal immigrants rather than on signalling possible victims of trafficking.²¹¹

The quality of identification procedures by the police also depends on the different regions in the country. Some regions have more police officers working on human trafficking than others. Some police officers claim for example that human trafficking does not exist in their area. At the same time one can see that there are no officers working on this issue. In addition, in some areas officers have more knowledge about human trafficking than in other regions. NGOs can try to convince the police to pay more attention to the phenomenon at all levels, but the latter are not obliged to listen to this advice.²¹² Nevertheless, NGOs and police cooperate a lot with each other concerning signalling of victims, but it can still be improved.²¹³

The primer actors who have a specific role with regards to human trafficking are the alien police. They deal with illegal immigration and therefore with (possible) victims of trafficking. The alien police are not alert enough concerning recognising symptoms of trafficking. Most trafficked women do not have a valid passport or residence permit as these are taken away by traffickers. In many cases where an alien police officer arrests a woman without legal documents, s/he considers her as an illegal immigrant, does not recognise the symptoms of trafficking and is thus not aware s/he is dealing with a (possible) victim of trafficking. As such, many trafficked persons remain uninformed about their rights and are often deported.²¹⁴

In addition, the KMAR and the IND have a signalling role in combating human trafficking. KMAR deals with border controls; it is responsible for detecting undocumented migrants at airports, ports and other places where migrants could possibly enter the Netherlands. The IND increasingly deals with aliens who become victims during the asylum procedures and aliens who apply for asylum and who declare they are victims of human trafficking later on. That is why it should emphasise the signalling human trafficking. At the moment the IND is working on the development of instructions for its staff.²¹⁵

The last institution which plays an important role in signalling and identification procedures is the alien detention. According to the National Rapporteur on Human Trafficking, several NGOs and the EMM, victims are rarely signalled in detention centres.

²¹¹ NRM, 2007, p.128 & Kroon, email 31 March 2008

²¹² Interview van Neerbos (Comensha) 2008

²¹³ NRM, 2007, p.133

²¹⁴ Pearson, 2002, p.40

²¹⁵ NRM, 2007, pp.129-132

There is no policy whatsoever on the signalling of victims in alien detention.²¹⁶ Moreover, it is difficult to signalise human trafficking and reaching victims as aliens are spread in various detention centres throughout the country. They are often being replaced and new centres are being created as well.²¹⁷

The National Rapporteur, two NGOs and the EMM argue that once victims of trafficking are arrested and stay in detention centres as illegal immigrants, they are rarely identified as victims and therefore do not get the protection they need.²¹⁸ For the last couple of years BlinN is investigating the numbers of women who are victims of trafficking (of whom the staff in detention centres had not identified them as such). This NGO published a report in 2005 wherein it states that 60 percent of the women in these detention centres have worked in prostitution. It is unknown how many of them are victims of trafficking, but it is sure that this 60 percent includes women who are victims of this crime. The NGO continues to collect data on this issue.²¹⁹ The employees in detention centres like guards, social workers, psychologists, spiritual counsellors, and criminal officers are not prepared or trained for signalling. BlinN is also visiting alien detention centres and tries to signalise victims of trafficking.²²⁰ An expert on human trafficking of the police believes that the people working for BlinN visiting detention centres are too subjective. He argues it would be better if there is more cooperation between BlinN and the police on this area. Only then it would be possible to form an objective opinion.²²¹

Moreover, even if a person claims to be a victim of trafficking their reports or testimonies are not believed. This is not only the case in detention centres, but also at the IND and the alien police. Many women do not remember how they entered the Netherlands, where they have been working and for whom. Furthermore, women make contradictory statements because they do not trust the police as in many countries of origin police are corrupt and untrustworthy. These contradictory statements or testimonies work against them.²²²

The different institutions and organisations deny some responsibilities and claim signalling victims is not their task. The police arrest women without passports at raids and bring them to the alien detention centres without further investigation. The IND does the same with asylum seekers whom are not granted a refugee status. When persons in detention

²¹⁶ Boermans, 2006, p.25

²¹⁷ Idem, pp.26-27

²¹⁸ Kroon, email 31 March 2008 and Interview Werson (EMM/OPEX) 10 April 2008

²¹⁹ Claassen, 2005, p.37

²²⁰ Kroon, email 31 March 2008

²²¹ Interview Werson (EMM/OPEX) 10 April 2008

²²² Interview NGO (anonymous (off the record)) 2008

centres are waiting for their expulsion, nobody pays attention to symptoms of trafficking anymore because employees of detention centres believe it is not their task.

All actors have to be conscious of their own responsibilities to signalise human trafficking and to provide protection for them.²²³ There should be a strong emphasis on signalling in all institutions that deal with aliens and each institution should take its responsibilities.²²⁴ Nevertheless, employees of the alien police and the detention centres in the Netherlands are willing to cooperate in improving the signalling and trainings for detection and signalling for employees in detention centres are being given.²²⁵ There is no information on this for Hungary whatsoever, except that the National Police issued a directive on the treatment and identification for law enforcement authorities, but this has not been implemented yet. Furthermore, one may come to the conclusion that Hungarian police officers are less benevolent on signalling of victims than their Dutch colleagues. Overall, officers and other people who deal with aliens need (more) permanent training. Besides that, to tackle this problem there should be more cooperation between partners, including NGOs.²²⁶ Signalling and the identification of (possible) victims is thus one of the most important stages in the protection mechanisms for victims of trafficking.

