



ICMPD

International Centre for
Migration Policy Development

Anti-Trafficking Training Material for Judges and Prosecutors

Background Reader

in EU Member States and Accession and Candidate Countries



AGIS 2004
With financial support from the AGIS Programme
European Commission - Directorate General Justice, Freedom and Security

ICMPD Project Partners:



Anti-Trafficking Training Material for Judges and Prosecutors

Background Reader

in EU Member States and Accession and Candidate Countries

International Centre for Migration Policy Development (ICMPD)
Gonzagagasse 1
A-1010 Vienna
Austria
www.icmpd.org
www.anti-trafficking.net

International Centre for Migration Policy Development · 2006

All rights reserved. No part of this publication may be reproduced, copied or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without permission of the copyright owners. The contents of this publication may be used for educational and other non-commercial purposes, provided that notification of the purpose is made to ICMPD and any such usage is accompanied by acknowledgement of the source.

This publication has been produced within the framework of the EU AGIS Project "Elaboration and Implementation of Anti-Trafficking Training Modules for Judges and Prosecutors in EU Member States, Accession and Candidate Countries" with the assistance of the European Union and the Ministry of Justice of Bulgaria. The content of this publication is the sole responsibility of ICMPD and can in no way be taken to reflect the views of the donors.

Layout by Local Communication Design, Vienna, www.local.cd

ISBN: 3-900411-48-4

Acknowledgements

We gratefully acknowledge the contributions and assistance of a large number of persons and organizations, without whose dedicated efforts this training material could not have been completed. Many thanks to the drafting committee, the multi-disciplinary project implementation teams of the participating countries, the project partners and the reference group, who all contributed to the development of the training material.

Drafting committee:

Silke Albert (Anti-trafficking Legal Consultant), Francesco Carchedi (Professor, University of Rome, Italy), Barbara Cuzuioc-Weiss (International Centre for Migration Policy Development (ICMPD), Els De Busser (Institute for International Research on Criminal Policy, Ghent University, Belgium), Heike Gerhart (Psychiatrist, Germany), Maria Grazia Giammarinaro (Judge, Italy), Eva Schaab (Solwodi, Germany), Elisa Trossero (ICMPD).

Multi-agency project teams:

Carla Amaral (Portuguese Association for Victim Support - APAV), Paulo Da Mesquita (Centro de Estudos Judiciais, Portugal), Carlos De Almeida (Judge, Portugal), Paola Filippi (Consiglio Superiore della Magistratura, Italy), Dagmar Freudenberg (Prosecutor, Germany), David Herbots (High Council of Justice, Belgium), Ina Holznagel (Prosecutor, Germany), Ilse Hulsbosch (Accueil et accompagnement des victimes de la traite internationale des êtres humains - PAG-ASA, Belgium), Veronika Imova (Judge, Bulgaria), Witold Jakimko (Judge, Poland), Andreas Kangur (Law Center Foundation, Estonia), Sofia Kashlakeva-Andreeva (Animus Association Foundation, Bulgaria), Teodora Kateva (Animus Association Foundation, Bulgaria), Ivanka Kotorova (Prosecutor, Bulgaria), Frederic Kurz (Prosecutor, Belgium), Zbigniew Lasocik (Professor, Human Rights Centre, Poland), Caroline List (Judge, Austria), Kristiina Luht (Ministry of Social Affairs, Estonia), Alexandra Mathes (Judge, Austria), Beate Matsching (Judge, Austria), Oliver Michiels (Judge, Belgium), Pedro Pato (Centro de Estudos Judiciais, Portugal), Luigi Patronaggio (Judge, Italy), Mariusz Pilat (Prosecutor, Poland), Jüri Reede (Prosecutor, Estonia), Eva Schaab (Solwodi, Germany), Yves Segaeert-Vanden Bussche (Prosecutor, Belgium), Rumiana Tozova (National Institute of Justice, Bulgaria), Artur Wandoch (Prosecutor, Poland).

Project partners:

Magdalena Bialecka (Ministry of Justice, Poland), Antonieta Borges (Prosecutor, Central Department for Investigation and Penal Action, Portugal), Laviero Buono (Academy of European Law - ERA), Anne Fitzgerald (Solwodi, Germany), Juliano Franco (former ERA), Svetlana Shopova (Ministry of Justice, Bulgaria).

Reference group members:

Beate Andrees, (International Labour Organization - ILO), Gianluca Esposito (Council of Europe), The European Union's Judicial Cooperation Unit (EUROJUST) Anti-trafficking team, Anelise Gomes de Araujo and Liliana Sorrentino (Organization for Security and Co-operation in Europe - OSCE), Mechtild Maurer (End Child Prostitution, Pornography and Trafficking of Children for Sexual Purposes - ECPAT, Germany), Kristiina Kangaspunta (United Nations Office on Drugs and Crime - UNODC), Helga Konrad (former OSCE Special Representative on Combating Trafficking in Human Beings).

ICMPD project team:

Barbara Cuzuioc-Weiss, Seth Oppenheim, Irma Salihovic, Joanna Swierczynska, Gerda Theuermann and Elisa Trossero.

Editing:

Stella Mc Dowell and Yuliya Prodamiuk.

A special "thank you" to the ERA for hosting on its premises the regional seminars during which the training material was developed and with the involvement of multi-disciplinary teams from Austria, Belgium, Bulgaria, Estonia, Germany, Italy, Poland and Portugal.

Table of Contents

Acknowledgements	3
Introduction	8
How to use this Document	9
List of Abbreviations	10
Glossary of Terms	11
1. Trafficking in Human Beings - Description of a Phenomenon	11
1.1 Abstract - Learning Objectives	15
1.2 Introduction of the Phenomenon	15
1.3 Definition of Human Trafficking	16
1.4 Distinguishing Trafficking in Human Beings and Smuggling of Migrants	16
1.5 Root Causes of Human Trafficking	19
1.5.1 Push Factors	19
1.5.2 Pull Factors	20
1.5.3 Restrictive Migration and Labour Regulations	20
1.6 Organised Crime	21
1.7 The Trafficking Process	22
1.7.1 Recruitment	22
1.7.2 Transportation	23
1.7.3 Exploitation	23
1.7.4 Methods of Controlling the Victims	32
1.7.5 The Issue of Consent	33
1.8 Consequences and Risks of Trafficking in Human Beings	34
1.9 The Scale of Trafficking in Human Beings	35
2 The Trauma and the Needs of Victims	37
2.1 Abstract - Learning Objectives	39
2.2 Definition of "Trauma"	39
2.3 The Impact of Violence and Long-term Exploitation	39
2.4 Reactions to Traumatic Events	40
2.5 Dissociation	43
2.6 The Need of Stabilising the Victims in the Context of PTSD	43
2.7 Interrogation of Traumatized Victims	44
2.8 Traumatized Children	45
3 The Normative Framework	47
3.1 Abstract - Learning Objectives	49
3.2 United Nations Treaties and other International Instruments	49
3.2.1 Convention against Transnational Organized Crime and its Supplementing Trafficking Protocol	49
3.2.2 Other Treaties	55
3.2.3 International Labour Organization	58
3.2.4 The International Criminal Court Statute	60
3.2.5 Council of Europe	60
3.2.6 Organization for Security and Co-operation in Europe	65
3.3 European Union Regulations and Policy Documents	65
3.3.1 European Union Legislation - Introduction	65
3.3.2 The Three Pillars	66

3.3.3 Charter of Fundamental Rights of the European Union.....	66
3.3.4 Framework Decision of the Council of the European Union on Combating Trafficking in Human Beings.....	67
3.3.5 Directive 2004/81/EC of the Council of the European Union on the Residence Permit for Victims of Trafficking.....	68
3.3.6 Framework Decision 2001/220/JHA of the Council of the European Union on the Standing of Victims in Criminal Proceedings.....	69
3.4 National Legislation.....	69
4 The Comprehensive Approach towards Combating Trafficking in Human Beings.....	73
4.1. Abstract - Learning Objectives.....	75
4.2 Human Rights-based and Victims-centred Approach.....	75
4.2.1 Identification.....	75
4.2.2 Reflection Period.....	76
4.2.3 Residence Status.....	77
4.2.4 The Victim's Exemption from Liability.....	78
4.2.5 Victims' Support Activities.....	78
4.2.6 Prevention of Secondary Victimisation.....	80
4.3 Co-operation and Co-ordination Mechanisms.....	80
4.3.1 Task Force.....	81
4.3.2 Independent Body - National Rapporteur.....	81
4.3.3 National Referral Mechanisms.....	81
4.3.4 The Role of NGOs - Co-operation Concepts.....	81
4.4 Prevention.....	83
4.4.1 Address Root Causes Including Demand.....	84
4.4.2 Increase of Legal Migration Possibilities.....	84
4.4.3 Awareness Raising Activities.....	85
4.5 Return, Re-integration and Social Inclusion.....	85
5 Criminal Proceedings and Victims' Rights.....	87
5.1. Abstract - Learning Objectives.....	89
5.2 Victim's Right to Effective Criminal Proceedings.....	90
5.3 The Pre-trial Phase.....	91
5.3.1 The Identification of Victims.....	91
5.3.2 Balanced Mix of Proactive and Reactive Investigation.....	96
5.4 The Victim's Right to Recovery.....	96
5.4.1 Co-operation Between Law Enforcement, Judiciary and Civil Society.....	96
5.4.2 Assistance to and Support of Victims.....	98
5.4.3 Reflection Period.....	99
5.5 The Right to Safety.....	99
5.5.1 The Protection of the Victim from Intimidation.....	101
5.5.2 The Protection through NGOs.....	102
5.5.3 The Police Protection.....	102
5.5.4 Special Protection Programmes.....	102
5.5.5 The Protection of the Victim's Identity.....	103
5.5.6 The Protection of other Personal Data.....	103
5.6 The Right to Privacy.....	104
5.6.1 Confidentiality of Proceedings.....	104
5.6.2 Closed-Door Hearing.....	104

5.7 The Right to Information.....	104
5.8 Protecting the Victims' Dignity.....	106
5.8.1 Avoiding Repetition of the Testimony.....	107
5.8.2 Avoiding Visual Contact with the Defendant.....	108
5.8.3 Questioning the Victim.....	110
5.8.4 Using Evidence Obtained in the Pre-Trial Phase.....	111
5.9 The Right to Legal Stay.....	111
5.9.1 Avoiding Deportation Following a Risk Assessment.....	112
5.9.2 Avoiding Deportation Considering Family Links in the Country of Destination.....	113
5.9.3 Cases of the European Court of Human Rights.....	113
5.10 The Right to Compensation.....	114
5.11 The Victim's Exemption from Prosecution.....	114
5.12 Sentencing the Perpetrators.....	115
5.13 Post-trial Phase.....	116
6 International Co-operation in Criminal Matters.....	117
6.1 Abstract - Learning Objectives.....	119
6.2 Cross-border Co-operation and Co-ordination.....	119
6.2.1 General Rules regarding Requests for International Co-operation in Criminal Matters.....	119
6.2.2 Specific Requests in the Fight against Trafficking in Human Beings.....	120
6.2.3 Other Requests in the Fight against Trafficking in Human Beings.....	121
6.3 Extradition.....	131
6.4 Transfer of Persons.....	132
6.4.1 Temporary Transfer of Persons.....	132
6.4.2 Transfer of Sentenced Persons.....	133
6.5 Ne bis in Idem.....	133
6.6 Transfer of Proceedings.....	134
6.7 Recognition and Transfer of Sentences and other Judicial Decisions.....	134
6.8 Money Laundering.....	135
6.9 Data Protection.....	136
6.10 Co-operation within the European Union.....	136
6.10.1 Europol.....	136
6.10.2 Eurojust.....	138
6.10.3 The European Judicial Network.....	138
Annex I: Questionnaire Responses concerning the Legal Framework of Anti-Trafficking Legislation.....	141
Annex II: Points of Contact in the Field of Anti-Trafficking.....	149
Annex III: UNICEF Guidelines for Protection of the Rights of Children Victims of Trafficking in Southeastern Europe.....	153
Annex IV: International Co-operation.....	161
Annex V: Reference Material.....	163

Introduction

This Anti-Trafficking Training for Judges and Prosecutors aims at providing a modern training package for practitioners who may be exposed to human trafficking in the course of their duties.

It was elaborated in the framework of the project "Elaboration and Implementation of Anti-Trafficking Training Modules for Judges and Prosecutors in EU Member States and Accession and Candidate Countries", implemented by the International Centre for Migration Policy Development (ICMPD) in partnership with the Academy of European Law (ERA), the Central Department for Investigation and Penal Action (DCIAP) of Portugal, the Ministry of Justice of Bulgaria, the Ministry of Justice of Poland and the non-governmental organization (NGO) Solwodi (Germany).

The project was based on the premise that well-trained judges and prosecutors are an indispensable part of the response to anti-trafficking and have a pivotal role in countering human trafficking. Yet the responsibilities of criminal justice systems do not lie exclusively in punishing offenders, but above all and primarily in respecting and restoring the human rights and needs of victims of trafficking. Taking the rights of victims seriously encourages them to participate in proceedings, thus enhancing effective criminal investigations.

This training package was developed with the objective of raising awareness about the crime of human trafficking as a serious crime and a violation of human rights, and of enhancing the capability and skills of judges and prosecutors to adequately detect trafficking cases and implement anti-trafficking legislation in line with agreed European and international standards.

The approach proposed was elaborated with the active participation of multi-disciplinary teams from nine European countries, comprising judges, prosecutors, representatives from judicial training institutes, and representatives of NGOs providing assistance services to victims of human trafficking. The multi-disciplinary teams were invited to validate the training material in the course of two seminars and an in-country test run, where the proposed training material was assessed, reviewed and finalised for proposal as a good practice standard for anti-trafficking training for judges and prosecutors within the European Union.

The training package comprises a **Background Reader**, a **Handbook** and a **Curriculum - Training Guide** and is fully in line with the latest international and European standards and policy developments in this field. It takes into consideration the latest trends in terms of forms of exploitation practised by human traffickers as well as good practices adopted by European countries to combat the crime.

A multi-disciplinary approach is the key underlining principle at the basis of this training. In order to be effective, anti-trafficking training has to be developed and carried out by multi-disciplinary teams composed of judges and prosecutors with experience in anti-trafficking cases, law enforcement trainers and trainers with knowledge and experience in the field of assistance to victims (NGOs or state service providers). Whenever possible, the involvement of additional expertise coming from other professional areas, such as labour inspectorates, physicians and immigration services, should also be envisaged.

Apart from its proven effectiveness, multi-disciplinary training is key to fostering multi-agency cooperation at the operational level and to improving the overall efficiency of institutional responses. For this reason, this project, in parallel with other projects implemented by ICMPD, actively promotes the institutionalisation of regular anti-trafficking training in the judicial training institutes of participating countries and beyond.

How to use this Document

The present Background Reader is part of a training package comprising a Handbook and a Curriculum - Training Guide. The training package was reviewed and validated by participating countries¹ during a validation seminar at the Academy of European Law in Trier, Germany (23-25 May 2005), and an in-country test run. It was then revised and finalised during a final seminar also held at the Academy of European Law (8-9 February 2006).

The **Background Reader** incorporates most of the topics relating to trafficking of relevance for judges and prosecutors. The document follows a so-called modular approach and is divided into six chapters. Each chapter is introduced by objectives indicating what trainees should have learnt at the end of the chapter. In this way all users, both trainees and trainers, can choose the topic that is most relevant and interesting for their work.

The **Handbook** follows the same structure, reproduces a summary and the key points of the Background Reader. The Handbook, being considerably shorter, could supplement the Background Reader to be handed out to target groups/trainees.

A so-called **Curriculum - Training Guide** accompanies the Background Reader and the Handbook. The Curriculum is designed for trainers. An overview in table form outlines the sequence, content, suggested teaching/learning activities, time frame and reference material needed.

The Background Reader and the Handbook have the following structure:

- Chapter 1** describes the phenomenon of trafficking in human beings, including the trafficking process, international definitions of trafficking, the difference between trafficking and smuggling, the root causes of trafficking, the different forms of exploitation and manifestations of trafficking, and gives an idea of the global extent of trafficking.
- Chapter 2** provides the most basic background on traumatic events and their impact upon affected individuals, especially with regard to victims of trafficking.
- Chapter 3** describes the international instruments that can be used to investigate, prosecute and adjudicate trafficking in human beings. Furthermore, specific national anti-trafficking laws or provisions that criminalize trafficking in the respective penal codes are outlined for each country.
- Chapter 4** describes the core aim of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims. It outlines the comprehensive approach to fighting trafficking, which should entail at the least the following four main components: identification; residence permit/ reflection period; victim support and redress/access to justice..
- Chapter 5** describes the criminal proceedings and in this context the rights of victims that must be respected throughout.
- Chapter 6** is structured according to the relevant instruments for international co-operation to be used by the judiciary in the fight against trafficking in human beings, with an emphasis on co-operation within the European Union. The emphasis is on judicial co-operation in criminal matters. However, since police co-operation cannot be completely independent from judicial co-operation, instruments of police co-operation are also included in this chapter.

At the end of the Background Reader there is a comprehensive Reference Material. It is meant as a selection of reading material and resources for those who would like to find out more about certain aspects of the subject matter.

Furthermore, information containing an overview of the legislative framework on trafficking in human beings and a list of key contact persons (e.g. service providers, national members of Eurojust, etc.) in the countries participating in the project is available in the annexes to the Background Reader.

¹ Participating countries in the EU AGIS Project "Elaboration and Implementation of Anti-Trafficking Training Modules for Judges and Prosecutors in EU Member States and Accession and Candidate Countries" were Austria, Belgium, Bulgaria, Estonia, Germany, Italy, Poland and Portugal.






Note on the contents of the training package

The present training package targets practising judges and prosecutors in EU Member States and Accession and Candidate countries. The problem of trafficking in human beings as a crime and the measures used to combat it cover a vast area. Because of the diversity of legislation, procedures, investigative and prosecutorial practices in the regions concerned, the subject matter is on many occasions limited to broad principles and general points of best practice.

While the sequence, content and methodology were tested and validated by a number of national teams, trainers and national teams are encouraged to adapt the materials provided to their own circumstances. Situations obviously vary from country to country, hence the need to adapt the content, exercises, cases and examples.

Icons

Icons have been introduced to help users to:

-  to make references to other sections of the training material
-  to stress the importance of the subject
-  to refer to other sources that should be consulted / background reading
-  to refer to case studies
-  to refer to law

List of Abbreviations

CCEM	French Committee against Modern Slavery
Cf.	See, refer to
CoE	Council of Europe
DESNOS	disorders of extreme stress not otherwise specified
EC	European Commission
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EHRC	European Convention on Human Rights and Fundamental Freedoms (European Human Rights Convention)
ERA	Europäische Rechtsakademie (Academy of European Law)
EU	European Union
FD	Framework Decision
GRETA	Group of Experts against Trafficking in Human Beings
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization
IO	international organisation
IOM	International Organization for Migration
LEFÖ/IBF	Beratung, Bildung und Begleitung für Migrantinnen/Interventionsstelle für Betroffene von Frauenhandel (Counselling, Education and Support for Migrant Women/Intervention Centre for Migrant Women Affected by Trafficking)
MLA	mutual legal assistance in criminal matters
MoU	memorandum of understanding
NGO	non-governmental organisation
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PJCC	police and judicial co-operation in criminal matters
PTSD	post-traumatic stress syndrome
TOC	transnational organised crime
UN	United Nations

UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNHCHR	Office of the United Nations High Commissioner for Human Rights
UNODC	United Nations Office on Drugs and Crime

Glossary of Terms

Trafficking in human beings	<p>According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime (2000), "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" (article 3 (a)).</p> <p>"The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking persons' even if this does not involve any of the means set forth in subparagraph (a) of this article" (article 3 (c)).</p> <p>" 'Child' shall mean any person less than eighteen years of age". (article 3 (d)).</p>
Smuggling	<p>According to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime (2000), " 'smuggling of migrants' shall mean 'the procurement 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' " (article 3 (a)).</p>
Victim of crime	<p>According to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), "victims" means "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power" (para. 1).</p> <p>"A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization" (para. 2).</p>
Forced labour	<p>According to the ILO Forced Labour Convention No. 29 (1930), the term "forced or compulsory labour" shall mean "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 voluntarily" (article 2.1).</p>

Slavery

According to article 1 of the UN Slavery Convention (1926), "slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised".

According to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, no. 226 (1956), institutions and practices, such as debt bondage, serfdom, forced marriage, exploitation of children, should be abolished, whether or not covered by the definition of slavery contained in article 1 of the Slavery Convention (1926).

Debt bondage

According to article 1(a) of the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956), "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined".

Servitude

According to article 1(b) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), "the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status".

1

Trafficking in Human Beings – Description of a Phenomenon.

1. Trafficking in Human Beings - Description of a Phenomenon

1.1 Abstract - Learning Objectives

The crime of trafficking in human beings is a prime example of 21st century globalisation and undoubtedly a major concern all over Europe. This chapter explains the differences between smuggling and trafficking, outlines the root causes behind trafficking in human beings and describes the trafficking process and forms of exploitation. The chapter also provides additional information on crimes related to and consequences of trafficking, as well as information on the extent of the crime.

At the end of this section the trainee will:

- Understand the trafficking process
- Know the international definition of trafficking
- Be able to distinguish between trafficking in persons and smuggling of migrants
- Understand the root causes behind human trafficking
- Be familiar with different forms of exploitation and manifestations of trafficking
- Gain an idea of the global extent of trafficking and the difficulties of obtaining accurate statistics on the crime

1.2 Introduction of the Phenomenon

In recent years trafficking in human beings has become a phenomenon that is particularly important and evident from a social point of view. Given the increasing pressure of migration into the European Union and the adoption by its Member States of policies restricting the entry of migrants, an illegal market for the transnational transfer of people has developed, with the aim of sidestepping such measures.

The journey towards the West, crossing the boundaries of the EU and the possibility of settling in the destination country have become precious assets to be bought at a high price by those who can afford them, even if this means having to suffer subjection or abuses similar or very close to slavery.

Organized crime has proved to be the only "enterprise" capable of guaranteeing a range of services aimed at shifting thousands of people from their country of origin to new destinations. Accordingly, trafficking in human beings has become a market for criminality, combining transportation with economic and/or sexual exploitation of an ever-growing number of "new slaves". This has not only rapidly enriched criminal groups, but has also broadened the already existing illegal markets, such as trafficking in narcotics, in arms, and so on.

In addition, human trafficking has allowed transnational organized criminal groups to carry out illegal activities on EU territory and to establish business relations and co-operation with local criminal groups and Mafia-related organizations.

Such criminal groups have gradually specialised - at least in this historical phase - in the sexual exploitation of women and progressively in more complex forms of forced work exploitation of both adults and children. Today, many different types of exploitation can be identified: forced begging, mainly by minors, domestic slavery and forced marriages for financial gain or for servile and abusive relationships and so on.

Nowadays the term "trafficking" refers to different forms of exploitation and different types of victim - there is no one "typical" trafficking case.

Trafficking is often referred to as a form of **gender-based crime**, as it is frequently the case that unemployment, underdevelopment and poverty - conditions that increase the risk of falling victim to false promises of a better future, to exploitation and to the acceptance of inhuman working conditions - affect women more than men. Most legal migration schemes also appear less favourable to women. In addition, trafficking for the purpose of sexual exploitation in Europe affects women almost exclusively. Thus, responses to trafficking require a **gender-sensitive approach**.

Children, who are often totally unprotected and thus at the mercy of ruthless criminals, are likewise vulnerable. It is necessary to remember that men and boys are also victims, though often ignored in most data collections: they can of course also fall prey to and be exploited by traffickers.

Victims of trafficking are usually unaware of their rights and cut off from family and other ties. Many are illegal immigrants who fear reprisal if they lodge a complaint against their employer.

1.3 Definition of Human Trafficking

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, states, in art. 3, subparagraph (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."

Subparagraph (b) of art. 3 of the Trafficking Protocol states:

"The **consent of a victim of trafficking in persons** to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used."

The Protocol provides further in art. 3 subparagraphs (c) and (d):

The definition given in the Protocol is the first internationally agreed definition of trafficking.

"The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article."

"'Child' shall mean any person under eighteen years of age."

1.4 Distinguishing between Trafficking in Human Beings and Smuggling of Migrants

Trafficking in persons and smuggling of migrants are frequently confused, because trafficking to some extent bears a resemblance to smuggling. However, it is vital for the identification of victims of human trafficking to distinguish clearly between the phenomena of trafficking and smuggling, as the identification of a person as a victim of trafficking and the identification of a person as a smuggled migrant entails different state responsibilities. The Trafficking Protocol mentioned above and the Protocol against the Smuggling of Migrants by Land, Sea and Air, also supplementing the UN Convention against Transnational Organized Crime, establish a clear distinction between human trafficking and smuggling of migrants.

According to the Migrants Protocol, art. 3 subparagraph (a):



"Smuggling of migrants' shall mean the procurement 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."

Whereas according to art. 3 of the Trafficking Protocol:

"Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by [improper] means **for the purpose of exploitation.**"

According to these definitions, smuggling and trafficking differ as follows:

- **Breach of public order - victim of crime**

To smuggle a person means to facilitate the person's illegal crossing of a border and entry into a country of her/his choice. Though migrants are often smuggled under dangerous conditions, it is not required for the crime of smuggling to be constituted that the smuggled person be mistreated or harmed. Hence, it is not the smuggling itself that produces victims, but a - possible but not necessary - inhuman treatment during the facilitation of the illegal border crossing. Smuggling of migrants is a crime against the state and public order regulating entry and immigration.

To traffic a person, in contrast, means to intentionally force or trick the person into recruitment and transport, plus her/his subsequent exploitation. Therefore trafficking is a crime against an individual, resulting (if completed) by definition in the existence of a victim of crime. A trafficked person, unlike a smuggled one, is automatically a victim.

- **Illegal crossing of international boundaries**

Smuggling of migrants by definition requires the illegal crossing of international borders. Trafficking can occur either within national borders or after legal border crossing.

- **Nature and duration of the relationship smuggler/migrant and trafficker/victim**

Smuggler and migrant are partners, albeit disparate, in a commercial operation that the migrant enters into willingly. The relationship between smuggler and smuggled person usually ends after facilitation of the border crossing. Smuggling fees are paid up front or upon arrival. The smuggler has no intention of exploiting the smuggled person after arrival.

In the case of trafficking, an exploitative relationship between the trafficker and the victim continues after accomplishment of the travel. It is the intention of the trafficker that the relationship with the exploited victims last beyond the crossing of the border to the final destination. Smuggling can become trafficking, for example, when the smuggler "sells" the person and his/her transport debt or forces the person to work off transportation costs under exploitative conditions.

Victims of trafficking may have initially agreed to an illegal border crossing. However, a possible initial consent is rendered meaningless if any improper means (threat, use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, giving payments or benefits to a person in control of a victim) is used by the traffickers, with the intent to exploit the victim.

- **Profit**

The profit of the smuggler consists of smuggling fees. The trafficker, on the other hand, continues to exert control over the trafficked victim in order to gain additional profit through the exploitation of the victim.

Importance of the distinction

The potential overlaps between trafficking and smuggling are responsible for the confusion of the two crimes: in many cases, both smuggled migrants and victims of trafficking are moved from one country to another (often through transit countries) by organised criminal groups for the purpose of generating illicit profits. Many trafficked persons may start their journey by agreeing to be smuggled into a country, only to find themselves deceived or forced into an exploitative situation later in the process.



It is crucial for law enforcement and judiciary officials to distinguish clearly between human trafficking and smuggling, as a trafficked person is automatically a victim of crime, with the right to protection and assistance. Without such a clear distinction, trafficked victims will simply be considered illegal migrants, detained and deported - as happens very often today. If a trafficking case is wrongly characterised as a case of smuggling, without the trafficked persons being identified as victims of crime, those persons will not be supported and protected accordingly by the responsible authorities. Therefore, failing to identify victims leads to the violation of international human rights standards and can cause re-traumatisation of the victims. Moreover, it can also deprive the criminal justice system of important evidence against the perpetrators and form an obstacle to breaking up the trafficking cycle and confiscating the proceeds from it.


Element	Smuggling	Trafficking
Type of crime	Crime against the state - no victim Violation of immigration laws/ public order; the crime of smuggling of itself does not include crimes that may be committed against the smuggled migrants	Crime against the person - victim Violation of human rights; victim of coercion and exploitation that incur duties by the state to treat the individual as a victim of a crime and human rights violation
Why do we fight it?	To protect the sovereignty of the state	To protect the human rights of individuals Obligation of the state to provide adequate protection to its citizens ²
Relationship smuggler/ smuggled migrant and trafficker/victim	Commercial ; relationship between smuggler and migrant ends after the illegal border crossing has been completed and the fee paid	Exploitative ; the relationship between trafficker and victim continues in order to maximise economic and/or other gains from exploitation
Rationale	Organised movement of persons for profit	Organised recruitment/ transport and (continuous) exploitation of the victim for profit
Illegal border crossing	Illegal border crossing is a defining element	The purpose of exploitation is the defining element, (illegal) border crossing is not an element of the crime
Consent	Migrant's consent to illegal border crossing	Either no consent or initial consent made irrelevant because of the use of force or coercion at any stage of the process

² As regards the positive obligation of the state, see the case of the European Court of Human Rights, *Siliadin v. France*, application n°. 73316/01, 26/07/2005: "The Court considered that Article 4 [No one shall be held in slavery or servitude] of the Convention enshrined one of the fundamental values of the democratic societies which make up the Council of Europe. It was one of those Convention provisions with regard to which the fact that a State had refrained from infringing the guaranteed rights did not suffice to conclude that it had complied with its obligations; it gave rise to positive obligations on States, consisting in the adoption and effective implementation of criminal-law provisions making the practices set out in Article 4 a punishable offence."

1.5 Root Causes of Human Trafficking

Trafficking in human beings can be caused and fuelled by circumstances and conditions of an economic, social, cultural, political and/or legal nature:

- Within **countries of origin**: grinding poverty or at least little prospect for sustained economic opportunities (compared with more affluent countries) provides for a persistent supply of potential victims among the people who are willing to migrate; existence of other social and environmental factors;
- Within **countries of destination**: constantly growing sex markets and demand for cheap migrant labour or other forms of exploitative services cause an increasing need for the services of the victims;
- Concerning **both countries of origin and of destination**: restrictive legal migration and labour opportunities, corruption;
- Lack of awareness in countries of destination regarding the problems that migrants face;
- Migrants are often unaware of their rights in the countries of destination and their fear of state authorities makes them vulnerable to abuse and exploitation;
- Possibility for traffickers to generate huge profits by taking advantage of this "supply and demand" situation.

Though trafficking in human beings is very much a migration-related concern, and the root causes of trafficking correspond to a degree to the root causes of migration, trafficking should be regarded as a serious crime rather than a mere migration issue. 

1.5.1 Push Factors

There are numerous circumstances that literally push people to leave their homes. The most commonly identified factor pressing people to migrate and to accept risky offers is poverty or at least a lower standard of living compared with the situation in more affluent countries of destination. However, it is not poverty of itself that causes trafficking and victims of trafficking do not automatically come from the poorest backgrounds: a lack of opportunities on the labour market, discrimination as well as difficult and challenging family circumstances can encourage people to migrate, accepting precarious conditions. Cultural stereotypes and limited political interest in enforcing guaranteed rights often contribute to the acceptance of exploitative labour conditions, especially concerning women and children.

Political instability may also contribute to the development of trafficking in human beings, as conflicts, post-conflict situations and political transition have a major political, social and cultural as well as economic impact. Many of the countries from which victims are trafficked are going through phases of reconstruction occasioned by war or political and social change. Such change is often accompanied by unemployment and the break-up of family structures.

Trafficking in human beings clearly has a **gender dimension**: the legal and social inequality of women and girls is a driving force behind the development of trafficking. Girls are often left without the prospect of further education and instead are forced to stay at home and carry out domestic or other "invisible" work. They remain unskilled and uneducated and are also often abused within their own family, such that violence and harsh working conditions appear normal to them. For many, migrating or seeking jobs outside their community is not just an economic decision and a means to support their families: it may be a quest to find personal freedom and better general living conditions. Women are often specially burdened by a difficult socio-economic situation in that they are usually more affected by unemployment, levels of lower education and payment than men, while being at the same time very much constrained to provide for their families. Thus even well educated women and girls are in danger of falling prey to the promises of traffickers, since there are no future prospects at all for them.

The fact that **children** are often seen as additional breadwinners may push families to send their children to dangerous and exploitative workplaces and to work abroad.

Other reasons for the phenomenon of trafficking in children is that many children from poor(er) countries have to grow up without parents, who may have lost their lives in armed conflicts or as a result of severe disease, or who may have gone abroad for work or for other reasons cannot be with their children. Such children may have to live with distant relatives who have weaker family ties, or in orphanages, which leaves them less protected and more vulnerable to trafficking.

Some countries do not even have a register of births, which makes newborns and children an easy prey for traffickers.

However, it should not be overlooked that men are also exposed to the danger of being trafficked, for economic, discriminatory, political and other reasons.

1.5.2 Pull Factors


Attractive living conditions in the countries of destination constitute pull factors. The ever growing demand for exploitative, undeclared labour and services in the countries of destination also fuels the trafficking business, which results in forced labour exploitation, sexual exploitation, forced or arranged marriages, exploitation of small-time criminals, slavery and slavery-like practices and other forms of exploitation.

Many trafficked victims initially have high expectations concerning a stable economic situation, better job opportunities, social security and political stability and strongly believe in the opportunity to improve their own and their families' lives. Success stories of those who "have made it" abroad, not mentioning any of the problems that many migrants are facing, may increase those expectations. At the same time, persons who are underprivileged and used to exploitative conditions of work can often not be discouraged by the prospect of unfair conditions in the country of destination, yet it is the hope for improvement and independence that attracts most people to working abroad.

There is an enormous demand for workers in the unskilled and often unregulated sector. In the skilled sector shortages are most often met through managed migration. Skilled migrant workers are in a strong legal position to negotiate their terms and conditions, and are unlikely to face exploitation. Moreover, governments face little risk that the public perceives skilled migrant workers as a threat to national resources.

On the other hand, the demand for workers in unskilled occupations such as domestic service, agriculture or the entertainment sectors is commonly filled by migrant workers, as national workers tend to abandon unskilled and low-paid labour. In the unskilled sectors there is usually little regulation or organisation and the occupations in question are often, by their nature, isolated and not conducive to organisation and collective negotiation. Many previously formal sectors, such as construction, agriculture or transport, are becoming increasingly informalised; the organisation of workers and definition or enforcement of labour standards is more and more difficult. Such labour is cheap, expendable and exploitable, and thus highly susceptible to trafficking.

1.5.3 Restrictive Migration and Labour Regulations

 The European Commission has recommended that a realistic approach be adopted in order to facilitate legal and fair migration possibilities for third-country nationals, considering economic and demographic necessities within the EU.³ Many governments, however, continue to respond with a restrictive approach to migration and immigration and with policies that have not decreased migration, but have rather left migrants more vulnerable to trafficking and labour exploitation.

In effect, trafficking for purposes of forced labour may be ascribed in the main to disparities between labour supply and the availability of legal work in the country of destination.

Restrictions with regard to labour markets also exist, resulting in trafficking flows from less to more affluent countries even within the EU.

Many governments have sought political advantage by promoting more restrictive immigration policies, regardless of the fact that such policies reduce the opportunities for regular migration, thereby providing greater opportunities for traffickers to operate. Until now governments in developed countries have often been reluctant to publicly recognise their dependency on both skilled and unskilled migrant labour.

³ European Commission, Report of the Experts Group on Trafficking in Human Beings (Brussels, 22 December 2004).

1.6 Organised Crime⁴

To a very large extent, trafficking in human beings is controlled by organised crime, exploiting the "supply and demand" situation and generating huge profits. Organised criminal networks or individual criminals respond to the demand for cheap unskilled labour by recruiting and providing a never-ending supply of human "commodities", whose exploitation guarantees huge profits. The spectrum of offenders involved in the different stages of the crime - recruitment, transport and/or exploitation - ranges from colluding individuals such as acquaintances or relatives to highly complex, international, organised criminal networks. The different groups can be categorised as follows:

- **Informal networks (amateurs/low-level)**

Informal networks usually exist in the form of small groups of individuals within limited family networks and ethnic communities that extend over borders. Migrants often use contacts with family and community members back home to recruit the persons to be trafficked. Such networks are frequently used in border regions between the country of origin and the country of destination and/or within ethnic communities.

- **Large-scale organised criminal networks**

Large-scale organised criminal networks control every phase of the trafficking process. The traffic functions like a business, with different "departments" managing the different stages of the business, from the recruitment, the procurement of documents and transport to the management of the workplaces and the exploitation of the trafficked persons. Traffickers take their job very seriously and professionally and use often extreme violence to maintain order. The victims procured are regarded as merchandise or commodities to be traded, much as in a traditional slave trade. These networks often run brothels and prostitution rings through agents in Western Europe and may use other countries only as a point of transit to obtain false documents or as a "training ground" before moving westward.

- **Criminal distribution networks**

Networks of criminal groups recruit and transport victims from one country and sell them in another: one may call them "wholesalers" or "distributors" who sell to local "retailers".

With the recent flood of migration, the political and economic insecurity in many parts of the world and the booming informal markets and sex industry in the West, already established criminal networks have become aware of the extraordinary profits to be made from trafficking for labour and sexual exploitation. These networks are often the same as those developed for smuggling of people, drugs and stolen goods. Highly-organised networks are also able to carry out high-level corruption and money-laundering.

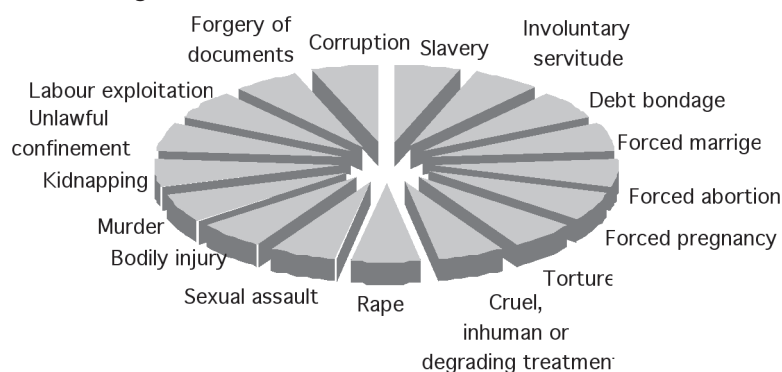
However, while expert sources suggest that organised crime widely controls the criminal trafficking market, much about the traffickers themselves remains unknown.

The presumption that the typical trafficker is male is outdated, as women are now also involved as offenders in trafficking cases. Often female perpetrators have been victims of trafficking themselves. Offenders' nationalities vary: they can be nationals of the country of origin or the country of destination or other countries and hostile nationalities can even act in collusion. Ethnicity can also become irrelevant when it comes to colluding for trafficking purposes.

Irregular private employment and marriage bureaux are also involved in illegal arrangements in the trafficking process.

⁴ Based on ICMPD Regional Standard for Anti-trafficking Training for Judges and Prosecutors in SEE (Vienna, November 2004).

Crimes Related to Trafficking



Source: United Nations Office on Drugs and Crime

Trafficking in human beings is not an isolated crime. The figure above lists crimes that are related to human trafficking. Trafficking, if committed by highly organised criminal groups, may also be part of other organised criminal schemes and as such be a threat to global security: the proceeds of human trafficking may feed terrorist activities, trafficking in firearms and so on.

1.7 The Trafficking Process

Trafficking in human beings is a complex process, starting with the improper and/or abusive recruitment of persons from different vulnerable groups, continuing with the transportation of those people to various destinations and ending in their ruthless coerced exploitation in conditions severely violating their human rights. The methods of traffickers and the stages of trafficking are outlined below. However, trafficking techniques change frequently, as traffickers tend to adapt quickly to new technology and to overcome obstacles that may obstruct their activities.