5.2.3 Registration

Moreover, it is necessary that (possible) victims are registered in order to see who they are, what their background is, if and how one can protect them sufficiently and what kind of protection they need. In chapter 4 we have seen that the Netherlands has a well-established system on the registration of victims; all actors have to report possible cases to the EMM and Comensha who register all victims of trafficking. However, the National Rapporteur mentions that the system of reporting and sharing information can still be improved.²²⁷

Hungary does not have any registration system whatsoever. In 2007 the U.S. Department of State reported that the government should work to establish a systematic method to document victims".²²⁸ In 2008, it concluded the plan of the Hungarian National Bureau of Investigation's information centre to collect, register and report trafficking in

²²³ Boermans, 2006, pp.26-27

²²⁴ Idem, p.27

²²⁵ NRM, 2007, p.128

²²⁶ Interviews Werson (EMM/OPEX) 10 April and Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

²²⁷ NRM, 2007, p.129

²²⁸ U.S. Department of State, 2007, pp.114-115

persons related statistics, including victims and perpetrators, remains in the planning stages.²²⁹

To conclude, the lack of registration data bases, and signalling and identification procedures may relate to the assumption that the Hungarian government fails to recognise the gravity of human trafficking in the country. Neither international, nor internal trafficking is seen or treated as a big problem.²³⁰ Choudhury, Dimitrova & Johnson et al. (2005) also discovered that trafficking is not received as a major problem because the scarcity and inconsistency of its statistics, and the fact that prosecution statistics tend to seriously downplay the prevalence of trafficking.²³¹ Officers of the International Trafficking Unit confirmed this in a way by claiming that there are not so many victims of human trafficking as it is not the biggest crime in Hungary.²³² Looking at reports of the IOM in Budapest gives the same impression; the majority of the publications concern neighbouring countries and not Hungary.

Overall, in both Hungary as the Netherlands there is a need for change of perception in relation to dealing with (illegal) immigrants, who are thus sometimes victims of trafficking. Furthermore, more emphasis should be on an organised system of identification, signalling and registration of victims. It seems that Hungary has even less developed signalling and identification procedures than the Netherlands as there are no data on these issues whatsoever. Moreover, a State should tackle the problem of trafficking with a human rights approach. But it seems that in both countries the emphasis is on combating organised crime and illegal migration, rather than on the assistance and support for victims.

5.3 Referral Procedures

When a victim has been recognised as such, a next problem can be encountered. This relates to the referral mechanisms in the countries of destination. As laid down in international and national laws, victims have the right to information about the procedures, to the so-called 'reflection period', and to certain types of protection. A well-functioning referral system is therefore necessary. If victims are not referred to specialised agencies, a victim does not get the information and protection which s/he needs.

²²⁹ U.S. Department of State, 2008

²³⁰ Interview Tóth (NANE) 16 April 2008

²³¹ Choudhury, Dimitrova & Johnson et al., 2005, p.8

²³² Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

5.3.1 Hungary

In 2004 there were no documented cases where assistance for victims of trafficking was provided in Hungary.²³³ Afterwards the Ministry of Justice and Law Enforcement created a referral mechanism framework agreement.²³⁴ In its next report, the U.S. Department of State concluded that the law enforcement authorities had improved the government's victim assistance efforts. Authorities continued to implement the government's victim referral process which was established in 2005; 23 victims were referred for assistance in 2006, compared with 12 in 2005.²³⁵ At the same time it concluded that the police should continue to utilise referral procedures. During an interim assessment by the U.S. Department of State in 2008, it became clear that the directive on the referral procedures for potential trafficking victims remains unimplemented.²³⁶ Then, in the newest report it said that in 2007, NGOs assisted 45 trafficking victims, 37 of whom were referred by government officials.²³⁷ One of the aims of the national strategy is to do a research on the reasons why the number of referred victims remains quite low.²³⁸

As we have seen in chapter 3 and 4, police officers have the duty under international and national legislation to inform victims of trafficking about their rights and the assistance which could be given to them. The reflection period should always be offered to victims of trafficking. The Hungarian police are obliged to give information about the rights and procedures during the first interview or meeting with the victim. Officers of the International Trafficking Unit, officers described that they provides the victims with information about the procedures and their rights, but due to a lack of knowledge of officers at (smaller) police stations, victims are not always provided with information about their rights and protection possibilities.²³⁹

Moreover, the officers of this unit did not make a clear distinction between the 'reflection period' and criminal procedures. Therefore it is unclear whether the reflection period is always offered to victims of trafficking. With regards to trafficking the focus is, like in many EU member States, on combating organised crime so the police are probably more interested in prosecution of the perpetrators than the protection of victims. Therefore police may try to encourage victims to testify without providing them information about procedures,

²³³ U.S. Department of State, 2004

²³⁴ Ministry of Justice and Law Enforcement, 2008

²³⁵ U.S. Department of State, 2007, p.115

²³⁶ US Department of State, Trafficking in Persons Interim Assessment, February 2008

²³⁷ U.S. Department of State, 2008, p.138

²³⁸ Ministry of Justice and Law Enforcement, 2008

²³⁹ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

protection and the reflection period. In 2006 authorities encouraged victims to assist in trafficking investigations and prosecutions, but few victims chose to participate due to lack of information provided to victims, language barriers, and fear of retribution by traffickers.²⁴⁰

Furthermore, according to the International Trafficking Unit the general referral procedure depends on what the victim says she wants. Even though listening to the victims' needs is important and necessary, it seems that this only regards the first stage of a referral procedure. The question is what happens afterwards. Police officers should refer them to specialised agencies to make sure the reflection period will be granted and protection will be given to the victims. As mentioned before, a directive on referral procedures has not been implemented yet. Therefore rules or guidelines on this issue do not exist or remain unclear.

Not only are the police responsible for the lack of referral procedures. As it says in referral mechanism framework agreement, the Office of Immigration and Nationality (BÁH) is not only responsible for issuing (temporary) residence permits but is also supposed to refer victims to actors who can provide shelter, the expertise, the staff and support. Furthermore, a female victim who is identified by the helpline should be referred to the shelter by giving her the phone number of the shelter.²⁴¹ Furthermore, specialised agencies for human trafficking do not exist. Therefore, it remains unclear which actor is responsible for what kind of protection.²⁴² How can a referral system function if you do not know to whom you should refer victims?

Moreover, there seems to be little cooperation or even frictions between various (inter-) governmental institutions, the police, NGOs, and other associations.²⁴³ For example, NANE's director usually does not refer victims to the police. This NGO will see what help a woman needs, for example housing, social or medical help and tries to channel her to services like a local social worker or a family assistance centre. But the director would suggest the victim not to say she is a trafficking victim, because it is stigmatising and there is a lot of victim blaming.²⁴⁴ For certain issues a consensus exists between the various actors. They all agree on the idea that a victim needs amongst other support shelter, social and medical care, and psychological assistance. It is the task of the government to make institutions where consensus is reached. After all, cooperation is in advantages of the victim.

²⁴⁰ U.S. Department of State, 2007, pp.114-115

²⁴¹ Ministry of Justice and Law Enforcement, 2008

²⁴² Besides issuing residence permits and offering return programmes, protection includes amongst other measures psychological and medical assistance, legal advice and support, and accommodation or shelter (section 6.f U.S. Department of State, 2004 and Apap & Medved 2002, pp.55-61).

²⁴³ IOM Budapest, 2003-2004, pp.44-45

²⁴⁴ Interview Tóth (NANE) 16 April 2008

5.3.2 The Netherlands

In the Netherlands law enforcement officials have guidelines concerning the information they should give to persons who could have been trafficked about their rights as well. But there is a regular failure by the police to carry out this order. Victims who (may) want to cooperate with the authorities are not always provided with (information about) protection measures and facilities under the B9 Regulation. A common problem is the operation of the reflection period in practice. Sometimes law enforcement officials seem unwilling to inform possible trafficked persons about the right to a reflection period, because of their lack of knowledge or they feel it interferes with investigation.²⁴⁵

Another reason why police or border guards (KMAR) do not offer the reflection delay is the increasing abuse or exploitation of the current legal system by traffickers. Traffickers manipulate the isolation and vulnerability of trafficked persons or illegal immigrants. Traffickers push them to tell the authorities that they are victims of trafficking, so that they will be accommodated in open detention centres. Traffickers will pick them up at these centres and traffic them to other places. Police and KMAR do not want to be responsible of helping traffickers and putting persons at risk and therefore do not provide them with the proper information.²⁴⁶

Even though the times the reflection period offered to trafficked persons seem to increase: 10.1% in 2007 against 17.3% in 2006, it is still not optimal. Moreover it is known that in 2004 out of 147 persons pressing charges as trafficked persons, only 47 had been informed of their rights and given reflection delay.²⁴⁷ It can also happen that the reflection period is offered, but for less than three months.²⁴⁸ Moreover, the amount of testimonies has decreased; 36.5 percent in 2005 against 35.6 percent in 2006.²⁴⁹

Besides, Comensha is concerned about those persons who have been refused to enter the country, but who claim they have been victims of trafficking in other countries. As we have seen in chapter 4 they do not have the right to use the reflection period. In practice it means that many do not want to cooperate because they often do not even know in which country they are in, and have no idea what testifying would mean for them. Therefore, these

²⁴⁵ NRM, 2007, p.128 and OSCE/ODIHR and Anti-Slavery International, 2004, p.3

²⁴⁶ Interview Werson (EMM/OPEX) 10 April 2008 and Pearson, 2002, p.43

²⁴⁷ OSCE/ODIHR and Anti-Slavery International, 2004, p.3

²⁴⁸ Pearson, 2002, p.42 and NRM, 2007, p.128

²⁴⁹ Comensha, 2006, p.10

persons will often be brought to detention centres for aliens.²⁵⁰ As discussed before, signalling and identification of victims of trafficking does most likely not happen there.

Another concern of Comensha is the lack of notification by the police to NGOs. In illustration of the problem, a study of 2004 demonstrated that out of 3,500 victims that reportedly were identified in police investigations, only 350 were referred to NGOs.²⁵¹ Moreover it appears that the police – contrary to the trafficking in human beings guidelines – do not always report offences involving human trafficking to the public prosecutor. Instead they drop or dismiss them in-house when they believe the case would not be interesting from the perspective of criminal law. In fact, police officers have indicated that if they invest time with possible victims, the victims will – relatively often – be actually prepared to report the offence after.²⁵²

Bureaucratic delays in referral procedures experienced in the Netherlands have a negative impact by delaying the provision of all services. If there is a delay in processing the person's immigration status it will delay the financial assistance, access to a shelter or other housing, free legal assistance and non-emergency medical care.²⁵³ Furthermore, it is unclear which insurance company should pay for what kind of services.²⁵⁴ Delays increase pressure on NGOs to fill the gap by funding basic services, such as shelter and financial assistance during this period. In 1999 BlinN and SRTV established an emergency fund. Victims can apply for a gift or a loan to bridge this gap and to become a little more financially independent.²⁵⁵ Access to non-emergency medical care during the 'gap' is also a problem in most countries, since many trafficked persons need prompt medical treatment.²⁵⁶ In Hungary there are probably no such funds.

5.4 Accommodation and assistance

In addition to being granted with a residence permit, trafficked persons need access to extensive support and assistance measures in their (social) recovery as provided for under Article 6 of the Palermo Protocol (a) and Article 12 of the Warsaw Convention.²⁵⁷ One of these measures is appropriate housing. However, under the provision 6.3 (a) of the Palermo

²⁵⁰ van Neerbos, email 1 April 2008

²⁵¹ OSCE/ODIHR, 2004 and Anti-Slavery International, 2004, p.3

²⁵² NRM, 2007, p.128

²⁵³ Interviews Werson (EMM/OPEX) 10 April and van Neerbos (Comensha) 2008

²⁵⁴ Interview van Neerbos (Comensha) 2008

²⁵⁵ BlinN, 2007, p.44

²⁵⁶ Pearson, 2002, p.54

²⁵⁷ CoE Warsaw Convention 2005 and UN Palermo Protocol (a) 2000

Protocol ‘states shall consider these measures’, which means that States must consider but are not obliged to provide victims with accommodation. Furthermore, the UN writes in a report of 2002 that States should consider ensuring, in cooperation with NGOs, safe and adequate shelter that meets the needs of trafficked persons is made available. Again, this is not an obligation but just a recommendation.²⁵⁸

5.4.1 Shelter in Hungary

Under the Hungarian law the State is not obliged to provide housing for victims of trafficking either. There had not been a shelter for trafficked persons until some years ago. Initiatives and efforts by several organisations for the establishment of a shelter in Hungary were unsuccessful because of a lack of proper state funding.²⁵⁹ And to some extent the situation is still the same as due to a lack of funding the White Ring Association, NANE and the Hungarian Prostitute Interest Protection Association can only sometimes provide temporary accommodation and have not been able to establish permanent safe accommodation for victims of trafficking.²⁶⁰

Nevertheless, in March 2005 a shelter for amongst others victims of trafficking was opened. In the National Strategy one can find that the Office of Immigration and Nationality (BÁH) provides the shelter’s physical accommodation and that its operation is performed by a non-governmental organization.²⁶¹ However, on its website the Hungarian Baptist Aid Association writes that it opened a house only since January 2008. The house is expanding and from 1 January 2009 it is expected to be able to host forty people.²⁶² But there are some complexities concerning this shelter.