1.7.1 Recruitment

The first phase of the trafficking process is commonly referred to as the "recruitment stage", during which traffickers target individuals in order to ensnare them into the trafficking scheme. The term "recruitment" in the context of trafficking in human beings includes not only the hiring of people, but also the use of improper means such as force, deception, abduction and so on. The methods of recruitment of persons used by traffickers vary considerably and depend on the modus operandi and level of organisation of the traffickers. Common methods include:

- Recruitment via informal networks of families, friends or acquaintances;
- Advertisements (Internet, newspapers, etc.) offering work or study abroad;
- Agencies offering work, study, marriage or travel abroad;
- False or arranged marriages;
- Purchasing of children from parents;
- Individual recruiters searching bars, cafes, clubs and discotheques for targeted persons and so on.

Often the victim knows the recruiter, who in some cases may be a relative. Traffickers seek to exploit the "push and pull" factors described above and to focus very much on individuals who are searching for new opportunities abroad and who have difficult economic and social situations at home.

Women in particular are offered well-paid jobs abroad in restaurants, in agriculture, in the textile industry, in the child or adult care sector and so on. International marriage agencies can be involved in trafficking too. Often it is only when the women arrive in the country of destination that they realise the deceptive nature of the original agreement with the trafficker and find themselves in exploitative, inhuman situations. In some cases, relatives, "boyfriends" or state institutions such as orphanages may sell women and children directly to recruiters without their consent. In other cases, people are forcibly abducted from their home surroundings and trafficked internally or externally. In some cases victims may have an idea of the clandestine nature of their employment abroad, but not be aware - and not made aware - of the real working conditions. A variety of recruitment methods, ranging from sheer force to less severe means of deception, exist. Criminal methods of recruitment include:


- Coercion through abduction or kidnapping;
- Selling a person, typically a child, to the traffickers by someone having control over him or her, typically the parents or an orphanage;

- Deception by promises of legitimate employment/entry;
- Deception through half-truths;
- Deception about the exploitative, controlled and coercive working conditions.

Recruitment methods also depend on the type of targeted victim: in the case of trafficking in children, it is not necessarily organised crime that is involved in the recruitment. Very often parents themselves hand over their children to exploiters, although often enough in the belief that they will improve their children's lives.

It frequently occurs that even former victims act as recruiters and at times turn into traffickers themselves. This is surely also due to the absence of social reintegration perspectives for trafficked individuals and the persisting push and pull factors.

1.7.2 Transportation

The recruitment process is followed by the transportation and transfer phase, which can also involve the harbouring and receipt of victims at a number of stages in the process, including initial receipt and transfer within their country. The victim may suffer grave human rights violations and physical and other abuse during the journey. 

Many victims have never left their country of origin before and are therefore completely dependent on the traffickers. Some may leave their home country without a passport, having been told that there is no real need for one or that they will receive one later. If they do hold a passport, it is often taken from them and held by the traffickers in order to secure compliance of the victims.

Victims who are in an irregular situation are especially vulnerable to the whims of their exploiters, who are aware that their illegal status renders them less likely to gain police or state protection, should the process be interrupted or should they voluntarily seek protection. In most cases, recruits agree to depend on traffickers for procurement of documents and for transportation. This gives the trafficker a high degree of control during the transit phase.

As mentioned above, many victims of trafficking leave their homes voluntarily in search of a better life. However, the voluntary nature of their travel does not preclude the occurrence of human trafficking, depending on the methods used for the recruitment and the traffickers' real intentions.

Many victims are trafficked across borders by truck, private car or coach, which can offer greater flexibility than air or train travel. Victims are also transported from the country of origin to the country of destination by long-distance, high-volume carriers such as airlines, shipping lines and long-distance coach companies.

It is worth noting that during the transport phase trafficked victims are often not aware that the traffickers have tricked them. This is very important, especially with a view to recognising the limitations in the ability of law enforcement, including border control, to identify and intervene in trafficking cases during this phase.

The entry into the final country of destination can basically occur as follows:

- Covert: smuggled entry in vehicles, containers, trains, ferries or on foot;
- Overt: by presentation of stolen or forged documents;
- Overt: by the presentation of bona fide documents that provide visa entitlements to enter the country, e.g. employment, tourist or student visas.

1.7.3 Exploitation

The UN Trafficking Protocol determines that 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.

Accordingly, trafficking in human beings is not confined to sexual exploitation of the victims, though this is the most commonly discussed topic and also that predominantly featured in the Western media. However, adults and children are trafficked for many exploitative purposes, among which the issue of forced labour exploitation has recently come to the forefront. Forced labour is not attracting much interest, however, and is often simply regarded as illegal employment. In times of high unemployment, exploited trafficked labourers are

likely to be seen as perpetrators on the local labour market rather than as the victims of traffickers.

Forced labour or services

● General features

"Bound labour" - to use a term suggested by Kevin Bales⁵ - can be said to be the condition under which immigrant workers can find themselves in European countries when their survival is subject to their total submission and under the total control of their employers. Thus the essential characteristic of this condition is the lack of liberty, the absence of any form of negotiation and collective agreement on working conditions, with the exception of the means for basic survival and retaining the physical conditions that will allow for continued exploitation. If "slavery" ceases to be profitable, there is no purpose in practising it.⁶

As a rule, these kinds of labour relations - which involve practices of violence and radical exploitation - have social and legal repercussions in Europe when detected. It is therefore camouflaged as practices that are close to acceptance, e.g. as "moonlighting", "underpaid labour", "extended working hours" and "overexploited work", which indeed characterise the conditions of significant numbers of the migrant population. This first migration phase is often characterised as a period of legal vulnerability (lack of residence permit), socio-existential weakness (lack of relations), political absence (no participation in institutional decision-making mechanisms) and economic crisis (unemployment).

This different dimension of vulnerability pushes immigrants into an area of social and economic marginalisation, forced to carry out any kind of work that can guarantee basic survival - a condition difficult to escape, especially for those groups and individuals whose encounter with the recipient society produces bewilderment and a strong feeling of being uprooted (as the Comité contre l'esclavage moderne (CCEM) in Paris and the Cooperativa Lotta all'Emarginazione in Vicenza, Italy, observe).⁷

It is now undeniable that in the margins of European societies moonlighting - in its most negative meaning - is almost essential for the survival of productive enterprises (not only small ones) that otherwise would not stand a chance of remaining in business. The production sectors where it is possible to find these forms of quasi-slave labour are those where underground labour is in force, that is, labour that does abide by national legislation. From this perspective, quasi-slave labour represents the most extreme form of moonlighting, in which the lack of free will and freedom of decision, concerning both entering and leaving the relationship, is the main feature.

The next level is the area of non-guaranteed labour (however negotiable and to a certain extent socially tolerated) to be followed by the area of vulnerability and temporary work at a low level (qualified or highly qualified temporary work must be excluded as these cases are often characterised by tax evasion and forms of illegal accounting and certification acts). The extreme form is represented by totally "submerged" labour, the work done in conditions far below the standards set by legislation and unions, and violent forms of repression.

"Black" labour manifests itself in a wide variety of forms, which are characterised by the capacity of entrepreneurs to compulsorily impose their work. This kind of relationship remains linked to two strongly contradictory aspects however: on the one hand, the possibility of intensive exploitation resulting in fast earnings and profit and on the other the need not to unduly disable the potential of the earning source.

A balance should occur once the involved actors (involuntarily) reach a kind of mutual agreement: on the one hand in not suffering further violence and on the other in not making the negative effects of the compulsory repression process irreversible.

⁵ Kevin Bales, *I Nuovi Schiavi: la Merce Umana nell'Economia Globale* (Milan, Feltrinelli, 2000), pp.14-15. (Originally published as *Disposable People: New Slavery in the Global Economy* (University of California Press, 1999).)

⁶ Kevin Bales, *op. cit.*, p.36.

⁷ CCEM is an NGO based in Paris and whose objective is to combat all forms of servitude, as well as to assist and protect the victims of modern slavery. According to CCEM, five criteria define a person as a slave: confiscation of documents, abuse of vulnerability, working and living conditions contrary to human dignity, cultural isolation and family isolation. In addition to these non-determinant components, which are strong tools in the hands of the employer, the practice of violence (real or threatened) and fear of the local authorities (whether warranted or not) can be added.


On the contrary, if the relationship remains unbalanced (and the reason is that it is a quasi-slave one), enormous wealth is guaranteed only by the continuous exploitation of the victims, that is, of those who are forced to accept submission due to their vulnerability to a relationship of quasi-slave exploitation (generally for a medium to long period of time) and the role of those who voluntarily accept such a relationship (generally for a short time).⁸ In the first case, there is a total lack of autonomy, whereas, in the second, at least in the initial phase, free will still exists and above all it is possible to assume a minimum level of negotiation and ability to end the professional relationship.


The need for a continuous turnover determines an exploitation model that can be defined as revolving. It depends entirely on the time factor, that is, on the duration of the exploitation and the capacity for recruitment of new victims (or new volunteers) on behalf of the criminal group. This continuous rotation from an activity of hyper-exploitation to another of the same kind (from one European country to the other) is extremely compatible with the farthest part of the labour market that can be defined as tertiary, that is, that segment of labour that is left to the immigrants as it justifies a kind of "cultural division of labour".⁹ In other words, it justifies a division ethnically based on duties, salaries and guarantees within the labour market where foreign workers occupy unfavourable segments in which it is less frequent to encounter local workers.

In the presence of a labour market structured through segmented sections - also from an ethnical and national point of view - where immigrants generally occupy the last level of the occupational structure, the occurrence of extreme exploitation situations is very high; these arise in particular - as mentioned above - within the informal sector and within the illegal economies that exist almost everywhere in the advanced capitalist world.¹⁰

Enterprises are no exception to these dynamics as they are part of the so-called ethnic business (where intensive labour reaches levels that cannot be compared with those of local workers).¹¹ The fact that victims of trafficking for the purpose of forced labour exploitation sometimes even have room to negotiate to some extent can make it difficult to distinguish between trafficking for forced labour and moonlighting. However, a restricted capacity to negotiate labour conditions does not necessarily exclude the existence of human trafficking.

● Definition of "forced labour"

The **ILO Convention No. 29** Concerning Forced Labour (1930) - ratified by over 160 States - defines forced or compulsory labour as "**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 voluntarily**". Thus forced labour occurs when people are subjected to some form of coercion, either physical or psychological, and which they would not otherwise have agreed to perform under the prevailing conditions. 

The UN Convention on the Rights of the Child provides more specifically in its art. 32: "States Parties recognise the right of the child to be protected from economic exploitation and from performing **any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development**". (On **ILO Convention No.182 on the Worst Forms of Child Labour**, see chapter 3.) 

Forms of forced labour

Labour exploitation often occurs within the **agricultural, catering** and **construction** sectors and also in the **textile** industry, where adult and child victims of both genders are coerced into working under ruthless and exploitative conditions. Children and young adults are also forced into **street begging**, recruited and trafficked to earn money for others by begging or selling goods on the street. In some cases, beggars are maimed in order to arouse pity and increase charity. Victims of forced labour may be subjected to sexual abuse as well.

⁸ Annette Brunovskis and Guri Tyldum, *Crossing Borders: an Empirical Study of Transnational Prostitution and Trafficking in Human Beings* (Oslo, FAFO, 2004), pp. 30-33.

⁹ M. Hecter, *Group formation and cultural division of labor*, *American Journal of Sociology*, vol. 84, No. 2, 1978.

¹⁰ S. Sassen, *Le Città nell'Economia Globale* (Il Mulino, 1997).

¹¹ E. Bonacich, *A theory of middleman minorities*, *American Sociological Review*, vol. XXXVII, October 1973.

Trafficked victims have to work compulsory overtime without pay or in, further jobs that they have not consented to or to accept very lengthy delays in the payment of wages.

Children and young adults are especially vulnerable to trafficking for exploitation as criminal agents. The "**criminal agency**" traditionally means activities such as pickpocketing and other forms of low-level crime. Cases are known, for example, of Roma children from Bulgaria, who are circulated within Europe and forced to steal considerable amounts of money per day. Boys and young men are also trafficked to act as criminal operatives who carry out minor functions associated with the trafficking crime itself, acting as "look-outs" or "runners". Additionally, boys and young men are appointed as **street runners** for drug trafficking.

Trafficking in human beings is also not unknown in the **sports** sector.¹² Adolescents in particular may be prepared to leave their countries of origin in order to become rich and famous and depend on "helpers" in order to achieve those dreams. Sports is often a very profitable business for many clubs, federations, players, private companies and individuals. The "right" athlete - one that is cheap to "buy" and profitable to "sell" or "lease" - is recruited by means of deception, fraud, exploitation of the young person's position of vulnerability and then treated like a commodity.



Galina Nascu is 20 years old. She was rescued from a so-called "beggar home" owned by Moldovan gypsies in St. Petersburg, Russia. Galina's nightmare began when a woman promised her a good job. Galina was passed on to the "boss" who forced her to beg on the streets and in underground stations. She had to collect more than \$100 a day in a city where the average monthly wage is around \$250. If she failed, her "boss" would beat her up. Galina managed to escape and return to her village, south of Moldova's capital, Chisinau. An NGO found her a job at a pig farm. "The pigs I work with remind me of people who used to oppress me", says Galina.
(Text: Nicolae Pojoga on BBC News, UK edition.)¹³



One victim, P.O., fled abject poverty in Romania--not realizing he would become an indentured slave in Italy. He was smuggled into Italy by a "network" he refused to identify out of fear. "I knew the situation I was getting into was bad, but I felt like I was trapped", he says after nervously checking a reporter's credentials. Sent to Gallarate, 30 minutes north of Milan, P.O. was forced to work 14 hours a day laying tiles at construction sites around Milan for sustenance pay. His Italian boss hired thugs to intimidate and beat P.O. and 11 co-workers and keep them from any thought of rebellion. At night, they were locked in a tiny, rat-infested room. Says P.O.: "It was obvious that for [the boss] we were possessions." P.O. was finally freed in a March police raid of the warehouse where he and his co-workers were held captive.
(Business Week Online, by Gail Edmondson in Prato, Italy, with Kate Carlisle in Rome, Inka Resch in Paris, Karen Nickel Anhalt in Berlin and Heidi Dawley in London, 27 November 2000.)¹⁴

Domestic servitude is a special case of forced labour. Servitude in itself represents a broader concept, covering conditions of work or service that the individual cannot change or escape from - implying that one person dominates another person. In European countries there are also informal markets in the housekeeping and cleaning sector for trafficked women from Africa, Asia, Latin America and Eastern Europe. Those women and girls have to work under exploitative and degrading conditions as domestic workers, as cleaning ladies, nursemaids or au pairs in private homes.

Domestic workers are kept without residence and work permits and thus in total dependence. Thousands of domestic servants in Europe are subjected to long working hours with no holidays or decent living accommodation: many of them have to work between 15 and 18 hours a day, without ever being allowed a day off, they do not have their own rooms and often get only their "employers" leftovers to eat. Among the perpetrators are many diplomats who enjoy immunity from prosecution.

¹² Taken from: "Sports and trafficking in human beings", presentation by Prof. Dr. T.Vander Beken, at the 12th EASM European Sport Management Congress "Innovation in Co-operation" - Sport & Law, held in Ghent, Belgium, in September 2004.)

¹³ http://news.bbc.co.uk/1/shared/spl/hi/picture_gallery/05/world_forced_labour_and_trafficking/html/5.stm, accessed on 25 June 2005.

¹⁴ www.businessweek.com/2000/00_48/b3709036.htm.

The work of domestic servants is accompanied by abuse, humiliation and confinement. Possibly existing work contracts are ignored completely. As domestic workers work in the privacy of the home, the abuse is usually invisible and difficult to tackle.

So called "mail-order brides" can also end up in domestic servitude. The international mail-order bride industry has been proliferating in recent years, using the Internet as a high-powered engine to reach an unprecedented number of clients. International marriage or mail-order bride agencies capitalise on increasing disparities between women in economically distressed countries and men in the wealthiest nations of the world.

[...] An acquaintance of an Austrian man recruited a **woman from South-East Asia** who was fluent in English to work as a domestic worker in Austria. She was promised that the future employer would take care of the paper work (visa, working papers, etc.), and that she would only have to do simple housework. Eventually, she entered Austria with a tourist visa and after its expiration after three months she lived illegally in Austria. During the first three months she was treated decently, though the salary was less than promised and she was only insured with travel insurance.

After three months the burden of work increased and she had to work continuously, only on Sundays she was allowed to go to church for one hour - and even this was controlled so that she was not absent for too long. The family put pressure on her not to leave the house, as she was in the country illegally. Both the psychological pressure and the humiliations intensified: she was not allowed to wear jewellery, she had to arrange her hair in a specific way and the woman of the family was very jealous of her. Her health situation became worse due to the hard work and the psychological pressure. Only when she suffered unbearable pain, did the family consult a friend who was a retired doctor. Suffering from an acute life-threatening illness, she somehow finally managed to be taken to hospital. Afterwards her employers did not want her back again as she was no longer useful. After the time in hospital a pastor provided her with accommodation and finally got in touch with a support organisation. (Case reported by the Interventionsstelle für Betroffene von Frauenhandel.)¹⁵

Individuals with diplomatic status are able to import domestic staff based on their needs. In all cases, the domestic workers are obliged to comply with the wishes of their employer(s), given the fact that the latter can fall back on their diplomatic immunity. Even the Office of Protocol in the host country, which is responsible for issuing a special identity card to domestic staff employed by diplomats, finds it difficult to intervene in situations where staff are being exploited. This office may attempt to negotiate an amicable arrangement between the diplomat and the member of staff. If negotiation appears impossible, the only option available to the Office of Protocol is to declare the diplomat in question *persona non grata*. In other words, the Office declares that the diplomat in question may no longer enter the country. The risk is that such a decision could have a negative effect on the international relations between the host country and the diplomat's country. It goes without saying that not all diplomats exploit domestic workers. (Victims of trafficking, Internet site developed within the framework of the Daphne Programme set up by the European Commission (Justice and Home Affairs General Directorate).)¹⁶

Slavery or practices similar to slavery (and servitude)

The term "slavery" is defined in art. 1 of the 1926 Slavery Convention as follows:

- (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;
- (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves.

¹⁵ http://www.profrau.at/de/frauenhandel/nachfrage.htm#uabs_2, accessed on 24 May 2005.

¹⁶ <http://victimsoftrafficking.esclavagemoderne.org/UK/index.html>, accessed on 24 June 2005.



Four slavery-like conditions are defined in art. 1 of the Supplementary Convention on the Abolition of Slavery, the Slave-Trade, and Institutions and Practices similar to Slavery:

- (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
- (c) Any institution or practice whereby:
 - (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person;
- (d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

The Slavery Convention of 1926 distinguishes between forced labour and slavery: “it is necessary to prevent forced labour from developing into conditions analogous to slavery”. In **UNHCHR Fact sheet No. 14**, it is stated:¹⁷

“**Slavery-like practices may be clandestine.** This makes it difficult to have a clear picture of the scale of contemporary slavery, let alone to uncover, punish or eliminate it. The problem is compounded by the fact that the victims of slavery-like abuses are generally from the poorest and most vulnerable social groups. Fear and the need to survive do not encourage them to speak out. There is enough evidence, however, to show that slavery-like practices are vast and widespread.”

Slavery and similar practices may include illegal adoption in some circumstances.



c) Sexual exploitation

Victims, predominantly women and girls, who are trafficked into the sex industry, are forced to prostitute themselves in “red-light areas”, in hostess bars, escort agencies or in apartments being used as brothels. They are required to work extremely long hours and to provide unprotected and dangerous sexual services to many clients per day. In many cases they are unable to speak the native language and communicate with their clients by the use of a written “menu” of sexual services. The women are frequently moved from city to city and country to country. The purpose is to disorientate the victims in order to prevent them from developing friendships and becoming familiar with their surroundings. This prevents both police detection and intelligence-gathering.

The following main prostitution systems can be defined¹⁸ taking into account the different national groups of women involved:

- a) **Albanian group** characterised by recruitment modalities typical of trafficking for the purpose of sexual exploitation, through deceit or wedding or job promises. The modalities of subjugation are based on violence, social isolation and close control, as well as threats of reprisal against the families in the country of origin. The prostitution cycle is characterised by the fact that it

¹⁷ <http://www.unhcr.ch/html/menu6/2/fs14.htm>.

¹⁸ On the Albanian, Nigerian and Eastern systems, see Sabato Palazzo, “La tratta delle donne immigrate per sfruttamento sessuale di provenienza nigeriana, dai paesi dell’est europeo e dall’Albania”, Istituto Italiano per gli Studi Filosofici, *Il Traffico di Esseri Umani e il Ruolo della Criminalità Organizzata*; and P. Cove and C. Corso, “A profile of the target”, L. Brussa, *Health Migration Sex Work*.

remains anchored to an indeterminate time, i.e. until the woman does not free herself from the exploitation or when the police - or social workers operating in the streets - do not intercept her and create the possibility for her to free herself from her exploiters. The places where prostitution is practised remain mostly those related to the street (in Italy), even if in recent years there has been a steady movement to apartments and to night-clubs or brothels (with regard to the Netherlands, Belgium and Germany);

- (b) **Nigerian group** (including also trafficking in women from Ghana, Côte d'Ivoire and Cameroon for purposes of sexual exploitation), characterised by less violent and aggressive recruitment methods than in Albanian case, based on the prospect of finding a job in the country of destination and often with forms of indebtedness to repay travel and living expenditure for the first months after arrival in the country of destination. However, when the debt exists, it affects some part of the women involved and the contract (as a general rule an oral one and only recently written) is sealed with voodoo "juju" rituals binding the contracting parties to absolute respect of the contract (in the presence of traditional religious figures, the Baba-low). These contracts include in almost all cases a mediating role - direct and indirect - of agencies specialised in expatriation (regular or irregular, also with falsified documents). Very soon the contract turns out to be unbalanced, to the clear detriment of the woman who is forced to follow rigid rules of loyalty to the group and behaviour relating to debt restitution: any behaviour breaking the rules is liable to punishments that tend to increase the original debt that may rise steeply (in general from 30.000 to 50.000). The prostitution cycle, consequently, is characterised by "short-term" activity practised until the contracted debt is repaid. The places where prostitution takes place vary according to the country of settlement and practice of prostitution: in general it is found on the streets and to a lesser extent in apartments and in some cases also in nightclubs (Italy), in brothels (in the other European countries) and in apartments (Great Britain);
- (c) **Eastern group** (in particular Russian, Byelorussian, Polish, Ukrainian, Slovenian and Bosnian, but also Moldovan and Rumanian), mainly characterised by consensual recruitment methods (some minority members are sold against their own will), through contracts with "travel agencies" offering two types of service: regular ones typical of a travel agency and irregular ones that also include - besides management of the travel - prostitution tours, that is, movement from one city to another or to neighbouring areas in order to practise prostitution. The organisation provides, in fact, for stops for some days in a specific place, the movement towards another place and so on for all the "working season" (lasting for a month or also for three/four months). The prostitution cycle is "seasonal work"; sometimes the working period may be extended or restricted according to emerging need. Prostitution may be practised in different places (as already mentioned, according to the characteristics of the European country of destination). As an example, in Italy it is found mostly on the streets, even if from year to year prostitution also occurs in nightclubs or private clubs and to a lesser extent in apartments (considering the insufficient advertisement that can be generated in such a short time);
- (d) **Latin American group** (in particular Peruvian, Brazilian and Colombian), mainly characterised by consensual recruitment (even if there are also groups coerced into prostitution), through agencies that are specialised in emigration (regular or irregular, also using falsified documents) and means of subjugation. When there are exploiters/pimps, the relationship with them is generally based on consent and respect of mutual behavioural rules, above all as regards respecting the quotas of money due to the woman and to the system of protection. The prostitution cycle is based on activities carried out on certain days per week (especially during the weekend) in order to exploit profits acquired with ordinary jobs in the domestic field, in the field of restauration/hotel services and so on. The places where prostitution goes on are mostly the street and apartments (in Italy and Spain) and brothels (in Greece and Germany and in other Northern European countries). There are also groups of women (mostly Colombian women, but also Peruvians and Brazilians) that practise prostitution in a more regular way, with the aim of putting aside enough money to be able to settle down;

(e) **Chinese and Asian group**, on which information is still lacking, considering that the methods and places of prostitution very often reflect the characteristics of Chinese communities' whole life: that is, much discretion plus little advertisement outside of the community. In Europe's Mediterranean countries prostitution of Chinese women still appears predominantly as an internal issue of the community. From this point of view it would still seem to be a form of internal community prostitution, offering services mainly to fellow countrymen clients and only to a few "aliens". In Northern European countries (where Chinese communities have been settled for a longer time, like in France - above all in Paris - Great Britain - above all in London - Belgium and Holland, with Brussels and Amsterdam, and Norway, with Oslo) the presence of Chinese women is visible in brothels, in houses of prostitution, in red-light bars and so on.¹⁹

● **Marriages**

Trafficking in human beings in the context of marriage is often a **combination of several forms of exploitation**: sexual exploitation, forced labour and domestic servitude. Seeking a way out of hardship and poverty, women are ready to leave their countries of origin and marry an EU citizen in order to enter and live in the EU legally. Some of these women, however, find themselves exploited in domestic slavery and under the total control of their husbands. They have no choice but to stay, even in an exploitative marriage, as a divorce may be tantamount to the loss of the woman's legal status or her being reported to the police by her husband for fictitious marriage.

d) Removal of organs

Also in the case of trafficking in organs, traffickers take advantage of the supply and demand situation. Trafficking in organs according to the Trafficking in Persons Protocol is a form of trafficking in human beings; it is not included in the EU Framework Decision against Trafficking.



"There is certainly a much more significant pattern of **organ trafficking** in terms of people being deceived and coerced into selling organs. Most consent to sell a kidney, but there is deception as to the amount of payment for the kidney, and in some cases no payment at all. Consent may be obtained under varying degrees of coercion. Victims of kidney trafficking face not only the economic crisis that caused them to consider selling their kidney in the first place but also ill health due to lack of information and lack of adequate health care. Kidney sellers are not supported to take legal action against traffickers; many are precluded from filing a criminal complaint as they unwittingly signed false affidavits saying they gave their kidney away. There are no statistics on the extent of kidney trafficking per se. Experts state, at a minimum, several thousand illegal kidney transplants from live unrelated donors take place every year. Some of this number, though not all, is trafficked (...)." ²⁰



"Many of his neighbours are hoeing the fields of their smallholdings. But **Gheorghii, who is 48 years old**, can't do heavy work anymore. Not since he sold his kidney in 1999 for \$3,000. It was not something he had planned to do. 'I went away because I was promised a job at a factory, where I could earn more money,' he said. 'The situation in Moldova is very hard.' Gheorghii was expecting to be taken to work in Israel but instead he ended up in Turkey. 'They took us to Istanbul and we were seen by many doctors who gave us lots of blood tests. We were taken to hospital', he said. Eventually he was given a paper to sign, agreeing to sell his kidney. 'I was afraid. I don't quite know how I decided to do it. It was very difficult after the operation - I could hardly move. I woke up in pain.' Ruth-Gaby Vermot-Mangold, the Parliamentary Assembly of the Council of Europe's rapporteur on trafficking of organs in Europe, says the going rate for a kidney is \$165-250,000."²¹

(Bethany Bell, BBC Moldova, 21 May 2003.)

¹⁹ Annette Brunovsky and Gury Tyldum, op. cit.

²⁰ Elaine Pearson, Coercion in the Kidney Trade? : Background Study on Trafficking in Human Organs Worldwide, Sector Project against Trafficking in Women (Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), April 2004).

²¹ <http://news.bbc.co.uk/2/hi/europe/3046217.stm>.

e) Sexual and labour exploitation of children

In general there is little information about the mechanisms of trafficking in young children between 1 and 5 or 6 years old.²² Because of children's psycho-physical vulnerability, the deceit takes on a wider dimension. Once they arrive at their destination, children who are victims of trafficking are usually exploited in one of the following ways:

- a) **Sexual exploitation**, especially, but not only, of girls, even if there are also forms of exploitation of boys, including street prostitution and, more and more, prostitution in private houses or night clubs and the production of paedophile or pornographic material;
- b) **Begging**, as far as it is a quasi-slave activity when it is based on violence, abuse and exploitation of the minor in order to make a profit;
- c) **Black labour**, especially in the manufacturing industry, in situations of harsh exploitation and without any possibility for the minors to leave voluntarily. This happens when their parents or relatives are involved, or when they are alone and thus are subjected to various forms of intimidation or threat of violence;²³
- d) **Fictitious illegal adoption** (hiding recruitment for trafficking behind adoption practices) or recruitment and transportation for purposes of removal of and trafficking in human organs for profit.



The sexual exploitation of child girls is the most alarming among these phenomena, because of the conditions of violence, abuse and harsh exploitation of the victims. It is also the most widespread form of exploitation and the most difficult to intercept by the police. The sexual exploitation of minors happens in both developing countries and in developed ones.²⁴ As regards developed countries, small segments of the population resort to upper-middle class travel to poor countries in order to sexually abuse children.

The prostitution cycle that involves minors constitutes of four phases: recruitment of the victims in the countries of origin, the journey to their destination, the exploitation and the attempt made by the victims to escape from their traffickers and exploiters. During the first phase, the recruiters select their potential victims, who may be people interested in migrating. They may be relatives of the victim, friends, well-known persons or finally professional recruiters. The family has very often a fundamental role in convincing the potential victim of the benefit and convenience of this migration process for the entire family - even if, in almost all the cases, the family members ignore the exploitative destiny that awaits the victim in the country of destination.

The following stage is the journey, during which the victims, who had been lured with false promises, are subjected to every kind of violence and abuse to be well prepared for the exploitation they will face when they arrive in the country of destination. In some cases, women and young girls who started their journeys as illegal immigrants, thus, as "clients", become trafficking "victims". In the case of minors, it is very common for the victims to travel with adults who pose as their parents or close relatives.

Once they reach their final destination, the girls are made totally subject to their traffickers and exploiters and "trained" by violence and abuse to submit to their will. In some cases, violence is substituted with an affective relationship between the victim and her exploiter, who can be her fiancé or even her husband. Just as women are trained what to do if they are arrested by the police, so are young girls told to deny their (under) age, making it very difficult to identify minors.

After the training phase, the victims are obliged to become prostitutes and to work on the street or in private houses. There are also cases in which this activity is conducted in a clandestine way in nightclubs, beauty or massage centres, where the girls work as dancers, escorts or masseuses. In the case of under age girls, prostitution

²² Mechtild (ECPAT Germany e.V.), "The specific needs of trafficked children during criminal proceedings", presentation at the validation seminar held in Trier, Germany, on 23-25 May 2005.

²³ In Italian "lavoro minorile" is usually used, but it does not make it possible to distinguish between "child labour" and "child work", a distinction emphasised by UNICEF and ILO.

²⁴ U.S. Department of State, *Forced Labor: the Prostitution of Children* (Washington D.C., 1996), p.9 and Save the Children, *Child Trafficking in Albania*, p.17.

has been gradually transferred to closed places, where it is more difficult for the police or for social workers to approach and rescue them.

Victims without documents, under age and without any possibility to negotiate with their exploiters are frequently moved from one place to another (both in different parts of the same city and in other parts of the national territory); the aim of this mobility is again to avoid any contact with the police or with social workers.²⁵

Finally, in the fourth phase the children try to escape from this situation of slavery-like exploitation to which they are subjected by their exploiters. Sometimes their clients may help them, at other times they may run away by themselves or with the help and support of NGOs working in the field. However, the victims may always risk falling back into such slavery-like situations or to themselves becoming recruiters and exploiters of other victims, especially of women of the same nationality.

As regards **begging**, it is important to distinguish between the voluntary type that involves a whole family (in which case social assistance should be given to all the members of the family because child labour is in this case related to their specific family situation) and the forced variety, which occurs when minors are obliged to beg for adults who are not members of their family and who take all the money the children earn.

Begging in these forms began in Italy, by members of the Rom and Sinti communities especially, in the 1980s, with the initial involvement of Slav children.²⁶ Subsequently, the phenomenon developed and broadened, so that today it also involves Moroccan and Albanian minors. Albanians are mainly controlled by organised criminal groups.²⁷ Estimates of the extent of voluntary and forced begging indicate that approximately 8,000 foreign children are beggars in Italy.²⁸

Moreover, research conducted on the phenomenon has underlined that forced begging is restricted to big cities and to a far smaller number of children, also because it is practised in the same places intensively, but for short periods of time.²⁹

1.7.4 Methods of Controlling the Victims

Frequently, people ask why victims do not escape or seek help, but it is not as simple as that. The fundamental aim of traffickers is to earn money through the long-term exploitation of their victims. This requires them to protect their investment, so as to ensure that the victim will continue to work as instructed and not try to escape. Thus, traffickers need to ensure continuous control over the victim, which is done through many different, partly violent, mechanisms. Each mechanism may be used in isolation from the others, but in the majority of cases, they will be implemented together so as to create a condition of actual or psychological imprisonment of the victim:

- **Debt bondage**

One of the primary mechanisms of control is debt bondage, in which the victim is required to repay the exaggerated costs allegedly incurred for bringing him or her into the country of destination. Exorbitant and cumulative interest rates are often attached to these costs, which are then supplemented by the requirement to pay vastly inflated prices for accommodation and transportation costs, all of which adds to an ever-mounting debt bond that becomes effectively impossible to pay off.

- **Removal of identification/travel documents - threats of deportation**

Traffickers confiscate the identification and travel documents of their victims, usually immediately after arrival in the final country of destination. This is to make the victims feel that they are deprived of their official identity, confirm their illegal entry status and make them refrain from seeking help or to escape to another location. As many victims originate from countries where the police are viewed as a force of oppression rather than a means of assistance, they are naturally unwilling to contact the police for help. Traffickers also threaten their victims by telling that they will be immediately deported if they seek help from the police.

²⁵ Francesco Carchedi, *Piccoli Schiavi senza Frontiere: Traffico dei Minori Stranieri in Italia* (Rome, Ediesse, 2004).

²⁶ Atti Parlamentari, Commissione Infanzia, Audizione del Sottosegretario di Stato per l'Interno, Alfredo Mantovano, in relazione ai minori costretti a forme di accattonaggio, Seduta del 5 febbraio 2003, p. 4.

²⁷ *Ibid.*, p.5.

²⁸ Osservatorio sul Lavoro Minorile, News: Il Forum dell'Osservatorio: contro l'emergenza accattonaggio, May 2003: www.osservatoriolavorominorile.it/news_04.htm.

²⁹ F. Carchedi, G. Mottura and E. Pugliese, *Lavoro Servile e Nuove Schiavitù* (Milan, Franco Angeli, 2003), pp. 197-303

Experience shows that the traffickers are usually correct in this assertion because many trafficked victims who are caught without documentation by police in EU states are likely to be deported immediately rather than to be identified and treated as victims of serious crimes.

Alternatively, the trafficker may tell the victim that there is no point in seeking police assistance because they are corrupt and in the pay of the traffickers. In some cases, law enforcement officials are indeed bribed by traffickers.

The lack of documentation, along with fear of the police, makes it highly unlikely that victims will try to escape or to lodge official complaints against the trafficker.

- **Linguistic and social isolation**

As a further measure of reinforcing control of victims through isolation, victims will often be kept in conditions where they are deliberately prevented from being able to communicate in their mother tongue or have any form of social contact with persons from similar backgrounds.

- **Use of physical and psychological violence and intimidation**

Traffickers also make full use of violence and threats of violence as an effective means of control. Victims are frequently beaten, raped, confined, kept in isolation for long periods, deprived of food and water, even drugged so as to maintain obedience. This abuse may be inflicted as punishment for some form of disobedience or transgression or may be designed to serve as a warning to the victims to ensure that they are fully aware of what the consequences of disobedience will be.

In cases of sexual exploitation, shame is another powerful mechanism of control. The trafficker may threaten to reveal to the victim's family that the daughter/sister is working as a prostitute. With victims from some cultures, specific psychological coercion is effective. For example, with West African (e.g. Nigerian) victims, voodoo-like rituals can impose terrible fear and control over the victim and guarantee her obedience.

Not only is brutal force used to bar victims from absconding, but indeed also mental violence, threatening the self-esteem of the victims. Shame, hopelessness, deep stress, desperation and so on make the victim feel powerless and unable to escape. Trafficking cases are also often highly complicated (e.g. when it comes to proving the crime), because of the invisible force exerted, not the obvious one.

- **Use and threat of reprisals against the victims' families**

A threat that makes the investigation of trafficking crime particularly difficult is the threat of violent reprisals against the loved ones of the victim back in the country of origin. In many cases, the traffickers will ensure that they know a range of details of the victim's family circumstances. It may simply be the name or address of a close family member or the address of another loved one. The trafficker does not actually need to possess a great deal of family detail, because it is the threat and the perception in the mind of the victim that ensures the control.

1.7.5 The Issue of Consent

In many trafficking cases there may be initial consent of the trafficked person to travel (illegally) abroad, to work for little salary, to do clandestine work, to work as a prostitute and so on. However, according to the Trafficking Protocol, the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the improper means (coercion, deception, etc.) have been used. This definition leaves the burden of proof on the state or the public prosecutor in accordance with domestic law. The interpretive notes to the Protocol add that there should be no restrictions on the right of the defendants to a full defence and the presumption of innocence, but consent requires the knowledge of all relevant facts and circumstances, which will hardly be the case. Slavery, slavery-like practices and forced labour rule out any consent.





1.8 Consequences and Risks of Trafficking in Human Beings

Consequences and Risks for the Victim

- **Violation of human rights**³⁰

Victims of trafficking are very often subjected to particularly detrimental forms of physical and/or psychological violence. Human trafficking is a risk to the life, the liberty and the security of a person, as victims face physical and psychological violence, are kept against will, held in slavery and servitude, subjected to torture, cruel, inhuman or degrading treatment and so on.

It is important to view the mechanisms of trafficking through the eyes of the victim:

Alone in a foreign country, isolated from contact with other compatriots, unable to communicate in the native language, denied possession of own identity and travel documents, denied contact with the family, disorientated by constant movement and relocation, subject to repeated physical and sexual abuse, denied access to police assistance through fear of the consequences, required to engage in physically dangerous and unprotected sexual practices on a daily basis for very long hours with clients with whom effective communication is impossible, existing under a regime of threats or reprisals against the victim and/or her/his family.

Whether all of these factors are applied collectively or individually, it is easy to understand why so few trafficked victims seek to escape from their traffickers and why there is such a compelling humanitarian duty upon law enforcement officers to act against the traffickers and provide for the victims' protection.

- **Shame, stigmatisation and trauma**

Victims of sexual exploitation are often subjected to psychological and/or physical torture (threats, humiliation, degradation, beatings, rape) by their traffickers. Many women blame themselves for having become involved in trafficking and prostitution. They later feel ashamed of having given in to the demands of their tormentors.

When forced to return home, victims are faced with the disappointment of their families and friends, having fallen short of everyone's expectations of making a new start in the West. Others are stigmatised as prostitutes and have great difficulty re-integrating in their country of origin. In many cases, the full psychological consequences of their ordeals first become apparent months after the traumatic experiences have occurred. Frequently an intensive period of therapy is the only way to help the victims come to terms with what they have been put through.

- **Complicity**

Victims are very often regarded as offenders and accomplices instead of as victims of crime, so that, rather than receiving assistance and protection, they are accused of offences such as illegal entry and stay, illicit employment, illegal prostitution, illegal begging, dealing in illicit drugs and other petty crimes.

- **Secondary victimisation**

Moreover, victims face secondary victimisation. Child victims involved in human trafficking cases in addition face the risk that the law enforcement and judicial authorities do not use the child-friendly instruments for sexually abused children.³¹



Consequences and Risks for the State and Society

- Destabilisation of existing labour markets
- Growth and diversification of organised crime
- Growth of money-laundering
- Growth of corruption
- Undermining governmental action and the rule of law

³⁰ Francesco Carchedi, *Piccoli Schiavi senza Frontiere: Traffico dei Minori Stranieri in Italia* (Rome, Ediesse, 2004).