First of all, it seems that the trafficking of human beings department is unaware of general procedures for accommodating victims of trafficking during the reflection period and/or criminal proceedings. This possibly relates to the lack of referral procedures. Apparently police decide where they will send victims after the first interview. It depends on what the victim says; whether she wants to go home or if she claims to have safe accommodation in another place. In those cases they consider sending the victim to the shelter

²⁵⁸ UN, Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the OHCHR to the Economic and Social Council, 2002

²⁵⁹ White Ring Association, 2003, p.20

²⁶⁰ Hungarian Prostitutes’ Interest Protection Association. (Magyarországi Prostituáltak Érdekvédelmi Egyesülete), introduction, available at: www.prostitualtak.hu

²⁶¹ Ministry of Justice and Law Enforcement, 2008

²⁶² Hungarian Baptist Aid Association. (Baptista Szeretetszolgálat), help for abused women, available at: <http://english.baptistasegely.hu/node/334>

as unnecessary. Hereby should be noted that victims of trafficking have the right to determine where they want to reside during the reflection period and criminal proceedings. At the same time police officers of the International Trafficking Unit state that: “*When victims are in criminal proceedings, prison care is enough for them. They do not complain about their circumstances.*”²⁶³ This makes me wonder whether police have rules or guidelines concerning accommodation or if they just act on what they think is best. There are no data about the amount of victims who have been referred to the shelter. However, the same trafficking unit revealed they have sent two victims to the shelter the previous year.²⁶⁴

Secondly, the Hungarian government does not differentiate NGOs from religious associations (nor the police do) which could be confusing and lead to incomprehension.²⁶⁵ A NGO is a legally constituted organization whose objective is to further the political or social goals of their members or funders, whereas a religious association has charity purposes only. A charity organisation may not have sufficient expertise to tackle the problem and provide victims with assistance. Besides, a shelter ran by a religious association may not be the ideal place for victims of trafficking who are not religious. The International Trafficking Unit stated that some prostitutes complained about the religious behaviour of the Baptists, who wanted them to lead them through the religious way where prostitutes did not want this.²⁶⁶ Moreover, in a country which separates the State from Church it may feel awkward that the State and a religious association provide the service of a shelter together.

Thirdly, according to the International Trafficking Unit of the police the Baptist Association does not have sufficient financial funds of the government to run this shelter and asks the State to give more money for this activity. After the release of the action plan of the national strategy, State funding may increase.²⁶⁷ It is not clear whether the Baptists provide victims with all psychological, legal and medical assistance, if they cooperate with other agencies, or whether other agencies are responsible for this support.

Another major issue of concern is security of the shelter itself. According to NANE the shelter is not really a shelter. Next to a refugee centre outside of Budapest there is a kind of communal accommodation and which may not be suitable for long term needs of human beings. This was meant for second step homes for refugees who still cannot make a living themselves. However, this plan was dropped and the accommodation facilities are now used

²⁶³ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

²⁶⁴ Idem

²⁶⁵ Interview Tóth (NANE) 16 April 2008 and Ministry of Justice and Law Enforcement, 2008

²⁶⁶ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

²⁶⁷ Idem

as the shelter. The shelter is in a highly 'infected area', because it is next to a refugee centre. According to NANE, the area of refugee centres is full of smugglers and sometimes of traffickers. They can get 'new clients' for their businesses there. Therefore, refugee centres are not the best places to hide victims of trafficking. The shelter was shown to the U.S. government and presented as a highly secret place. But NANE heard from a police officer that everybody in the local pub knows about it and calls the shelter '*a whore pub*'.²⁶⁸

Little cooperation between different agencies which deal with victims of trafficking is also problematic. Officers of the International Trafficking Unit claims that cooperation between them and the Baptists has been improving since one month and a half, but there is still little cooperation between the Baptists, NGOs and the police. NANE believes that the religious association does not provide organisations with any information about the shelter and that it is very secretive about it. It is important for agencies to whom they send a victim to but organisations such as NANE cannot directly contact the shelter.²⁶⁹

Apart from issuing (temporary) residence permits done by the Office of Immigration and Nationality (BÁH) and voluntary return programmes of the IOM, the government and criminal justice agencies delegate their responsibility for victim support to NGOs. This is not necessarily a problem. But it has become a problem because the government's funding is meagre. NGOs and other associations are not able to give the necessary assistance without sufficient financial support.²⁷⁰ Even though the government has allocated a large sum of money for NGOs which were dealing with trafficking issues, it is questionable whether this money was really given to the ones who specifically deal with victims of trafficking. Moreover, the police and NGOs still claim there is not sufficient funding.

5.4.2 Shelter(s) and support in the Netherlands

The Netherlands has various shelters for victims of all sorts of mistreatment or crimes, including victims of trafficking, which are funded by the State via its municipalities.²⁷¹ It is mainly the NGO Comensha which is looking for agencies who can assist in looking for shelters. These agencies can be for example other NGOs, like BlinN and SRTV, but also organisations dealing with victims of domestic violence. However, BlinN and Comenha argue

²⁶⁸ Interview Tóth (NANE) 16 April 2008

²⁶⁹ Idem

²⁷⁰ White Ring Association, 2003, p.28

²⁷¹ Pearson, 2002, p.53

that there are not enough shelters.²⁷² In BlinN's opinion the government does not feel responsible for the accommodation of victims. Municipalities can refuse accommodating persons who come from another area and the government does not push municipalities for creating more options for victims of trafficking.²⁷³ Therefore it is impossible to arrange good shelter.²⁷⁴

Moreover, there is no categorical shelter for victims of human trafficking which can cause difficulties.²⁷⁵ At the moment adult women are accommodated in 'regular women or crisis shelters'. Minors are accommodated in special youth centres or are placed under foster care. Often social workers and psychologists who work in these centres are often not specialised in trafficking cases. Furthermore, these accommodation centres are closed, which means they are secret for partners, police, and third persons. Victims can choose whether they want to stay in these shelters and when they want to leave. Most women have a trauma and/or feel that they are in an isolated position, because the women they share the shelter with are there for various reasons. This is one of the main reasons why they sometimes contact their former traffickers or women they know who work in prostitution as well. It can happen that the latter betray the victims to their old pimp or trafficker. Therefore, it is very difficult to keep the address secret and it is of no use and impossible to place police officers at all these centres.²⁷⁶

The EMM and several NGOs agreed upon a plan to create three diagnostic centres in the country specifically for victims of trafficking. Traffickers and pimps will know about these centres, but it is easier to guard them as there are only three. According to the EMM it will become more difficult for traffickers to abuse the law if these centres are in place. Victims will be able to leave, but nobody can enter the shelters. Moreover, in these centres trafficked women will have all the care they need. Social workers, psychologists, and legal advisors in these centres will be specialised in women trafficking. Persons who decide not live in one of these centres but in private residences, will also profit from the categorical approach. They will know where to go if they need help.²⁷⁷

Trafficked persons need the right to self determination; a person has to know that if s/he wants to leave s/he is free to do so. In the categorical shelters safety will be secured for

²⁷² Kroon, email 31 March 2008, BlinN, 2007 and NRM, 2007, p.87

²⁷³ Comensha, Landelijke opvang nodig voor slachtoffers mensenhandel, available at: <http://www.opvang.nl/leo/artikelen/raadplegen.asp?display=2&atoom=10178&atoomsrt=2&actie=2>

²⁷⁴ Kroon, email 31 March 2008

²⁷⁵ van Neerbos, email 1 April 2008 and STV, 2006

²⁷⁶ Interview Werson (EMM/OPEX) 10 April 2008

²⁷⁷ Interview van Neerbos (Comensha) 3 April 2008

those who want it. Closed centres put trafficked persons under too much pressure and will harm the victims even more. In addition, we should bear in mind that all women are different and have different needs, so the only thing what the authorities can do is create a framework so these women have the possibility to think about their choices and their future.²⁷⁸ At the moment the government is discussing whether they should implement this categorical accommodation for foreign victims.²⁷⁹

5.5 Legal Assistance

While legal assistance may be provided by the Immigration and Naturalisation Service (IND), or by lawyers through a victim support organisation or Comensha, in many cases trafficked persons appear unaware of the possibility of obtaining legal advice in the Netherlands.²⁸⁰ Moreover, not all victims receive this legal assistance.²⁸¹ Because the B9 Regulation is complex and the Dutch advocacy, due to lack of time and sufficient knowledge about trafficking issues, does not always provide information about the regulation and proceedings BlinN started a project of legal assistance in 2006. By order of this NGO legal advisors and volunteers helped 27 clients in that year, by providing them with information and assistance concerning the legal procedures.²⁸²

Furthermore, lawyers play a crucial role in ensuring that trafficked persons are kept well-informed about the witness protection and court proceedings against traffickers.²⁸³ Prosecutors in the Netherlands have duties to keep the victim informed about the case if the trafficked person requests this. Prosecutors must give a form to victims that must be completed and returned to the prosecutor if victims wish to stay informed of the case. In practice, Comensha stated that this form is in Dutch and complex, so many trafficked persons do not understand what it is for, unless the support coordinator is present and able to explain it to them. Comensha stated that in general witnesses are not well informed about the progress of the criminal cases.²⁸⁴ Moreover, chapter 4 already described that the Witness Protection Programme in the Netherlands is hardly ever applied for victims of trafficking, as protection is largely through the B9 Regulation. The Dutch National Rapporteur, Comensha and BlinN do not mention the Witness Protection Act in their latest reports, which probably means that

²⁷⁸ Interviews Werson (EMM/OPEX) 10 April and van Neerbos (Comensha) 3 April 2008

²⁷⁹ Interview van Neerbos (Comensaha) 3 April 2008

²⁸⁰ Pearson, 2002, pp.78-80 & NRM, 2007, p.82

²⁸¹ Kamerman & Wittenberg, 2008

²⁸² BlinN, 2007, p.39

²⁸³ Pearson, 2002, p.56

²⁸⁴ Idem, p.57

this Act has not been used for victims of trafficking the last years. Only in a report of 2004 the OSCE wrote that it considered witness protection was a key concern, as it has been rarely used, and only provided protection during trial, but not before or after.²⁸⁵

The Hungarian Witness Protection Act LXXXV on the Programme of Protection of Participants of Criminal Procedures and Persons in 2001 is according to NANE the Witness Protection Acts a rather marginal programme as it is not relevant to victims of trafficking:

“This programme costs a lot of money and can only take care of a few individuals. Witness protection concerns a handful of middle-level criminals in organised crime who agree to be whistle-blowers. Besides that, the police require victims not to contact anybody previously known and to place them under supervision. Many victims do not want this.”²⁸⁶

Even where victims give a testimony anonymously, the NGO claims that the protection act gives a false sense of security. Traffickers will most likely identify a witness from her statement, so this only works in cases with a huge number of identified victims who have been through highly similar things at the same time.²⁸⁷ In 2003 the White Ring Association stated that courthouses did not make any provision for separate waiting areas for victims, witnesses and defendants, and that intimidation and insecurity have undoubtedly ensued.²⁸⁸

Unfortunately there are no data on how many victims of trafficking have used this programme or whether they have received protection under the Witness Protection Act or not. This may be because victims have not received protection under this Act or because Hungary does not register these victims. Moreover, I did not manage to obtain publications which report whether victims of trafficking are provided with legal assistance and receive information on legal procedures in Hungary. Therefore, I can only assume the right to legal assistance and information on procedures is not respected in practice.

5.6 Right to a safe return?

5.6.1 Permanent Residency

Another issue of great importance is the granting residence permits on humanitarian grounds. In Pearson’s opinion (2002) a trafficked person’s residency status should not be dependent upon their participating in criminal proceedings. The extremely narrow grounds for granting

²⁸⁵ OSCE/ODIHR and Anti-Slavery International, 2004

²⁸⁶ Tóth, email 30 April 2008

²⁸⁷ Idem

²⁸⁸ White Ring Association, 2003, p.29

permanent residence means that most victim-witnesses are only protected for the purposes of the trial and not on a longer-term basis.²⁸⁹

Decisions on residency status should be based on an assessment of whether a trafficked person has suffered serious harm or abuse in the country where they are located and also the risk of further harm if they return home. This is more in line with general humanitarian principles and international human rights, such as not to expel someone if there are substantial grounds for believing they may be in danger of torture.²⁹⁰ Furthermore, the insecure residency status, which is related to the criminal proceedings, is seen by many victims as a major obstacle to cooperate with law enforcement authorities and to move on with their lives.²⁹¹ But in order to get a residence permit on humanitarian grounds, victims have to prove that they run a risk being persecuted by traffickers or being re-trafficked again, and that authorities offer insufficient protection. This is almost impossible, for example victims can rarely prove the risk of reprisals. Moreover, victims have to pay for applying for a residence permit on humanitarian grounds. Victims cannot afford to pay these costs.²⁹²

There are no data available how many victims have received a permanent residence permit making use of the principle of humanitarian grounds for both Hungary and the Netherlands.