³¹ Atti Parlamentari, Commissione Infanzia, Audizione del Sottosegretario di Stato per l'Interno, Alfredo Mantovano, in relazione ai minori costretti a forme di accattonaggio, Seduta del 5 febbraio 2003, p. 4.

- Growing number of socially excluded persons
- Growth of social problems that are weakening the society

Consequences and Risks for the Traffickers

Trafficking in human beings is often referred to as a “low-risk/high-profit” crime, indicating the prevalent situation that traffickers hardly face criminal proceedings, as the risk of detection, arrest and adequate punishment remains low. Yet the profits from trafficking in persons tend to surpass those made in trafficking in drugs and arms. Reasons for the lack of prosecution and convictions may be the underground nature of the crime, the lack of identified victims, lack of testimony against traffickers, (in many European systems investigations into trafficking cases are based on victims' complaints), be it due to fear or due to the fact that many victims are even detained/deported as illegal immigrants/criminals, the lack of sufficient anti-trafficking legislation and other reasons.



Consequences and Risks for the “End User”

As shown above, trafficking in human beings is also determined by the demand for cheap and informal labour provided by vulnerable persons. End users of cheap and vulnerable workers could be, for example, employers in small businesses or large-scale industries, but also persons who engage in the informal economy, private households and, in the case of sexual exploitation, clients of prostitutes. As countries focus on the control of illegal migration instead of the protection of migrants from abuse and exploitation, end users also face few or no consequences for having exploited a trafficked human being. Some countries, have however, decided to penalise the clients of prostitutes in an effort to reduce demand.



The current trend seems to be towards increasing penalties for the hiring of "illegal" migrant workers. This can be seen for example in such countries as France, Germany, Russia, the United Kingdom and probably many others.³²

1.9 The Scale of Trafficking in Human Beings

Trafficking in human beings is a global concern leaving no region of the world unaffected - with people usually and unsurprisingly being trafficked from the poorer regions of the world to the more affluent ones. Trafficking in human beings and contemporary forms of slavery have progressively assumed a significant importance and social visibility in almost of all European countries and neighbouring geographical areas, especially those forming its Eastern boundaries. The EU is a region of destination and transit for trafficked victims, but also, as regards Central and Eastern European countries, a region of origin to some extent.

The phenomenon has also involved South-Central American countries (e.g. southern Brasil, Peru, Columbia and Mexico) and North-America (USA); Central-West Africa (countries on the Gulf of Guinea, in particular Mali, southern Nigeria and Côte d'Ivoire) and those of South-East Asia: on the one side Thailand, Laos and Cambodia, and on the other Central-East China (in particular the Zeijiang region).³³

The UN estimates that around 4 million persons are trafficked each year in the world,³⁴ representing around 6.7 per cent of the 27 million slaves estimated by Bales³⁵ as involved in forced labour. The Government of the United States has estimated for the year 2004 that between 600,000 to 800,000 persons in the world are trafficked each year with purposes of exploitation; among these, women represent around 80 per cent of the total and are in the majority of cases involved in the sexual market,³⁶ while the remaining 20 per cent - consisting of men - are involved in forced working activities, among them around 6 per cent of the total are male minors (i.e. between 36,000 and 48,000 per year).³⁷

³² See “Employer sanctions: French, German and US experiences”, ILO, 2000.

³³ The fact that trafficking –both at the macro-regional and transnational level- is emerging is due to the increased awareness developed in this historical period of the phenomenon and of the strong attention given in the agendas of international governmental and non-governmental organisations to human rights. For a better understanding and wide overview of the phenomenon, besides the text of K. Bales quoted in note 2 below, see also Donna M. Hughes and Claire Roche, *Making the Harm Visible: Global Sexual Exploitation of Women and Girls. Speaking Out and Providing Services* (Coalition Against Trafficking in Women, Kingston, Rhode Island, 1999).

³⁴ United Nations (2000), Report of the Special Rapporteur on Violence Against Women, submitted to the Commission on Human Rights at its fifty-third session (E/CN.4/2000/68), para. 72.

³⁵ Kevin Bales estimates that in the world there are at present around 27 million people living under slavery conditions, of whom around 20 million are in bonded labour due to indebtedness of the worker towards the employer. For this reason “the worker surrenders in slavery as warranty for a received or inherited loan granted to a relative”. See K. Bales, *op. cit.*, p.14.

³⁶ U.S. Government, *Assessment of U.S. Government Activities to Combat Trafficking in Persons* (June 2004), p. 9.

³⁷ These data, as it can be inferred, are inconsistent, both because they are provided by different organisations and because the territory to which they refer is too broad. Their usefulness lies in the fact that they give an approximate idea of the dimension of the phenomenon, almost as a “political fact” signaling the recognition of the importance of the phenomenon itself.

According to ILO research, a total of 2.45 million people are trafficked annually for purposes of forced labour, considering also prostitution as a form of forced labour.³⁸ Based on estimates done by the EU, women in the EU forced into prostitution under strong repression number around 500,000, of whom fewer than half - around 200,000 - come from Eastern European countries.³⁹ In particular these countries are most involved in trafficking, followed by Africans, especially Nigerian women.⁴⁰

However, the actual scope of human trafficking is very difficult to determine, as reliable statistical figures are lacking. The clandestine nature of the crime, the confusion of trafficking in human beings with smuggling of migrants, the frequent lack of proper legal and criminal justice responses, the difficulty of access to the victims and other factors result in the lack of reliable data on the crime and widely varying estimates.

Concerning the extent of trafficking for labour exploitation, even less hard data are available than on sexual exploitation. Unlike trafficking for purposes of sexual exploitation, labour trafficking is not in the spotlight. There are very few NGOs involved, labour unions have not given priority to the issue and there appears to be very little political will to probe into the recruitment and employment conditions of irregular migrant workers. Furthermore, there are no reliable data on child trafficking. An estimated 1.2 million persons under the age of 18 are trafficked throughout the world every year, bought and sold for exploitation in domestic and farm work, in mines and the commercial sex industry.

Estimates on the financial extent of the crime that may give an idea of how much money could be made through trafficking also exist: the US Department of State in its Trafficking in Persons Report of June 2005, for instance, refers to profits of 9.5 billion US dollars annually⁴¹ that are generated through trafficking.

³⁸ Beate Andrees, "Human trafficking for forced labour exploitation", presentation at the validation seminar, held in Trier, Germany, (23-25 May 2005).

³⁹ Francois Loncle, "La tratta delle donne dell'est in Europa occidentale, *Le Monde diplomatique* – Il Manifesto, no. 11, vol. VIII (November 2001), pp. 18-19.

⁴⁰ Estimates on forced labour have not yet been calculated, because this aspect of the new slavery has not yet been included in the political-institutional agenda of the European Union.

⁴¹ See www.state.gov/documents/organization/47255.pdf.

2

The Trauma and the Needs of Victims

2 The Trauma and the Needs of Victims⁴²

2.1 Abstract - Learning Objectives

The following chapter seeks to provide the most basic background to the causes of trauma and its impact upon the victims, the strategies the victims use to cope with it and how trauma affects their behaviour and responses.

At the end of this section the trainee will:

- Understand the impact of traumatisation in order to promote understanding of the need for assistance
- Know the symptoms of post-traumatic stress disorder
- Be able to comprehend the range of victims' reactions, such as hostility, apathy, defending the offender, etc.
- Know why it takes time to stabilise traumatised victims
- Be able to balance law enforcement interests with promoting the human rights of the victims

Human beings commonly experience crime as something more severe than accidents and other misfortunes, as it is not easy to come to terms with harm and injury that is deliberately caused by other human beings. Victims' initial reactions range from shock, fear and anger to helplessness, denial and guilt. Later on victims may become depressed, a phase that may be followed by a period of reconstruction and acceptance, making normalisation or adjustment possible.

Trafficking in human beings is a crime that seriously violates the human rights of its victims. Almost everybody has been through a stressful event in his or her life, however, when such an event causes a lot of stress, it is described as a "traumatic" event. This is the case with trafficked persons, who may become victims of physical abuse and mental and sexual harassment by perpetrators, employers, intermediaries and/or the police, and are subjected to economic servitude and other exploitative practices.

Prosecutors and judges need to understand how and why victims who suffer from severe or long-lasting trauma may, until they receive adequate treatment, deny that they have been a victim of trafficking and have trouble reconstructing or remembering what happened to them, and may not be able to testify against the traffickers.

2.2 Definition of "Trauma"

Trauma is the experience of a vital discrepancy between a threatening situation and the personal ability to cope with it, accompanied by feelings of helplessness and defenceless abandonment, resulting in a lasting crisis in the understanding of oneself and others.⁴³ Traumatic events can include natural disasters, serious accidents, physical or sexual assault, rape, robbery, mugging, witnessed violence, torture, imprisonment, threats of harm to self or loved ones, domestic violence and physical abuse, psychological force and violence, perilous illnesses and treatments and other circumstances that can cause overwhelming feelings of threat, danger to life and so on.



2.3 The Impact of Violence and Long-term Exploitation⁴⁴

The experience of violence impairs the victim's basic concept of the "other", especially with regard to trust and confidence.⁴⁵ Victims therefore withdraw from social relations, which adds to the process of isolation and "disempowerment".

Trafficked victims are coerced into a long-term exploitative relationship with their traffickers, that is, they suffer systematic violence or abuse over a period of time. Victims thus have time to develop survival strategies and to adapt their behaviour in order to reduce the risk of further incidences of abuse.

⁴² This chapter is based largely on the presentation by Heike Gerhardt (Psychiatrist), at the validation seminar held in Trier, Germany (23-25 May 2005).

⁴³ Definition by Prof. Fischer, see Gottfried Fischer und Peter Riedesser, *Lehrbuch der Psychotraumatologie*. 1st ed. (Munich, Ernst Reinhard, UTB, 1998).

⁴⁴ Sub-chapter 2.3 is based on ICMPD, *Regional Standard for Anti-Trafficking Training for Judges and Prosecutors in SEE*, 2.2.1.

⁴⁵ G. Fischer, M. Becker-Fischer and C. DÜchting, *Neue Wege in der Opferhilfe. Ergebnisse und Verfahrensvorschläge aus dem Kölner Opferhilfe Modell*, (Köln, 1998), p.42.



Survival strategies in prolonged and severe interpersonal abuse:

“Avoidance”: the victims do everything within their power to avoid further violence or abuse. They may become docile and completely obedient to the traffickers and even exhibit enthusiasm and joy on the job so as to please the traffickers.

“Identification with the offender” (also referred to as the “Stockholm Syndrome”)⁴⁶: the victim feels that she may not survive the violence, that she is isolated from the outside world and that escape is not possible. It becomes critical to her chances of survival to ensure that her behaviour will gain the approval of the trafficker. For that reason the victim will try to put herself in the position of the trafficker, to adopt his or her views and to feel and think as he or she does - so that she can accurately identify and adopt the types of behaviour that are likely to be approved. This identification process is even stronger if the trafficker occasionally pretends to care for the victim. This is why trafficked victims often refuse to co-operate with law enforcement officers or take any steps to secure their own rescue. The degree of identification may extend so far that the victims offer implausible explanations in the face of strong evidence that they have been trafficked.

“Numbing”: eventually, the victims are so involved in identification with the trafficker that they become alienated from their emotions and thoughts, which explains the often noted extremely high levels of apathy or indifference to their own suffering displayed by many victims. Victims who have lived under the control of traffickers for a long time will need months, perhaps years, to reconstruct their personality. They will require a lot of respect and support from others to make the reconstruction process possible.

2.4 Reactions to Traumatic Events

In the case of a crime, victims of that crime are likely to experience a number of reactions to the event. As part of an immediate response (the first 48 hours), these may include an increased level of adrenalin in the body, an increased heart rate, hyperventilation, shaking, tears, numbness, a feeling of being frozen or of experiencing events in slow motion, dryness of the mouth and a “fight or flight” response.

It is possible to distinguish between immediate responses to a traumatic event, such as acute stress symptoms and those responses which develop over time and show themselves for example in:

- Adjustment disorder (symptoms can be depressed mood, anxiety, disturbance of emotions and conduct);
- Post-traumatic stress syndrome (PTSD) (see below);
- Complex post-traumatic stress syndrome (see below);
- Dissociation (see below);
- Depression;
- Anxiety;
- Addiction.

Not all people exposed to traumatic events develop PTSD or complex PTSD. Some manage to cope and after an acute stress reaction reach a stage of integration and compensation. The mental response to the traumatic event depends on risk factors and the nature of the trauma. The symptoms a victim potentially develops after the traumatic event as a mental response to it would not have been there if the event had not happened.



● PTSD

As one of the most important potential mental responses, **post-traumatic stress syndrome** (PTSD) is explained in more detail.

In simple terms, PTSD occurs when a victim lives through an experience or a series of experiences that is/are so extreme that she/he is unable to comprehend the nature of it or accept that it has happened to her/him.

⁴⁶ In a robbery case in Stockholm 1973, the victims continued to defend their captors even after their six-day physical detention was over and showed reticence during the following legal procedures.

Victims of trafficking in addition to the exploitation often suffer acts of extreme violence or abuse – physically but also psychologically - even things like multiple gang rape, the severing of fingers as punishment for disobedience or the removal of teeth to improve a victim's ability to provide sexual services. The abuses are beyond comprehension or acceptance - victims may even completely deny what has happened to them (for dissociation, see below). The Diagnostic and Statistical Manual of Mental Disorders⁴⁷ requires the traumatic event to have taken place at least **four weeks ago before the diagnosis of PTSD is legitimate**.⁴⁸

Epidemiology of PTSD⁴⁹

The prevalence of PTSD depends on the nature of the trauma:

- 50 per cent prevalence in the case of rape;
- 25 per cent prevalence in the case of violent criminal assault;
- 20 per cent prevalence in the case of victims of war;
- 15 per cent prevalence in victims of traffic accidents.

The lifetime prevalence of PTSD in the general population is between 1 and 7 per cent. There is a strong tendency for PTSD to become a chronic condition.

Risk factors for PTSD⁵⁰

A whole variety of risk factors have been examined and in particular the following relationships have been described. Stronger effects are caused by factors operating during or after the trauma, such as:

- Severity of the trauma;
- Lack of social support;
- Additional life stress.

Situations where the trauma is potentially life-threatening also carry a high risk of developing a post-traumatic mental response, in particular PTSD. Ozer and others describe this as a "perceived life threat".⁵¹ Highly predictive is dissociation during the trauma.

The nature of trauma, as frequently encountered in cases of trafficking, fulfil the criteria that make the development of PTSD (or complex PTSD, see below) a possible result of it. (It should be recalled that the prevalence of PTSD in victims of rape is around 50 per cent.)

Criteria for the diagnosis of PTSD:⁵²

- (a) The person has been exposed to a traumatic event in which both of the following have been present: the person experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury or a threat to the physical integrity of self or others. The person's response involved intense fear, helplessness or horror. In the case of children, this may be expressed instead by disorganised or agitated behaviour;
- (b) The traumatic event is persistently re-experienced in one (or more) of the following ways:
 - Recurrent and intrusive distressing recollections of the event, including images, thoughts or perceptions. In young children, repetitive play may occur in which themes or aspects of the trauma are expressed;
 - Recurrent distressing dreams of the event. In children, there may be frightening dreams without recognisable content;
 - Acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations and dissociative flashback episodes, including those which occur upon awakening or when intoxicated). In young children, trauma-specific re-enactment may occur;

⁴⁷ 4th ed., 1994, published by the American Psychiatric Association.

⁴⁸ This further corroborates the view that victims should be given a temporary residency permit, see chapters 4.2.3 and 5.11.

⁴⁹ Flatten, Gast, Hofmann, Liebermann, Reddemann, Siol, Wöller, Posttraumatische Belastungsstörung- Leitlinie und Quellentext, eds. Rudolf and Eich, 2nd ed. (Stuttgart, Schattauer, 2004), p.4.

⁵⁰ Brewin and others, "Meta-analysis of risk factors for posttraumatic stress disorder in trauma exposed adults", *Journal of Consulting and Clinical Psychology*, vol. 68, No.5, pp. 748- 766.

⁵¹ Ozer and others, "Predictors of posttraumatic stress disorder and symptoms in adults: a meta-analysis", *Psychological Bulletin*, vol.129, No.1, pp. 52-73.

⁵² Frances, First and Pincus, *DSM- IV Guidebook*, 4th ed., (Washington, American Psychiatric Press), pp. 260-261.

- Intense psychological distress at exposure to internal or external cues that symbolise or resemble an aspect of the traumatic event;
 - Physiological reactivity on exposure to internal or external cues that symbolise or resemble an aspect of the traumatic event;
- (c) Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by three (or more) of the following:
- Efforts to avoid thoughts, feelings or conversations associated with the trauma; efforts to avoid activities, places or people that arouse recollections of the trauma; inability to recall an important aspect of the trauma; markedly diminished interest or participation in significant activities; feelings of detachment or estrangement from others; restricted range of affection (e.g. unable to have loving feelings);
 - Sense of a foreshortened future (e.g. does not expect to have a career, marriage, children or a normal life span);
- (d) Persistent symptoms of increased arousal (not present before the trauma), as indicated by two (or more) of the following:
- Difficulty falling or staying asleep;
 - Irritability or outbursts of anger;
 - Difficulty concentrating;
 - Hyper-vigilance;
 - Exaggerated startle response;
- (e) Duration of the disturbance (symptoms in criteria (b), (c) and (d)) is more than one month;
- (f) The disturbance causes clinically significant distress or impairment in social, occupational or other important areas of functioning.

Specify if:

- Acute: if the duration of symptoms is less than 3 months;
- Chronic: if the duration of symptoms is 3 months or more;
- With delayed onset: if the onset of symptoms is at least 6 months after the stressor.

Complex PTSD (or disorders of extreme stress not otherwise specified (DESNOS))

Definition:

Complex PTSD is a syndrome associated with histories of prolonged and severe interpersonal abuse, also called '**disorders of extreme stress not otherwise specified**' (DESNOS), according to the American Psychiatric Association.

The diagnosis of PTSD describes symptoms that usually follow from the experience of short-lived trauma. This diagnosis often fails to capture the severe psychological harm that occurs with prolonged and severe repeated trauma. These effects are described in the diagnosis of complex PTSD (or DESNOS, see above).

The diagnosis of DESNOS covers six different problems:⁵³

- Alterations in the regulation of affective impulses;
- Alterations in attention and consciousness;
- Alterations in self-perception;
- Alterations in relationship to others;
- Somatisation;
- Alterations in systems of meaning.

⁵³ Bessel A. van der Kolk, "The assessment and treatment of complex PTSD", Rachel Yehuda, Traumatic Stress (American Psychiatric Press, 2001).

2.5 Dissociation

In the **traumatic situation**, the elementary senses of the victim are not able to process the experience as an entirety and a reality of her/his life. The experience cannot be transferred into a structured piece of memory. Thus the victim of a traumatic event cannot deliberately recall what has happened.

The so-called effect of “dissociation” means a fragmentation of

- Behaviour
 - Affect
 - Sensation and
 - Knowledge
- BASK Model of Dissociation**⁵⁴

During questioning, this can be one of the reasons why a victim may at times only recall one or perhaps two of the components of a normally integrated piece of memory (for example, telling about the traumatic event without showing emotions. At this moment the victim may not have access to the emotional part (affect) of the trauma, but to facts and details (knowledge).

One form of dissociation is “depersonalisation”: the victim feels as if she/he was another person or as if she/he would leave her/his body and watch what happened from a distance.⁵⁵ This is why victims of severe violence may appear to be astonishingly indifferent or apathetic.

Another form is “derealisation”, which means that an alteration in the perception or experience of the external world so that it seems strange or unreal.⁵⁶

2.6 The Need to Stabilise the Victims in the Context of PTSD

According to evidence-based guidelines, stabilisation has the highest and first priority,⁵⁷ which has to include:

- Establishing a physically and emotionally safe environment for the victim;
- Organising a psycho-social support system;
- Contact with a therapist specialised in the treatment of PTSD;
- Providing information for the victim to understand the nature of trauma and post-traumatic mental responses and how to deal with them.

Stabilization:

A sense of **physical security** depends on the knowledge that the trauma will not return. This means that active steps need to be taken to ensure that traumatised patients are both physically and emotionally in a safe environment.⁵⁸ This requires in the case of trafficking:

- Shelter for the victims of trafficking;
- Victim witness protection;
- Counselling centres for trafficked persons;
- Good co-ordination of support for the victims; collaboration at different levels (NGO, police, prosecutors, government and others). Chapter 4 and 5

During the stabilisation phase it is important to put the victim into a position where she/he is able to **gain control** over her/his overwhelming emotions and pathological defence operations.⁵⁹

As regards criminal proceedings and questioning, the need for stabilisation entails:

- Law enforcement and judicial authorities need to be aware of possible responses related to the traumatic experience
- Need for psychosocial support during questioning (potential triggers)
- Need for psychosocial support when confronted with the perpetrator during the trial (potential trigger)
- Explanation of expected procedures during the trial will enhance the victims’ sense of control

⁵⁴ Braun, “Psychotherapy of the survivor of incest with a dissociative disorder”, *Psychiatric clinics of North America*, vol. 12, No. 2, pp. 307-324.

⁵⁵ Bessel A. van der Kolk, Onno van der Hart and Charles R. Marmar, “Dissoziation und Informations-verarbeitung beim posttraumatischen Belastungssyndrom”, Bessel A. van der Kolk and others, *Traumatic Stress: Grundlagen und Behandlungsansätze* (Paderborn, 2000), pp. 250-252. ⁵⁶ Braun, “Psychotherapy of the survivor of incest with a dissociative disorder”, *Psychiatric clinics of North America*, vol. 12, No. 2, pp. 307-324.

⁵⁶ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed., (Washington D.C., 1994).“

⁵⁷ Flatten, Gast, Hofmann, Liebermann, Reddemann, Siol, op. cit., p.6.

⁵⁸ Braun, “Psychotherapy of the survivor of incest with a dissociative disorder”, *Psychiatric clinics of North America*, vol. 12, No. 2, pp. 307-324.

⁵⁹ Ibid.

These fundamental principals of stabilisation and treatment also apply to victims who suffer from complex PTSD.

2.6

2.7 Interrogation of Traumatized Victims

(a) Interrogation of the victim should start only after she/he has been stabilised.

Possible behaviour of traumatised victims:⁶⁰

- The “hostile victim”: the victim may have learnt that anything jeopardising the dominance of the traffickers could lead to immediate violence. She/he may thus avoid any co-operation with law enforcement or judicial authorities;⁶¹
- Disorientation: after leaving the situation of ongoing trauma and control there may be a period of disorientation;
- Reconstruction and remembering: for many victims, there then follows a period of reconstruction, filled with retrospective thinking. During the cognitive restructuring, victims re-interpret and try to come to terms with their experience, to find a possible explanation for what has happened or to evaluate the event as leading to personal growth.

Relevance of the above for law enforcement and judicial authorities:

Law enforcement officers as well as judges and prosecutors should acknowledge the impact of trauma on trafficked victims and recognise that symptoms such as lack of co-operation or overt hostility, an impaired ability to recall events in detail, errors or subsequent corrections in accounts or fabrications concerning specific events are likely to occur as a consequence of the trauma, rather than resulting from a deliberate decision not to co-operate or to give a false statement.

An early interrogation of the victim will in many cases overstrain the victim’s capacity to remember and to cope with the overwhelming memories. It is likely to be only after the traumatised victim has received specialist assistance and a degree of autonomy over a period of time that she/he will be in a position to make fully informed decisions or to provide a detailed history of what she/he has gone through.

Victims do not understand themselves and why they cannot remember and might be tempted to make up the details that are missing in their recollection in order to “fill in the holes” in their memory. Yet, at a later stage of the proceedings, when the victim remembers more, as she/he may be able to cope better with the memory, it will be difficult for her/him to change her/his account. Under normal circumstances we remember events that have just occurred much better than experiences long past - the opposite is true for victims of violence.⁶² Prosecutors and judges must recognise that every attempt to force the victim to remember will not contribute to the investigation, but rather create an imminent danger of re-traumatisation.

Avoiding secondary victimisation

Secondary victimisation refers to the victimisation that occurs, not as a direct result of the criminal act, but through the response of institutions and individuals to the victim.⁶³ The whole process of criminal investigation and trial may cause secondary victimisation, because of difficulties in balancing the rights of the victim against the rights of the accused or the offender, or even because the perspective of the victim is entirely ignored.⁶⁴ Law enforcement authorities that are corrupt or not sufficiently committed to their tasks and therefore fail to respect the rights of victims to security and justice can lead to the most severe forms of re-traumatisation. Victims may have difficulties in acknowledging that an offence has occurred, where the state, which is supposed to be protective, in fact mistreats victims. Fighting corruption and fostering the commitment of law enforcement authorities is an important element of anti-trafficking strategies.

⁶⁰ Sub-chapter 2.7 is based on ICMPD, Regional Standard for Anti-Trafficking Training for Judges and Prosecutors in SEE, sub-chapter 2.2.1.

⁶¹ Radhika Coomaraswamy, statement quoted in Dearing/Förg (1999), p.105.

⁶² G. Fischer, M. Becker-Fischer and C. Düchting, op. cit., p.62.

⁶³ UN Handbook, 9.

⁶⁴ Also other agencies that come into contact with the victim may cause secondary victimisation. The hurried schedule of the emergency room may intrude on the privacy of a sexual assault victim or offend his or her sense of dignity. Intrusive or inappropriate investigation and filming, photography and reporting by the media are also aggravating factors. Even victims’ support organisations may cause secondary victimisation.

2.8 Traumatized Children⁶⁵


Following the traumatic event(s), children may initially show agitated or confused behaviour. They also may show intense fear, helplessness, anger, sadness, horror or denial. Children who experience repeated trauma may develop a kind of emotional numbing to deaden or block out the pain and trauma. This is called “dissociation”. Children with PTSD avoid situations or places that remind them of the trauma. They may also become less responsive emotionally, depressed, withdrawn and more detached from their feelings.

A child with PTSD may also re-experience the traumatic event by:

- Having frequent memories of the event or, in young children, play in which some or all of the trauma is repeated over and over;
- Having upsetting and frightening dreams;
- Acting or feeling as if the experience is happening again;
- Developing repeated physical or emotional symptoms when she/he is reminded of the event.

Children with PTSD may also show the following symptoms:

- Worry about dying at an early age;
- Losing interest in activities;
- Having physical symptoms such as headaches and stomach aches;
- Showing more sudden and extreme emotional reactions;
- Having problems falling or staying asleep;
- Showing irritability or angry outbursts;
- Having problems concentrating;
- Acting younger than their age (for example, clingy or whiny behaviour, thumb sucking);
- Showing increased alertness to the environment;
- Repeating behaviour that reminds them of the trauma.

The symptoms of PTSD may last from several months to many years. Support from parents, school and peers is important. Emphasis needs to be placed on establishing a feeling of safety. Psychotherapy (individual, group or family), which allows the child to speak, draw, play or write about the event is helpful. Behaviour modification techniques and cognitive therapy may help reduce fears and worries. Medication may also be useful to deal with agitation, anxiety or depression. 

Child and adolescent psychiatrists can be very helpful in diagnosing and treating children with PTSD. With the sensitivity and support of families and professionals, youngsters with PTSD can learn to cope with the memories of the trauma and go on to lead healthy and productive lives.

⁶⁵ World Health Organisation, Regional Office for South-East Asia, List of Guidelines for Health Emergency, Nr. 70, 10/99.

3

The Normative Framework

3 The Normative Framework

3.1 Abstract – Learning Objectives

All EU Member States and candidate and accession countries are to have specific anti-trafficking laws or provisions that criminalise trafficking in their penal codes. Lack of specific anti-trafficking legislation, however, cannot justify lack of action. Until specific domestic legislation on trafficking is passed, existing UN treaties and EU legislation provisions as well as national provisions concerning slavery and work under slavery-like conditions, forced labour exploitation, violation of a person's liberty, facilitation of illegal border crossing, violation of public order, the prohibition of the formation of criminal association, the exploitation of prostitution and other provisions can be used to investigate, prosecute and adjudicate trafficking in human beings.

Judges and prosecutors can avail themselves of international standards as a means of interpreting national law, even if these standards are not directly applicable or legally binding. And though the EU Framework Decision is "closer" to EU and candidate countries, the UN Trafficking Protocol contains more comprehensive provisions.

At the end of this section the trainee will:

- Be familiar with relevant international and European legal instruments with regard to human trafficking
- Know which international/European instruments can be applied directly, having the same status as national law
- Be able to interpret domestic legislation with the help of international instruments
- Know which domestic laws exist on trafficking
- Be able to compare national legislation with the existing international/European framework and identify the main gaps between the two

3.2 United Nations Treaties and other International Instruments

International, especially United Nations, instruments provide for the different approaches relating to how to tackle the global concern of trafficking in human beings: trafficking as a human rights issue, a gender issue, a migration-related problem, a law enforcement concern, a form of organised crime, a modern form of slavery, a child protection issue, a labour problem, a health problem and so on.

3.2.1 Convention against Transnational Organized Crime and its Supplementing Trafficking Protocol

Until recently, no universal and legally binding definition of human trafficking existed and different national and international actors used differing definitions. That situation has been changed as a result of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.⁶⁶ In many states, specific counter-trafficking legislation has been or is being drafted and enacted on the basis of the provisions of the Convention and the Protocol.

The Trafficking Protocol is primarily a law enforcement instrument, but also requires states that ratify it to take steps to protect and assist trafficked persons.

Another fundamental purpose of the Protocol is to reinforce international co-operation. To accomplish this, it is necessary to ensure that as many states as possible adopt minimum measures against organised crime so that there are no safe-havens for such crime.

Relationship of the UN Trafficking Protocol and Convention⁶⁷

According to art. 1 of the Protocol and art. 37 of the Convention, the Protocol supplements the Convention, so in order to become a party to the Protocol, states must first be a party to the Convention and whenever the Pro-



⁶⁶ The Convention was adopted by the UN General Assembly in its resolution 55/25 of 15 November 2000 and entered into force on 29 September 2003; the Protocol was adopted together with the Convention and entered into force on 25 December 2003. See www.unodc.org/unodc/en/crime_cicp_convention.html for more information.

⁶⁷ Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (United Nations, New York, 2004).

Protocol applies, the parent Convention also applies. Though the Protocol is a separate instrument for the purposes of ratification, it is not a separate “stand-alone” instrument in terms of its content.

Effectively, the Protocol and the Convention constitute one large instrument, with general powers against transnational organised crime in the Convention and specific powers/provisions dealing with specific problems concerning human trafficking in the Protocol. Protocol offences are deemed to also be Convention offences, thereby invoking all Convention powers, procedures and the like.

The UN Convention against Transnational Organized Crime is a legally binding instrument committing states that ratify it to taking a series of measures against transnational organised crime. States Parties to the Convention are required to establish in their domestic laws **four criminal offences: participation in an organised criminal group, money-laundering, corruption and obstruction of justice.**

The Convention also determines how countries can **improve co-operation** through **extradition, mutual legal assistance, transfer of proceedings and joint investigations.** Moreover, it includes provisions on **victim and witness protection** and the protection of legal markets from infiltration by organised criminal groups. The Convention covers the following issues:



- **Participation in an organised criminal group (art. 5 of the Convention)**

States parties have to criminalise the participation in an organised criminal group.

“Organised criminal group”: “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences ... in order to obtain, directly or indirectly, a financial or other material benefit.”

“Serious crime”: “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”

“Participation in an organised criminal group”: agreeing with one or more other persons to commit a serious crime in order to obtain material benefit; supporting the commission of serious crime involving an organised criminal group; active participation in criminal activities of the group; other contributions to the achievement of the criminal aim of the group.



- **Money -laundering (art. 6 of the Convention):**

States parties are obliged to criminalise the laundering of proceeds, particularly with regard to the proceeds of the activities of organised criminal groups. The detection of financial flows and disruption of money-laundering processes is essential for an effective investigation against trafficking.



- **Corruption (art. 8 of the Convention)**

Public officials⁶⁸ must be held criminally accountable for both active and passive bribery. **Active bribery** means participation as an accomplice in an offence, whether on the side of the person giving or receiving the undue advantage. **Passive bribery** entails both offering an undue advantage to a public official as well as the solicitation or acceptance of such an advantage by a public official. The role of public corruption in facilitating human trafficking needs to be addressed. Art. 8, Para. 2, suggests that the criminalisation be extended to foreign public officials or international civil servants as well as to other forms of corruption.



- **Liability of legal persons (art. 10 of the Convention)**

Liability for offences must be established both for natural or biological persons and for legal persons such as corporations.



- **Sanctions , prosecution and adjudication (art. 11, paras. 1, 2 and 6)**

The severity of the punishment for the offences mandated by the Convention/the Protocol is left to the states parties, but it must take into account the gravity of the offence. The primacy of national law is affirmed by

⁶⁸ Anyone who provides any public service (Para. 4)

art. 11, para. 6. States must endeavour to ensure that the grave nature of the offence and the need to deter its commission is considered in prosecution, adjudication and correctional practices and decisions.

The Convention also requires states to ensure that any discretionary powers they may have are exercised to maximize the effectiveness of law enforcement and deterrence. States that have discretionary prosecutorial powers available must make an effort to encourage the application of the law to the maximum extent possible in order to deter the commission of the four main Convention offences, as well as the Protocol offences and serious crimes.

- **Presence of defendants (art. 11, para. 3)**

Defendants may have huge financial means for posting bail and avoiding detention, which may undermine law enforcement, and there is the risk of pre-trial/ pre-appeal releases. States parties are required to take appropriate measures consistent with their law and the rights of defendants to ensure that they do not abscond.

- **Parole of early release (art. 11, para. 4)**

The gravity of the offences established in accordance with the Protocol must be taken into account when considering the possibility of early release or parole of convicted persons.

- **Statute of limitations (art. 11, para. 5)**

A long domestic “statute of limitations period” should be established for the commencement of proceedings for Convention offences, where appropriate, especially when “the alleged offender has evaded the administration of justice”.

- **Confiscation (arts. 12-14)**

A main strategy to keep offenders from profiting from their crimes is to ensure that states have strong confiscation regimes that provide for the identification, freezing, seizure and confiscation of illicitly gained funds and property. Special international co-operation mechanisms enable countries to give effect to foreign freezing and confiscation orders and to provide for the most appropriate use of confiscated proceeds and property.

- **Jurisdiction (art. 15)**

States parties have to establish jurisdiction to investigate, prosecute and punish all offences established by the Convention and the Protocol. Jurisdiction must be established over offences committed by such nationals anywhere in the world.

- **Special investigative techniques (art. 20)**

Special investigative techniques shall be provided for the purpose of combating such offences, if permitted by basic principles of the domestic legal system of the state party concerned and, where deemed appropriate, other techniques such as electronic surveillance and undercover operations.

- **Obstruction of justice (art. 23)**

This provision protects criminal proceedings against unlawful interference. Subparagraph (a) – including the pre-trial phase of proceedings⁶⁹ related to crimes covered by arts. 5, 6 and 8 - protects the evidence in proceedings and makes illicit: “the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence.” Subparagraph (b) requires the criminalisation of: “the use of force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official”.

- **Witness and victim protection (arts. 24 and 25)**

Victims and witnesses are to be protected from potential retaliation or intimidation. Art. 24 of the Convention covers the protection of witnesses who give testimony, and, in appropriate cases, also provides protection for relatives of the witnesses.

⁶⁹ UN, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime on the work of its first to eleventh session, addendum: Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organised Crime and the Protocols thereto (A/55/383/Add.1).



Art. 25 in addition provides for assistance to and protection of victims. Bearing in mind that some victims may also be witnesses, states are required to provide effective protection for witnesses, within available means. This may include:

- Physical protection;
- Domestic or foreign relocation;
- Special arrangements for giving evidence.

States also have to establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by the Convention and the Protocol. Furthermore states must provide opportunities for victims to present views and concerns at an appropriate stage of criminal proceedings, subject to domestic law. States are also required to consider relocation agreements. The UN Trafficking Protocol contains more specific measures for protection (see sub-chapter 3.2.1.4).



● **Enhancement of co-operation (art. 26)**

At the same time states must encourage those who have participated in organised criminal groups to co-operate with and assist law enforcement authorities. Thus, states parties are required to consider providing the possibility of mitigated punishment for such persons or of granting them immunity from prosecution. This is an option that states may or may not be able to adopt, depending on their fundamental principles. (It should be noted that in jurisdictions where prosecution is mandatory for all offences, such measures may need additional legislation.)



UN Trafficking Protocol, arts. 2 and 3: purposes and definition

According to its art. 2, the basic purpose of the UN Trafficking Protocol is

- To prevent and combat trafficking;
- To protect and assist victims, with full respect of their human rights;
- To promote international co-operation.

Victims and witnesses are also dealt with in the parent Convention, but the protection of and assistance to victims is specified as a core purpose of the Protocol in recognition of the acute needs of trafficking victims and the importance of victim assistance, both as an end in itself and as a means to support the investigation and prosecution of trafficking crimes.



Trafficking in persons according to **art. 3 of the Trafficking Protocol** means:

- 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 prostitution⁷⁰ of others or other forms of **sexual exploitation**, forced labour⁷¹ or services, slavery or practices similar to slavery, servitude or the removal of organs. [Subparagraph (a)]
- The **consent of a victim** of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used. [Subparagraph (b)]

⁷⁰ Dealing with prostitution and related matters outside of the scope of trafficking in persons is specifically reserved for the laws and policies of individual State Parties (see the interpretative notes (A/55/383/Add.1, para. 64)).

⁷¹ "Forced labour" is not defined in the Protocol. There are, however, several international instruments in this regard, for example: the 1930 Convention concerning Forced or Compulsory Labour (Convention No. 29) of the International Labour Organization; and the 1957 Convention concerning the Abolition of Forced Labour (Convention No. 105) of the International Labour Organization. "Slavery" is also not defined in the Protocol, but numerous international instruments, as well as the domestic laws of many countries, define or deal with slavery and similar practices (see, for example, article 4 of the 1948 Universal Declaration of Human Rights; the 1926 Slavery Convention, as amended by the 1953 Protocol (United Nations, Treaty Series, vol. 212, No. 2861); the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (United Nations, Treaty Series, vol. 266, No. 3822); the 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182) of the International Labour Organization; article 11, paragraph 1, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (General Assembly resolution 45/158, annex); and article 4 (Prohibition of slavery and forced labour) of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.

- The **recruitment, transportation, transfer, harbouring or receipt of a child** for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article; child shall mean any person under eighteen years of age. [Subparagraph (b) and (c)]

The **Protocol** is a tool that provides a basis for prosecuting all forms of trafficking.

The interpretative notes to the Protocol point out that the abuse of a **position of vulnerability** refers to any situation in which the person involved has **no real and acceptable alternative but to submit** to the abuse involved. This explanation recognises that trafficking can occur without any actual threat or use of force.

According to the definition given in the Protocol, the consent of the victim is irrelevant to the prosecution of trafficking. However, the interpretative notes of the Protocol determine that there should be no restrictions on the right of the accused person to a full defence and to the presumption of innocence.



This definition reflects the reality of trafficking very well:

- It does not restrict trafficking to sexual exploitation, but includes the conditions of forced labour, servitude, slavery and slavery-like practices, each of which are defined in international law;
- It does not refer to women and girls exclusively, but recognises that women, men, girls and boys can all be victims;
- It does not require that the victims cross an international boundary, taking into account that persons may also be trafficked internally within the borders of one country;
- Except in the case of a person under the age of eighteen years, the Protocol requires some form of distortion of the victim’s free and informed will, for example, by means of force, deception or the abuse of power and thus respects the ability of adult persons to make self-determined decisions about their lives, specifically regarding labour and migration choices. Because deception is sufficient for a trafficking case, force and coercion are not necessary elements;
- According to this definition, if any of the improper means (i.e. coercion, fraud, deception) have been used, it is irrelevant whether the victim finally consents to the intended exploitation.

Criminalisation of trafficking in human beings, art. 5 of the UN Trafficking Protocol

The Trafficking Protocol obliges states to criminalise trafficking in art. 5, which is a binding regulation for states parties of the Protocol:



- Each state party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct as set forth in art. 3 of this Protocol, when committed intentionally;
- Each state party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - Subject to the basic of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - Organising or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

As different legal systems determine the attempt of a crime differently, the interpretative notes of the Protocol add that “attempting to commit an offence” can in some countries be understood as acts perpetrated in preparation for an offence, and also those acts carried out in an unsuccessful attempt to commit the offence, when those acts are punishable under the law.

Participating as an accomplice refers exclusively to offenders – not to victims of the crime. **The Protocol aims at punishing the traffickers, not the victims.**

It is important to point out that according to art. 34, para. 2, of the UN Convention **neither transnationality nor the involvement of an organised criminal group must be made elements of the trafficking offence in domestic legislation.** In other words, in domestic law, offences established in accordance with the Trafficking Protocol should apply equally, regardless of whether the case involves transnational elements or is purely domestic and regardless of whether an individual committed the offence or individuals associated with an organised criminal group and regardless of whether or not this could be proved.



Protection of and assistance to victims, arts. 6 – 8 of the UN Trafficking Protocol

It should be remembered that the UN Trafficking Protocol applies to the protection of victims irrespective of the element of transnationality or the involvement of organised crime. The Protocol recognises that victims of trafficking are especially vulnerable, and thus need specific protection.

Therefore the UN Protocol requires each state party to:

- Protect, to the extent that is possible under domestic law, the privacy and identity of victims, including by making legal proceedings relating to trafficking confidential⁷² (art. 6, para. 1);⁷³
- Ensure that victims receive information on relevant court proceedings in appropriate cases and have an opportunity to have their views presented and considered⁷⁴ (art. 6, para. 2);⁷⁵
- Consider providing, in co-operation with civil society, for the physical, psychological and social recovery of the victim. This shall include (art. 6, para. 3):
 - **Appropriate housing;**
 - **Counselling and information**, in particular as regards their **legal rights**, in a **language** that the victims of trafficking in persons **can understand**;
 - **Medical, psychological and material assistance**; and
 - **Employment, educational and training opportunities;**
- Take into account the age, gender and special needs of children, including appropriate housing, education and care (art. 6, para. 4);
- Endeavour to provide for the physical safety of victims while they are in their territory (art. 6, para. 5);
- Ensure that measures exist to allow victims the opportunity to seek compensation for damages suffered (art. 6, para. 6);
- Facilitate and accept the return of victims who are nationals or have the right of permanent residence, with due regard for their safety (art. 8, para. 1);
- Verify without unreasonable delay whether a trafficking victim is a national or has the right of permanent residence and issue the necessary travel documents for re-entry (art. 8, paras. 3 and 4).



Prevention of trafficking in human beings, art. 9 of the UN Trafficking Protocol

Art. 9 of the Protocol stipulates that:

- States parties shall establish comprehensive policies, programmes and other measures:
 - To prevent and combat trafficking in persons; and
 - To protect victims of trafficking in persons, especially women and children, from re-victimisation;
- States parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons;
- Policies, programmes and other measures established in accordance with this article shall, as appropriate, include co-operation with non-governmental organisations, other relevant organisations and other elements of civil society;
- States parties shall take or strengthen measures, including through bilateral or multilateral co-operation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity;

⁷² Denying information to the defence must be reconciled with any applicable constitutional or other rights.

⁷³ The Protocol understands the importance of protecting the identity of trafficked persons, as they face retaliations from the perpetrators.

⁷⁴ In a manner **not prejudicial** to the rights of the defence.

⁷⁵ One instrument that has been employed in some states to present the victim's views is the idea of a **victim statement about the impact of the offence.**

- States parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral co-operation, to discourage the demand that fosters all forms of exploitation of persons, especially of women and children, that lead to trafficking.

Social prevention measures have to include addressing the adverse social and economic conditions believed to contribute to the desire to migrate and hence to the vulnerability of victims to traffickers. Such campaigns can aim to raise awareness of the problem among the general population or be directed at warning specific groups or even individuals believed to be at high risk of victimisation.

The Protocol recognises that trafficking in persons could be dealt with from **both the demand side and the supply side**, requiring measures intended to discourage the demand for services, which fosters the exploitive element of trafficking and hence its major source of illicit revenue. The Protocol also takes into consideration that former victims are often even more vulnerable later on, especially if they are repatriated to places where trafficking is common. Hence, in addition to the basic requirements to protect victims from intimidation or retaliation by offenders, art. 9, para. 1, of the Protocol calls for measures to protect victims from being trafficked again and from other forms of re-victimisation.

Finally, the Protocol seeks to prevent trafficking in persons by requiring measures intended to make it more difficult for traffickers to use conventional means of transport and enter into countries by requiring states parties to ensure that border controls are effective and by taking measures to prevent the misuse of passports and other travel or identification documents.

Most of the various measures called for in art. 9 of the Trafficking Protocol involve non-legal initiatives and will not require legislative authority in most countries, apart from ensuring that the basic powers and resources are allocated to the appropriate officials. However, demand reduction may be achieved in part through legislative or other measures targeting those who knowingly use or take advantage of the services of victims of exploitation. All of the mentioned obligations are mandatory, requiring states parties to adopt or strengthen measures, but only in the sense that some action on each point must be taken. The Protocol does not specify in detail the exact actions required, leaving states parties some flexibility to apply the measures that they think are most likely to be effective.

The UN Protocol also deals with border measures and the security and control of documents, so as to prevent trafficking from happening.

Co-operation measures

Various articles of the UN Trafficking Protocol set out specific obligations to co-operate with other state parties and entities that are not parties to the Protocol. It is essential that, both in developing and applying implementing legislation, the Protocol provisions must be read and applied together with the corresponding articles of the Transnational Organized Crime Convention. For example, apart from the specific obligation to assist in verifying travel or identity documents under art. 13 of the Protocol, there are no articles on extradition or mutual legal assistance in the Protocol because these are already fully covered by articles 16 and 18 of the Convention (see more specifically chapter 6).



3.2.2 Other Treaties

- The 1948 Universal Declaration of Human Rights acknowledges the equality, liberty, security and freedom, also from slavery or servitude, of all human beings:
 - Art. 3: Everyone has the right to life, liberty and security of person.
 - Art. 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
 - Art. 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.



The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948 and provides human rights standards accepted by all Member States. Though it is not a binding treaty, it provides a normative basis for international human rights standards.



- **The International Covenant on Civil and Political Rights (1966) forbids slavery and slave-like conditions:**

- **Art. 8**

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
(b) Subparagraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) Any work or service, which forms part of normal civil obligations.



- **The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)** deals with the slave trade and the so-called "white" traffic, as well as with traffic in women and children, and determines the obligation to punish traffickers, even if the person being exploited has consented to the trafficking:

- **Art. 1:**

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

- (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
- (2) Exploits the prostitution of another person, even with the consent of that person.

- **Art. 2:**

The Parties to the present Convention further agree to punish any person who:

- (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;
- (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

However, the value of the Convention is rather limited, as it contains no definition of trafficking, focuses exclusively on prostitution and is quite ineffective as regards the protection of victims' rights. In a resolution of 1996 the European Parliament called upon Member States to contribute to a new UN convention – with the intention to make coercion and deception defining element of the crime of trafficking.



- **The Slavery Convention (1926) and Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1956)** criminalise the act of "enslaving another person" and requires states to co-operate in combating slavery:

Slavery Convention

- **Art. 1:**

For the purpose of the present Convention, the following definitions are agreed upon:

- (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
- (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

- **Art. 2:**

The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps:

- (a) To prevent and suppress the slave trade;
 - (b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.
- The Slavery Convention grants the victims protection and obliges states to abolish all forms of slavery, but the implementation mechanisms remain rather poor.

Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery

- **Art. 1:**

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in art. 1 of the **Slavery Convention signed at Geneva on 25 September 1926:**


- (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
- (c) Any institution or practice whereby:
 - (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person;
- (d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

- **Art. 2:**

With a view to bringing to an end the institutions and practices mentioned in article 1 (c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

- **The Convention on the Elimination of all Forms of Discrimination against Women states in art. 6:** 

“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.

- **The Convention on the Rights of the Child (1989) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) stipulate:** 

Convention on the Rights of the Child

- **Art. 32**

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

- **Art. 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.



- **The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, which entered into force on **1 July 2003**, promotes equal rights of migrant and local workers. Without status, the irregular migrant is a natural target of exploitation, obliged to accept any kind of job and any working and living conditions. Restrictive immigration policies often turn flows of would-be migrants towards illegal channels. The Convention seeks to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and to discourage the employment of migrant workers in an irregular or undocumented situation.

3.2.3. International Labour Organization⁷⁶



- **ILO Convention No. 29 concerning Forced or Compulsory Labour (1930)**

More than 160 Member States have ratified the ILO Forced Labour Convention No. 29 of 1930. It provides a basic definition of forced labour, which is still applicable to such present-day international instruments as the UN Trafficking Protocol.

Under the **ILO Convention No. 29**, the term **forced or compulsory labour** shall mean (art. 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 voluntarily”.

The provision then goes on to exclude certain types of forced or compulsory labour: namely compulsory military service, work or service as part of the normal civic obligations, certain forms of prison labour, work or service that is exacted in emergency situations, and minor communal services.

The Convention requires the suppression of the use of forced or compulsory labour in all its forms within the shortest possible time (art. 1). This includes forced labour exacted by public authorities as well as by private persons. States that have ratified the Convention have both an obligation to abstain and an obligation to act. ILO Convention No. 29 provides for the adoption and appropriate application of penal sanctions against the illegal exaction of forced labour.

Art. 25 of Convention No. 29 stipulates that:

“the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced”.

The specific mechanism by which this is to be done is left to the state. The exaction of forced or compulsory labour could be a “penal offence” under either the criminal or labour law, although “adequate” penalties for this basic human rights violation are more likely to be included in the penal or criminal code. Penal sanctions can be imposed in the form of fines or imprisonment. Fines should be high enough to act as an effective deterrent.

In addition, the ILO Forced Labour Convention No. 29 provides an explanation for the “**harbouring and receipt**” aspects of the UN Trafficking Protocol. Harbouring is the more difficult of the two concepts, relating more to the provision of accommodation than to the use of coercion. “Receipt” means receiving persons into employment or for the purposes of employment, including forced labour. By focusing on

⁷⁶ Information in this subchapter is based largely on International Labour Organization/Office, “Human Trafficking and Forced Labour Exploitation - Guidance for Legislation and Law Enforcement”, 2005; “Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers”, 2004; and Forced Labour, Child Labour, and Human Trafficking in Europe: An ILO Perspective, Technical paper for the EU/IOM STOP European Conference on Preventing and Combating Trafficking in Human Beings, 18-20 September 2002, Brussels.


the forced labour aspect of the Protocol's definition, countries may find the task of implementation somewhat easier as it can be tied to existing national legislation and to the implementation of Convention No. 29. Trafficking requires the intention of the perpetrators to exploit individuals. Exploitation is defined as specifically including forced labour. Thus the emphasis on the suppression of forced labour corresponds to a number of state obligations, both those which have been in force in most states for years and new obligations assumed under the UN Trafficking Protocol.

- **ILO Convention No. 105 concerning the Abolition of Forced Labour (1957)** 

At a time when there had been growing use of forced labour for political purposes, ILO adopted an additional instrument on the subject: its Abolition of Forced Labour Convention (No. 105 of 1957), which calls for the suppression of forced labour as a means of political coercion, labour discipline or racial, social, national or religious discrimination; as a method of mobilizing and using labour for purposes of economic development; and as punishment for having participated in strikes.

- **ILO Convention No. 138 concerning the Minimum Age for Admission to Employment (1973)** 

Convention No. 138 lays down the basic obligation to eliminate child labour and sets the conditions for entry of young persons into the world of work. Trafficked children are particularly vulnerable in view of their age. To find themselves in a foreign country where they do not speak the language and have no family to turn to places them in a particularly difficult position. The fact that their family members may have been complicit in their trafficking places especially heavy responsibilities on all states parties regarding their protection.

- **ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination on the Worst Forms of Child Labour (1999)** 

The ILO Convention on the Worst Forms of Child Labour (No.182) adopted in 1999 includes the sale and trafficking of children as one of the worst forms of child labour that must be tackled urgently. In the ILO Convention No.182 "children" are, in line with the UN Convention on the Rights of the Child and the UN Trafficking Protocol, defined as persons under the age of 18. While the UN Convention against Transnational Organized Crime and its Trafficking Protocol tackle trafficking in human beings from the angle of transnational organised crime, the ILO Convention No.182 declares the sale and trafficking of girls and boys under 18 years of age one of the worst forms of child labour and calls for immediate measures, including prevention, withdrawal and rehabilitation. Convention No.182 further sets out the framework for action against child trafficking and other worst forms of child labour.

Art. 7 of the Convention calls for "the provision and application of penal sanctions or, as appropriate, other sanctions", as well as "effective and time-bound measures", to prevent child trafficking, withdraw children from it and rehabilitate them. However, criminal provisions are not the only means to tackle the problem of child trafficking. There should be, inter alia, appropriate mechanisms (art. 5) to monitor the implementation of the relevant national provisions and also programmes of action (art. 6) designed and implemented to eliminate child trafficking. Its art. 8 promotes international co-operation and assistance to apply the Convention, including support for poverty alleviation and universal education, so as to tackle the root causes of trafficking in children.

ILO Recommendation No.190, supplementing Convention No.182, also includes many useful suggestions for practical action that may be considered by countries that wish to enhance their action against child trafficking.

- **ILO Convention No. 143 (1975) on Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers** 

This Convention refers specifically to the recruitment of migrant workers.

- **ILO Recommendation No.190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)** 

Children are particularly vulnerable to exploitation in domestic service. Some children may be subjected to the worst forms of child domestic labour as a result of trafficking and/or debt bondage. They may be

sexually abused or exploited, suffer practices similar to slavery or be forced to undertake hazardous work (see ILO Recommendation No. 190, which supplements Convention No.182). All worst the forms of child domestic labour are unacceptable and must be eliminated.

ILO has an elaborate supervisory mechanism for the employment of its conventions and recommendations. These include a regular reporting system by Member States, supervised by an independent Committee of Experts, which meets at ILO's annual conference, and special procedures for representations and complaints. In recent years there has been a growing tendency of the Committee of Experts to refer to trafficking in persons in its comments under Convention No. 29.

3.2.4 The Statute of the International Criminal Court

Art . 7, paragraph 1, of the Statute includes among the **crimes against humanity** the crime of **enslavement**, which is defined in paragraph 2 (c) of this article as "the exercise of any or all of the powers attaching to the right of ownership over a person", **including** "the exercise of such power in the course of **trafficking in persons, in particular women and children**". The Statute of the International Criminal Court adopts the concept of slavery to the present situation by explicitly mentioning trafficking in the same provision as slavery and forced labour. In the same context, the crimes of "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other forms of sexual violence of comparable gravity" are mentioned.

3.2.5 Council of Europe

As a pan-European organisation, the Council of Europe regroups, among its 45 Member States, countries of origin, transit and destination of the victims of trafficking. Trafficking constitutes a blatant and terrible violation of human rights in general and of women and children's human rights in particular. This question is of considerable importance for the organisation and a key issue on its agenda for the safeguard of human rights.⁷⁷

European Convention on Human Rights and Fundamental Freedoms

Art. 4 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) prohibits slavery and servitude, forced or compulsory labour, stating:

- 1) No one shall be held in slavery or servitude.
- 2) No one shall be required to perform forced or compulsory labour.

Art. 4 clarifies what is not comprised in the concept of forced or compulsory labour:

- Any work required to be done in the ordinary course of detention;
- Any service of military character;
- Any service exacted in case of an emergency or calamity;
- Any work or service that forms part of normal civil obligations.

3.2.2 The ECHR does not contain a definition of forced or compulsory labour. However, a definition of forced or
3.2.3 compulsory labour can be found in art. 2 of the ILO Convention No. 29. Slavery and servitude are also already defined by international law.

The ECHR states a universal principle, recognised in the contexts of human rights, humanitarian law and international criminal law.

The Convention applies also to violations committed by private individuals. The European Court of Human Rights clearly stated, under art. 8 concerning the protection of private life, that the rights in the Convention create obligations for states which involve the adoption of measures designed to secure respect for private life even in the sphere of relations between individuals themselves.⁷⁸

This approach, which considers the European Convention to be applied also in the private sphere, is very important concerning trafficking, which is a violation typically committed by private individuals, even though in some cases public officials are involved.

⁷⁷ www.coe.int/T/E/human_rights/trafficking/1_Overview/Introduction.asp#TopOfPage , accessed in May 2005.

⁷⁸ Case X and Y v. The Netherlands (1985), Series A, para. 23.

Council of Europe Convention on Action against Trafficking in Human Beings⁷⁹



On 3 May 2005, the Committee of Ministers adopted the Council of Europe Convention on Action against Trafficking in Human Beings.⁸⁰

Trafficking in human beings directly undermines the values on which the Council of Europe is based. The Council's geographical composition has enabled it to sit at one table countries of origin, transit and destination of the victims of trafficking. Thus, the new Convention is not a mere declaration of principles, but rather a practical tool designed specifically to protect the fundamental rights of victims of trafficking and to effectively prosecute traffickers, as well as the rights of those who make use of the services of victims.

The main added values of this new Council of Europe Convention are the following:



- Recognition of trafficking in human beings as a **violation of human rights**;
- A special focus on **assistance to victims** and on **protection of their human rights**;
Comprehensive scope of application:
 - **All forms of trafficking**: national/transnational linked/non-linked with organised crime;
 - **All trafficked persons**: the Convention applies to all persons who are victims of trafficking whether they are women, children or men;
- Setting up a comprehensive **legal framework** for the **protection of victims and witnesses** with specific and binding measures to be adopted;
- Setting up an efficient and independent **monitoring mechanism**;
- A **Council of Europe Convention** benefits from the more limited and uniform context of the Council of Europe, contains more precise provisions and goes beyond the minimum standards agreed upon in other international instruments.

Chapter I of the Convention deals with its purposes and scope, the principle of non-discrimination and definitions; **chapter II** deals with prevention, co-operation and other measures; **chapter III** deals with measures to protect and promote the rights of victims, guaranteeing gender equality; **chapter IV** deals with substantive criminal law; **chapter V** deals with investigation, prosecution and procedural law; **chapter VI** deals with international co-operation and co-operation with civil society; chapter VII describes the monitoring mechanism; and lastly **chapters VIII, IX and X** deal with the relationship between the Convention and other international instruments, amendments to the Convention and final clauses.

As two of the main added values of this Convention are its human rights perspective and its focus on victim protection, the preamble states that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being.

As to the chapters concerning the assistance to and the protection of victims (**chapters I, II and III**), the Convention contains a number of innovative and far-reaching provisions.

The Convention thus, after defining trafficking in human beings as in the UN Trafficking Protocol, contains a specific definition of "victims". Indeed, there are many references to victims in the Convention and the drafters felt it was essential to define the concept. In particular the measures provided for in chapter III are intended to apply to persons who are victims within the meaning of the Convention.

Chapter II contains various provisions that come under the heading of prevention in the wide sense of the term. Some provisions are particularly concerned with prevention measures in the strict sense (arts. 5 and 6) while others deal with specific measures relating to controls, security and co-operation (arts. 7, 8 and 9) with preventing and combating traffic in human beings.

Chapter III contains provisions to protect and assist victims of trafficking in human beings. Some of the provisions in this chapter apply to all victims (arts. 10, 11, 12, 15 and 16). Others apply specifically to victims unlawfully present in the receiving party's territory (arts. 13 and 14) or victims in a legal situation but with a short-term residence permit. In addition, some provisions also apply to persons not yet formally identified as victims but who for reasonable grounds can be believed to be victims (arts. 10 (2), 12 (1) and (2) and 13).

⁷⁹ Ministers' Deputies, CM Documents, CM (2005) 32 Addendum 1 final, 3 May 2005, 925 Meeting, 3 and 4 May 2005, Human Rights, Council of Europe Convention on action against trafficking in human beings: www.coe.int/T/E/human_rights/trafficking/PDF_CM_2005_32_add1final_E.pdf.

⁸⁰ www.coe.int/T/E/Human_Rights/Trafficking, accessed in May 2005.

Thus, for instance, **art. 12** requires states parties to take a number of specifically mentioned (and binding) measures to assist victims in their physical, psychological and social recovery. Such assistance shall include at least: (a) standards of living capable of ensuring their subsistence, through such measures as appropriate and secure accommodation and psychological and material assistance; (b) access to emergency medical treatment; (c) translation and interpretation services, when appropriate; (d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand; (e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; (f) access to education for children.

Another very innovative provision of this new Convention concerns the recovery and reflection period (**art. 13**). The Convention contains a provision requiring parties to provide for this period to last at least 30 days. This minimum period constitutes an important guarantee for victims and serves a number of important purposes.

Art. 14 concerns residence permits and is also innovative in that it opens the possibility to deliver residence permits not only on the basis of the persons' co-operation with law enforcement authorities, but also on the basis of their personal situation. Thus, the two requirements laid down in art. 14(1) for issuing a residence permit are that either the victim's stay be "necessary owing to their personal situation" or that it be necessary "for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings". The aim of these requirements is to allow parties to choose between granting a residence permit in exchange for co-operation with the law-enforcement authorities and granting a residence permit on account of the victim's needs, or indeed to adopt both simultaneously.

For the victim to be granted a residence permit, depending on the approach the party adopts, either the victim's personal circumstances must be such that it would be unreasonable to compel them to leave the national territory, or there has to be an investigation or prosecution with the victim co-operating with the authorities. Parties likewise have the possibility of issuing residence permits in both situations. Even though the Convention does not specify any length of residence permit it does provide that the permit has to be renewable.

As regards criminal law, chapter IV of the Convention contains a series of "classical" criminalisation provisions of trafficking and related offences (including attempt and aiding or abetting, corporate liability, aggravating circumstances, sanctions and measures, etc.). It also contains two innovative provisions. The first (art. 19) concerns the criminalisation of the use of the services of the victims of trafficking (parties must consider making it a criminal offence to knowingly use the services of a victim of trafficking) and the second (art. 26) the so-called non-punishment clause (an obligation to parties to adopt and/or implement legislative measures providing for the possibility of not imposing penalties on victims, on the grounds that victims have been compelled to be involved in unlawful activities).

Chapter V on investigation, prosecution and procedural law has been included to protect victims of trafficking and assist prosecution of the traffickers. Parties are thus required, inter alia, (i) to provide effective and appropriate protection to victims, collaborators with the judicial authorities, witnesses and members of such persons' families, (ii) to promote specialisation of persons or units in anti-human-trafficking action and victim protection and (iii) to adapt their judicial procedure so as to protect victims' privacy and ensure their safety.

As regards international co-operation (**chapter VI**), the Council of Europe already has a substantial body of standard-setting instruments in the area of international co-operation in criminal matters. Mention should be made here of the **European Convention on Extradition** [ETS No. 24], the **European Convention on Mutual Assistance in Criminal Matters** [ETS No. 30], the protocols to these [ETS Nos. 86, 98, 99 and 182] and the **Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime** [ETS No. 141]. These treaties are cross-sector instruments applying to a large number of offences, not to one particular type of crime, and will be applicable to those crimes contained in this new Convention too.

However, it should be underlined that the provisions of chapter VI are not confined to judicial co-operation in criminal matters. They are also concerned with co-operation in trafficking prevention and in victim protection and assistance.

Chapter VII of the Convention contains provisions that aim at ensuring the effective implementation of the Convention by the Parties. The monitoring system foreseen by the Convention, which is undoubtedly one of its main strengths, has two pillars: on the one hand, the Group of Experts against trafficking in human beings (GRETA) is a technical body, composed of independent and highly qualified experts in the area of human rights, assistance and protection to victims and the fight against trafficking in human beings, with the task of adopting a report and conclusions on each party's implementation of the Convention; on the other hand, there is a more political body, the Committee of the Parties, composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of parties non-members of the Council of Europe, which may adopt recommendations, on the basis of the report and conclusions of GRETA, addressed to a party concerning the measures to be taken to follow up GRETA's conclusions. Any party to the Convention will be subject on an equal footing to the same monitoring mechanism foreseen by the Convention.

As to **chapters VIII, IX and X**, it is worth mentioning that the Convention does not interfere with rights and obligations deriving from provisions of the Transnational Organized Crime Convention and that it reinforces the protection afforded by the United Nations instrument and develops the standards it lays down. In addition, the Convention is open for signature not only by Council of Europe Member States but also the European Community and states not members of the Council of Europe (Canada, the Holy See, Japan, Mexico and the United States), which took part in drawing it up. The Committee of Ministers of the Council of Europe may, after consultation of the parties to the Convention and obtaining their unanimous consent, invite any non-member state of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in art. 20 d. of the Statute of the Council of Europe, and by unanimous vote of the representatives of the contracting states entitled to sit on the Committee of Ministers. Ten ratifications are required for the Convention to enter into force.

Recommendations



- **Recommendation of the Committee of Ministers No. R (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure**

At the European level the most important, though not legally binding, instrument is the Council of Europe Recommendation on the position of the victim. Next to the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985, it forms the starting point of placing the protection and recuperation/recovery of the victim in the centre of the system.

This change in the fundamental orientation of the criminal justice system is expressed in its preamble: "(...) Considering that (...) the operation of this system has sometimes tended to add to rather than to diminish the problems of the victim; (...) that it must be a fundamental function of criminal justice to meet the needs and to safeguard the interests of the victim; (...) that it is also important to enhance the confidence of the victim in criminal justice and to encourage his co-operation, especially in his capacity as a witness; that, to these ends, it is necessary to have more regard in the criminal justice system to the physical, psychological, material and social harm suffered by the victim, and to consider what steps are desirable to satisfy his needs in this respect; (...)"

Regarding prosecution, the recommendation entitles the victim "to ask for a review by a competent authority of a decision not to prosecute, or to the right to institute private proceedings" (para. B.7). With regard to the questioning of the victim the recommendation states that the victim, at all stages of the procedure, "should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity".

- **Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on action against trafficking in human beings for the purpose of sexual exploitation**



The definition contained in the CoE Recommendation concerns trafficking for the purpose of sexual exploitation, which was the phenomenon that European countries tackled first. Nevertheless, the Council agrees that national criminal law should provide for and punish every form of trafficking, including trafficking for the purpose of slavery, forced labour or services and servitude, in line with the UN Trafficking Protocol.

The CoE Recommendation identifies trafficking as a crime involving not only the use of force, coercion and fraud, but also abusive means, such as abuse of power or of a position of vulnerability. The last formulation especially allows public institutions to tackle situations in which the trafficked person has no real or acceptable alternative but to submit to the abuse, for instance because of debt bondage, lack of education and information, uprooting and isolation.

The **Recommendation** identifies four major goals:

1. To review national legislation with a view to effectively prosecuting and punishing traffickers;
2. To introduce or increase penal sanctions in proportion to the gravity of the offences involved in trafficking patterns;
3. To protect the rights and interests of the victims of trafficking;
4. To consider trafficking as falling within the scope of international organised crime.

It must be stressed that the Recommendation gives absolute priority to assisting victims and protecting them from traffickers, in particular the most targeted and vulnerable, women, adolescents and children, in countries of origin, transit and destination.

As regards this goal, the following **actions** should be particularly emphasised:

1. **Establishing reception centres** or other facilities aimed at providing victims with information, psychological and medical assistance, with a view to reintegrating the victim in the country of origin or in the host country (para. 26);
2. Ensuring that **the victims have the opportunity to benefit** from legal assistance in their own language (para. 27);
3. Granting the victim of trafficking a **temporary residence permit** in connection with social and medical assistance (paras. 34-35);
4. Establishing a **network of NGOs** involved in assisting victims (para. 36);
5. Ensuring the **right to return** and to social support for people who go back, aimed at reintegration (paras. 39-40).

Victim protection is one of the central topics encompassed by the Recommendation. The document deals with this problem from different points of view.

Under the Recommendation victim protection means:

1. Social protection, in terms of **prevention**;
2. Social protection, in terms of support and **assistance for victims**;
3. **Police protection** for victims and witnesses, including protection for families in the country of origin.

It is important to stress that the approach of the Recommendation implies that protection should be ensured not only for victims who make statements in criminal proceedings and act as witnesses, but to all the victims of trafficking, taking into account the real danger deriving from their attempts to escape from traffickers.

Concerning the assistance and the protection of victims, the following points must be stressed. It is necessary:

1. To establish a **victim protection system**, including families in countries of origin;
2. To extend this protection to members of **NGOs assisting victims**, where appropriate;
3. To grant victims **temporary residence status** in the country of destination. It is essential to ensure that victims have access to social and medical assistance during the period covered by the residence permit;
4. To consider **providing a temporary residence status** on humanitarian grounds;
5. To organise a system of **social support for returnees** to ensure that victims are assisted by the medical and social services. Introduce special measures concerned with victims' occupational reintegration.



- Recommendation No. R (2001) 16 of the Committee of Ministers to Member States on protection of children against sexual exploitation
- Recommendation 1545 (2002) of the Parliamentary Assembly of the Council of Europe on a campaign against trafficking in women
- Recommendation R (2002) 5 on the Protection of Women against Violence
- Recommendation R (97) 13 concerning Intimidation of Witnesses and the Rights of the Defence

3.2.6 Organization for Security and Co-operation in Europe

In December 2003, at the Maastricht Ministerial Council the 55 OSCE Foreign Ministers endorsed the Action Plan on Combating Trafficking in Human Beings, which intends to provide the participating States with a comprehensive toolkit to help them implement their commitments to reduce this horrendous crime.

The Action Plan adopts a multidimensional approach to the problem and envisages a number of measures against this modern form of slavery at the national and international levels in the field of prevention, protection and prosecution. It includes a range of recommendations for participating states and relevant OSCE institutions, bodies and field operations in dealing with these complex phenomena. It is important to highlight that a comprehensive approach to human trafficking requires a focus on bringing to justice those responsible for this crime, and on carrying out effective measures to prevent it, while maintaining a humanitarian and compassionate approach in rendering assistance and protection to its victims.

The Action Plan therefore covers a number of commitments and recommendations for national action: the establishment of national referral mechanisms, appointing national co-ordinators and national rapporteurs, the elaboration of national anti-trafficking plans of action, making trafficking a criminal offence, providing protection and establishment of shelter for victims, and establishing special police anti-trafficking units to fight trafficking in both countries of origin and destination and the like.

3.3 European Union Regulations and Policy Documents

A number of documents have been adopted over the last years within the EU in order to strengthen the penal framework to fight trafficking in human beings. However, only few of the legislative acts are binding and they are often not yet effective or fully implemented.

3.3.1 European Union Legislation - Introduction

In general, EU law is composed of three different - but interdependent - types of legislation:



Primary legislation

Primary legislation is agreed by direct negotiation between governments of Member States. These agreements are laid down in the form of treaties, which are then subject to ratification by the national parliaments. The most important treaties are the Treaty establishing the European Community and the Treaty on the European Union.

The Treaties also define the role and responsibilities of EU institutions and bodies involved in decision-making processes and the legislative, executive and juridical procedures which characterise Community law and its implementation.

Title VI of the Treaty on the European Union, "Police and Judicial Co-operation in Criminal Matters", which is also referred to as the third pillar of the European Union, is of utmost importance for fighting trafficking in human beings (see sub-chapter 3.3.1.2).

Secondary legislation

Secondary legislation is based on the Treaties and implies a variety of procedures defined in different articles therein. In the framework of the Treaties establishing the European Community, community law may take the following forms:

- Regulations are directly applicable and binding in all EU Member States without the need for any national implementing legislation;
- Directives bind Member States to the objectives to be achieved within a certain time-limit while leaving the national authorities the choice of form and means to be used. Directives have to be implemented in national legislation in accordance with the procedures of the individual Member States. Directives aim to harmonise the legislation of the Member States;
- Decisions are binding in all their aspects for those to whom they are addressed. Thus, decisions do not require national implementing legislation. A decision may address any or all Member States, but also enterprises or individuals (common in the field of competition policies);

- Recommendations and opinions are not binding, they can only recommend how Member States should react, for example, in the fields of employment and the economy.

Case-law

Case-law includes judgements of the European Court of Justice and of the European Court of First Instance, for example, in response to referrals from the Commission, national courts of the Member States or individuals.



3.3.2 The Three Pillars⁸²

The activities of the European Union are usually divided into three pillars, according to the structure introduced by the **Maastricht Treaty**:⁸³

The **first pillar** – the Treaty establishing European Communities - concerns economic, social and environmental policies (e.g. the single market, agricultural policy, competition policy, monetary policy, etc.);

The **second pillar** - common foreign and security policy - concerns foreign policy and military matters;

The third pillar - Police and Judicial Co-operation in Criminal Matters (PJCC) - concerns co-operation in the fight against crime, Title VI of the Treaty on the European Union. (This pillar was originally named “Justice and Home Affairs”.)

The forms of co-operation of the three pillars differ:

- Topics among the first pillar are transferred from the Member States to the EU institutions for decision, thus the first pillar has a more supranational character;
- As regards topics belonging to the second and the third pillars, in contrast, decision-making authority remains to a greater extent with the Member States themselves. The second and the third pillar are therefore largely intergovernmental. State governments still have power, but must share it with other actors;
- In the third pillar the Council of the European Union, representing the Member States, is the decision-making organ;
- The combating of trafficking in human beings falls mainly within the third pillar.

Legal instruments in the third pillar:



Art. 34 of the Treaty on the European Union stipulates that in the area of PJCC (third pillar), the Council of the EU may, on the initiative of any Member State or of the Commission:

- Adopt common positions defining the approach of the Union to a particular matter;
- Adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;
- Adopt decisions for any other purpose consistent with the objectives of this title, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;
- Establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council.

Unless they provide otherwise, conventions shall, once adopted by at least half of the Member States, enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two thirds of the contracting parties.



3.3.3 Charter of Fundamental Rights of the European Union

According to art. 5 of the Charter of Fundamental Rights of the European Union:

⁸² Eur-Lex: http://europa.eu.int/eur-lex/en/about/abc/abc_12.html, accessed in May 2005.

⁸³ The draft EU constitution proposes to abrogate the three-pillar structure.

- No one shall be held in slavery or servitude;
- No one shall be required to perform forced or compulsory labour;
- Trafficking in human beings is prohibited.

3.3.4 Framework Decision of the Council of the European Union on Combating Trafficking in Human Beings

Efforts have been made to bring anti-trafficking legislation on the European level in line with new international standards. With the Council Framework Decision of 19 July 2002 on combating trafficking in human beings⁸⁴ the EU aims at harmonising the laws of the EU Member States in the area of police and judicial co-operation in criminal matters. It thus deals with issues such as criminalisation, sanctions and penalties.

In fact, EU Member States were obliged to incorporate the provisions of the decision into their national legislation by 1 August 2004. Pursuant to the “Pupino Case” (C-105/03, European Court of Justice, see also below under 3.3.6), all national courts of the EU Member States are required to take into consideration all the rules of national law and interpret them, as far as possible, in the light of the wording and the purpose of the Framework Decision.⁸⁵

The definition in the UN Trafficking Protocol is the basis for the Council Framework Decision of 19 July 2002 on combating trafficking in human beings, according to its art. 1:

“1. Each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

- (a) use is made of coercion, force or threat, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
- (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

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

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

4. For the purpose of this Framework Decision, ‘child’ shall mean any person below 18 years of age.”



Unlike the UN Trafficking Protocol, the EU definition does not include the removal of organs as a form of trafficking, although EU instruments also distinguish between trafficking in human beings and smuggling of migrants. The framework decision is **legally binding** for EU Member States, but does **not** entail **direct effect**.

Articles 4 and 5 of the decision concern the liability of and sanctions on legal persons. This is the first time that legal persons are addressed explicitly with regard to trafficking in persons.

Art. 6 stipulates that each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in articles 1 and 2 where:

- The offence is committed in whole or in part within its territory; or
- The offender is one of its nationals; or
- The offence is committed for the benefit of a legal person established in the territory of that Member State.

⁸⁴ http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_203/l_20320020801en00010004.pdf.

⁸⁵ <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:62003J0105:EN:HTML>, Criminal proceedings against Maria Pupino - Reference for a preliminary ruling: Tribunale di Firenze - Italy. - Police and judicial co-operation in criminal matters - Articles 34 EU and 35 EU - Framework Decision 2001/220/JHA - Standing of victims in criminal proceedings - Protection of vulnerable persons - Hearing of minors as witnesses - Effects of a framework decision - Case C-105/03.

The protection of and assistance to victims is dealt with in detail in the UN Trafficking Protocol and the parent Convention, but less comprehensively in the Framework Decision, which only requires “adequate legal protection and standing in judicial proceedings”. Also as regards the prevention of trafficking, unlike the UN Trafficking Protocol, no reference is made in the Decision to tackling the root causes of trafficking such as poverty, unemployment and gender discrimination.

The Framework Decision also stipulates the criminalisation of human trafficking (arts. 1 and 2). Furthermore the decision requires that investigations and prosecution shall not depend upon victim’s report or accusation (art. 7, para. 1).

3.3.5 Directive 2004/81/EC of the Council of the European Union on the Residence Permit for Victims of Trafficking

On 29 April 2004 the Council of the European Union (Council of Ministers) adopted a directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities. This directive is based on art. 63, point 3, of the Treaty on the European Union.

According to its art. 3 (3), the directive applies primarily to adults, but may be extended to minors.

The procedure for issuing the residence permit consists of two main stages:

- 1) The **first stage** is to grant the victim a **reflection period**: according to art. 6 of the directive, a reflection period must be granted to the victims allowing them to recover and escape the influence of the perpetrators and to consider whether they want to co-operate with the competent authorities. The duration of the reflection period is to be determined by national law, during this time the victim may not be deported. During the reflection period the victim has to be granted basic means of subsistence, medical treatment, safety and protection, and where applicable under national law, also free legal aid;
- 2) In a **second stage**, after the expiry of this reflection period a **residence permit** shall be issued **if the victim** has shown a **clear intention to co-operate** with competent authorities. The possibly issued residence permit shall be valid for at least six months and is renewable. Victims who hold a residence permit shall additionally have access to education and the labour market (point 16 of the preamble and art. 11); special provisions for minors call for measures appropriate for children.

The third-country nationals concerned shall be granted access to special programmes set up for reintegration, either in the country of origin or the country of residence and to their recovery of a normal social life (art. 12).

The directive has two main objectives: obtaining the co-operation of victims of trafficking and illegal immigration for criminal procedures and providing assistance to these victims by granting a residence permit.

However, for all the benefits described, the directive also very much meets with criticism:

- A residence permit is only issued to a co-operative victim, which is described as an instrumentalisation of the victim;
- It is moreover greatly criticised that the residence permit under the directive depends on the duration of the criminal proceedings. A victim will have to leave the country (art. 13) unless the Member State has adopted national legislation allowing her or him to stay. Victims, who are understandably afraid of returning home, be it because of the awaiting stigmatisation, be it for fear of intimidation, may not be ready to file a complaint;
- A further critique of this directive is its focus on third-country nationals, as nationals of other EU Member States cannot refer to this directive. This matters especially for nationals of those origin countries, which after the accession of the ten Central and Eastern European countries to the EU on 1 May 2004 became part of the EU. Nationals of these states no longer belong to a third country. Nationals who are settled in one of the EU states on a valid residence permit may fall outside the scope of this directive as well.

For the sake of the best possible recovery and protection of victims, states should preferably exceed the system of the directive and issue residence permits to victims on humanitarian grounds, independent of their willingness to testify. Under certain conditions, victims should be granted a permanent residence permit.