The BÁH is not collecting data on this issue.²⁹³ NANE argues that victims are rarely granted with a residence permit on humanitarian grounds. The lack of information could signify that only very few victims of trafficking have been granted a permanent residence permit based on these grounds.

The actual number of permanent residence permits on the basis of humanitarian and compassionate grounds granted is not readily available in the Netherlands either.²⁹⁴ However, the IOM wrote that it would correspond to roughly five percent of the overall number of applications in 2002.²⁹⁵ A permanent residence on humanitarian grounds, is given only in exceptional circumstances. Comensha tries to contribute to the success of an application for a permanent residence permit by intensive lobbying.

According to BlinN the announcement of the Parliamentary Undersecretary Albayrak at 18 October 2007, wherein she stated that in abrading cases she would exercise her

²⁸⁹ Apap & Medved, 2002, p.69 and Pearson, 2002, p.68

²⁹⁰ Pearson, 2002, p.45

²⁹¹ van Neerbos, email 1 April 2008

²⁹² Kroon, email 31 March 2008

²⁹³ Ministry of Justice and Law Enforcement, 2008

²⁹⁴ Interview Kroon (BlinN) 13 May 2008 and Kroon, email 31 March 2008

²⁹⁵ Apap & Medved, 2002, pp.72-73

discretion in granting permits where a victim is legitimately afraid of cooperating with the authorities, is insufficient. The victim still has to talk to the police and precisely the most threatened victims are too scared to do this.²⁹⁶ Goodey (2003) also argues that there is a pressing social need of eligible victims to consider disconnecting cooperation and granting residence permits, even though there is a possibility that illegal immigrants will use the opportunity to falsely claim victim status.²⁹⁷ An expert on human trafficking does not share their opinion. He claims that disconnecting granting residence permits from any form of cooperation with law enforcement authorities is a bad idea for both victims as for combating human trafficking. He believes that if it would be possible to receive a residence permit by only giving a statement that you are victim it, traffickers will abuse the law.²⁹⁸

Victims and victim-witnesses who dread returning may be tempted to look for illegal means to remain in the country and are therefore in the county of destination without State protection or support.²⁹⁹ If victims decide to return home or if they are obliged to leave the country another problem comes to play, namely the lack of return and reintegration programmes and strategies.

5.6.2 Return and Reintegration

Hungary and the Netherlands have serious shortcomings in return and reintegration strategies for victims of trafficking, most likely due to a lack of legal obligations and the governments' emphasis on the expulsion of illegal immigrants rather than on the protection of victims of trafficking. Moreover, those who are identified as victims of trafficking but choose not to cooperate with law enforcement authorities are most likely to face deportation. Furthermore, the residency status will be withdrawn as soon there has been a decision by the court.³⁰⁰ Thus many (possible) victims are deported, often without any kind of protection offered. They have fair chances to be re-trafficked or punished by their traffickers. The only law which could apply to victims of trafficking is the Witness protection Act wherein victims who cooperate with law enforcement authorities should be protected during and after the procedures in case

²⁹⁶ Interview Kroon (BlinN) 13 May 2008

²⁹⁷ Goodey, 2003, p.169

²⁹⁸ Interview Werson (EMM/OPEX) 10 April 2008

²⁹⁹ Apap & Medved, 2002, pp.72-73 and Pearson, 2002, pp.45-46

³⁰⁰ VPRO, Vrouwenhandel in Nederland. Een papieren prioriteit, 2006, available at: <http://www.vpro.nl/programma/tegenlicht/afleveringen/27693117/items/27760620/>

it is necessary. Unfortunately there are no documents or reports available how many victims were protected under witness protection programmes.³⁰¹

The relevant governmental authorities of destination countries (Ministry of Interior or Ministry of Foreign Affairs) should consult consular authorities of countries from which trafficked women originate in order to inform them about the situation and to coordinate safe, voluntary return of victims of trafficking and assistance to trafficked women.³⁰² Due to the reasons mentioned above, this does not usually happen. In addition, there is little cooperation with police in countries of origin due to a lack of trust of authorities, and the unwillingness of women for local police to be informed.³⁰³ The latter is due to corrupt practices by the police in (mostly) countries of origin.

Officers of the International Trafficking Unit in Hungary explained that they contact colleagues in foreign countries if they need information for an investigation, if the case does not need it, they do not. If they send a victim back to the country of origin they do not make a risk analysis because that is not the responsibility of their unit. The immigration office (BÁH) has general information about the safety in different countries and on the basis of this information, the police's information and the victim's statement s/he send is sent home or they let him/her stay.³⁰⁴ NANE claims that the Hungarian police would not contact anyone if they deport victims of trafficking. Hungary has agreements on extradition of illegal immigrants with most of its neighbouring countries. If the authorities arrest a person who is illegal in the country, s/he will be deported in two days.³⁰⁵ As there are no reports about (successful) rehabilitation and reintegration programmes, we can assume there is not much assistance and support available funded by the State or organisations for victims of trafficking who (want to) return home after being trafficked to and being exploited in Hungary.

As there are no Hungarian NGOs that specifically deal with human trafficking and due to a lack of State funding the NGOs that deal with trafficking issues as a side activity cannot offer protection for victims who return home. NANE explained it does not have the money to support victims abroad.³⁰⁶ The White Ring Association wrote in a report of 2003 that it provides provision of assistance to foreign victims of crime who return to their home countries (in exceptional cases, financial assistance). In that year 247 persons were provided

³⁰¹ At least until the year 2002 there was no police witness protection programme for after the trial in the Netherlands (Pearson, 2002, p.74).