3.3.6 Framework Decision 2001/220/JHA of the Council of the European Union on the Standing of Victims in Criminal Proceedings

The Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)⁸⁶ aims to improve access to justice for victims of crime in the EU and to protect their rights. The Framework Decision provides rules on the prevention of victimisation, assistance to victims, standing of victims in criminal procedures and on compensation issues.

On 16 June 2005, the European Court of Justice issued a ground-breaking judgement⁸⁷ stating that a Council Framework Decision concerning police and judicial co-operation in criminal matters must be respected in a national criminal court case. The case before the Court concerned an Italian nursery school teacher accused of maltreating her 5-year-old charges. Under Italian law, there was no procedure allowing the young victims to give evidence in private – they would have to appear before the full court (except in sexual offence cases). However, an EU framework decision does provide for special procedures for protection of minors in such a case. Under the EU Treaty, framework decisions adopted under the third pillar have no direct effect, that is, they cannot normally be directly invoked by individuals in national courts. However, the Court pointed out that framework decisions are "binding" on Member States in that they have a bearing on the interpretation of national law. The Court went on to say that, in this case, "the Italian court is required to interpret (national law) as far as possible in a way that conforms to the wording and purpose of the framework decision". In this case, this meant allowing vulnerable victims to be protected when giving testimony.⁸⁸



Relevant instruments relating to international co-operation.



3.2.2
3.2.3

3.4 National Legislation⁸⁹

By now all EU countries, including the new Member States, should have legislation on the crime of trafficking in human beings.⁹⁰ Provisions are either decreed as specific anti-trafficking legislation or included in the national criminal code. Even the absence of specific anti-trafficking legislation cannot justify lack of action, however. Until specific domestic legislation on trafficking is passed, existing penal provisions concerning slavery and work under slavery-like conditions, forced labour exploitation, violation of a person's liberty, facilitation of illegal border crossing, violation of public order, the prohibition of the formation of criminal association, the exploitation of prostitution and other provisions can be used to investigate, prosecute and adjudicate trafficking in human beings.

- **Trafficking in the context of the crime of slavery⁹¹**

Until the adoption of national legislation concerning a specific crime of trafficking, the crime of slavery can be used to punish trafficking, as slavery is envisaged by all the national penal codes. In this case a process of progressive interpretation and adaptation is needed, which is already in place in some countries, considering that the crime of slavery should not only apply to those cases in which the right of ownership over a person is exercised, but also to slavery-like practices.

- **Trafficking in the context of exploitation of labour⁹²**

Each of the acts below, when committed intentionally by an employer against an employee, is likely to be a criminal offence within the criminal law of most countries: physical violence, physical restrictions on the movement of workers, forms of debt bondage, (i.e. deliberately inducing persons into a situation of spiralling debt from which they cannot hope to extricate themselves), refusing to pay wages, retention of passports and other identity documents, or threat of denunciation to authorities, in order to avoid paying wages and social benefits for work performed.

⁸⁶ http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_082/l_08220010322en00010004.pdf

⁸⁷ <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:62003J0105:EN:HTML>: Criminal proceedings against Maria Pupino - Reference for a preliminary ruling: Tribunale di Firenze - Italy. - Police and judicial co-operation in criminal matters - Articles 34 EU and 35 EU - Framework Decision 2001/220/JHA - Standing of victims in criminal proceedings - Protection of vulnerable persons - Hearing of minors as witnesses - Effects of a framework decision - Case C-105/03.

⁸⁸ <http://www.euractiv.com/Article?tcmmuri=tcm:29-141124-16&type=News>.

⁸⁹ This section will contain relevant national legislation on trafficking of persons or comparable offences such as slavery-related definitions. The national team will elaborate it.

⁹⁰ See CFD of 19 July 2002 on combating trafficking in human beings (2002/629/JHA): Article 10: "Implementation" 1. Member States shall take the necessary measures to comply with this Framework Decision before 1 August 2004.

⁹¹ ILO, Belgrade, 23 March 2004, Human Trafficking: The Forced Labour Dimensions, Roger Plant, Head, Special Action Programme to Combat Forced Labour.

⁹² Ibid.

Acts of violence for example are likely to come within the scope of the criminal offence of assault. Non-payment of wages can be subsumed under the criminal law of theft. The withholding of identity documents and passports may also be classified as theft or part of the offence of deception, depending on the intention of the employer. Was the intent never to return the documents? Or to deceive and coerce the victim into receiving little or no remuneration? And in many jurisdictions, the threat of denunciation to the authorities can fall within criminal law definitions relating to blackmail.

- **Trafficking in the context of the crime of exploitation of prostitution⁹³**

Until specific national legislation on trafficking is passed, the provisions of the penal codes concerning exploitation of prostitution can also be applied to prosecute and punish trafficking for the purpose of sexual exploitation. Harsher sentences must be applied when the trafficking is aggravated by violence, threats, coercion or deception. Even though penalties are often inadequate to the gravity of trafficking, it is possible to start combating trafficking through the provisions already existing in the majority of national penal codes. In countries where prostitution in itself is criminalised, it is necessary to understand that women will find it difficult to come forward and declare they are victims of trafficking, for fear of being prosecuted themselves. Provisions prohibiting prostitution may not be used against victims of trafficking whose prostitution has been exploited.

- **Trafficking in the context of the crime of facilitating illegal border crossing**

The crime of facilitating illegal border crossing can be used to prosecute trafficking involving the element of illegal entry.

Also here the prime principle applies that only the offenders may be punished, not the victim. In practice it can be difficult to identify a case of trafficking, especially at an early stage of the trafficking process. Nonetheless, a clear distinction between trafficking in human beings and smuggling of migrants must be held as a basic approach to the problems implied by investigation and prosecution.

Sometimes cases are mentioned as trafficking cases, but the trafficked person has been deported without any attempt at collecting evidence on her/his potential condition as a victim. As soon as there are reasonable grounds to suspect that violence, threats or other forms of coercion, deception or abuse have been used against the migrant, prosecution should be clearly oriented to protect and support the person and favour her/his collaboration.

- **Trafficking in the context of the crime of criminal association**

Where national legislation envisages a crime of criminal association, this provision should be applied with a view to identifying and prosecuting the criminal network that very often manages trafficking, sometimes at the international level.

This should be considered an essential step forward in the fight against trafficking. In some legal systems, an indictment of a criminal association makes it possible to use the most effective techniques of investigation, such as electronic surveillance, phone tapping and undercover operations.

Unfortunately, even in countries where (thanks to victims' testimonies) many criminal proceedings are in place, only the final exploiters are prosecuted. The main architects of the trafficking ring remain undetected and unprosecuted.

- **Illegal conduct of the victim - exemption of punishment**

One of the serious obstacles to obtaining the victim's co-operation in an investigation is the fear of being prosecuted for breaking laws regarding clandestine work, prostitution, illegal border crossing and other crimes.



A special clause of exemption from punishment for the victims of trafficking in national legislation is necessary. Typically, a nation's non-punishment clause applies at least to all crimes related to transferring of the person from one country to another, such as illegal border crossings, or occurring while the individual was under the influence of the traffickers.

⁹³ ICMPTD, Regional Standard for Anti Trafficking Training for Judges and Prosecutors in SEE (Vienna, 2004).

As a matter of legislative drafting, for those judges or prosecutors involved in their country's anti-trafficking legal reform efforts, setting precise legal requirements of the non-punishment clause is important. Such requirements would necessarily refer to statements to be made during the criminal proceedings, which should be evaluated as reliable and useful for the development of investigation and prosecution.

Where such a clause is not yet stipulated by national legislation, prosecutors and judges can apply general clauses of non-punishment envisaged by national legislation, at least in the most serious cases, where there is a severe constraint of self-determination as a consequence of a slavery-like practice. If national legislation allows this practice, prosecutors should consider the possibility of granting immunity under certain conditions to those victims of trafficking who collaborate with justice.

The international instruments that are listed and explained above are means of interpretation for the national legislation. Some of these instruments are already of binding nature, without requiring an implementing act.

- **Other crimes linked to trafficking**

Slavery, slave-like practices, involuntary servitude, forced or compulsory labour, debt bondage, forced marriage, forced abortion, forced pregnancy, torture, cruel/inhuman/degrading treatment, rape, sexual assault, assault, bodily injury, murder, kidnapping, unlawful confinement, labour exploitation, withholding of identity documents, corruption: the majority of these crimes are criminal offences in all jurisdictions within the region.

4

The Comprehensive Approach towards Combating Trafficking in Human Beings

4 The Comprehensive Approach towards Combating Trafficking in Human Beings

4.1. Abstract – Learning Objectives

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

The recovery, restoration, and rehabilitation of victims and the demonstration that justice is done are important elements of an overall anti-trafficking strategy. This requires an adequate legal and organisational framework. This framework must include a profound understanding of the importance of effective proceedings within the overall strategy to counter trafficking for the police, public prosecutors and the judiciary, as well as for officials who are well trained and committed to their tasks.

A comprehensive approach to fighting trafficking should entail at the least the four main components:


- Identification of victims
- Residence permit / reflection period
- Victim support
- Redress / access to justice

At the end of this section the trainee will:

- Be familiar with the elements of a comprehensive strategy to fight human trafficking
- Be familiar with international standards on human rights and human trafficking

4.2 Human Rights-based and Victims-centred Approach

The crime of trafficking in human beings constitutes a serious violation of human rights, which requires a human rights-based approach. The human rights perspective has to be determining and integrative part of any response to trafficking be it at the political, legislative, executive or judicial level. Prosecutors and judicial authorities in particular have to be aware of the needs of victims.

The protection of the basic rights of the trafficked person, such as the right to safety, the right to a residence status, the right to be supported, must be guaranteed unconditionally, at least at an early stage of the procedure. This approach must establish a link with prosecution, however, not on the basis of making support conditional on the co-operation of the victim in criminal proceedings. This is important for prosecutors and judicial authorities, since they have to be aware of the needs of trafficked persons, when taking decisions concerning victims' residence status, or obtaining victims' testimony in criminal proceedings. 

Experience shows that those countries that have protection schemes in place have a higher success rate with regard to the investigation of trafficking and the conviction of the traffickers.

4.2.1 Identification

It is of vital importance to identify the victims of trafficking, so as to recognise them as victims and to grant them access to assistance and protection. Moreover, the identification of victims is the basic requirement for the identification of trafficking cases and their prosecution.

“Victim” is a legal term and the qualification of a person as a victim is the result of an assessment concerning the fact that a crime has been committed against that person, leading to an indictment. However, from the beginning of investigations and during the time needed for such an assessment, the person needs to be treated as a victim. It is to be clearly understood by prosecutors that a correct approach to the (supposedly) trafficked person facilitates identification and investigation of a trafficking case. Therefore, in the whole training material, all the suggested actions concerning victims apply also to potential victims.

The identification shall not depend on the awareness or perception of the trafficked person concerning her/him being victimised. Consequently, the person involved does not have to be specifically questioned about her/his condition as a victim.

Particular skills are needed to identify victims. This implies establishing effective **training** programmes, specifically aimed at improving the evaluation of indicators and standards for the identification process. According to the **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (1985),⁹⁴ (clause 16), persons who are likely to be in contact with victims (such as police and justice officials and staff from health and social services) should receive training in order to enable them to identify victims and to be sensitive to their needs. This is especially crucial for those who come in contact with victims who are foreign nationals and thus especially vulnerable.

It is necessary to enlist the co-operation of all persons and groups who come into contact with victims of trafficking, such as **border guards, police and immigration officers, judges and prosecutors, doctors, medical and social workers, housing, agricultural and labour inspectors, staff of immigrant rights organisations, women's, victims' rights and refugee protection and asylum organisations**. Proper training can help to identify trafficked persons to facilitate their referral to victim support organisations (see also below, 4.3.3). Many agencies and NGOs have developed training material providing valuable information for actors involved.



A **failure to identify** a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place.⁹⁵

It should be kept in mind that behind a case of smuggling a case of trafficking can be hidden.⁹⁶

The identification of victims requires a **multi-agency approach**.

Outreach work can be an essential element of efforts to identify and support victims of trafficking in the environment in which they are forced to work. This work is typically performed by **social work agencies and non-governmental organisations**. **Health care providers** are also part of the front line services that may come in contact with victims. A network of professionals and agencies should be involved in the identification of potential victims and should be working together in order to protect victims and ensure a referral network without gaps. Whenever possible hotline and outreach services should be able to respond in foreign languages. Law enforcement, immigration, health care, social services, and other professionals may also be able to use these hotline services to help them refer victims to the appropriate services.⁹⁷



5.11

Identifying victims entails that trafficked persons are not prosecuted for trafficking-related offences such as illegal entry, holding false passports, working illegally, even if they agreed to hold false documents or to work (or prostitute) without permission. Otherwise victims are not identified as victims, but as offenders.

The victim identification process should respect the rights of victims, their choice, and their autonomy. Besides the statements of the presumably trafficked person, other evidence should be collected to identify all the facts and relevant information to determine if the case is one of trafficking.



5.3

For details on how to identify victims of trafficking and other identification issues

4.2.2 Reflection Period

An effective way to further self-identification of victims of trafficking is to provide for a reflection period, i.e. a period of time in which the presumed trafficked person is referred for services and counselling, with no obligation to make an immediate statement to police on her or his status. This enables the presumed trafficked persons to receive appropriate support and allows them to make informed decisions.⁹⁸



2

Especially traumatised victims will not be able to give evidence before they have recovered, and to place pressure on them at an early stage of proceedings involves a severe risk of secondary **traumatisation**.

A **reflection period** should preferably be granted to all victims of trafficking regardless of their ability or


⁹⁴ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985.

⁹⁵ UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 2.

⁹⁶ According to the UN Trafficking Protocol three features must be present in a trafficking case: Activity: recruitment, transportation, transfer, harbouring or receipt of persons; Means: threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and Purpose – for the purpose of exploitation. Each of the three stages must be present and linked to each other for the crime of human trafficking to be complete.

⁹⁷ United Nations Office on Drugs and Crime, Anti-Human Trafficking Unit, 2005.

⁹⁸ OSCE, National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook (OSCE – ODIHR, Warsaw 2004): http://www.osce.org/documents/odihr/2004/05/2903_en.pdf.

willingness to give evidence as a witness. Victims are not in the state of mind and do not have the adequate background respectively, to plan a bargaining with competent authorities. They are terrorized and do not necessarily trust public institutions. 


First of all, they have to be **reassured about their situation in life**. The phase of reflection may contribute to attain the victim's confidence in the State and its ability to protect his or her interests. Once recovered, a trafficked person with confidence in the State is more likely to make an informed decision and to co-operate with the authorities in the prosecution of traffickers. Special attention should be paid to child victims, i.e. persons below the age of 18, in that their best interests should be a primary consideration in all policies and procedures involving them.⁹⁹


4.2.3 Residence Status

Destination countries have a responsibility to limit damage to the trafficked person by providing them a legal residence status. Access to legal temporary residence status for trafficked victims would not only serve to protect their rights, but would also serve the interest of law enforcement agencies engaged in effective criminal prosecution of the traffickers. Unfortunately, destination countries are often unwilling to provide trafficked victims with any form of temporary legal residency status. This means that it becomes impossible to provide proper protection, care and support for trafficked victims or to regularise their residence status so that they can begin to co-operate with the criminal justice system. However, at the EU level, the Council of Ministers has adopted a directive concerning residence permits to third-country nationals who are victims of trafficking in human beings and who co-operate with the competent authorities (see chapter 3.3.5).

But a policy making the legal status of victims conditional on their readiness to provide law enforcement and judicial authorities with information on the case would tend to exploit the victim for the achievement of the goals of law enforcement. Whenever, for the sake of the recovery of the victim, it is necessary to offer unconditional support, it is imperative that the victim be allowed to remain in the country where s/he finds her/himself. Human rights should not be subjected to any conditions. Therefore it should not be a discretionary decision to grant a residence permit.

There are good reasons, that the issuance of a residence permit should not depend on the willingness (or ability) of the victim to co-operate with law enforcement authorities. Victims should be reasonably sure that they can obtain a residence status, if some legal requirements are met. Only then they would be able to decide on co-operation.

Several countries have adopted measures for the temporary or permanent residence of victims of trafficking, and such measures have had a positive effect on victims coming forward to testify against traffickers and on non-governmental organisations encouraging victims to whom they provide services to report incidents to the government. 

A person's residence permit could also be based on grounds of asylum, according to the Geneva Convention on Refugees.¹⁰⁰ The UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking in Guidelines 1 (6), 2 (7) in this regard suggest that states and, where applicable, intergovernmental and non-governmental organisations, should consider: 

- Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through the effective application of the principle of **non-refoulement**;¹⁰¹
- Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times. However, it has to be borne in mind that the principle of informing trafficked persons of their right of access to diplomatic and consular representatives from their state of nation-

⁹⁹ European Commission, Report of the Experts Group on Trafficking in Human Beings (Brussels, EC, 22 December 2004).

¹⁰⁰ UNHCR: Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (HCR/GIP/06/07, 7 April 2006), www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.pdf?tbl=PUBL&id=443b626b2. of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and Purpose – for the purpose of exploitation. Each of the three stages must be present and linked to each other for the crime of human trafficking to be complete.

¹⁰¹ This principle, as per art. 33 of the Geneva Refugee Convention, means that no state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where her/his life or freedom would be threatened on account of her/his race, religion, nationality, membership of a particular social group or political opinion, see 5.11.

ality does not apply to trafficked asylum seekers.



5

4.2.4 The Victim's Exemption from Liability

One of the serious obstacles of obtaining the victim's co-operation in an investigation is the fear of being prosecuted for breaking laws regarding e.g. prostitution or illegal border crossing. There should be a special clause of exemption from punishment for the victims of trafficking in national legislation. As a matter of legislative drafting, for those judges or prosecutors involved in their country's anti-trafficking legal reform efforts, setting precise legal requirements of the non-punishment clause is important. Such requirements would necessarily refer to statements to be made during the criminal proceedings, which should be evaluated as reliable and useful for the development of investigation and prosecution.

4.2.5 Victims' Support Activities

States have the duty to provide appropriate standards of care for the victims. Next to the protection of victims, their right to physical, psychological and social recovery must be given the highest priority. As stipulated in **art. 6 of the UN Trafficking Protocol**, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care have to be taken into consideration.

This includes in particular:

- Safe housing under conditions that meet the needs of traumatised victims;
- Legal counselling and information, in particular regarding their legal status, in a language that the victims can understand;
- Medical and psychological assistance;
- Material assistance;
- Employment, educational and training opportunities .



The **Council of Europe Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on action against trafficking in human beings for the purpose of sexual exploitation** refers to the necessity to "give absolute priority to assisting the victims of trafficking through rehabilitation programmes". The recommendation calls upon Member States to encourage the "establishment or development of reception centres or other facilities where the victims of human trafficking can benefit from information on their rights, as well as psychological, medical, social and administrative support with a view to their reintegration into their country of origin or the host country". In particular states should ensure that the victims could benefit from **legal assistance** in their own **language**.

There are numerous practical reasons for victim support activities. Obviously the main objective is to reduce the effects of trafficking on victims and to contribute to the victims' recovery process. Providing support, shelter and protection for victims furthermore increases the likelihood that they will be willing to co-operate with and to assist investigators and prosecutors. This aspect cannot be overvalued in a crime where the victims are almost always witnesses and (expected) intimidations by traffickers have proven to be major obstacles to prosecution.

Some countries, however, tend to link the right of a victim to stay and to receive support to her/his willingness to co-operate with law enforcement authorities. This, however, has proven to be inefficient. Experience has rather shown that victims who are provided with shelter and who are protected and supported to some extent, are more willing to co-operate with authorities. In contrast, it can be very destructive if victims are given the feeling that they are part of a "deal" and "used". According to the UNHCHR Recommended Principles and Guidelines, guideline 6 (1), "the provision of shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses." **Support and protection shall not be made conditional upon the victim's capacity or willingness to co-operate in legal proceedings.**

Dealing with the social, educational, psychological and other needs of victims as early as possible may also prove less costly than addressing them at a later stage.

- **Victim support organisations**

It is imperative and indispensable that victim support organisations, specialised in giving victims of trafficking assistance and counselling, are in place and adequately funded by governments. Art. 9, paragraph 3, of the UN Trafficking Protocol obliges states parties to include in their policies and programmes co-operation with NGOs, other relevant organisations and other elements of civil society.

- **Health care**

In particular victims who were exploited in the sex industry often suffer from venereal diseases. It is extremely important to establish co-operation between specialised victim support organisations and experts working within the health system who are trained to treat traumatised victims in a respectful and careful manner. For victims of trafficking, it is important that health care systems guarantee **strict confidentiality**. Any mechanism of reporting to the police would discourage victims to seek health care. Guideline 6 (2) of the UNHCHR Recommended Principles and Guidelines stipulates that trafficked persons should **not be required to accept** any such support and assistance and they should **not be subject to mandatory testing** for diseases, including HIV/AIDS.

Health care services have to be provided to all victims, not only those who were sexually exploited. Research indicates that many physical health problems are correlated with chronic stress and anxiety caused by abuse.

Health care services have to be non-discriminatory and gender-appropriate.¹⁰²

Any support provided to victims of trafficking have to consist in personalised services as well as respect the self-determination of victims.

- **The victim's family**

As regards the protection of witnesses it has to be remembered that also the victim-witnesses' family should be provided with adequate assistance.

- **Compensation funds**

Confiscated proceeds of trafficking should be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund that could be part of a more general compensation system for crime victims.¹⁰³

Children¹⁰⁴

Art. 6, para. 4, of the UN Trafficking Protocol provides that each state party shall take into account the special needs of child victims. If the age of a victim is uncertain and there are reasons to believe that the victim is a child, states parties may treat the victim as a child in accordance with the Convention on the Rights of the Child¹⁰⁵ until his or her age is verified. In addition, a state party may also wish to consider:

- **Appointing a guardian** to accompany the child throughout the entire process until a durable solution in the best interest of the child has been found. This would be particularly important in obtaining the co-operation of victims, as it would enable assurances of safety to be given prior to any prosecution of the offenders. To the extent possible, the same person should be assigned to the child victim throughout the entire process;
- Establishing special recruitment practices and training programmes so as to ensure that those responsible for the care and protection of the child victims understand their needs, are gender-sensitive and possess the necessary skills both to assist children and to ensure that their rights are safeguarded;
- Ensuring that, during investigation, prosecution and trial hearings, where possible, **direct contact between the child victim and the suspected offender be avoided**. Unless it is against the best interest of the child, the child victim has the right to be fully informed about security issues and criminal procedures prior to deciding whether or not to testify in criminal proceedings. During legal proceedings, the right to legal safeguards and effective protection of child witnesses needs to be strongly emphasised. Child victims who agree to testify should be accorded special protection measures;

¹⁰² London School of Hygiene and Tropical Medicine, The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study (2003).

¹⁰³ Report of the Experts Group on Trafficking in Human Beings, op. cit.

¹⁰⁴ The following information is based on the Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations, New York, 2004)

¹⁰⁵ General Assembly resolution 44/24.



- Providing **appropriate shelters for child victims** in order to avoid the risk of re-victimisation. Child victims should especially be hosted in safe and suitable accommodation, taking due account of their age and special needs;
- **Not returning child victims unless** doing so is **in their best interest** and, prior to the return, a suitable caregiver such as a parent, another relative or adult caretaker, a government agency or a childcare agency in the country of origin has agreed and is able to take responsibility for the child and to provide her/him with proper care and protection. Relevant judicial authorities and government ministries, together with the relevant social service authorities and/or guardian, should be responsible for confirming whether or not the repatriation of a child is safe and should ensure that the process takes place in a dignified manner and is in the best interest of the child. Social service authorities, in co-operation with the Ministry of the Interior or other relevant authorities or agencies, where required, should take all steps needed to trace, identify and locate family members and facilitate the reunion of the child victim with her/his family where that is in the best interest of the child. States should establish procedures to ensure that the child is received in the country of origin by an appointed member of the social services of the country of origin and/or the child's parents or legal guardian;
- In those cases where return is voluntary or in the best interest of the child, each state party is encouraged to ensure that the child returns to her/his home country in a speedy and safe manner. In situations where the safe return of the child to her/his family and/or country of origin is not possible or where such return would not be in the child's best interest, the social welfare authorities should make **adequate long-term care arrangements** to ensure the effective protection of the child and the safeguarding of her/his human rights. In this regard, relevant government authorities in countries of origin and of destination should develop effective agreements and procedures for collaborating with each other in order to ensure that a thorough inquiry into the individual and family circumstances of the child victim is conducted to determine the best course of action for the child.

4.2.6 Prevention of Secondary Victimization

Secondary victimisation refers to the victimisation that occurs, not as a direct result of the criminal act, but through the response of institutions and individuals to the victim.¹⁰⁶

Institutionalised secondary victimisation becomes apparent within the criminal justice system. The entire process of criminal investigation and trial may cause secondary victimisation, from investigation, through decisions on whether or not to prosecute, from the trial itself and from the sentencing of the offender, to her/his eventual release. Secondary victimisation may occur because of difficulties in balancing the rights of the victim against the rights of the accused or the offender, or even because the perspective of the victim is entirely ignored.

Also other agencies that come into contact with the victim may cause secondary victimisation. The hectic emergency room may encroach upon the privacy of a sexual assault victim or offend her/his sense of dignity. Intrusive or inappropriate investigation and filming, photography and reporting by the media are also aggravating factors. Even victim organisations, victim compensation systems, refugee services and mental health institutions may have some policies and procedures that lead to secondary victimisation.

4.3 Co-operation and Co-ordination Mechanisms¹⁰⁷

Co-operation and co-ordination structures are needed in order to ensure an enduring institutional framework, which allows full co-ordination and co-operation among the main state and non-state actors involved in the fight against trafficking. Co-ordination mechanisms should consist of multidisciplinary and cross-sector participation, should be created at the government level and should include:

- National anti-trafficking governmental co-ordinator with the overall responsibility for design and implementation of the anti-trafficking response;
- National secretariat;
- National working group including governmental, non-governmental, international bodies, responsible for design, implementation and regular review of the national strategy and action plan; and
- Thematic working groups, (subgroups of the national working group), responsible for the design, implementation and regular review of the national strategy and action plan in their respective thematic areas.

State and non-state actors are: ministries, police, law enforcement and judiciary, labour inspectors, international organisations, non-governmental organisations, etc.

¹⁰⁶ United Nations Office for Drug Control and Crime Prevention, Handbook on Justice for Victims (United Nations, New York, 1999).

¹⁰⁷ ICMPD, Regional Best Practice Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response (Vienna, 2005).

4.3.1 Task Force

The National Task Force should develop thorough methods for organising, monitoring and evaluating the implementation of the action plan against trafficking. Moreover it should recommend to the government how to improve the action plan, the legal framework, or organisational measures. Through the assistance of NGOs who work closely with victims, the task force may improve assessments of the current trafficking situation. Government should be responsible to select such NGOs that have the most experience with regard to the assistance of victims of trafficking and that are in the best position to represent the needs and interests of victims.

4.3.2 Independent Body - National Rapporteur¹⁰⁸

The National Rapporteur should be an independent body whose main task should be the systematic collection and analysis of data on trafficking and the monitoring of the effects of the national action plans. The national rapporteur should have the competence to directly report to the government and/or the Parliament and to make recommendations on the development of national policies and action plans.

4.3.3 National Referral Mechanisms¹⁰⁹

A national referral mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons and co-ordinate their efforts in a strategic partnership with civil society.

An NRM shall ensure that the human rights of trafficked persons are respected and provide an effective way to refer victims of trafficking to services. Such mechanisms can also improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation, and witness protection. In the centre of NRMs is the process of identifying trafficked persons, by different stakeholders and the co-operation among stakeholders to ensure the victims' referral to specialised services. This process includes all the different state and non-state actors.


Components of an NRM are:

- Identification of trafficked persons;
- Basic principles of co-operation agreements;
- Support and protection services;
- Repatriation and social inclusion; and
- Specific legal provisions.

Special attention has to be paid to child victims, as child victims shall be referred expeditiously to appropriate services.¹¹⁰

4.3.4 The Role of NGOs – Co-operation Concepts

Part of a victim-oriented approach is the development and implementation of co-operation concepts between police, prosecutors and specialised non-governmental organisations who counsel and support victims of trafficking. Comprehensive concepts include provision for the support and protection of victim-witnesses **before, during and after** trafficking trials.

Co-operation concepts are chiefly concerned with co-operation between the police and the counselling centres, however, such concepts may also include provisions on liaising with local authorities and social services in order to ease the way for obtaining work permits, social benefits etc for the victim-witness. 

The co-operation concept should include agreements on and provisions for at least the following aspects of victim-witness treatment:¹¹¹

- The criteria a witness must fulfill in order to be taken into a witness protection programme (willingness and capability to testify, willingness to accept protection measures when required etc);
- The point in time when the counselling centre will be included in the proceedings;
- The role of the counsellors during the various stages of the proceedings (e.g. during raids, pre-trial, trial, post-trial phases);

¹⁰⁸ Report of the Experts Group on Trafficking in Human Beings, op. cit.

¹⁰⁹ OSCE, National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook, op. cit.

¹¹⁰ Guidelines for the Protection of Children Victims of Trafficking in Southeast Europe accepted as the general standard for the protection of trafficked children in Europe (www.unicef.org/ceecis/GUIDELINES_Protection_of_Victims_of_Trafficking.pdf).

¹¹¹ See e.g., "Co-operation concept between counselling services and the police concerning the protection of witnessing victims of traffic in human beings", developed by the German national round table on trafficking in women and currently used to create working co-operation concepts at the German Federal State (Laender) level.

- A clear division of work between the counsellors and the witness protection officers with regard to obtaining legal documents, work permits, social benefits etc with other authorities, to avoid misunderstandings which lead to unnecessary delays and insecurity;
- The responsibility for finding safe accommodation for the witness;
- The financial responsibilities during the various stages of the proceedings and for the various measures offered to the victim-witness (medical care, food, accommodation, language courses etc);
- Support in obtaining legal documentation for the victim-witness (e.g. temporary residence permit, work permit); and
- Treatment of trafficking victims who are unsuitable as witnesses (e.g. agreement to still contact the counselling centre or inform the victim how to contact a counsellor; time allowance to prepare to return via a reintegration programme as opposed to immediate deportation, etc).



[Brothel raids and the role of NGOs^{112,113}

- **Planning a raid:**

When planning a brothel raid the police should have some idea of how many victims they will find and from which countries they originate. A co-operation concept may allow for the counselling centre to be informed of these details in advance of the raid.

?Advantage: Counsellors have time to arrange for interpreters and shelters. ?

Issues: Investigators rely completely on the counselling centre's discretion.

- **Carrying out the raid:**

The concept may envisage that counsellors accompany police to brothel raids to directly support the trafficked persons: They may distribute information flyers in the relevant languages, explaining that the police is mainly interested in prosecuting the traffickers and pimps, thus interested in obtaining the victims' statements and that the NGO is there to support the victims.

Advantage: The women feel less isolated and intimidated and more likely to co-operate with police. ?

Issues: PThe counsellor may have loyalty conflicts, as investigators may consider the victims also as offenders. PThe counsellor may be putting her/himself at risk, as s/he may be in danger of being traced by the offenders. PSome victims may be better off participating in a returnee scheme, as by giving evidence sufficient police protection cannot be guaranteed for the family back home, the counsellor may not aim to win the victim as a witness

- **After the raid:**

The co-operation concept may allow the victim to speak with a counsellor, preferably on their own or with an interpreter. When her/his statement is taken, s/he can be given the chance to have a counsellor with her/him if s/he chooses.

Advantage: The victim is informed about: possible right to receive legal aid as co-plaintiff against the traffickers; chance to participate in re-integration or returnee programmes; possible right to remain in the current country after the trial; the risks being deported; how she can receive medical and psychosocial support etc. ?

Issues: PThe counsellor will want to ensure that offenders and victims are kept separated, to avoid criminalisation, intimidation and threatening of the victim. This, particularly in cases where the offenders are women, is not always taken into consideration. Plf after questioning it becomes apparent that the victim is not suitable as a witness, the counsellor will want the opportunity to discuss alternatives e.g. participating in re-integration or returnee programmes, remaining in the destination country, etc. Unfortunately, the counselling centres are often only contacted if police have identified a potential witness. Those not suitable to testify are often deported or released without having been counselled, and be in danger to fall victim once again, since their basic situation of dependence and poverty has remained unchanged. PTo protect the counsellor, the counsellor's particulars should not be taken during questioning.]

¹¹² Based on SOLWODI, Germany, 2005.

¹¹³ With a view to rescue operations, the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking suggest in guideline 5 (6): "States and, where applicable, intergovernmental and non-governmental organisations should consider implementing measures to ensure that 'rescue' operations do not further harm the rights and dignity of trafficked persons. Such operations should only take place once appropriate and adequate procedures for responding to the needs of trafficked persons released in this way have been put in place."

- **Memorandum of understanding**¹¹⁴

Increasingly, law enforcement agencies are entering into so-called memoranda of understanding (MOU) with international organizations (IO) and NGOs to build the foundation of continuing working co-operative relationships.

The following model is based upon an existing one that has been in operation in Germany for some time:

(a) The protocol should start by setting out a basic understanding between the two parties along the following lines:

- Trafficking offenders will be efficiently prosecuted and testifying victims have a key role to play in this process.
- All parties must acknowledge the trauma caused by the crime and the penal proceedings.
- The victims must be treated with dignity.
- As a matter of fact, a co-operating victim in a trafficking case is always at risk.
- The better the care and counselling of the victim, the better their evidence.
- Where there is any evidence of a concrete risk to a testifying victim of foreign origin if she returns home, she/he must be granted exceptional leave to remain.
- All measures taken under witness protection programmes must be carried out by mutual consent.

(b) The memorandum then sets out the measures to be taken by both sides:

Law Enforcement

- Investigators must inform the victim of the availability of the support services.
- As soon as it is suspected that the individual is a victim of trafficking, the investigator will establish contact with the IO-NGO sector.
- The investigator will ensure that no information about the witness is divulged.
- The investigators are responsible for protection measures before, during and after all activity linked to the criminal justice procedure, for example, court inspections of the scene, interviews, attendance at identification parades, preliminary and full hearings until such time as the victim is returned to the shelter.
- The investigator will permit the presence of a trained counsellor at each of these activities if the victim requests it.
- Police will provide security advice on protection to the counsellors.

The IO-NGO support organisation

- In consultation with the investigator, the organisation decides upon the appropriate accommodation for the victim and makes the necessary arrangements.
- The organisation provides psycho-sociological care to the victim and arranges for physical, sexual and psychological medical care.
- Counsellors will inform victims of the facility of receiving a verbal and written briefing from a police officer if she wishes it and the counsellor will initiate contact with the police if the victim does request it.
- Counsellors will be present during the interview of the witness.
- Counsellors provide psychological support to the witness during all activity related to the criminal justice procedure.
- The counselling service provides offers of re-integrative training and education to the witness.

Rules, guidelines and/or programmes for co-operation between the criminal investigation agency/police and the specialised advisory agency (for victim protection and assistance – IO-NGO) will differ from country to country.

4.4 Prevention

The UN Trafficking Protocol also wants states to adopt prevention measures such as social and economic initiatives, research, and media campaigns targeting the public and potential victims. Policies, programmes, and other measures taken should include co-operation with NGOs and other relevant organisations. States should take or strengthen measures, including bilateral or multilateral co-operation, to alleviate the factors (e.g. lack of equal opportunity, poverty) that make people, especially women and children, vulnerable to trafficking.

¹¹⁴ See Regional Standard for Anti-Trafficking Police Training in SEE (ICMPD, 2004).





4.4.1 Addressing Root Causes, Including Demand

The UNHCHR Recommended Principles and Guidelines stipulate (principle Nr. 1 (4-6)) that:

- Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking;
- States and intergovernmental organisations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination;
- States shall exercise due diligence in identifying and eradicating public-sector involvement or complicity in trafficking. All public officials suspected of being implicated in trafficking shall be investigated, tried and, if convicted, appropriately punished.

The UN Trafficking Protocol requires in art. 9 the adoption of a comprehensive prevention strategy, including addressing the social and economic causes that contribute to the vulnerability of victims to traffickers.

Trafficking affects especially women and girls as a result of their vulnerability; women encounter discrimination in the labour market, within the family and in the society, women and girls are often more affected by poverty. To improve these conditions would thus also play a major part in preventing trafficking in women and girls. Also the perception of violence against women as something normal should be counteracted.

Elements of prevention strategies:

- Reducing the vulnerability of potential victims through social and economic development;
- Discouraging the demand for the services of trafficked persons;
- Gender mainstreaming;
- Public education;
- Border control;
- Preventing the corruption of public officials.

The Protocol also takes into consideration that former victims are often even more vulnerable later on, especially if repatriated to places where trafficking is common. Thus states have the responsibility to protect victims from being trafficked again, and from other forms of “re-victimisation”.

Recognising that trafficking could be dealt with from the demand and supply side, art. 9 of the UN Trafficking Protocol includes measures intended to discourage the demand for services which fosters the exploitive element of trafficking and hence its major source of illicit revenue.

4.4.2 Increase of Legal Migration Possibilities

Restrictive legal migration possibilities contribute to the development of trafficking, in that the lack of admission of economic migrants presumably increases the number of third country citizens entering the EU illegally and without any guarantee of having a declared job. EU institutions are very aware of the need to adopt instruments regarding common immigration opportunities:



Art. 63 (3) of the Treaty establishing the European Community, stipulates that the Council of the EU shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt measures on an immigration policy within the following areas: (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion; and (b) illegal immigration and illegal residence, including repatriation of illegal residents.

In 2001 the European Commission adopted a proposal for a directive dealing with “the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities”. The European Commission in 2005 also adopted a “Green Paper” on an EU approach to managing migration.¹¹⁵ Its aim is to stimulate a public debate with civil society at large, the social partners and the other EU institutions on the need to develop a comprehensive EU strategy on this issue.

Individual countries should increase activities to recruit foreigners for taking up legal labour and living with a residence permit, which should be also issued to family members.

The creation of legal migration possibilities can not only help to channel migration flows but also provide for a better integration of immigrants.

¹¹⁵ Commission of the European Communities, Brussels, “Green Paper on an EU Approach to Managing Economic Migration” (COM (2004) 811 final, Brussels, 11 January 2005).

However, the wish to migrate is not always based on economic reasons only, but also on existing human rights violations in the country of origin. In order to prevent that victims fall prey to traffickers, all nations have to work together so as to increase legal migration opportunities.

4.4.3 Awareness-Raising Activities

Prevention strategies should also include education and awareness-raising campaigns so as to raise awareness of the problem and to mobilise support for measures against it in the general population. Awareness-raising campaigns can be targeted also at different risk groups. It is very important to create awareness-raising campaigns in a non-patronising and non-discriminatory yet understandable way, without reinforcing gender discrimination and hindering the integration of returnees.

In this context, telephone hotlines can help to identify trafficking situations. Such hotlines, however, have to be operated by competent personnel, so permanent training of hotline operators is essential. Consular officials should also receive regular training, including information on victims' profiles, trafficking patterns and trends and information material from NGOs that should be disseminated in the consulates.

4.5 Return, Reintegration and Social Inclusion

Depending on the country of origin and national aliens' law, some victims who do not act as witnesses or those who have already given evidence are faced with deportation or an exit order. Others, regardless of their legal status, wish to return home as soon as possible at their own free will. Without support – financial and psychosocial – returning to the home country often means returning to the same vicious circle: suffering poverty and lack of perspectives, domestic violence and abuse, and being once again easy prey for traffickers. Indeed, in some cases trafficked women have been deported directly into the arms of the same traffickers, only to be picked up and trafficked immediately to the same or a new country.

But also the opposite can happen: victims turn into traffickers themselves. Also in this regards the importance of programs focusing on the reintegration of victims cannot be overemphasised. Victims of trafficking refer to their "traffickers" as their "saviours". Becoming a trafficker may be a logical "promotion" in the trafficking system.

Returnee and reintegration programmes aim at supporting the trafficked person on her/his return back home. Some programmes simply finance the journey home, pay for the transport of luggage and give a small amount of start-up cash. Others aim at developing sustainable income generating projects for the returning women in their home countries. Sustainability is increased by insuring that counselling is continued in the country of origin after the return, since trafficked persons are often faced with numerous problems upon their arrival, for example, loss of face at having failed abroad, stigmatisation if it becomes known that a woman has worked as a prostitute and so on.

SOLWODI's (Germany) returnee project offers comprehensive support for trafficked women returning home. The SOLWODI counsellor helps the client to find a realistic way of earning a living, once back home either by taking up vocational training or by setting up a small business. As soon as the client and counsellor have planned the basic details of the return in a development plan, the SOLWODI counsellor looks for a suitable partner NGO in the client's home country. The partner NGO will continue the support and counselling once the woman has arrived back home. Any financial support is paid by SOLWODI to the partner NGO, who in turn pays out the agreed sums at the agreed dates to the client according to the development plan. In addition the partner NGO helps the woman find accommodation and settle down, and continues to counsel and accompany her development until she is stable. SOLWODI remains in contact with the partner NGO and the client for a period of at least three years.

Comprehensive reintegration projects can be expensive and time consuming for the counselling centres/NGOs. Some projects are financed partially by national ministries, others by EU funding but often NGOs must cover the costs from donations. SOLWODI counsellors have sometimes experienced difficulties in finding suitable partner NGOs in certain countries of origin. Some are not in the position to carry out longer-term counselling due to financial restrictions. Others are unwilling to offer accommodation or counselling to women who have worked as prostitutes – regardless of whether the women were forced or volunteered. Finding sheltered housing for returnees for their first weeks back can be particularly difficult since counselling centres tend only to exist in the capital cities and are not available in rural areas.



Some NGOs do operate a countrywide network but without sheltered housing. Reintegration programmes can only work successfully if the returnee can find affordable accommodation upon arrival. National measures are required here to fill the gaps.



With regard to the return of trafficked persons the **UNHCHR Recommended Principles and Guidelines** suggest:

- “Principle 11: Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.”
- “Guideline 4 (6): States should consider ensuring that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family.”
- “Guideline 6 (7&8): States and, where applicable, intergovernmental and non-governmental organisations, should consider ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely). In partnership with non-governmental organisations, ensuring 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, 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.”

5

Criminal Proceedings and Victims' Rights

5 Criminal Proceedings and Victims' Rights

5.1 Abstract – Learning Objectives

The judiciary has the power to put the victims - and human rights - centred approach into practice before and during criminal proceedings.

Acknowledging that different countries have different national legislation, the following chapter sets out to offer some good practice so as to promote a harmonised approach and to provide guidelines for the interpretation in national legislation.

In general, **good judicial practice** should include:

- Co-operation between the police, prosecutors' offices and NGOs. The trafficked person must be immediately **sheltered and assisted**, as soon as she/he decides to report, or to escape from traffickers, regardless of her/his readiness to testify. Similarly, the person must be sheltered and assisted as soon as the competent authorities assess that there are grounds to think that the person has been trafficked.
- The potential victim must have an **adequate period of time to recover** and take informed decisions about the participation in criminal proceedings. During this period, since the person could have been seriously traumatised, normally she/he should not be interviewed. Even after the expiration of the recovery and reflection period, any decision concerning the time for her/him to make a statement should be made in close co-operation between the police, the prosecutor and the NGO that shelters and assists the victim.
- During criminal proceedings, judicial authorities must make every effort to **avoid secondary victimisation**, that is, victimisation caused by the procedure itself.
- First of all, this implies that judicial authorities must treat victims with **compassion, fairness, recognition** of their essential role in criminal proceedings and **respect** for their **dignity**.
- Judicial authorities must ensure the **security** of the trafficked person before and during criminal proceedings. Protection is normally connected with sheltering the person. In addition, police protection must be ensured during criminal proceedings and even before if the person is in danger.
- All legal means must be used, in conformity with the criminal code of procedure, to protect the victim from further negative consequences, taking into account that she/he has been subjected to violence, abuse, and she/he can have suffered a trauma.
- As far as possible, prosecutors and judges should **avoid** further repetition of the victim's examination, and use in the trial a testimony obtained at an earlier stage of the procedure.
- During examination, **visual contact** with the **defendant** must be avoided, for instance through the use of audio-video facilities.
- During the pre-trial and the pre-trial phase the judge must play an active role in order to protect the victim's dignity. In particular, in legal systems that provide for cross examination, the judge must establish very clear and strict rules, **neither allowing questions concerning private and sexual life, victim's consent to prostitution or trafficking, nor questions merely aimed at discrediting the witness**.
- In addition, the testimony of a child victim should be obtained with the assistance of a **psychologist**, and through **audio-video facilities**.
- The **trafficked person** must **not** be **arrested**, or **prosecuted**, or sentenced, for crimes connected with the trafficking process, such as use of false documents or illegal border crossing.

At the end of this section the trainee will:

- Have learned how to efficiently investigate, prosecute and try trafficking cases, at the same time protecting the human rights of the victims.
- Understand the concept of the right to a fair trial, both for the defendant and the victim, and how to ensure the balance between the defendant's and the victim's rights.
- Understand the need for co-operation between judicial authorities and NGOs.

5.2 Victim's Right to Effective Criminal Proceedings

The demonstration that justice is done is important for the recovery of the victim. Following the UN Declaration on Victims, the Council of Europe issued the Recommendation R(85) on the Position of the Victim in the Framework of Criminal Law and Procedure. The Recommendation considers it necessary to have more regard in the criminal justice system to the serious physical, psychological, material, emotional and social harm suffered by the victim.

Trafficked victims have suffered serious human rights violations and have a fundamental interest in the prosecution of the perpetrators and the subsequent criminal proceedings. Prosecution and judiciary generally benefit greatly from the improved co-operation of victims who feel that they have been protected, assisted and properly informed.

It is owed to victims that criminal justice officers make all possible efforts to effectively prosecute and sentence traffickers. The victims' right to effective criminal proceedings has to be granted irrespective of the immigration status of the victims.



In a number of decisions, by interpreting art. 2, 3 and 13 of the European Human Rights Convention (EHRC), the European Court of Human Rights held a right to an adequate criminal proceedings for victims of crime, or their relatives in case of murder:

Aksoy v. Turkey – 18.12.1996 (under art. 3)

The applicant, suspected of being a member of the Kurdistan Communist Party (PKK), claimed to have been subject to torture during his detention. No investigation had been carried out at the national level by the prosecution. The Court stated that investigation must be adequate, and can be considered to meet this standard when it is capable of leading to the identification and punishment of the perpetrators.

Kaya v. Turkey – 19.2.98

In this case the police had shot a person suspected of being a member of the Kurdistan Communist Party (PKK). The Court found that the investigation carried out by the judicial authorities had serious elements of weakness. For example it had not been ascertained that the victim actually was a terrorist; the results of the autopsy were not reliable. Hence the Court held that the state has an obligation to carry out an accurate and effective investigation into the circumstances of the death of any person. In the above mentioned case *Selmouni v. France – 28.7.99*, the Court added another element to the obligation of the state involved. The investigation must be accurate, impartial, effective, and quick. The Court clarified that an obligation of the state exists even when the case involves a violation not committed directly by state officials, but by private individuals.

● **Balance of victims' and offenders' rights**¹¹⁶

Various procedural rights, such as the right to confidentiality and protection, must be balanced against the rights of the defendant, such as the right to confront the accuser and to prepare her/his defence. This training manual focuses on the rights of the victims of trafficking, proceeding on the assumption that the addressees have expertise regarding the offenders' rights in criminal cases. In a number of cases the European Court of Human Rights has ruled that the right to an adversarial trial is not absolute:



Doorson v. The Netherlands – 26.3.96 (under art. 6 EHRC)

The Court stated: "It is true that art. 6 EHRC does not explicitly require the interest of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However, their life, liberty or security of person may be at stake, as may interests coming generally within the ambit of art. 8 of the Convention. Such interest of witnesses and victims are, in principle, protected by other, substantive provisions of the Convention, which imply that contracting states should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled. Against this background, principles of fair trial also require that, in appropriate cases, the interest of the defence are balanced against those of witnesses or victims called upon to testify".

¹¹⁶ United Nations Office for Drug Control and Crime Prevention (now UNODC), Handbook on Justice for Victims (United Nations, New York, 1999).

Birutis and others v. Lithuania – 28.3.02 (under art. 6 EHRC)

The Court identified the limits of such a balance, stating that, in principle, no conviction may be based, either solely or to a large extent, on the statement of a witness the defendant was not able to confront, either as a consequence of the absence or the anonymity of the witness. As long as the unchallenged statement of a witness forms part of the grounds of the decision, the Court is obliged to strive to counterbalance the disadvantage of the defence's right, particularly by examining the circumstances in which the unchallenged statement has been obtained.

S.N. v. Sweden – 2.7.02 (under art. 6 EHRC)

The case concerned child sex abuse. The victim, a ten-year-old boy, had been questioned by the police and the interview had been recorded on videotape.

The Court stated: "The Court has had regard to the special features of criminal proceedings concerning sexual offences. (...) In the assessment of the question of whether or not in such proceedings an accused received a fair trial, account must be taken for the rights to respect for the private life of the perceived victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures can be reconciled with an adequate and effective exercise of the rights of the defence." The Court reached the conclusion that criminal proceedings against the applicant, taken as a whole, did not imply any breach of art. 6.

● **Prosecutors should, inter alia:**¹¹⁷

- Arrange for the information, translation and notification services;
- Explain the criminal proceedings in understandable terms to the victim;
- Co-ordinate, where applicable in the jurisdiction, the inclusion of victim impact information, such as written statements, allocutions or radio or video statements in court proceedings with the judiciary; and
- Provide a safe waiting area for victims and witnesses in the courthouse that separates them visually and audibly from the suspects.



● **Judges should, inter alia:**¹¹⁸

- Respect and value the victim;
- Provide the victim with information;
- Encourage and arrange for special services and support for the victim;
- Order restitution for the victim;
- Ensure the victim's participation in all stages of the judicial proceeding;
- Arrange for/allow for person's accompanying the victim;
- Use their judicial authority to protect the victim;
- Ensure adequate protection for particularly vulnerable victims such as children, disabled persons, victims of sexual abuse and so on; and
- Create separate facilities for victims and witnesses.



More specific details are given throughout this chapter.

5.3 The Pre-Trial Phase

5.3.1 Identification of Victims

The first stage of investigation and also of support activities is necessarily the identification of victims. Very often trafficked persons are treated as illegal migrants and immediately deported, without any procedure aimed at finding out what is hidden beneath the surface. Though often difficult to distinguish trafficking from smuggling, the distinction is vital for the identification of victims. Trafficked persons must be treated as victims, not as criminals and shall not be prosecuted and detained because of irregular migration and/or labour status. When an illegal migrant is found, the competent authorities should immediately assess whether there are any indications of trafficking (e.g. the person is terrorized; shows injuries or other signs of violence; the documents

¹¹⁷ Ibid.

¹¹⁸ Ibid.

are in the possession of another person, etc.). If these indicators are found, the deportation process should be suspended, with a view to identifying a possible trafficking situation.

Most difficult to note is also the element of coercion. Coercion exists because women and other trafficked workers do not have the real capacity to avoid debt-bondage situations, to know and stand up for their rights, or to seek legal and other remedies without an ever-present threat of denunciation and deportation.

Other problems:

- Victims do not come forward referring to themselves as “victims”, they are usually totally unaware of a possible victim status;
- Exploitation, violence and discrimination may seem “normal” to some migrants, based on their experiences back home and their level of awareness as regards a possible illegal status;
- Victims are threatened by their perpetrators and in addition fear to be deported;
- Victims might fear state authorities in general due to experience in home country;
- Victims might be traumatised (n chapter 2);
- Children even more alienated than adults, feel inhibitions.

Solutions:

- To take up time to foster confidence and trust;
- List of indicators.



Below are some indicators for the identification of victims, relating to the different form of exploitation. However, there is no “one”, typical victim; stereotypes have to be avoided when identifying victims, as there is no specific way a trafficked person behaves, suffers, looks like and so on. The indicators shown below do also **not** form **an exclusive list**. It is highly recommendable that officials involved in the identification process are equipped with some cultural background knowledge on regions or countries of origin, as they might be confronted with behaviour that cannot be assessed by applying the destinations’ standards.

● **FORCED LABOUR**

In conformity with the ILO Forced Labour Convention No. 29 (1930), forced labour is a work or service exacted from any person under the menace of any penalty, and for which the person has not voluntarily offered her/himself. The element of voluntariness is problematic, especially taking into account the definition of trafficking under the Trafficking Protocol, where the means used by traffickers include not only violence, threats and coercion, but also abuse of a position of vulnerability. According to the ILO Guidelines on Human Trafficking and Forced Labour Exploitation, legislatures and law enforcement authorities have to take into account that the seemingly “voluntary offer” of the worker/victim may have been manipulated or was not based on an informed decision. Where migrant workers were induced by deceit, false promises and retention of identity documents, or force, to remain at the disposal of the employer, the ILO supervisory bodies noted a violation of the Convention. They have also noted that, where an employment relationship is originally the result of a freely concluded agreement, the workers’ right to free choice of employment remains inalienable.

The ILO Guidelines say that the failure to pay a worker the statutory minimum wage does not constitute forced labour. However, the failure to pay a worker the minimum wage, combined with other indicators, can be taken into consideration as evidence of forced labour. Consequently, attention should focus on situations where work or service is extracted from workers by physical or sexual violence, through their confinement in the workplace, by debt bondage, by retention of passports or identity documents, or by threat of denunciation to the authorities



Hence, despite the difficulties in identifying victims it is possible to outline a series of indicators, which may be of use to identify forced labour cases:

- The worker is prevented from leaving the workplace freely.
- Personal documents/passport are retained arbitrarily by the employer.
- The worker is or has been exposed to physical or sexual violence.
- She/he is kept under control through threats of denunciation to the authorities (frequently applied to illegal migrants or irregular workers).

- The person feels linked to the employer by debt bondage (often for an undefined amount).
- Threats of use of violence against her/his family have been made.
- Compensation provided for services is below minimum wage.
- Working hours are disproportionate with respect to compensation.

● DOMESTIC SERVITUDE

As regards domestic servitude, the indicators are often similar or identical to the ones relevant for the identification of forced labour cases. A personal relationship between the worker and the employer, which frequently implies cohabitation, is characteristic of domestic servitude.

The worker is particularly vulnerable as there are no negotiations. The persons are supposed to be members of the family, but in fact they do not have any room or time for themselves. They must be available for any personal need of the members of the family. No time for rest or leisure during the day and during the week is given. If it is granted, it is not regular, and so cannot be enjoyed by the person autonomously. Often she/he is subject to racist and discriminatory behaviour, and sexual abuse. Vital indicators for domestic servitude are:

- Cohabitation;
- Lack of respect of working hours and of daily/weekly breaks on a regular basis;
- Perpetration of offensive acts or manifestation of racist attitudes against the domestic worker;
- She/he is exposed to physical or sexual abuse/violence;
- She/he is prevented from leaving the place of residence/work freely;
- No negotiation of work conditions is allowed;
- Remuneration or salary is not paid or is insufficient for the domestic worker to conduct an autonomous life; and
- The person feels linked to the employer by debt bondage - for instance to pay back travel expenses - often for an undefined amount.



ECHR case concerning domestic servitude:

Siliadin v. France – 26.7.05 (under art. 4)

The first trafficking case heard by the Court under art. 4, providing for prohibition of forced labour, slavery and servitude, was a case of domestic servitude.

The Court noted that Ms. Siliadin, a citizen from Togo, who was a minor at the relevant time, was “lent” by Ms. D. to a couple of friends living in France, to help them with household chores and to look after young children. Ms. Siliadin became a “maid of all work” to the couple, who made her work from 7.30 a.m. until 10.30 p.m. every day with no days off, giving her special permission to go to mass on certain Sundays. The applicant slept in the children’s bedroom, on a mattress on the floor, and wore old clothes. She was never paid, but received the equivalent of 76.22 twice.

The Court held that Ms. Siliadin had worked for the couple without respite, against her will, and without being paid. In those circumstances, the Court considered that Ms. Siliadin had, at least, been subjected to forced labour within the meaning of art. 4 of the Convention. The Court did not identify a situation of slavery. However, the Court stated that Ms. Siliadin had been held in servitude.

The Court considered servitude as an obligation to provide one’s services under coercion, and was to be linked to the concept of “slavery”. In that regard, the Court noted that the forced labour imposed on Ms. Siliadin lasted almost 15 hours a day, seven days a week. Brought to France by a relative of her father’s, she had not chosen to work for Mr. and Ms. B. As a minor, she had no resources and was vulnerable and isolated, and had no means of subsistence other than the home of the employers.

The applicant was entirely at Mr. and Ms. B.’s mercy, since her documents had been confiscated and she had been promised that her immigration status would be regularised, which had never occurred. Nor did Ms. Siliadin, who was afraid of being arrested by the police, have any freedom of movement or free time. In addition, she had not been sent to school, despite the promises made to her father.

In that circumstance, the Court held that Ms. Siliadin had been held in servitude within the meaning of art. (From the press release issued by the registrar)



● SEXUAL EXPLOITATION

Indicators of sexual exploitation depend on whether prostitution is performed on the streets or in brothels in those countries where prostitution is legalised.



Indicators used by the **Essen Police (Germany)**, among others, are as follows:

Special mechanical locks on entrances and exits;

- Technical electronic monitoring;
- Guards at the entrances and exits;
- Protected and barred windows;
- Women without passports or identity cards or visas;
- Women whose personal data cannot be verified;
- Women speak only their native language;
- Women seem to be very anxious or in a helpless situation;
- Women are not able to explain how they entered the country;
- Women do not have their earnings at their free disposal;
- The price of sexual services is considerably lower than market prices;
- Women have to earn a minimum amount of money per day;
- Women are limited in their freedom of movement; and
- Women have a relatively high debt.

Indicators used by the police in the Netherlands for victims of trafficking for the purpose of sexual exploitation:

- Travel, visa etc. was arranged by third party (8 points);
- Having no identity document at their disposal (10 points);
- Possesses forged or fake passports (10 points);
- Illegal residency or illegal working (10 points);
- Fear (10 points)
- Having no independent access to income (10 points);
- Disproportionately high part of income is handed over (6 points);
- Medical assistance is withheld (10 points);
- Debt bondage towards a third party (10 points);
- Under obligation to earn a minimum amount per day (10 points);
- Take-over price was paid (10 points);
- Subject has no freedom of movement (10 points);
- Blackmail or threats of family (10 points);
- Working under all circumstance and working disproportionate long hours (6 points)
- Coerced to perform (certain) sexual acts (10 points);
- Threatened with the actual use of violence, showing physical signs of abuse (10 p);
- Working on alternate locations (2 points);
- Indication smuggling single women (6 points);
- Combination: non-EU, marriage or residency with partner and shortly found working in brothel (6 points);
- Relation to persons with relevant antecedents or location associated with trafficking in human beings (6 p);
- Not having one's own accommodation (6 points);
- Sleeping in the premises (6 points);
- Unfamiliarity with working address (4 points);
- Originates from source countries (4 points);
- Marks that indicate dependency upon exploiters (tattoos, voodoo accessories)(10 p); tips from a reliable source (value depending upon kind of information) (- points);
- Servile attitude towards third party (10 points); and
- Social isolation by third party (10 points).

(Indication of trafficking for the police – The Netherlands, 14 October 2004, Source: IKPS – Annex 1)

Indicators concerning trafficking for the purpose of sexual exploitation on the streets, assessed according to the **Italian experience**:



- Women are subjected to sexual or other forms of violence.
- Passports are in the possession of exploiters.
- Women are controlled very often, normally through cellular phones.
- Exploiters are informed about the entire amount of women's earnings. Women get punished if they try to hide some parts of the earnings.
- Exploiters get 50 per cent or more of the earnings. In addition, women have to pay for their maintenance.
- Women cannot decide anything about their working conditions, working hours, etc.
- Women cannot refuse a client, or an unprotected sexual intercourse.
- They have asked the clients a fixed price decided by exploiters.
- They have to perform a certain minimum number of sexual intercourses, irrespective of their health condition.
- Women cannot freely decide to return to their country. Sometimes they are threatened if they want to leave.
- Temporary returns are arranged by traffickers, under their strict control.
- The exploiters use the criminal fame of the group to terrorize victims.
- Women's relatives are threatened in the country of origin.
- Women do not know the language of the country of destination, and are socially isolated.
- Women and their family are in a situation of extreme poverty.
- They have to give back a remarkable amount of money, which is supposed to have been spent by traffickers for the travel and/or illegal entry. Normally the amount is not precisely fixed, or the exploiters pretend that the debt increases.
- Traffickers use sub-cultural approaches or religious rites to reinforce the persuasion concerning the restitution of the debt.

In all cases of trafficking, concerning both forced labour and sexual exploitation, some common indicators of trafficking can be found:



- The documents of the person are in the hands of the employer;
- Contact with people other than employer or other people subjected to the same exploitation is forbidden or severely restricted;
- Threats are used, aimed at compelling the person not to leave and keep on performing the same work or services;
- There is a situation of isolation, no knowledge of the language, separation from friends and relatives;
- The exploiter is connected with organised crime.

● **CHILD VICTIMS**

The identification of children as victims of trafficking requires pro-active identification measures. "Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child".¹¹⁹

- Unaccompanied children take up (illegal) work and other activities and deliver their proceeds to somebody else.
- Unaccompanied children leave shelters provided for them by the state or NGOs.
- Children are found with false identification documents.
- Children are found to be living at working places.
- Children work long working hours.
- (Unaccompanied) Children do not attend school regularly.

● **The role of prosecutors**

Especially in legal systems where the prosecutor is head of investigations from an early stage of the proceedings, it is advisable that the prosecutor is involved in interviewing a person, when there are grounds to believe that she/he has been trafficked. A procedure involving the prosecutor before the deportation of an illegal migrant should be adopted as a general intervention in cases where the person can be consid-



¹¹⁹ UNICEF Guidelines for the Protection of Children Victims of Trafficking in Southeast Europe, op. cit., see annex.

ered as a potential victim of trafficking. In particular, such a procedure should be in place when potential victims have been working in unprotected and highly vulnerable work places, such as domestic workers or prostitutes. The procedure specifically aims at avoiding deportation, when there is a suspect of trafficking. In fact deportation would prevent police and judicial authorities from interviewing the person, and thus carrying out investigations. Of course, the interview of the victim must be postponed if she/he is admitted to the reflection period.

5.3.2 Balanced Mix of Proactive and Reactive Investigation

According to concrete judicial practice, a successful prosecution must be based on a combination of proactive and reactive investigation.¹²⁰ The use of only one of these approaches can be detrimental for investigation and prosecution.¹²¹



The use of **proactive** investigation is needed especially in cases where trafficked persons are not ready to report or testify, and thus it is necessary to make an assessment based on indications deriving from searches, raids in brothels, labour inspections, or other means of investigation. Among them, phone tapping and electronic surveillance have proved particularly effective, but also undercover operations, especially in brothels and in cases of forced labour can be equally efficient. Generally speaking, it must be underlined that all the standard investigative techniques must be used, especially those tested in organised crime cases.¹²²

At the same time, also the testimony of victims is essential, as the victims can tell or confirm important details of the trafficking process, such as the use of threats, the abuse of a situation of extreme poverty, the existence of debt bondage. Only the trafficked persons can give information about the travel from the country of origin, through countries of transit, to the country of destination, and the role played by criminal groups of different nationalities in the various stages of the trafficking chain, since their connection with the traffickers and final exploiters has been going on for a certain time, and has implied a close and daily relationship.

However, victims would be overburdened and normally more endangered if their testimony is the only source of evidence. Effective prosecution requires other sources of evidence, the testimony of the victim may be stronger if prosecution can prove the facts also through other means. The victim's testimony may be the basis for further investigation aimed at identifying the whole trafficking network.

Mere proactive investigations tend to support the false idea that police and judicial authorities can dispose of policies aimed at ensuring assistance, support and residence status to victims. In general, it is equally important that prosecutors develop skills concerning a correct approach to the potential victim, in order to secure their testimony in the proceeding, and simultaneously are trained to use the most sophisticated means of investigation in trafficking cases.

5.4 The Victim's Right to Recovery

5.4.1 Co-operation between Law Enforcement, Judiciary and Civil Society



Please note: co-operation between law enforcement/judiciary and civil society is a cross-cutting issue, not only needed in the field of the victims' right to recovery, but also when it comes to the victims' right to safety, the victims' right to information, protecting the victims' dignity, the victims' right to privacy, and also as early as at the identification stage. Thus the following details apply accordingly to other topics.

The role of NGOs, working in partnership with criminal justice authorities, should not be underestimated. Just as the authorities are often reliant on victims' testimonies to secure convictions against traffickers, so they are reliant on the expertise of NGOs. Specialist organisations that identify and work with trafficking victims can also provide an environment where victims are encouraged to testify against traffickers with the assurance that their safety, and that of their families, is being taken care of.

Judges and prosecutors should build on what is already in place. In every country there are NGOs that already offer shelters and support programmes. NGOs ensure a victim friendly and non-bureaucratic approach, that is

¹²⁰ Proactive investigation is intelligence-led investigation, while reactive investigation depends more on evidence provided by the victim.

¹²¹ Even the participation of child victims and witnesses in the criminal justice process may be necessary for effective prosecutions, especially where the child is the only witness: see the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime adopted by the Commission on Crime Prevention and Criminal Justice at its 14th session, held in Vienna from 23 to 27 May 2005 (<http://daccessdds.un.org/doc/UNDOC/GEN/V05/852/65/PDF/V0585265.pdf?OpenElement>).

¹²² UNHCHR Recommended Principles and Guidelines, guideline 5 (3): "States and, where applicable, intergovernmental and non-governmental organisations should consider providing law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers. States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony."

more effective than situations in which shelters are managed in a way similar to detention centres for migrants awaiting deportation.

In order to facilitate co-operation it has proved to be successful for representatives of the different professions, for example, counsellors, law enforcement officers, public prosecutors, authorities from the social services and aliens' office - to first meet and discuss their aims, to clarify their different positions, priorities and working methods and to help dispose of any prejudices and reservations towards one another's professions. The outcome of these discussions should be a mutual feeling of trust and a clear understanding on both sides that the aim of protecting the victim-witness is their joint aim. A written concept, signed by all participating parties, lays down the general conditions on the form of co-operation with the counselling centre during the various stages of the proceedings. Later in practice an interdisciplinary team should be built, including victim protection officers, investigating officers and counsellors, who keep the public prosecutor informed of measures planned to win victims as witnesses for trafficking trials (for details on co-operation concepts, see 4.3.4).

Experience has shown that the earlier a counselling centre is able to participate in a case, the more likely a victim is willing to give evidence. Having been exposed to violence, intimidation and exploitation, victims need to be offered security and help with developing perspectives for their future. The counselling centres provide this support¹²³ and become a stabilising factor for the victims, who, if allowed to re-establish a self-determined life, are more likely to be effective as witnesses. It therefore makes sense to include counsellors possibly even as early as the planning phase of a brothel raid (see the example given in 4.3.4). Furthermore, the quality of the evidence given improves when a victim-witness who has gained the trust of a counsellor during the period leading up to the court proceedings is accompanied to the trial by that same person of trust. Finally, counselling and support and thus co-operation must continue after the trial has completed. Only if victims are able to develop realistic perspectives for their future they will re-gain the confidence and psychological stability required of credible witnesses. If trafficked persons believe they will be immediately deported and left to their own resources once they have given evidence, it is unlikely that they will be willing to go through the traumatic experience of giving evidence and reliving their experience.

The time between being taken in for questioning by the police and the actual trial often stretches over at least 6 months – sometimes even several years. This period of time is used by the counselling centre to help the victim begin living a normal life, for example, providing the opportunity to take language lessons, vocational training, find work and the like. This phase is essential for stabilising victims and plays a major role in the healing process. In turn, the psychological stability of the victims will improve their credibility later on as witnesses in court.

The victim-witness may be allowed to remain in the country for the time period leading up to the trial, particularly if her/his safety cannot be guaranteed in her country of origin. During this time, the co-operation concept may allow the victim-witness to be in the care of a counselling centre. Providing victim-witnesses with professional counselling and support has a major impact on the quality of their evidence during trafficking trials, thus improving the effectiveness of criminal prosecution. Practical experience has shown that jointly developed co-operation concepts between specialised counselling centres and prosecuting authorities can greatly improve work in this field. However, whilst aiming to improve prosecution, it must not be at the cost of renewed victim exploitation – this time by the state. Failing to include counselling centres to take care of the special needs of victim-witnesses may be just that.

The pre-trial phase:

The victim-witness may be allowed to remain in the country for the time period leading up to the trial, particularly if her/his safety cannot be guaranteed in her country of origin. During this time, the co-operation concept may allow the victim-witness to be in the care of a counselling centre:



Advantages:

- The victim-witness lives in safe accommodation, for example, in the counselling centre's sheltered housing, receives psychosocial counselling and support. Her/his health (physical and physiological) is stabilised, increasing her/his quality as a witness;
- The victim-witness can be encouraged by the counsellors to take language lessons or take up vocational training, with a focus on the time after the trial. This again helps stabilise and strengthen the victim-witness;

¹²³ NGO services may include social and psychological support, such as protected shelter, help in everyday life, legal and financial help, help regarding the labour market, but also crisis intervention, confidence-building measures, establishing a recreation period, psychological preparation for and accompaniment to the trial.

- The counsellor can discuss with the victim-witness the formal sequence of events during a trial of this kind and may even visit a court with her/him. The victim-witness can talk to the counsellor about her/his fears and reservations, for example, about the prospect of coming face to face with the offenders in court;
- The victim-witness can ask the counsellor to accompany her to appointments with her/his lawyer, witness protection officers and investigators.

Issues:

- The judiciary may see a danger that the counsellors unwittingly influence the witness, or at least this line of argumentation may be used by the defence in the trial. In order to eliminate this danger, the criminal investigators should inform the counsellors as to what may or may not be discussed with the victim-witness. Since the task of the counselling centres is to provide support and shelter to the victim (regardless of her status as a witness), no real danger of witness influencing exists;
- The question of financing the witnesses' stay during the pre-trial period must be clarified in the concept;
- The conditions under which the counselling centre will allow the victim-witness to live in the sheltered accommodation must be understood by all parties involved (e.g. she/he can be forced to leave if she is found taking drugs or alcohol, becomes violent, invites men, has contact with the offender etc.). Ideally, from the counsellor's view point, the victim will be stabilised such that she/he is able to move from a (normally women's) shelter to her/his own rented accommodation. It will be the aim of the counselling centre to help the victim regain her/his independence as quickly as possible.

The trial phase:

By the time the trial begins, the victim-witness has usually begun to settle in to her/his new surroundings and with the help of the counsellor is fairly stable. The opening of the trial often comes as a shock and being faced with the reality of the past can be intensely unsettling and questioning, in particular from the defence can be extremely destabilising. The co-operation concept must cover the psychosocial counselling of the victim-witness during this phase.

Advantages:

The counsellor, who has been looking after the victim-witness for period preceding the trial, supports and stabilises the client, preventing a re-traumatisation, since the strategy of the defence often includes stigmatising the victim and attacking her credibility.

Issues:

Is the counsellor allowed to sit next to the victim-witness during the trial in order to give her moral support? Will the counsellor also be called to the witness stand by the defence and, if so, can she refuse to testify? Is the victim-witness aware this may occur?

5.4.2 Assistance to and Support of Victims

Individuals who are trafficked are suffering human rights violations. For these victims to **recover** from their painful experience and to **not be re-victimised** it is crucial that they receive all the necessary assistance and protection.



Support activities should not just consist of a quick rehabilitation solution for the victim but rather offer enduring holistic rehabilitation opportunities. It is crucial to **identify the concrete needs** of victims and the real possibilities for social integration.

Support of and assistance for victims of trafficking shall not depend on the trafficked person's ability and willingness to testify as a witness in a trial against suspected traffickers. Assistance to and support of victims primarily serve the recovery of the trafficked individuals in respect of their human rights. Law enforcement and judiciary need to carry out a victim and human rights centred approach towards the victims, and thereby encourage victims to appear as witness. The responsibility for establishing a criminal offence - the burden of proof - lies with the authorities. However, research clearly shows that victims treated with respect are more willing to co-operate and make better witnesses, resulting in higher conviction rates of traffickers.¹²⁴

¹²⁴ E.g. Anti-Slavery International, Commission on Human Rights, Subcommission on the Promotion and Protection of Human Rights, Working Group on Contemporary Forms of Slavery, 28th session, Geneva, 16-20 June 2003.

Basically, it is in the victim's own interest to tell what she/he has experienced. To give testimony and being acknowledged by the public authorities representing justice, will help the victim to come to terms with her/his experiences. Therefore, there is no antagonism between the victim's rights to support and assistance on the one hand and the efficiency of prosecution and judiciary on the other. Still, there may be many good reasons why victims would be reluctant to testify, such as traumatising, caution towards authorities, fear of retaliation and that protection cannot be granted sufficiently, fear of mental overstrain and so on. This reluctance to testify has to be accepted, in order to avert any re-victimisation/re-traumatisation and health damages for the victim.¹²⁵

As important it is to provide all victims with all the necessary support and protection, it is equally vital to respect their self-determination and to further their empowerment. It has to be remembered that the term victim does not imply that trafficked persons are powerless individuals, completely deprived of their autonomy.

5.4.3 Reflection Period

In the ideal case criminal justice authorities are in a position to respect the victim's reflection period, irrespective of her/his capacity or willingness to co-operate with these authorities. During this period the victim should be given the opportunity to consider whether or not she/he wants to testify or otherwise co-operate, which entails that the victim is properly informed. A possible reflection period of 30 days may collide with limited time to collect and/or present evidence, or with time limits as regards remanding the suspect(s) in custody. In such cases the recovery of the victim has priority, taking evidence should therefore (initially) exclude the victim.

5.5 The Right to Safety

Victims of trafficking and their families are at risk of intimidation and retaliation, preceding the criminal case, during the case, and in its aftermath. Therefore, the protection of victims of trafficking requires the attention of prosecutors and judges at every moment of proceedings and has to be their first concern.

This requires a management of proceedings ensuring that the traffickers will not be able to trace, harm, or intimidate the victim. It also calls for close co-operation between judiciary, police and victim support agencies. Precise logistics and preparation of the victim's participation in the court proceedings must be taken to ensure that the traffickers are prevented from getting in touch with the victim. All technical possibilities have to be utilised in order to tape, videotape or to audio-visually transmit the statement of the victim.



Providing for the victims' safety also entails to inform victims of what to expect during the criminal case and beyond, as regards potential dangers should they agree to testify against traffickers. All in all, to handle victims with care and to convince them that they are in a safe position to give evidence against the defendants will be the best means of enabling and encouraging them to testify and to foster effective prosecution of trafficking cases.

However, it is beyond dispute that victims' safety may be at risk regardless of whether they act as witnesses or not and the UN Convention against Transnational Organized Crime calls for the protection of witnesses and victims. For the perpetrators it is fundamental to harshly sanction any attempt of victims to free themselves, or at least to threaten victims with the use of violence. A victim of trafficking who has escaped or been rescued from the grasp of the traffickers is in danger of retaliation simply because her/his behaviour challenges the control of the traffickers. Trafficking victims are at risk long before the proceedings start and the question of the victim performing the role of a witness arises.

Witness protection in very serious cases might be associated with change of identity and relocation. Protection measures should also include measures taken during and after the prosecution and trial. After a successful investigation, witnesses become particularly vulnerable to corruption, threats and intimidation during and after the prosecution and the trial.¹²⁶

A number of measures must be taken at the trial stage to ensure that the case is successfully prosecuted and the trial process is not compromised. Some measures, such as **video testimonies** or the **exclusion of the general public** from a hearing, aim to protect the witness's identity, privacy, and dignity. Other measures, for

¹²⁵ Eg. the Italian system (art. 18 of the legislative decree n. 286/98 – the Immigration Consolidation Act), foresees besides the so-called "judicial path" also a "social path", through which the victim can benefit from a special residence permit and a social assistance and integration program. Within the "social path" the victims give information - through the appointed public or private body responsible for the program - about their trafficking and exploitation experience, contributing in such a way to the police investigations. Moreover, if required, the victims will testify in court. The Italian experience shows that many women, who began the "social path", after having been reassured and having gained new trust in institutions and legality, came to the decision to file a complaint against their traffickers. Source: On the Road: "Article 18: protection of victims of trafficking and fight against crime. Italy and the European scenarios". (Martinsicuro, On the Road Edizioni 2002).

example **witness concealment** or allowing witnesses to remain anonymous, aim at protecting their physical security. (Anonymous witness statements or testimony behind screens, are not necessary, though, in cases where the trafficker knows the identity of the witness.)

Court witness protection measures are generally authorised and regulated under criminal (procedural) law. Such measures aim to prevent the accused or his accomplices from violating the witnesses' physical integrity in the courtroom and, in some cases, from revealing the witnesses' identity. Courtroom-based witness protection measures require technical equipment, well-trained personnel and adequate financial resources. Therefore, **sufficient funding** must be made available to the prosecutors and the courts to use them effectively.

Children, and among them especially girls, are extremely vulnerable and need special protection in line with their age, level of maturity and individual needs.¹²⁷



Cases concerning the victim's right to safety

The right of any individual to be protected against the arbitrary use of force has been largely recognised by the European Court of Human Rights under different articles of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Leading cases:

Mc Cann v. UK – 27.9.95 (under art. 2 EHRC)

In a case concerning terrorism in Ireland, the victim, suspected to be a terrorist, was shot by the police just after a meeting with two other people, and without evidence that the police had given a previous warning. The Court stated that every party to the Convention is obliged not only to forbid the arbitrary use of force that causes death, but also to guarantee the effectiveness of the ban.

Selmouni v. France - 28.7.99 (under art. 3 EHRC)

In this case the plaintiff complained of the mistreatment he had been subject to during his detention after arrest. In this case the Court stated that acts of physical violence, threats and sexual abuse, taken as a whole, must be considered as acts of torture, when they cause acute forms of suffering, and can be seen as particularly serious and cruel. In this decision the Court lowered the threshold beyond which an act formerly considered inhuman and degrading must now be considered as an act of torture.

Mastromatteo v. Italy – 24.10.2002 (under art. 2 EHRC)

The case concerns a murder committed by a group of convicted persons, who committed a robbery during the time they were allowed to leave the prison on parole.

Although the Court did not find the state responsible, in principle it stated that, in certain well-defined circumstances, a positive obligation exists for the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

Y. v. United Kingdom – Report of 8.10.91, Res. DH (92)63

This was a case concerning corporal punishment in private schools. The plaintiff, as a consequence of a punishment for bullying another student, had been given four strokes of the cane with his trousers on. The case ended with a friendly statement. However, it is suggested that where a beating by a teacher has actually taken place, art. 3 is applicable, even in the case of private schools, as preventive legislation prohibiting such behaviour would almost certainly have persuaded teachers not to use corporal punishment.

Although the facts taken into consideration by the Court in this case were of a different nature, the level of suffering that in most of the cases of trafficking is inflicted on victims can be seen as a form of torture, under the meaning indicated by the European Court of Human Rights.

Also under art. 8 EHRC, concerning the protection of private life, a number of decisions – mainly regarding physical punishment in English and Scottish schools – have considered that the concept of respect for private life includes the protection of the physical integrity of the person, even under a wider interpretation compared to acts of torture under art. 3. The Court also remarked that the state is also obliged to ensure effective prevention, with a view to avoiding people under their jurisdiction to be subject to seri-

ous forms of offence against their physical integrity. Therefore, physical integrity can be protected both under art. 3, or, depending on factual circumstances, under art. 8.