³⁰² Musacchio, 2004, p.1028

³⁰³ Pearson, 2002, p.74

³⁰⁴ Interview Pörtl & Kiripovszky (International Trafficking Unit) 8 May 2008

³⁰⁵ Interview Tóth (NANE) 16 April 2008

³⁰⁶ Idem

with assistance in replacing stolen documents or in administrative tasks related to return home.³⁰⁷ These persons are not all trafficked persons. Moreover, the IOM coordinates voluntary return programmes involving local organisations in countries of origin.

The State and Dutch NGOs do not have a coherent offer in the area of return and reintegration. There are some initiatives but these are either incidental or are not structural enough to make them sustainable. Moreover, many parties are involved and therefore good communication and information exchange is necessary. Comensha has designed some initiatives to coordinate programmes of return and integration, but these are far from perfect. Furthermore, the Convention on return and reintegration signed by various NGOs and the IOM can help the tuning programmes. On a case by case basis the different organisations decide which activities could be good to assist victims. All organisations exchange contacts and information as well. In the years 2004, 2005 and 2006; 44, 69 and 54 victims returned to their countries of origin. Of these returned victims most of them were accompanied or supervised by Dutch agencies.

Return accompanied/assisted by:	2006	2005	2004
IOM	38	35	27
Alien / police	7	7	4
La Strada (Comensha)	3	7	2
BlinN	1	6	2
Embassy	2	0	
Returned by themselves	15	6	

Table 3: Numbers of returned victims assisted by organisations and institutions (Source: STV, 2006, p.20)

In table 3 we can see that IOM accompanies most return processes. Probably this is because one of IOM’s programmes (the REAN Programme³⁰⁸) can offer financial support, assistance during and after the journey.³⁰⁹ Where necessary and possible it also offers individual mediation.³¹⁰ NGOs often do not have the financial resources to offer all these services. Overall, cooperation between different agencies in the Netherlands and abroad is improving.

It seems that the majority of the return and reintegration programmes are voluntary programmes. Unclear is whether these programmes are also applicable to victims who do not want to return to their home countries and are deported against their will. Furthermore, it

³⁰⁷ White Ring Association, 2003, p.14

³⁰⁸ REAN stands for Return and Emigration of Aliens from the Netherlands (Dutch National Rapporteur, 2007, p. 65).

³⁰⁹ STV, 2006, pp.19-20

³¹⁰ Examples of individual mediation are: arranging temporary accommodation, providing information about the availability of medical services or employment in the country of origin (available at: http://www.iom-nederland.nl/english/Programmes/Return/Departure_projects/Additional_individual_assistance/Victims_of_human_trafficking).

should be thoroughly investigated whether victims can return home or not. Therefore, a checklist was introduced by Comensha in 2005. The checklist is supposed to be a source of information about the risks and security aspects concerning the return and reintegration processes of victims of trafficking. It is meant to be used by lawyers, the IND and different NGOs. It is important to continuously make adjustments where necessary in order to make the checklist as complete as possible. However, many victims are persuaded to return to their countries of origin by the IND and the alien police, and there is still a big risk they are deported without any form of protection, which also relates to the lack of signalling and identification procedures, so that many victims are not recognised as such and are simply deported as illegal immigrants.³¹¹

Voluntary return and reintegration in the society of origin appear to be good options for women who have been trafficked. However, we should bear in mind that in practice this is very difficult and may be even impossible because of the risks of reprisal, risk of being re-trafficked again and problems with family or the community. Furthermore, it is questionable if people who are relocated do not contact family or community members and still run the risk of reprisals. Even though I would like to approach it differently, I believe that in many occasions permanent residency might be the only solution for the well-being and safety of trafficked women.

Finally, as we have seen before we should be cautious using the ‘victim approach’. Of course, women who have been trafficked to Hungary and the Netherlands and who were forced into prostitution are victims of a serious crime. But it is important to remember that they do not necessarily stay victims for the rest of their lives. From a certain moment women are in the position to make choices. Even though many women can still feel threatened and have to recover from their experiences, after they are identified as victims of trafficking and receive assistance and support there is a difference from before. They have possibilities to make their own decisions again. A victim approach can have negative consequences for the recovery and reintegration of trafficked women.

³¹¹ Dutch National Rapporteur, 2007, p.56 and p.188

6. Concluding remarks

Various international, regional and national bodies have developed laws and policies to tackle the problem of human trafficking. Despite the various UN Conventions, two protocols, reports of international organisations, the Council of Europe Convention, the EU directives and regulations and the adoption of some good national laws and policies to protect the rights of trafficked persons, there is a need in both countries to institutionalise good practice; that is to say ensure uniform implementation by issuing clear guidelines that are regularly evaluated and reviewed, and disseminating these by means of training and sharing of good practices. An important reason for the lack of implementation of laws and policies in this area is that many treaties, directives, and regulations contain rather vague and weak obligations, provisions, guidelines, and recommendations. Therefore States do not feel the urge to develop trafficking-specific laws, regulations and policies and mechanisms for implementation. Furthermore, States still have a wide margin of discretion in implementing measures stated under the varying provisions. Some root causes of the problems in implementing laws and policies regarding the protection of trafficked women which can be found on the national level - especially in Hungary - are: insufficient state funding, problems concerning the legalisation of prostitution, the lack of cooperation between the different actors who deal with victims of trafficking and, in some extent, the absence of political will. Moreover, it seems that the main aims of the Hungarian and Dutch governments are to combat illegal immigration and the prosecution of traffickers rather than protecting the victims of trafficking. But the human rights of victims of human trafficking should be at the centre of all efforts. It should be ensured that victims of trafficking receive support and protection by both governments. Certain areas of protection need special emphasis.

Criminal Proceedings

Firstly, a human rights response to trafficking could argue that trafficked women, regardless of their willingness to testify, should be given the opportunity to remain in the host country; particularly given the dangers they might face upon a return to their home country. Under international and national laws victims of trafficking in Hungary and the Netherlands are entitled to apply for a permanent residence permit based on humanitarian grounds. But in practice, residence permits on those grounds are rarely granted to them.