X. and Y. v. The Netherlands – 1985 (under art. 8 EHRC)

This case involved a 16-year-old mentally handicapped girl who was sexually assaulted by the son-in-law of the director of a private nursing home. There existed a gap in the Dutch law, so that an effective criminal prosecution could not be carried out. The European Court of Human Rights stated that, in addition to the primarily negative undertaking demanded by art. 8, there may be a positive obligation inherent in an effective respect for private or family life. This obligation may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations between individuals themselves.


It must be stressed that so far the protection of sexual rights has been considered to fall under art. 8, not under art. 3. Referring to the same case, the Commission clarified that the protection afforded by art. 8 to an individual's physical integrity may be wider than that contemplated by art. 3 of the Convention depending on the facts of the case.

Costello-Roberts v. United Kingdom - 25.3.1993 (under art. 8 EHRC)

In the Costello case, concerning the corporal punishment of a child in a private school, the Court did not hold the violation of art. 8, but in principle stated that art. 8 can be applied in the field of disciplinary measures and provide a wider protection than art. 3 of the Convention.

5.5.1 Protection of the Victim from Intimidation

Council of Europe **Recommendation R(97)13 concerning Protection from Intimidation of Witnesses and the Rights of the Defence**¹²⁹ envisages a wide concept of protection, encompassing not just aspects connected with police protection, but actions concerning the whole development of the proceedings, including the pre-trial and the trial phase. The Recommendation establishes a high standard of protection, not just for witnesses, but also for victims of crimes and their families.

The Recommendation also includes a definition of the "victim" and a broad definition of "intimidation", which is relevant also for a correct interpretation of the "abuse of a position of vulnerability", in conformity with the definition of trafficking in the UN Protocol. 

"Intimidation" means any direct, indirect or potential threat to a witness, which may lead to interference with his duty to give testimony free from influence of any kind whatsoever. This includes intimidation resulting either:

- (i) from the mere existence of a criminal organisation having a strong reputation of violence and reprisal, or
- (ii) from the mere fact that the witness belongs to a closed social group and is in a position of weakness therein".

While respecting the rights of the defence, the protection of witnesses and victims should be organised, when necessary, to include the protection of their life and personal security before, during and after the trial. This protection should be extended to their relatives and other persons close to them (para. 2).

While respecting the right of the defence, witnesses should be provided with alternative methods of giving evidence which protect them from intimidation resulting from face to face confrontation with the accused, for example, by allowing witnesses to give evidence in a separate room (para. 6).

While insuring that the defence has adequate opportunity to challenge the evidence given by a witness, the following measures should, inter alia, be considered:

- Recording by audio-visual means of statements made by witnesses during pre-trial examination;
- Using pre-trial statements given before a judicial authority as evidence in court when it is not possible for witnesses to appear before the court or when appearing in court might result in great and actual dan-

¹²⁹ Also [http://cm.coe.int/stat/E/Public/1997/.%5C.%5C.%5C.%5Cta%5Crec%5C1997%5Cword/ExpRep\(97\)13.doc](http://cm.coe.int/stat/E/Public/1997/.%5C.%5C.%5C.%5Cta%5Crec%5C1997%5Cword/ExpRep(97)13.doc)

- ger to the life and security of witnesses, their relatives or other persons close to them;
- Revealing the identity of witnesses at the latest possible stage of the proceedings and/or releasing only selected details; and
- Excluding the media and/or the public from all or part of the trial (para. 9).

Where available and in accordance with domestic law, anonymity of persons who might give evidence should be an exceptional measure (para. 10). However, in principle the possibility of not revealing the identity of the victim-witness is considered to be a solution, while the defendant should have the possibility to challenge the alleged need for anonymity in a special procedure.



In general terms: victims' protection should seek to provide safe places for victims, separate from the accused and defence witnesses when they are present at hearings or interviews. During hearings the risk of intimidation may be at its greatest. Many jurisdictions have adopted laws and practices seeking to minimise this risk. For example, several jurisdictions allow the taking of evidence with video or closed-circuit television; this is commonly done in the case of child victims of abuse.¹³⁰

5.5.2 Protection of the Victim through NGOs

Offenders often convince victims that they will be arrested and prosecuted or deported if they approach authorities to complain or ask for help. Therefore, victims will approach and trust shelters, counselling and other services offered by non-governmental organisations in this area rather than state-based agencies. It is thus imperative that such NGO services in this function stay as independent as possible from the state and to ensure that this is known to potential victims.

5.5.3 Police Protection

The police are often the first, or as the case may be the second after an NGO, to have contact with trafficked victims. Victims should not be detained as suspects at this stage because that equates to criminalisation and re-victimisation. They should be released from any initial detention and referred to (by providing transport with protection as needed based upon the initial risk assessment) the appropriate service provider pending enquiries into their claims. So far there is not much evidence of offenders falsely claiming to be victims. To the contrary, the bigger problem appears to be that the real victims deny that they have been trafficked.



The protection of victims/witnesses of trafficking calls for tailor-made solutions that are implemented in the closest possible co-operation between the police, victim support agencies, prosecutors and judges. Initially these programmes will assess the risk to the physical safety of victims (and their families) and dedicate protective resources to assure no harm comes to the individual (and her/his family).

As said above, victims are at risk of retaliation and have the right to protection, regardless of whether or not they testify; they are in danger of retaliation as soon as they decide to escape from the traffickers and leave. Therefore it is very important that they are immediately protected. If victims are asked to attend the court hearings, protection measures have to start as soon as they approach the court building. Victims should be accompanied by the police (preferably of the same sex), until they have left the courthouse and returned to a safe place. Possible protection measures are the installation of panic alarms in the witnesses' whereabouts, provision of mobile phones, supplemented by daily contact by law enforcement officials, or police escorts may be considered appropriate.

5.5.4 Special Protection Programmes¹³¹

Many countries have designed **witness-protection programmes**. They mainly intend to secure persons who have insider-knowledge (typically obtained as criminal co-conspirators) and who can contribute to the prosecution of members of criminal organisations, and are thus expected targets of criminal organisations. Witnesses might be provided with a new identity and transferred to another country. Usually these measures are extended to close family members of the witness.

Some policies tend to concentrate on **relocation** of the victim-witnesses of trafficking to safe third countries so as to ensure their safety. However, in practice this should only be used as a policy of **last resort**, where all

¹³⁰ Handbook on Justice for Victims, op. cit.

¹³¹ European Commission, Report of the Experts Group on Trafficking in Human Beings, op. cit.

other protection measures are not appropriate, and with full discussion and consent of the trafficked person. Relocation to third countries is problematic and likely to have significant risks attached, and to increase the trauma of the trafficked persons and their risk of being re-trafficked. Relocation would require trafficked persons to cut off links with their families and friends and support network. In a third country they may not speak the language, may not have access to labour markets or lack appropriate skills and may not have access to social support networks.

If relocation occurs, then it must be culturally and socially appropriate. Full support measures including language classes, vocational training, employment, accommodation, financial assistance and support networks, including contact with appropriate local NGO service providers should be provided. Relocation will also have to include the trafficked person's family. Again full support measures should be provided. However, in all cases, it is unrealistic to expect trafficked persons and family members to sever contacts with their friends, family and community.

Full change of identity is even harder to achieve, as this requires trafficked persons to completely cut themselves off from their families, friends, community and previous life and often culture. Again this should only be considered in the most **extreme circumstances**, after full discussion and understanding of all options and consequences.


In the long-term, the state response may change as a result of continuing risk assessment.

Ultimately, the aim of these programmes, in combination with assistance programmes provided by governmental, non-governmental and international organisations, will be to empower victims and to enable them to overcome victimisation and ideally, to live their life in safety without depending on protection measures of state institutions for the rest of their life.

Excursus: extended protection

Witness protection schemes should consider extending protection to all persons who co-operate with or assist in investigations until it becomes apparent that they will not be called upon to testify; and to persons who provide information which is relevant but not required as testimony or not used in court because of concerns for the safety of the informant or other persons.

5.5.5 Protection of the Victim's Identity

Judges and prosecutors should apply national provisions, which protect the identity of victims. Even if national rules of procedure do not allow any use of **anonymous testimony** or information as evidence, when victims are seriously threatened, the prosecution could have the option to ensure the anonymity of victims and use their anonymous information only as an input for the development of investigation. 

The possibility of giving evidence anonymously will be irrelevant when, by what victims report, it is easy for the offenders to recognise them. In other cases, however, the possibility to conduct the interview only in the presence of the investigative judge, the public prosecutor, an interpreter, (a woman from) the victim support agency and the legal counsel of the victim should be considered.

Co-operation agreements between law enforcement authorities and counselling agencies/authorised NGOs must include provisions, which guarantee that the identity and other personal data of the trafficked person will not be forwarded without the consent of the trafficked person or the proper authority to do so.

The identity of a child victim should never be published, unless it is in the best interest of the child.

5.5.6 Protection of Other Personal Data

Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data requires that personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, and personal data relating to criminal convictions may not be processed automatically unless domestic law provides appropriate safeguards.

The victim-witness is regularly endangered and this calls for the principal observance of the following rules:

- Data such as the personal history, name and photograph of the affected person may not be published; and
- Media must not publish details that allow the identity of the trafficked person to be deduced and must avoid any reporting that endangers the trafficked person (such as information as to where the trafficked person is staying, etc.).

5.6 The Right to Privacy

Art. 6 of the UN Protocol stipulates that in appropriate cases and to the extent possible under its domestic law, each state party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential. Procedural laws may require amendments to ensure that courts have the authority to shield the identities or otherwise protect the privacy of victims in appropriate cases.

5.6.1 Confidentiality of Proceedings

The victim's right to privacy requires appropriate measures aimed at not allowing the dissemination of information about their private life.

Denying information to the defence must be reconciled with any applicable constitutional or other rights, including the right to confront witnesses or accusers and the right to disclose any information that might be exculpatory or assist the defence.

Measures adopted in some countries:

- Publication of details that may lead to the identification of a rape victim is prohibited;
- Addresses of victims and witnesses are not included in the depositions made available to the accused before or at committal proceedings. Victims are not required to state their addresses when being sworn as witnesses in court;
- Special locations for victims to report sexual crimes so that confidentiality and privacy can be maintained.

5.6.2 Closed-Door Hearings

Art. 6 EHRC - establishing the right to a fair trial - determines the principle of public hearings. However, to protect victims' privacy and confidentiality by restricting reporting may include keeping the proceedings confidential by excluding members of the public or representatives of the media or by imposing limits on the publication of specific information, such as details that would permit identification of the victim.

Also art. 6 EHRC itself states that "the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".

On the other hand, excluding the media or the public from legal proceedings limits the effectiveness of openness and transparency as a safeguard to ensure the propriety of the proceedings and may infringe the rights of the media to free expression. A careful evaluation of freedom of the press on the one hand and the right of the victim to control over their own personal data on the other is necessary. One option is to permit exclusion but to create a preference for open proceedings and require the courts to find some justification before ordering them closed.¹³⁵

Definitely, the public should be excluded from the hearings if victims are asked to report on matters of intimacy or sexual violence. The right of victims to have their privacy respected by far outweighs the interest of the public to monitor court proceedings during the statements of victims. Of course, this is even more necessary when victims are present in court.

5.7 The Right to Information

Judges and prosecutors have to ensure that victims of trafficking, irrespective of their will to co-operate with authorities, receive information on relevant court proceedings and as the case may be get the chance to present

¹³⁵ United Nations Office on Drugs and Crime, Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations, New York, 2004).

their views. Judges and prosecutors shall not deny information or exclude participation on any basis other than prejudice to the rights of the defence.¹³⁶ In line with art. 4 of the EU Council Framework Decision of 15 March 2001 on Standing of Victims in Criminal Proceedings, victims have a right to information from the first stage of the proceedings:

“1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests. Such information shall be at least as follows:

- (a) Type of services or organisations to which they can turn for support;
- (b) Type of support which they can obtain;
- (c) Where and how they can report an offence;
- (d) Procedures following such a report and their role in connection with such procedures;
- (e) How and under what conditions they can obtain protection;
- (f) To what extent and on what terms they have access to:
- (g) Legal advice or
- (h) Legal aid, or
- (i) Any other sort of advice, if, in the cases envisaged in point (ii), they are entitled to receive it;
- (j) Requirements for them to be entitled to compensation; and
- (k) If they are resident in another state, any special arrangements available to them in order to protect their interests.

2. Each Member State shall ensure that victims who have expressed a wish to this effect are kept informed of:

- (a) The outcome of their complaint;
- (b) Relevant factors enabling them, in the event of prosecution, to know the conduct of the criminal proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected; and
- (c) The court’s sentence.

3. Member States shall take the necessary measures to ensure that, at least in cases where there might be a danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary.

4. In so far as a Member State forwards on its own initiative the information referred to in paragraphs 2 and 3, it must ensure that victims have the right not to receive it, unless communication thereof is compulsory under the terms of the relevant criminal proceedings.”

Giving information to the victims is an obligation, even if national legislation does not explicitly provide for such a rule. Victims also have to be told immediately if they have to expect punishment and if so, to which extent (minor/severe fine, prison sentence, youth custody, etc.). Victims might misconceive the degree of penalty and wrongly expect long-term imprisonment. Likewise, victims have to be informed if they are likely to go unpunished.

It is particularly important that the person is correctly informed about the possibility of being sheltered and assisted, of obtaining a residence permit and the like.

In addition, it is a good judicial practice to inform victims about the act that is to be performed in the procedure with their participation. It is important also that victims know what exactly they are expected to do. For example, before cross-examination, the judge should clarify whether victims have to answer questions unless the judge does not allow them to, or, on the contrary, they have to answer questions only when the judge explicitly allows.

This information normally makes victims feel more comfortable, especially because they are aware of their being a subject of the procedure, not just an object to be used in the interest of prosecution. In addition, this information makes them aware that the judge will play an active role in protecting their dignity and rights during cross-examination.

¹³⁶ According to the UN Legislative Guide, para. 56.



INFORMATION about the criminal justice process and victims role

What information do other systems provide and how?

Information about the process, developments and status of the case includes:

- The status of the investigation in general terms (specifics may be imparted
- As long as the information will not interfere with the investigation);
- The arrest of the offender;
- The filing of charges;
- The schedule of court proceedings;
- The release of or detention;
- Status of the offender;
- The outcome of a trial; and
- The sentence;
- Parole possibilities;
- The release or escape of the offender.

Information about what victims can do and receive includes:

- Ways that the victim can participate or express their views in the procedure;
- Ways to be protected and ensure safety;
- Ways to receive victims services (health, counselling, shelter, etc.);
- Ways to receive compensation or reimbursement;
- Ways to receive further information, clarification and assistance.

Methods of providing this information vary widely and can include:

- Information material, such as brochures and leaflets;
- Phone calls or letters for notification, in person from police, prosecutors, judges or victim advocates. For example, in the United States, in situations where communication is difficult and there are no phones, victim advocates travel to the victim's house driving for several hours for notification of court dates and to provide transportation as needed. Accompaniment of the victim can be quite extensive for isolated minorities, such as, for persons who live on Native American reservations.

In order to ensure that victims can seek clarifications about the information or be aware generally of victim information, some systems use:

- Hotlines for victims to call and ask questions;
- Broadcasting of information through the media.

(Source: Victim Advocacy Introductory Manual: Working with Victims of Crime, (Warsaw, OSCE Office for Democratic Institutions and Human Rights, 2002).

5.8 Protecting the Victims' Dignity


● Treatment of victims with respect and recognition

Prosecutors and judges should treat victims and witnesses with courtesy, respect and fairness. This not only reflects the core element of human rights but is also a precondition for the recovery of the victim and her/his ability to find a way back into a normal life. Treating (alleged) victims in a respectful manner also contributes to their greater willingness to assist in the investigation and judicial process.

Good practices already exist in cases of domestic violence or sexual violence, or other crimes that cause a serious trauma to the victim.

Prosecutors and judges may be in danger to give attention to victims only with regard to the information victims can provide or their usefulness to the criminal justice system, but granting victims basic human respect and dignity can yield many benefits. It assures victims that the community condemns victimisation in general and wants justice to be done. This is basic to the victims recovery. The right of the victims to recover can be violated if pressure is put on them to give evidence against the traffickers.

The concept of human rights is based on the assumption of the dignity of all persons. A person who has suffered violence is entitled to measures of (moral and legal) redress, reaffirming her/his dignity and rights that form the basis of her/his social personality. The term “victim”, however, is not used to label trafficked persons as powerless human beings, but rather as a legal term provoking certain legal consequences.

The protection of the victim’s dignity also includes the right to be treated equally, regardless of the victim’s social background, ethnicity, colour, gender, religion, and so on. The UNHCHR Principles and Guidelines express the need to take “particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory manner” (Guideline 1 (4)). It is, therefore, important to avoid any statement in court procedures that could be experienced by the victims as discriminating against them. This is of particular relevance with regard to women who have worked in the sex industry. 

Countries have to actively respond to discrimination, for example, by granting children additional rights to support in criminal proceedings or by placing emphasis on the necessity to counteract violence directed against women or against migrants.


The **Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime**¹³⁷ recognise that improved responses to child victims and witnesses of crime can make children and their families more willing to disclose instances of victimisation and more supportive of the justice process. As soon as a child victim is identified, a guardian should be appointed to accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented. To the extent possible, the same person should be assigned to the child victim throughout the entire process.¹³⁸ The guardian has to ensure that all decisions are taken in the child’s best interest and thus advance the child’s right to be treated with dignity.

● **The protection from secondary victimisation**

There are **several interests of the victim** at stake that have to be taken into account:

If victims show up at the courthouse, they can be attacked when entering or followed when leaving the premises. Even within the courthouse they can be attacked or threatened by the perpetrators (security risks). Excessive questioning can result in a mental overstrain and cause secondary victimisation, particularly when questions show disrespect to victims. When victims have to report on their experiences in front of the public, this will often result in feelings of shame or guilt, particularly when their intimate life is involved (moral stress).

Victims of trafficking should be accompanied in the courtroom by a supportive person of their own choice. If the victim of trafficking is a female, she will find it particularly encouraging to be accompanied by another woman. Usually this will be the woman who takes care of the victim within the support agency.

The Council of Europe Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on action against trafficking in human beings for the purpose of sexual exploitation in paragraph 28 also asks Member States to provide victims with “special (audio or video) facilities to report and file complaints, and which are designed to protect their private lives and their dignity and reduce the number of official procedures and their traumatising effects”. 

5.8.1 Avoiding Repetition of the Testimony

Every time the victim is obliged to tell her/his story, the trauma repeats. All legal means should be used, in conformity with the criminal code of procedure, to avoid further repetition of the victim’s examination. According to the European Court of Human Rights, it does not necessarily violate the rights of the defence, to use statements that have been obtained **during the police and judicial investigation** as evidence.

Co-operation between judicial authorities and law enforcement authorities (police), who might have conducted the initial questioning and collected information, is essential. However, the defendant must be given an adequate

¹³⁷ Economic and Social Council resolution 2005/20 of 22 July 2005 (www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf).

¹³⁸ UNICEF Guidelines for the Protection of Children Victims of Trafficking in Southeast Europe, op. cit.

and proper to challenge and question a witness against him. Also **the use of audio and video technology** for taking evidence and conducting and recording hearings helps to avoid that the victim has to repeat the testimony.

5.8.2 Avoiding Visual Contact with the Defendant

Equally, meeting the defendant face to face can overstrain victims-witnesses mentally, which may deter victims-witnesses from giving testimony. Visual contact between and simultaneous presence of victims and offenders in court should be avoided. This can be achieved, for example, through the use of **audio-video facilities**, that is, the victim testifies in another room and the statement is transmitted via live feed to a court television.



Accordingly, **art. 8** of the **Council Framework Decision on the standing of victims in criminal proceedings**¹³⁹ provides that the contact between victims and offenders within the courts premises should be avoided, “unless criminal proceedings require such contact” and, where appropriate, **special waiting areas** for the victims should be provided. Art. 8, paragraph 4, states that: “where there is a need to protect most vulnerable victims from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles”.

It is advisable that the accused be asked to leave the courtroom for the duration of the questioning of the victim. The questioning of the victim can be interrupted to allow the defence counsels to consult with their clients. In any case, the defence counsels will be allowed to inform their clients following the testimony of the victim.

To safeguard the interests of the victim, a very important tool is the taking of evidence with closed-circuit television. This allows the victim to be visually and acoustically present at court hearings without entering the courthouse. The victim can stay in a friendly and comfortable atmosphere while her rights are exercised in court by her legal counsel.

Such a solution needs timely preparation and requires adequate equipment. But it is a highly appropriate way to meet the legitimate interests of both the defendant and the victim. On the one hand, the defendant’s counsel can exercise the defendant’s right to confront the victim. On the other hand, this is done at a secure distance, limiting the risk of intimidation.

However, all efforts to protect the victim against confrontation with the defendant have to take into account that, from a legal point of view, these efforts are limited by the adversarial nature of criminal proceedings. Indeed, according to the case law of the European Court of Human Rights, it is a fundamental aspect of a fair trial (guaranteed by art. 6 EHRC) that criminal proceedings should be adversarial.¹⁴⁰ This means that both prosecution and defence must be given the opportunity to comment on the evidence introduced by the other party.



With regard to witnesses, according to art. 6, paragraph 3(d) EHRC, everyone charged with a criminal offence has, as a minimum right, the right to “examine or have examined witnesses against him”.¹⁴¹

The Court has, however, in a number of cases, ruled that the right to an adversarial trial is not absolute. In any criminal proceeding there may be competing interests, such as the need to protect witnesses at risk of reprisals or to keep secret certain police methods of crime investigation. These interests must be weighed against the rights of the accused.

The Doorson judgement states:

“It is true that art. 6 does not explicitly require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However, their life, liberty or security of person may be at stake, as may interests coming generally within the ambit of art. 8 (art. 8) of the Convention. Such interests of witnesses and victims are, in principle, protected by other, substantive provisions of the Convention, which imply that Contracting States should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled. Against this background, principles of fair trial also

¹³⁹ Framework Decision of 15 March 2001 2001/220/JHA on the standing of victims in criminal proceedings, Official Journal L 082, p. 0001 – 0004.

¹⁴⁰ Inquisitorial – adversarial legal systems: the role of judges in trafficking cases depends on the respective national legal system. In inquisitorial systems the court plays an active role in determining the facts of the case, whereas in adversarial system the court neutrally decides based on the evidence produced and presented by the parties of the case. However, even in the adversarial system the judge may participate in the fact-finding phase by questioning witnesses and so on. The adversarial law system is usually applied in common-law countries.

¹⁴¹ Brandstetter v. Austria, 28 August 1991, Series A no. 211, paras. 66-67; case of Rowe and Davis v. The United Kingdom, 16 February 2000, para. 60; P.G. and J.H. v. The United Kingdom, 25 September 2001, para. 67.

require that, in appropriate cases, the interests of the defence are balanced against those of witnesses or victims called upon to testify.”

Indeed, the necessity to take the rights of the victim into account and, moreover, to balance these rights against the rights of the defendant, such as the right to a fair trial, are relatively new issues for prosecutors and judges, which require special consideration and training, particularly when it comes to victims of violence, to severely traumatised or highly vulnerable victims.

On the one hand, art. 6 does allow a balancing against the interests of the victim. On the other hand, only those restrictions on the rights of the defence, which are strictly necessary, are permissible. Moreover, to ensure that the accused receives a fair trial, any difficulty caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities.¹⁴²

In effect, no conviction may be based, either solely or to a decisive extent, on the statement of witnesses of which the defendant was not able to confront, either as a consequence of the absence or the anonymity of the witness.¹⁴³ Furthermore, even when the judgement is based on additional evidence which the defendant had the possibility to challenge, as long as the unchallenged statement of a witness is among the grounds on which the defendant's conviction is based, the court is obliged to strive to counterbalance the handicaps on the defence rights of the accused, particularly by examining the manner and the circumstances in which the unchallenged statement has been obtained.¹⁴⁴

It has to be remembered that the court does not stop at finding that one of the elements of art. 6 (fair trial) has been disregarded, but goes further to indicate a breach of the whole of art. 6. The requirements of art. 6 (3) are seen as particular aspects of the right to a fair trial guaranteed by art. 6 (1). Therefore, in the end the crucial question with regard to art. 6 is always whether or not “the proceedings as a whole, including the way in which the evidence was obtained, were fair”,¹⁴⁵ even including appeal procedures.¹⁴⁶

Finally the Court reaches the conclusion that the criminal proceedings against the applicant, taken as a whole, cannot be regarded as unfair or in breach of art. 6 EHRC.

In the present context, the recent case of *S.N. v. Sweden*¹⁴⁷ is significant, dealing with sexual child abuse. M., a ten-year-old boy, had been questioned by the police and the interview was recorded on videotape. The defendant's counsel, on receiving a copy of the report of the preliminary investigation, requested that M. be interviewed again. This second interview was recorded on audiotape. The defendant's counsel, finding that the issues raised in his request had been covered, did not call for a further interview.

The ECHR observed that the two statements made by M. “were virtually the sole evidence on which the Court's findings of guilt were based. (...) It must therefore be examined whether the applicant was provided with an adequate opportunity to exercise his defence rights within the meaning of art. 6 of the Convention in respect of the evidence given by M.” The Court then remarks:

“The Court has had regard to the special features of criminal proceedings concerning sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. In the assessment of the question of whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the private life of the perceived victim.

Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence”.

¹⁴² *Doorson v. the Netherlands*, 26 March 1996, Reports of Judgements and Decisions 1996-II, para. 70; *Van Mechelen and Others v. the Netherlands*, 23 April 1997, Reports of Judgements and Decisions 1997-III, paras. 54 and 58; *Rowe and Davis Case*, para. 61; *P.G. & J.H. case*, para 68.

¹⁴³ *Case of Birutis and Others v. Lithuania*, 28 March 2002, para. 29.

¹⁴⁴ *Birutis Case*, para. 34.

¹⁴⁵ E.g. case of *Allen v. United Kingdom*, 5 November 2002, para. 42.

¹⁴⁶ *Case of Sipavicius v. Lithuania*, 21 February 2002, para 30.

¹⁴⁷ *Case of S.N. v. Sweden*, 2 July 2002.



Following the testimony, the outcome has to be submitted in a written version to the defendant and his counsel in order to allow them to ask for additional questions. This gives effect to the right of the defendant under art. 6 (right to a fair trial), paragraph 3 (d) EHRC, to confront the victim-witness. If such additional questions are proposed again, the victim will have to be asked to testify in-camera (e.g. in a private room).

The documentation can then be introduced in the court trial. If it is not necessary, or not possible, to render anonymity to the victim, then the best way to organise the testimony of the victim is by videotaping her or his statements. In this case, either the defence counsel may be allowed to be present at the hearing in-camera or, if this would pose a risk to the safety of the victim or to the process of her recovery, the defendant and his counsel can again be informed of the outcome of the interview (e.g. through audiotape) later on and ask for supplementary questions to be forwarded to the victim during a second hearing in-camera.



During the hearing, the risk of intimidation and of secondary victimisation will be at its greatest. Many jurisdictions have adopted laws and practices seeking to minimise this risk. In trafficking cases, it is indispensable to find, within the framework of national legislation and with the available technical equipment, a solution that allows the victim to testify without being confronted with the offender.

5.8.3 Questioning the Victim¹⁴⁸

It is during the questioning time that judges and prosecutors are very much confronted with the effects of traumatisation of the victim. The questioning of the victim should be restricted to what is absolutely indispensable, excessive questioning should be avoided. Questions on the previous private (and sexual) life of the victim should be forbidden, unless it is absolutely necessary to ascertain the facts, which are at the core of the indictment.

Interviewing a person who has been trafficked raises a number of ethical questions and safety concerns. The World Health Organization has developed a set of recommendations based on a set of ten guiding principles to the ethical and safe conduct of interviews with women who have been trafficked.

Even though the recommendations are focused on female victims, they apply also to other victims of human trafficking.

- **Do no harm**

Treat each woman and the situation as if the potential for harm is extreme until there is evidence to the contrary. Do not undertake any interview that will make a woman's situation worse in the short term or longer term.

- **Know your subject and assess the risks**

Learn the risks associated with trafficking and each woman's case before undertaking an interview.

- **Prepare referral information - do not make promises that you cannot fulfil**

Be prepared to provide information in a woman's native language and the local language (if different) about appropriate legal, health, shelter, social support and security services, and to help with referral, if requested.

- **Adequately select and prepare interpreters and co-workers**

Weigh the risks and benefits associated with employing interpreters, co-workers or others, and develop adequate methods for screening and training.

- **Ensure anonymity and confidentiality**

Protect a respondent's identity and confidentiality throughout the entire interview process – from the moment she is contacted through the time that details of her case are made public.

- **Get informed consent**

Make certain that each respondent clearly understands the content and purpose of the interview, the intended use of the information, her right not to answer questions, her right to terminate the interview at any time, and her right to put restrictions on how the information is used.

¹⁴⁸ Source: World Health Organization, WHO: Ethical and Safety Recommendations for Interviewing Trafficked Women (Geneva, WHO, (2003) (<http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf>).

- **Listen to and respect each woman's assessment of her situation and risks to her safety**
Recognise that each woman will have different concerns, and that the way she views her concerns may be different from how others might assess them.
- **Do not re-traumatise**
Do not ask questions intended to provoke an emotionally charged response. Be prepared to respond to the person's distress and highlight her strengths.
- **Be prepared for emergency intervention**
Be prepared to respond if a person claims to be in imminent danger.
- **Put information collected to good use**
Use information in a way that benefits an individual or that advances the development of good policies and interventions for trafficked persons generally.

The testimony of a child victim should be obtained with the assistance of a psychologist, possibly using videofacilities. Any further hardship has to be avoided.

Judges and prosecutors have to consider when questioning the victim that traumatising can be responsible for a credibility gap, as the victim may defend the offender, show indifference, numbness, dwell on irrelevant issues, have blackouts, avoid to talk about what happened, etc. (chapter 2.) It has to be respected that victims may often not be able to testify systematically.

Children have to be questioned in a child-sensitive manner,¹⁴⁹ taking into account the child's individual needs and views.¹⁵⁰ Therefore child victims should only be questioned about their experience in the presence of their guardian.

5.8.4 Using Evidence Obtained in the Pre-Trial Phase

As described earlier, it has to be avoided that victims are confronted with traffickers during court proceedings. One strategy to avert such confrontation is to secure a well-documented, preferably videotaped statement of the victim before court hearings and to later introduce this statement into proceedings. Normally this is not possible in an adversarial system. Therefore, other means must be used, enabling the victim to give evidence, possibly through cross-examination, at an early stage of the procedure. The record of the testimony should be used in the trial. For example, under Italian law, the main way of protecting the trafficked person's safety when she/he gives testimony is through using the *incidente probatorio* (special evidence pre-trial hearing). It is a closed hearing and generally used in cases where there is a danger that evidence may be interfered with; it may also be provided in cases where witnesses may be pressured not to testify, or if there are grounds to think that the person cannot be examined in the trial, for instance because she/he probably will return to the country of origin.

In any case, close co-operation between law enforcement authorities that usually have the first contact with the victim and the judiciary is indispensable. Also evidence obtained through proactive investigation means, such as phone tapping, electronic surveillance, undercover operations and so on.

5.9 The Right to Legal Stay

Granting persons who have been trafficked a permit to stay in the destination country will be advantageous for all parties: for victims a legal status is the basis of support, protection and usually recovery - for the judiciary legally residing victims-witnesses ensure more successful operations.

It cannot be overemphasised that a residence permit should not depend on the willingness (or ability) of the victim to co-operate with law enforcement authorities. If the residence permit is based on judicial co-operation,

¹⁴⁹ UNICEF Guidelines for the Protection of Children Victims of Trafficking in Southeast Europe, op. cit.

¹⁵⁰ Commission on Crime Prevention and Criminal Justice, Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, May 2005.

the following questions and notions have to be taken into consideration:

- Is a victim's statement really helpful? The person probably does not know too much about the criminal organisation, she/he is threatened, feels used by authorities and fears deportation after the trial;
- In line with international human rights standards the right to safety of the person should be the first priority.

To deny the victim the right to residence permit gives the victim no other choice but to leave the country and accept repatriation respectively. Judges and prosecutors could consequently easily get the impression that the victim wants to return by all means. Judicial authorities should bear in mind that a **supposed voluntary return** of victims could be due to the **lack of residence possibilities** and alternatives. Victims could also easily fall back in the same vicious cycle or even become traffickers themselves.

In cases where the victim does not co-operate with authorities, and co-operation is an essential pre-condition for a residence permit, the principle of non-refoulement could also provide for a residence permit.



This principle, according to art. 33 of the Geneva Refugee Convention, means that no state shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a **particular social group**¹⁵¹ or political opinion. Most countries have this principle entrenched not only in their asylum but also their immigration laws. In most if not all countries it is also illegal to deport a person to a country where there are cogent reasons to believe that the person's life or physical integrity will be in danger, due to inhuman and degrading treatment. Though it is usually the immigration authorities that issue residence permits based on this principle, it is indispensable for judicial authorities to be very aware of this international standard, as their assessment of the situation might be very powerful.

5.9.1 Avoiding Deportation Following a Risk Assessment

The decision to deport a person in the trafficking context is not to be made lightly. It intrudes severely into this person's rights and will often affect the rest of the person's life. Therefore, it is highly desirable that this decision is taken by a court, or at least under strict scrutiny of a court. Decisions to repatriate victims of trafficking must be made "with due regard for the safety" of the victims (art. 8, para. 2, UN Trafficking Protocol).



Such decisions have to be taken in the light of art. 3 ECHR, prohibition of torture. The European Court of Human Rights decided in several cases,¹⁵² that the deportation of persons who run the risk of being ill-treated in their home country would violate art. 3 ECHR. The Court also decided, owing to the absolute character of the right guaranteed, that it would not rule out the possibility that art. 3 may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it had to be shown that the risk was real and that the authorities of the receiving state were not able to obviate the risk by providing appropriate protection.¹⁵³

The Court has maintained in several decisions that art. 3 ECHR requires states to take measures designed to ensure that individuals are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals, and to provide effective protection for the individual's safety, in particular of children and other vulnerable persons.



In effect this amounts to the following:

- When making decisions on the deportation of victims of trafficking, courts (and other authorities) have to take into account whether or not the victim runs a concrete risk of being ill-treated by traffickers in her/his home country and whether or not the authorities of this country can guarantee the safety of the victim and, by that, cope with the risk the victim was exposed to.
- Therefore, a comprehensive risk assessment is needed, taking into account the behaviour of the traffickers, to what extent the behaviour of the victim gives reason to fear acts of revenge and the security situation at the place where the victim would live in her/his home country. In accordance with the jurisdiction of the European Court of Human Rights, the assessing authority will have to take into consideration to what degree the authorities in the country of origin will be able and will be willing to safeguard the physical integrity of the victim.

¹⁵¹ Broad interpretation of the term "social group".

¹⁵² H.L.R. v. France, 22 April 1997, <http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>.

¹⁵³ Ibid.

5.9.2 Avoiding Deportation Considering Family Links in the Country of Destination

Prosecutor and judges thus have to take the family situation of the trafficked person into account when any decision or opinion related to a residence permit or an expulsion has to be taken by the competent authorities. The European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates in art. 8:

The right to respect for private and family life

- Everyone has the right to respect for her/his private and family life, home and correspondence;
- There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

This principle is presumably established in all EU Member States and accession and candidate countries. It is the obligation of criminal justice authorities to ensure that this standard is not violated.

A decision of the European Court of Human Rights recognises a right of the person not to be deported, in connection with family relationship in the receiving country.

5.9.3 Cases of the European Court of Human Rights

Jacupovic v. Austria – 6.5.03 (under art. 8)

In this case the applicant, who was born in 1979, had been convicted for burglary. In 1995 the competent authority issued a ten year prohibition of residence in Austria, without taking into consideration his family links in that country. In fact the applicant, who was a minor, had lived with his mother in Austria, while he no longer had contact with his father living in Bosnia.

The Court stated that the expulsion of a person from a country where close members of his family are living might amount to an infringement of the right to respect for family life guaranteed by art. 8.

It is the first time the Court applies this principle in a case concerning not extradition but expulsion, which had previously been regarded as a realm not covered by the Convention.

Cruz Varas v. Sweden – 20.3.91 (arts. 3 and 8 EHRC)

The case concerned the expulsion from Sweden to Chile of a couple and their child, as a consequence of a denial of refugee status.

Recalling its decision in the case *Soering v. United Kingdom* of 1989,¹⁵⁴ the Court reaffirmed the applicability of art. 3 to the extradition, enlarging the scope to expulsion measures, and a fortiori when those decisions are enforced.

In this case the Court stated that there was no sufficient evidence that the expulsion would have caused a trauma, which could be considered as implying a violation of art. 3, or that the applicant could not have had a normal family life in the country of origin.

However, the decision implies that, under certain circumstances, the expulsion can be considered to be illegitimate, when it exposes the person to a risk of torture or inhuman treatment.

Chahal v. United Kingdom – Report of 15.11.96

The Court decided that the deportation of the Chahal family, who were Sikhs, to India would have exposed the applicants to the risk of being ill-treated and therefore violated art. 3.

H.R.L. v. France – 29.4.97 (under art. 3 EHRC)

¹⁵⁴ *Soering v. United Kingdom* of 1989 was a case where extradition to the US, for a conviction implying the possibility of applying the death penalty in Virginia, and detention on death row, was considered to be a violation of art. 3 of the Convention.



The applicant alleged that his deportation to Colombia would have exposed him to retaliation by drug traffickers in his country of origin. Also in this case, the Court decided that evidence that the situation in Colombia was so serious that the person could be considered really in danger was not sufficient. In principle the Court stated, however, that the person should have been protected if there had been evidence that not only her/his life would have been at risk, but that they risked a treatment comparable to torture under art. 3 of the EHRC.

5.10 The Right to Compensation

Without a doubt a trafficked victim is entitled to receive an adequate compensation.¹⁵⁵ Compensation may provide the primary means of financial aid in the aftermath of victimisation. Not only the physical and psychological impact of the crime but also its financial impact can be devastating.¹⁵⁶ Victim compensation does not require the apprehension and conviction of the offender to provide financial relief to the victims.

According to the UN Trafficking Protocol, art. 6 (6), states parties have to ensure that measures exist to allow victims the opportunity to seek compensation for damages suffered. In some countries appropriate schemes offering at least the possibility of obtaining compensation might be already in place, otherwise legislation will be required. The UN Trafficking Protocol does not specify any potential source of compensation, which means that any or all of the following general options would suffice to meet the requirement of the Protocol:¹⁵⁷

- Provisions allowing victims to sue offenders or others under statutory or common-law torts for civil damages;
- Provisions allowing criminal courts to award criminal damages (that is, to order that compensation be paid by offenders to victims) or to impose orders for compensation or restitution against persons convicted of offences; and
- Provisions establishing dedicated funds or schemes whereby victims can claim compensation from the state for injuries or damages suffered as a result of a criminal offence.

Prosecutors and judges should play a major role in ensuring that victims receive compensation.

5.11 The Victim's Exemption from Prosecution

Characterising a trafficked person as a victim of crime implies that the trafficked person may not be treated as a criminal. In many cases, though, the very victim that requires support and protection has her/himself committed offences under immigration, labour and other laws. It is not appropriate to treat such a victim as an offender, when the victim has acted under the duress and coercion of a trafficker or a trafficking ring. At the same time, given the victim's fear for her/his personal safety and likelihood of reprisals by the traffickers, the additional fear of prosecution and punishment can all the more prevent the victim from seeking protection, assistance and justice.

- **Non-punishment clause:**

The principle of the victim's exemption from prosecution confirms the need for an early and careful identification of victims.

Where a non-punishment clause for trafficked persons is not yet stipulated by national legislation, prosecutors and judges should apply, through an extended interpretation, the general clause of non-punishment, provided in every penal code, stating that nobody can be punished for an act committed under coercion, (at least in the most serious cases, where there is a lack of self-determination as a consequence of a slavery-like practice). The application of the clause should be not discretionary when the legal requirements are met. Typically, a nation's non-punishment clause applies at least to all crimes related to illegal border crossings, or occurring while the individual was under the influence of the traffickers. If national legislation allows, prosecutors should consider the possibility of granting immunity under certain conditions to victims of trafficking.