Decisions on residency status should not be based on the progress of the criminal proceedings: if the victim's right to a (permanent) residence permit is dependant on the conviction of the perpetrator – it creates improper ranking of the perpetrator and the victim cannot be approved with respect to the human rights of the victim. Furthermore, the requiring of victims to gather their own evidence, on the safety in the country of origin by both States and especially on the commercial character of the offence by Hungary, are not in compliance with the public character of the prosecution and should be modified as the current law places victims in a position of vulnerability and risk of suffering serious and unjustified harm, including serious indiscriminate violence and other threats.

Apart from the reasons mentioned here above the protection of the most fundamental human rights of the victims requires authorities to insist on making a risk analysis on a case by case basis and sending a person back to the country of origin only when it is proved that the security of a person can be guaranteed. In case of uncertainty regarding security in the home country a residence permit offered to the victim is the proper way to follow.

Moreover, a question that must be dealt with is whether the right to a residence permit should be completely disconnected from criminal proceedings. It is reasonable to assume that the issuance of residence permits to victims without their cooperation with law enforcement authorities can be a problematic issue. Authorities need to ascertain first whether the individual is a victim or not which requires direct lines of communication and cooperation with potential victims. The problem therein lies in the fact that most threatened victims are too scared to talk with the police for fear of repercussions.

Signalising and Identification

Secondly, different treaties and reports at the international and national level emphasise the importance of well-functioning signalising and identification procedures. However, the focus of both governments is to combat illegal immigration rather than creating clear laws, policies or guidelines for the signalising and identifying victims of trafficking. Many victims are persuaded to return to their countries of origin by the immigration services (BÁH and IND) and the alien police, and there is still a big risk victims may be deported without any form of protection.

The State's prior interest to punish the perpetrator rather than safeguarding the rights of the victims and providing them with protection through well-functioning signalling and identification procedures eliminates male dominance behind criminal and administrative legislation.

Obviously, the change of minds in this area is as much important as the change of laws and policies. Therefore the most essential need is raising awareness among law- and policy makers, law enforcement officials (i.e. police, immigration and alien detention centres), service providers (e.g. medical, migrant, refugee) and the judiciary at a variety of levels (prosecutors, judges, lawyers) at every level. Besides having laws in place, proper training for those in charge of law enforcement might ensure that trafficked persons are correctly identified and to help them understand the complex situations and decisions trafficked persons face due to their vulnerable situation. Government agencies responsible for administration of justice should develop guidelines and procedures on treatment of (possible) trafficked persons by law enforcement officials. These need to be circulated widely and updated regularly. NGOs can play a role in these procedures as well. A good example is the initiative of a Dutch NGO to improve signalling in detention centres and to inform possible victims of trafficking about the proceedings and the right of protection.

Referral mechanism

In addition, services to inform trafficked persons about their entitlements to the reflection delay and other protection measures can be promoted by developing guidelines which provide a framework for these matters. In addition, police must ensure that victims of trafficking are not held in immigration detention or other forms of custody at any stages and refer them to specialised agencies that can offer the different forms of protection. Moreover, mechanisms have to be in place to ensure that a temporary residence permit is effectively issued within 24 hours of pressing charges. Furthermore, authorities should have the obligation to offer the reflection period to all victims of trafficking, also to persons who have been refused to enter the country, but who claim they have been victims of trafficking in other countries.

In general, the Netherlands has a well-functioning registration and referral system; victims are often informed about the reflection period and are provided with shelter, social care, (temporary) residence permits etc. But due to gaps in referral procedures, individuals are not always granted with support and protection. Hungary does not have a registration system.

Further, the plan for a referral system remains unimplemented and in practice victims are often not informed about their rights and not referred to agencies that could provide them with different kinds of support, care and protection. Due to a lack of information we do not know much about the current situation of victims.

Shelter

Moreover, both countries have problems with shelters for victims of trafficking. In Hungary the main concerns are whether victims are always referred to a shelter, whether it is safe and possesses the space capacity with experienced staff to assist victims. In the Netherlands one can find various shelters spread around the country but these are not specifically for victims of trafficking. Police and NGOs they are pleading for a total of three categorical shelters wherein specialised care, knowledge and services will be available. Meanwhile, it seems that this categorical shelter will be realised in the near future.

Witness protection

Under international and national legislation victim-witnesses are protected via the witness protection programmes. It has been a clear, though sad discovery of my research that these are rarely used for victims of trafficking. With regard to the Netherlands the protection of victims is already included in the B9 regulation. Actually protection should be given when victims are granted with a temporary residence permit in Hungary as well. But as there are no publications available that report whether this happens in practice, we can assume that victims of trafficking are rarely provided with protection. So long as their protection is been given beforehand, during and after criminal proceedings it is not of great importance under which regulation or programme this is provided. But as we have seen, victim-witnesses are required to leave the country of destination when a criminal proceeding comes to an end without a prosecution of the perpetrator, most often without any form of protection. The regulations mentioned above do not provide sufficient protection upon return. Under the witness protection programmes a State is obliged to protect the victim, so in this perspective it would be good to use these.

Return policies

The conditions for the return like safety guarantees and the provision of facilitation of return are given in treaties of the UN and the CoE. However, on the national levels in Hungary and the Netherlands we cannot see clear laws and policies regarding this issue. Both States do not

provide the necessary protection and support when victims return home. In both countries the IOM is the biggest organ that deals with this issue; it assists victims of trafficking via programmes for voluntary return. Furthermore, in the Netherlands return and reintegration strategies are more developed than in Hungary. In particular, Hungary does not seem to have any return and reintegration policies. The presence of some existing policies in this area in the Netherlands is mostly due to various NGOs who participate in these activities. However, it is States, not NGOs, that have the main responsibility of safe return and reintegration of victims. Governments should adopt migration policies to assist victims of trafficking and migrant prostitution in their rehabilitation and reintegration in society; enable female immigrant victims of ill treatment to return home and to ensure their security. States have to guarantee that upon return victims get complete protection. Return and reintegration in the societies of countries of origin are often not realistic and safe options. In many occasions permanent residency might be the only solution for the well-being and safety of trafficked women. Furthermore, victims of trafficking should have the right to work and education and training opportunities under the temporary residence permit. This is an important part of reintegration process either in the country of destination or of origin.

Overall, we can conclude that both Hungary and the Netherlands have problems in the implementation of laws and policies, regarding the protection of victims of human trafficking, and these should urgently be solved.

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