¹⁵⁵ Eg. the assumed salaries, but not only, as e.g. in countries where prostitution is regarded as immoral, salaries cannot be assumed.

¹⁵⁶ Handbook on Justice for Victims, op. cit.

¹⁵⁷ United Nations Office on Drugs and Crime, Legislative Guide..., op. cit.

International standards recognise that trafficked persons should not be prosecuted for any offences connected to the condition of being a victim of trafficking; they should be treated as victims first and foremost. There are also non-binding guidelines,¹⁵⁸ action plans,¹⁵⁹ declarations and resolutions¹⁶⁰ suggesting that trafficked persons should be exempted from being prosecuted for their illegal entry, residence, work and so on.

The **UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking** provide a number of elements on non-criminalisation of trafficked persons:

Principle No.7

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

Guideline No. 4 (5)

States should consider ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.

Guideline No. 8 (3)

States should consider ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

Also the CoE Convention on trafficking contains a specific non-punishment clause:

Art. 26: Non-punishment provision – “Each State Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

Children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses.¹⁶¹

5.12 Sentencing the Perpetrators

Very often domestic laws link the admissibility of instruments of law enforcement, in both national proceedings and in international co-operation, to the severity of the crime, which is judged by the gravity of sanctions. Therefore, the lack of adequate sanctions not only fails to serve as a means of effective prevention, but also impairs the effectiveness of proceedings.¹⁶²

Very often the sanctions for trafficking in human beings are too weak and do not have a deterrent effect upon traffickers. The UN Trafficking Protocol does not stipulate sentences. Nevertheless, there are legal instruments which shed light on this. At the EU level, art. 3 of the Framework Decision of 19 of July 2002 (which is binding for the Member States and that should have been incorporated in the national legislation by August 2004 – chapter 3), states that each Member State shall take the necessary measures to ensure that an offence of trafficking as defined by the UN Trafficking Protocol is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

In case the offence has endangered the life of the victim, committed against a particularly vulnerable person, by use of serious violence or has caused particularly serious harm to the victim or the offence has been committed within the framework of a criminal organisation, the Framework Decision provides a penalty of not less than eight years.

¹⁵⁸ UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking.

¹⁵⁹ Decision No. 557 – OSCE Action Plan to Combat Trafficking in Human beings – July 2003, <http://www.osce.org/docs/english/pc/2003/decisions/pced557.pdf>.

¹⁶⁰ General Assembly resolution 55/341 on the "Implementation of the outcome of the Fourth World Conference on Women and of the special session of the General Assembly".

¹⁶¹ Commission on Crime Prevention and Criminal Justice, Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, May 2005, no. 7 (e).

¹⁶² Kartusch, Angelika, Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe, (Warsaw, 2001).

5.13 Post-Trial Phase

It is essential that victim support activities continue after the trial. However, once the trial is over, the victim-witness is no longer needed by the prosecuting authorities. Depending on national alien laws and the state of origin, the victim-witness will now either be requested to leave the country, or be allowed to remove temporarily if her/his life is at risk, or be free to choose whether to stay or return. In the case that victims must return to their countries of origin, it is important that the concept covers co-operation between witness-protection, the aliens' office and the counselling centre to ensure victim and counsellor are given enough time to organise the return and plan re-integration measures.

6

International Co-Operation in Criminal Matters

6 International Co-Operation in Criminal Matters

6.1 Abstract – Learning Objectives

This chapter is structured according to the relevant instruments for international co-operation to be used by the judiciary in the fight against trafficking in human beings, with an emphasis on co-operation within the **European Union**. Taking into account the scope of each convention, agreement and (framework) decision for each instrument, the **regulation** in conventions, agreements and/or (framework) decisions is indicated. In order to make this chapter more useful in practice, information regarding the **entry into force** of the conventions and agreements will be added. When available and relevant, the information concerning the instruments is supplemented with **case law** in which the specific instruments were used.

For each section the following questions will be answered:

1. Which instruments are included in the relevant conventions, agreements or (framework) decisions and how can they be used (by which authority, on which conditions, etc.)?
2. In which cases have problems regarding the use of these instruments occurred?
3. Has the specific convention, agreement or (framework) decision entered into force?

In general, the emphasis is on judicial co-operation in criminal matters. However, since police co-operation cannot be completely independent from judicial co-operation, instruments of police co-operation have also been included in this chapter.

Given the importance of the involvement of **Eurojust** and **Europol** for international co-operation in criminal matters within the European Union, both institutions will be the subject of a separate section.

At the end of this section the trainee will know:

- Which instruments for international co-operation at the levels of the United Nations, the Council of Europe and the European Union (including the Schengen “acquis”) can be applied by the judiciary in cases concerning trafficking in human beings
- How the application of these instruments is regulated
- Which problems can occur using these instruments in practice

6.2 Cross-border Co-operation and Co-ordination

Given the extent of the subject and the variety in instruments for international co-operation in criminal matters, this section has been subdivided in three subsections. **Firstly**, the **general rules** concerning requests for international co-operation in criminal matters in general shall be dealt with, **followed by** the **specific requests** that can occur in the field of trafficking in human beings. **Thirdly**, a **list of other requests** is included. The latter has, for reasons of efficiency, also several subsections.

6.2.1 General Rules regarding Requests for International Co-operation in Criminal Matters

- **United Nations**

TOC Convention: all mutual legal assistance provisions regarding the Convention against Transnational Organized Crime are laid down in **art. 18**. It includes a list of purposes for which mutual assistance can be requested, the possibility to transmit information spontaneously and the temporary transfer of persons. Moreover the way in which requests for mutual legal assistance are to be made, which data they should contain and to which authority they should be addressed. There are also rules governing the execution of these requests.

- **Council of Europe**

CoE Mutual Legal Assistance Convention: arts. 2-6 and arts.14-20: The CoE MLA Convention contains basic rules to be applied in the requesting of mutual legal assistance and the execution of these requests. Its Additional Protocol extends the scope of the Convention to fiscal offences, but also comple-

ments the system of mutual legal assistance provided in the Convention.¹⁶³ The Second Additional Protocol is meant to improve and supplement the Convention by modernising the existing provisions governing mutual assistance, extending the range of circumstances in which mutual assistance may be requested, facilitating assistance and making it quicker and more flexible. In this view, the text is largely based on the EU MLA Convention and the Schengen Implementation Convention.¹⁶⁴

- **Additional Protocol to the CoE MLA Convention: art. 2** provides the condition of double criminality regarding fiscal offences
- **Second Additional Protocol to the CoE MLA Convention: art. 2** allows the presence of officials at the execution of requests for mutual assistance under certain conditions
- **Second Additional Protocol to the CoE MLA Convention: arts. 4-8** regarding the different channels of communication to be used to transmit request for mutual legal assistance

CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime: arts. 18-20 and arts. 23-35 contain the general rules for co-operation between states in the framework of this Convention which is meant to facilitate international co-operation as regards investigative assistance, search, seizure and confiscation of the proceeds from all types of criminality, especially serious crimes, and in particular drug offences, arms dealing, terrorist offences, trafficking in children and young women and other offences which generate large profits.¹⁶⁵

- **European Union**

Schengen Implementation Convention: arts. 48-53 are the articles included in chapter 2 of the Convention, dedicated to mutual assistance in criminal matters, intended to supplement the CoE MLA Convention and the Benelux Treaty of 27 June 1962 on Extradition and Mutual Assistance in Criminal Matters.

Naples II Convention: while arts. 8-14 provide the rules for assistance on request in the framework of criminal investigations concerning infringements of national and Community customs provisions, art. 19 is dedicated to the principles governing the special forms of co-operation that are included later in this chapter.

EU MLA Convention: arts. 4-6 govern the general rules applicable to requests for mutual legal assistance formulated within the scope of this convention and include the formalities and procedures in the execution of requests, the sending and service of procedural documents and the transmission of requests for mutual assistance.

- **Protocol EU MLA Convention: art. 6** regulates the making of additional requests for mutual legal assistance
- **Protocol EU MLA Convention: art. 10** ascertains that the refusal of a request for mutual legal assistance that is refused on the basis of specific grounds is forwarded to the Council and that Eurojust is involved on the initiative of requesting states when problems are encountered concerning the execution of certain requests.

MLA Agreement EU-US: art. 7 allows for the accelerated means of communication, including fax or e-mail providing a formal confirmation to follow when the requested state so requires.

6.2.2 Specific Requests in the Fight against Trafficking in Human Beings

- **UN Trafficking Protocol**

Art. 10 of the Trafficking protocol provides for the co-operation between law enforcement, immigration or other relevant authorities of states parties. These authorities should co-operate with one another, as appropriate, by exchanging information to enable them to determine:

¹⁶³ Cf. "Explanatory report on the Additional Protocol to the European Convention on mutual assistance in criminal matters" (<http://conventions.coe.int/-/Treaty/EN/cadreprincipal.htm>).

¹⁶⁴ Ibid.

¹⁶⁵ Cf. "Explanatory report on the Convention on laundering, search, seizure and confiscation of the proceeds from crime" (<http://conventions.coe.int/-/Treaty/EN/cadreprincipal.htm>).

- Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- The means and methods used by organised criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

● UN Smuggling Protocol

Arts. 8 and 9 of the Smuggling Protocol provide for concrete measures to be taken by states parties in co-operation with other states parties against vessels regarding which the state has reasonable grounds to suspect that the vessel is engaged in the smuggling of migrants by sea.

Art. 10 of the Smuggling Protocol, states parties can exchange relevant information in order to achieve the objectives of the protocol on matters such as:

- Embarkation and destination points, as well as routes, carriers and means of transportation;
- The identity and methods of organisations or organised criminal groups;
- The authenticity and proper form of travel documents issued by a state party and the theft or related misuse of blank travel or identity documents;
- Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents and ways of detecting them;
- Legislative experiences and practices and measures to prevent and combat the conduct set forth in art. 6 of this Protocol; and
- Scientific and technological information useful to law enforcement.


6.2.3 Other Requests in the Fight against Trafficking in Human Beings

● Sending of procedural documents, service of writs and records of judicial documents

The sending of procedural documents such as summons (for example for the summoning of witnesses, accused persons and experts to hearings) and court decisions to persons who are on the territory of another state should be done as efficiently as possible in order to serve the swift course of justice. Rules concerning the sending of these documents and the language in which they should be sent are provided in the following conventions and protocols.

Council of Europe:

CoE MLA Convention: arts. 7-12

CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime: art. 21 concerns the serving of judicial documents to persons affected by provisional measures and confiscation. 

Second Additional Protocol to the CoE MLA Convention: art. 15 regulates the language in which procedural documents and judicial decisions are to be transmitted and art. 16 concerns the service by post of procedural documents and judicial decisions to persons who are in the territory of any other state party.

European Union:

EU MLA Convention: art. 5 provides the general rule of sending procedural documents intended for persons who are in the territory of another Member State by post and the specific exceptions to this rule. 

● Provisional measures

For the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests, a state can take provisional measures. The rules governing the taking of provisional measures in another state through requests for mutual assistance are to be found in the following instruments:



Council of Europe:

Second Additional Protocol to the CoE MLA Convention: art. 24 covers the taking of provisional measures within the scope of the Protocol.

CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime: arts. 11 and 12 provide an obligation for the requested state party to take provisional measures (such as freezing or seizing property) and rules on the execution of provisional measures.

● **Appearances and hearings**

In this subsection the central focus is on ensuring the appearance of certain persons (witnesses, experts, etc.) and organising hearings. Several problems may occur:

- A witness or expert may fail to respond to a summons to appear;
- A person whose appearance (as a witness or for purposes of confrontation) is needed may be in custody in another state;
- A witness or expert may be concerned about prosecution or deprivation of his personal liberty; or
- The appearance of a witness or expert in the territory of a specific state may be undesirable (e.g. the young or old age or bad health of the witness)¹⁶⁶ or impossible for other reasons (e.g. the witness could be in danger when appearing in the requesting state).¹⁶⁷

The solutions to these problems provided in the relevant conventions and agreements are indicated in the following subsection.

● **Appearances of witnesses, experts and prosecuted persons**

Council of Europe:



CoE MLA Convention: arts. 8 and 9 refer to all witnesses and experts whether their personal appearance in another state has or has not been expressly requested, while Art. 10 elaborates on the rules concerning these requests. Art. 11 provides in the temporary transfer of persons to another state who are in custody and whose personal appearance as a witness or for purposes of confrontation is requested. Art. 12 ensures immunity for witnesses and experts summoned to appear in another state.

Second Additional Protocol to the CoE MLA Convention: art. 14 concerns the application of arts. 11 and 12 CoE MLA Convention to persons who are in custody in the requested state, pursuant to having been transferred in order to serve a sentence passed in the requesting state, where their personal appearance for purposes of review of the judgement is applied for by the requesting state.

● **Hearings by video-conference**

United Nations:

TOC Convention: art. 18, para.18, provides for the possibility for a hearing to take place by video conference if it is not possible or desirable for the person concerned to appear in person in the territory of the requesting state.

Council of Europe:

Second Additional Protocol to the CoE MLA Convention: art. 9 (based on art. 10 of the EU MLA Convention) allows for a hearing by the authorities of a state of a witness or expert in another state to take place by video conference when it is not desirable or possible for the person to be heard to appear in the territory of the requesting state in person. The rules governing this type of hearing are also to be found in art. 9.

¹⁶⁶ Cf. "Explanatory report on the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union", Official Journal, C 379, 29 December 2000, p. 7.


¹⁶⁷ Ibid.

European Union:


EU MLA Convention: art. 10 allows for a hearing by the authorities of a state of a witness or expert in another state to take place by video conference when it is not desirable or possible for the person to be heard to appear in the territory of the requesting state in person. The rules governing this type of hearing are also to be found in art. 10.

● Hearings by telephone conference


Council of Europe:

Second Additional Protocol to the CoE MLA Convention: art. 10 (based on art. 11 of the EU MLA Convention) includes the possibility for a hearing of a witness or expert to take place by telephone conference when the person concerned is in one state and has to be heard by the authorities of another state. The rules governing this type of hearing are to be found in Art. 10. 

European Union:

EU MLA Convention: art. 11 includes the possibility for a hearing of a witness or expert to take place by telephone conference when the person concerned is in one state and has to be heard by the authorities of another state. The rules governing this type of hearing are to be found in art. 11. 

Case law: Girard v. France:

In circumstances under which a confrontation with a witness was impossible (there was no transfer of the witness, who was residing in Switzerland, according to art. 11 EU MLA Convention and there was no written questioning of the suspect since he did not request this), the use of statements of the witness does not necessarily constitute a violation of art. 6 EHRC. 


Cf. (<http://www.echr.coe.int>, accessed on 25 June 1999).

● Judicial records

Exchanging information regarding judicial records between states is an important instrument in the context of fighting international crime. A difference should be made however, between information in judicial records and information from judicial records. Information in judicial records refers to extracts from the judicial record of a certain individual and all information relating to judicial records requested in the framework of a specific criminal case. Information from judicial records refers to the automatic exchange from one state to the other of all criminal convictions (to be understood in a broad sense) and subsequent measures in respect of nationals of the latter state.¹⁶⁸

● Exchanging of information in judicial records

Council of Europe:

CoE MLA Convention: art. 13 allows for the exchange of extracts from and information relating to judicial records from the requested state to the requesting state to the same extent that these can be made available to its own judicial authorities in a similar case. 

● Exchanging of information from judicial records

Council of Europe:

CoE MLA Convention: art. 22 obliges the State Parties to regularly communicate to each other all criminal convictions and subsequent measures entered in judicial records regarding each others nationals. 

¹⁶⁸ Cf. "Explanatory report on the European Convention on mutual assistance in criminal matters and the Additional Protocol to the European Convention on mutual assistance in criminal matters" (<http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>).



Additional Protocol to the CoE MLA Convention: art. 4 complements art. 22 of the CoE MLA Convention by providing for the case that the requesting party, following the automatic communication under art. 22, requires a copy of the conviction or of any subsequent measure or some other information relevant to the specific case.¹⁶⁹

- **Laying of information in connection with proceedings**

Council of Europe:

CoE MLA Convention: art. 21 gives a State Party the possibility to request another State Party to institute proceedings against an individual. It refers in particular to cases where a person, having committed an offence in the requesting country, takes refuge in the territory of the requested country and cannot be extradited.¹⁷⁰

- **Requests for information regarding bank accounts and banking transactions**

European Union:

Protocol to EU MLA Convention: art. 1 can be used to obtain information on bank accounts in cases where the requesting state considers that the information is likely to be of substantial value for the purpose of an ongoing investigation. Art. 2 provides for assistance for the purpose of getting information on operations carried out during a certain period on a specified bank account, whereas art. 3 provides for assistance relating to the monitoring of any operations that may take place in the future on a specified bank account. Art. 4 ensures that any assistance given in accordance with arts. 1-3 is not made known to the holder of the bank account or any third persons.¹⁷¹

MLA Agreement EU-US: art. 4 contains all rules on the identification of bank information between states parties. It includes the exchange of information on whether a certain individual or legal person (suspected of or charged with a criminal offence) is holder of one or more bank accounts and the exchange of bank information for the purpose of identifying information regarding natural or legal persons convicted of or otherwise involved in a criminal offence, identifying information in the possession of non-bank financial institutions or financial transactions unrelated to accounts.

- **Exchanging information with Eurojust (cf. infra)**

European Union:

Decision setting up Eurojust: art. 13 allows states to exchange any information with Eurojust that is necessary for the performance of its tasks (cf. infra: Co-operation with Eurojust). The national members of Eurojust can also exchange information necessary for the performance of its tasks without prior authorisation, among themselves or with the authorities of member states.

- **Mutual legal assistance to administrative authorities**

European Union:

MLA Agreement EU-US: art. 8 contains provisions on mutual legal assistance to be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation.

- **Spontaneous information**

First known in the field of money-laundering (CoE Convention on laundering, search, seizure and confis-

¹⁶⁹ Cf. "Explanatory report on the European Convention on mutual assistance in criminal matters", op. cit.

¹⁷⁰ Ibid.

¹⁷¹ Cf. "Explanatory report to the Protocol to the Convention on mutual assistance in criminal matters between the Member States of the European Union", Official Journal, C 257, 24 October 2002, p. 1.

cation of the proceeds from crime), the possibility for states to offer each other information (within the limits of their own national law) about investigations or proceedings without prior request has been included in several other conventions.

Council of Europe:

CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime: without imposing an obligation on states, art. 10 introduces the possibility for states to offer each other information on criminal investigations or proceedings spontaneously. Information must not be transmitted if it might harm or endanger investigations or proceedings in the sending state.¹⁷²

Second Additional Protocol to the CoE MLA Convention: art. 11 allows states to forward information obtained within the framework of their own investigations, that might assist the receiving state in initiating or carrying out investigations or proceedings or that might lead to a request for mutual legal assistance by that state. Conditions can be attached to the use of such information.

European Union:

Schengen Implementation Convention: the possibility of exchanging information without prior request is included in art. 46 and concerns any information which may be of interest to the receiving state in helping to prevent future crime and to prevent offences against or threats to public order and security.

Naples II Convention: art. 15 contains the principle of spontaneous assistance which is applicable to the provisions in this convention on surveillance (art. 16), the exchange of relevant information concerning planned or committed infringements and the goods involved in new ways and means of committing such infringements (art. 17) and the use of evidence (art. 18).

EU MLA Convention: art. 7 contains the facilitative provision of spontaneous exchange of information relating to the criminal offences or administrative infringements within the scope of the convention. In the attachment, art. 7 also provides conditions for the use of such information.

● **Cross-border activities (police and customs co-operation)**

Cross-border observations

The possibility of police authorities keeping under observation an individual who crosses the border of the original state and enters the territory of another state, is real. Therefore, police authorities can under certain circumstances and taking particular conditions into account, be authorised to continue their observation in the territory of another state.

Council of Europe:

Second Additional Protocol to the CoE MLA Convention: art. 17 is largely based on art. 40 of the Schengen Implementation Convention with an extension of the scope of the article to cases in which the police are keeping under observation “a person who it is strongly believed will lead to the identification or location” of an otherwise wanted person.¹⁷³

European Union:

Schengen Implementation Convention: art. 40 regulates the conditions under which police authorities of a state party can be authorised to continue a cross-border observation in the territory of another state party. A procedure for urgent cases is provided. Art. 42 contains the important provision stating that officers operating on the territory of another state party during the operations referred to in art. 40 shall be regarded as officers of the latter state party with respect to offences committed against them or by them. Art. 43 regulates the case in which these officers cause damage during the course of their mission.

¹⁷² Cf. “Explanatory report on the Convention on laundering, search, seizure and confiscation of the proceeds from crime”, op. cit.

¹⁷³ Cf. “Explanatory report on the Second Additional Protocol to the European Convention on mutual assistance in criminal matters” (<http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>).

- **Cross-border pursuit**

European Union:

Naples II Convention: art. 20 provides the conditions under which the officers of customs administrations of one state party pursuing in their state and individual observed in the act of committing one of the infringements within the scope of art. 19 or participating in such an infringement, can be authorised to continue pursuit in the territory of another state party.

Schengen Implementation Convention: art. 41 regulates the conditions under which police authorities of a state party can be authorised to continue the pursuit of an individual apprehended in that state in the act of committing an offence within the scope of art. 41, in the territory of another state. A procedure for urgent cases is provided. Art. 42 contains the important provision stating that officers operating on the territory of another state party during the operations referred to in art. 41 shall be regarded as officers of the latter state party with respect to offences committed against them or by them. Art. 43 regulates the case in which these officers cause damage during the course of their mission.

- **Cross-border surveillance**

European Union:

Naples II Convention: fulfilling the conditions included in art. 21, officers of the customs administrations of one state party who are keeping under observation in their state persons in respect of whom there are serious grounds for believing that they are involved in one of the infringements within the scope of art. 19, can be authorised to continue their observation in the territory of another state.

- **Controlled delivery**

The technique of controlled delivery is a special investigative technique frequently used in criminal offences involving the trafficking of goods or persons. The Naples II Convention defines controlled delivery as the investigation technique in which suspicious or illicit consignments of goods are not seized at the frontier but are kept under surveillance until they reach their destination. The technique allows authorities to identify organisations responsible for trafficking and to prosecute the main persons involved in those organisations, rather than just seizing goods at the frontier and/or prosecuting the couriers of those goods.¹⁷⁴

Council of Europe:

Second Additional Protocol to the CoE MLA Convention: Art. 18 is based on art. 12 of the EU MLA Convention and is meant to cover offences such as smuggling of aliens or trafficking in human beings.¹⁷⁵ Derogating from the general rule, controlled deliveries according to art. 18 will take place in accordance with the procedures of the requested state party.

European Union:

Naples II Convention: art. 22 provides for the possibility of controlled deliveries to be permitted by states parties in the framework of criminal investigations into extraditable offences in accordance with the procedures of the requested state party.

EU MLA Convention: art. 12 contains the provision that states can permit controlled deliveries on its territory in the framework of criminal investigations into extraditable offences. An “extraditable offence” is to be understood in accordance with the Convention of 27 September 1996 relating to extradition between the Member States of the European Union. The controlled delivery will take place in accordance with the procedures of the requested state party.

¹⁷⁴ Cf. “Explanatory report on the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and co-operation between customs administrations”, Official Journal, C 189, 17 June 1998, p.1.

¹⁷⁵ Cf. “Explanatory report on the Second Additional Protocol to the European Convention on mutual assistance in criminal matters, op. cit.

- **Covert investigations**

Criminal investigations carried out by officers acting under covert or false identity are the subject of several provisions in the following conventions.

Council of Europe:

Second Additional Protocol to the CoE MLA Convention: art. 19 is based on art. 14 of the EU MLA Convention and is meant to make the technique of covert investigations an ultimum remedium. The requesting state party should not make a request under this article unless it would be impossible or very difficult to investigate the facts without resorting to covert investigations.¹⁷⁶



European Union:

Naples II Convention: In the context of art. 23, covert investigation means an officer of the customs administration of one state party (or an officer acting on behalf of such administration) is authorised to operate in the territory of another state party under cover of a false identity. Requests for covert investigations may only be made where it would otherwise be extremely difficult to elucidate the facts. In the course of covert investigations, officers are authorised only to collect information and make contact with suspects or other persons associated with them. The investigation should be conducted under conditions set by the national law of the State Party where it occurs, and must be of limited duration.¹⁷⁷



EU MLA Convention: Under art. 14, assistance may be requested to enable an undercover agent to operate in the requested Member State or, alternatively, for the requested Member State to be able to send an agent to the requesting Member State. In addition, the requested Member State could be asked to provide an undercover agent to carry out a covert investigation on its own territory.¹⁷⁸

The investigation should be carried out in accordance with the national law and procedures of the requested state party. Both states parties involved should agree on the duration of the covert investigation, the detailed conditions and the legal status of the officers during the investigation.

- **Joint investigation teams**

Joint investigation teams are an investigation technique developed for the first time in the Naples II Convention. The technique consists of the co-operation between police officers of two or more states in the framework of a criminal investigation that has links with all states involved. For a certain period of time, the police officers work together in one team that can move from one state to the other. The close co-operation of police officers from the states involved intends to facilitate the fight against international crime.

United Nations:

TOC Convention: art. 19 only provides the possibility for states parties to conclude bilateral or multilateral agreements or arrangements in order to set up joint investigative bodies in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more states. Joint investigation can also be undertaken by agreement on a case-by-case basis when such agreements or arrangements are not available.



Council of Europe:

Second Additional Protocol to the CoE MLA Convention: art. 20 is based largely on art. 13 of the EU MLA Convention and contains all the provisions according to which joint investigation teams can be set up within the scope of the convention. One of the most innovative aspects of this article is provided for in para.7. The effect of this provision is that it enables a seconded member to request his or her own national authorities to take measures which are required by the joint investigation team. In that case it will not be necessary for the state of operation to submit a request for assistance and the relevant meas-



¹⁷⁶ Ibid.

¹⁷⁷ Cf. "Explanatory report on the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and co-operation between customs administrations", op. cit., p.1.

¹⁷⁸ Cf. "Explanatory report on the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and co-operation between customs administrations", op. cit., p.1.

¹⁷⁹ Cf. "Explanatory report on the Second Additional Protocol to the European Convention on mutual assistance in criminal matters", op. cit.

ures will be considered in the state in question in accordance with the conditions that would apply if they had been sought in a national investigation.¹⁷⁹

European Union:

Naples II Convention: art. 24 allows states parties to set up joint investigation teams by mutual agreement for a specific purpose and a limited time frame. Their purpose is to implement difficult and demanding investigations requiring simultaneous, co-ordinated action and to co-ordinate joint activities to prevent and detect particular types of customs infringements. The team works in accordance with the law of the state on which territory it is operational.¹⁸⁰

- **The Framework Decision of 13 June 2002** is really the accelerated entry into force of art. 13 of the EU MLA Convention. When the latter has entered into force in all member states, the framework decision will cease to have effect. art. 1 of the FD joint investigation teams contains all regulations necessary to set up joint investigation teams between one or more states after agreement has been reached between the states involved. Art. 1 also states in which cases in particular a joint investigation team should be established:

- In the case where a state's investigation into criminal offences requires difficult and demanding investigations having links with other states;

- In the case where a number of member states are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the states involved.

Europol Convention:¹⁸¹ the Protocol amending the Europol Convention inserts arts. 3a and 39a into the Europol Convention. These articles ensure the role of Europol officials in joint investigation teams to be set up in the EU and the liability regarding Europol's participation in joint investigation teams.

MLA Agreement EU-US: art. 5 provides in the possibility for joint investigation teams to be established for the purpose of facilitating criminal investigations or prosecutions involving one or more Member States of the EU and the United States of America.

- **Interception of telecommunications**

The EU MLA Convention contains, for the first time, a number of provisions on the interception of telecommunications in a specific way. Therefore, the drafters have taken into account all recent developments (particularly in the field of mobile telecommunication), yet making the regulations adaptable (to a certain extent) to future developments.

European Union:

EU MLA Convention: arts. 17, 18 and 21 contain the more general provisions concerning the competent authorities to order interception of telecommunications, the making of requests and the responsibility for charges made. Art. 18 makes a difference between two types of requests:

- **The first** concerns the immediate transmission to the Member State requesting the interception of telecommunications. Immediate transmission means forwarding the intercepted telecommunication directly to the requesting Member State, where it can be listened to and/or recorded by the competent authority which ordered it. This type of transmission, a novelty in the context of international co-operation, will be the rule from now on; and

- **The second** concerns the recording and subsequent transmission of telecommunications to the requesting Member State; this is the current practice in judicial assistance. This second type of request is dealt with specifically in paragraphs 6 and 7 and should be the exception from now on.¹⁸²

¹⁷⁹ Cf. "Explanatory report on the Second Additional Protocol to the European Convention on mutual assistance in criminal matters", op. cit.

¹⁸⁰ Cf. "Explanatory report on the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and co-operation between customs administrations", op. cit.

¹⁸¹ As amended by the Protocol of 28 November 2002 amending the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol. The Protocol, however, has not entered into force yet.

¹⁸² Cf. "Explanatory report to the Protocol to the Convention on mutual assistance in criminal matters between the Member States of the European Union", op. cit., p. 1.

Arts. 19 and 20 deal with very specific types of interception of telecommunications:

- **Art. 19** specifies the situation in which a state in whose territory the gateway (the technical installation which enables telecommunications made via a satellite system to be intercepted) is situated permits the installation of “remote control equipment”, because a state whose territory falls within the satellite’s coverage area, but which does not have a gateway, would not be technically capable of directly intercepting telecommunications made from or received on its territory via a satellite telephone.¹⁸³ The provisions included in art. 19 regulate and restrict the use of this type of assistance.

- **Art. 20** deals with the situation in which the technical assistance of another state is not needed. This means that the interception of telecommunications is authorised by the competent authority of the intercepting state and the telecommunications address of the subject specified in the interception order is being used on the territory of another state from which no technical assistance is needed to carry out the interception. The latter should be notified by the intercepting state in accordance with the provisions of art. 20.

● **Restitution of articles**

The restitution of property refers to mutual assistance requests made in order to have articles obtained by criminal means, stolen goods for example, placed at the disposal of the requesting state with a view to returning them to their rightful owners. The regulations permit, but do not oblige, a requested state to give effect to such a request. The requested state may, for example, refuse to grant such a request where property has been seized for evidential purposes in that state. The regulations are not intended to bring about any change in national law with respect to confiscation.

Council of Europe:

Second Additional Protocol to the CoE MLA Convention: the explanatory report defines the term “restitution” in **art. 12** as to mean “return”, in particular return of articles to their rightful owners; it is not used with any meaning carrying a connotation of “compensation”. “Property” should be understood as referring to property in general, tangible as well as intangible, goods as well as money.¹⁸⁴



European Union:

EU MLA Convention: art. 8 contains very similar rules regarding restitution as art. 12 of the Second Additional Protocol to the CoE MLA Convention.

● **Identification and tracing of instrumentalities, proceeds and other property**

Council of Europe:

CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime: **states parties shall be obliged by arts. 8 and 9** to afford each other assistance including any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the property. The latter are only intended to give examples of assistance and do not limit the application of arts. 8 and 9. “Identification and tracing” should be understood in a broad sense. The words “other property liable to confiscation” have been added to make it clear that investigative assistance should also be rendered when the requesting state applies value confiscation and the assistance relates to property which might be of licit origin.¹⁸⁵



● **Confiscation and seizure**

United Nations:

TOC Convention: art. 13 holds all regulations in compliance with which states parties should act when



¹⁸³ Ibid.

¹⁸⁴ Cf. “Explanatory report on the Second Additional Protocol to the European Convention on mutual assistance in criminal matters”, op. cit.

¹⁸⁵ Cf. “Explanatory report to the Convention on laundering, search, seizure and confiscation of the proceeds from crime”, op. cit.

co-operating for the purpose of confiscation of proceeds of crime, property, equipment or other instrumentalities regarding an offence within the scope of the TOC Convention. The disposal of confiscated proceeds of crime or property is dealt with in art. 14.

Council of Europe:



CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime: art. 13 describes the two forms of international co-operation regarding confiscation:

- The enforcement of an order made by a judicial authority in the requesting state; and
- An obligation for a state to institute confiscation proceedings in accordance with the domestic law of the requested state, if requested to do so, and to execute an order pursuant to such proceedings.

Any type of proceedings, independent of their relationship with criminal proceedings and of applicable procedural rules, might qualify in so far as they may result in a confiscation order, provided that they are carried out by judicial authorities and that they are criminal in nature, that is, that they concern instrumentalities or proceeds.

Art. 14 states the fundamental rule that, once the authorities of a state have accepted a request for enforcement or a request under art. 13, para.1.b, everything relating to the request must be done in accordance with that state's law and through its authorities. This rule of *lex fori* is normally interpreted to the effect that the law of the forum governs matters of procedure, mode of confiscation proceedings, matters relating to evidence and also limitation of actions based on time bars. A special rule regarding remedies is included in para. 5.¹⁸⁶

European Union:



Framework Decision of 17 December 2004 on the application of the principle of mutual recognition to confiscation orders: when this framework decision will enter into force, states parties will be obliged to recognise and execute in its territory confiscation orders issued by a court competent in criminal matters of another state party. The rules will be applicable to offences (as defined by the law of the issuing state) listed in art. 6 of the framework decision and punishable in the issuing state by a custodial sentence of a maximum of at least 3 years without verification of double criminality.

● Repatriation of victims

The repatriation of the victims trafficking in human beings is regulated by the trafficking protocol to the United Nations TOC Convention.

United Nations:



Trafficking protocol: art. 8 obliges a state of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving state; to facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay. When a state returns a victim of trafficking in persons to a state of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving state, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary. At the request of the receiving state, travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter the territory of the state of nationality or permanent residence (at the time of entry into the territory of the receiving state), shall be issued by the latter.

¹⁸⁶ Ibid.

6.3 Extradition

In this subsection the regulations concerning extradition on different levels of co-operation have been listed. Most instruments concerning extradition are full conventions (including protocols to these conventions) or agreements. Therefore, these have not been explained in detail.

● United Nations

TOC Convention: art. 16 sets out an extensive set of rules applicable to offences within the scope of the TOC Convention and the cases in which the offences covered by art. 3, para.1, involve an organised criminal group and the person who is subject of the extradition request is located in the territory of the requested state and the offence for which extradition is sought is punishable under the law of both states parties involved.

● Council of Europe

- Council of Europe Convention of 13 December 1957 on extradition
- Additional Protocol of 15 October 1975 to the Council of Europe Convention on extradition
- Second Additional Protocol of 17 March 1978 to the Council of Europe Convention on extradition



● European Union

Between the Member States of the EU, an important and fairly new instrument has been introduced. Since 1 January 2004 the **European arrest warrant (EAW) has replaced all extradition procedures between the Member States for 32 offences listed in the Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States**. Extradition requests received before 1 January 2004 will continue to be governed by the existing conventions and agreements relating to extradition.

An EAW may be issued by a national court if the person whose return is sought is accused of an offence for which the penalty is at least over a year in prison or if he or she has been sentenced to a prison term of at least four months. Its purpose is to replace lengthy extradition procedures with a new and efficient way of bringing back suspected or condemned criminals who have fled the country, in order to forcibly transfer them from one Member State to another. The EAW enables such people to be returned within a reasonable time for their trial to be completed or for them to be put in prison to serve their sentence. The EAW is based on the principle of mutual recognition of judicial decisions. This means that a decision by the judicial authority of a Member State to require the arrest and return of a person should be recognised and executed as quickly and as easily as possible in the other Member States.¹⁸⁷

- **Agreement of 26 May 1989** between the Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests
- **Convention of 10 March 1995** on simplified extradition procedure between the Member States of the European Union
- **Schengen Implementation Convention: arts. 59-66**
- **Convention of 27 September 1996** relating to extradition between the Member States of the European Union
- **Framework Decision 13 June 2002** on the European arrest warrant and the surrender procedures between Member States
- **Agreement of 25 June 2003** on extradition between the European Union and the United States of America



The Soering case:

Soering was residing in the United Kingdom when the USA requested his extradition for offences committed in their jurisdiction for which the death penalty could be issued. A bilateral treaty between both states included no grounds of refusal based on the risk of death penalty. Consequently, Soering was extradited but the European Court of Human Rights stated that in this case extradition would amount to an inhuman and degrading treatment because in the USA Soering would be subjected to the death row phenomenon for a long period of time, which was a violation of art.



¹⁸⁷ http://europa.eu.int/comm/justice_home/fsj/criminal/extradition/wai/fsj_criminal_extradition_en.htm.

3 EHRC. Eventually, Soering was extradited on the condition that he would not receive the death penalty.

Cf: Soering v. United Kingdom, ECHR, 7 July 1989 (Publ. ECHR, Series A, vol. 161).

The Moreno-Garcia case:

In 1996 the Belgian Minister of Justice rejected a Spanish request for extradition for a Spanish-Basque couple residing in Belgium and suspected of helping ETA terrorists. Shortly after the entry into force of the European Arrest Warrant on 1 January 2004, a Spanish judge issued a European Arrest Warrant for the couple regarding the same facts. The Court of Appeal of Antwerp decided against it, after which the Court of Cassation annulled the verdict up to three times (on different grounds) until the federal prosecutor stopped requesting the annulment of the verdict of the Court of Appeal that remained faithful to its rejection of the arrest warrant based on lapse of time of the prosecution. Cf.: <http://www.cass.be>


6.4 Transfer of Persons

Owing to the difference between the temporary transfer of persons detained or serving a sentence in the territory of a state whose presence in another state is requested for reasons of investigation (e.g. the person is a witness in a trial in another state), on the one hand, and the transfer of persons sentenced to deprivation of liberty for the purpose of completing their sentences on the territory of another state on the other hand, both types of transfer are dealt with in separate subsections.

6.4.1 Temporary Transfer of Persons


- **Temporary transfer of detained persons to the territory of the requested state**

Council of Europe:

 **Second Additional Protocol to the CoE MLA Convention: art. 13, para.1** is intended to mean that, where any requesting state requires that a person held under custody on its territory be present on the territory of the requested state for the purposes of the assistance sought, the first mentioned state may temporarily transfer that person to the territory of the second mentioned state, subject to an agreement to that effect between the competent authorities of both states. Practise has shown that in certain cases it is not possible to carry out the assistance sought in the requested state in a satisfactory way, unless by transferring the person to the territory of that state. Art. 14 aims at fulfilling a gap in the Convention on the Transfer of Sentenced Persons. It is in no way related to extradition. The article intends to put states in a situation where they can meet the legitimate expectations of transferred prisoners not to jeopardise, on account of their absence, the review of their judgement, if and where such a review takes place.

- **Temporary transfer of detained persons to the territory of the requesting state**

United Nations:

 **TOC Convention: art. 18, para.10**, regulates the temporary transfer of detained persons to the requesting state for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings. Both states involved should agree and the person involved should give his or her consent. **Paras. 11 and 12 of art. 18** provide for further conditions to be fulfilled.


Council of Europe:

 **Second Additional Protocol to the CoE MLA Convention: art.3 changes art.11** of the CoE MLA Convention in the following way:

– In para.1, it replaces the words "personal appearance as a witness or for purposes of confrontation" by the words "personal appearance for evidentiary purposes other than for standing trial"; and

– In para.4 it replaces the words "unless the Party from whom transfer is requested applies for his release" by the words "unless the Party from whom transfer is requested applies for his or her release".


European Union:

EU MLA Convention: art. 9 supplements art. 11 of the CoE MLA Convention by authorising a state to make arrangements for the temporary transfer of a person in its custody to another state in connection with an investigation being carried out by the custodial state. 

6.4.2 Transfer of Sentenced Persons

The following conventions and agreement have been concluded in the framework of the transferring of sentenced persons (on humanitarian grounds) in order to complete their sentences issued by the authorities of one state on the territory of another state. Because the following conventions and agreement are entirely dedicated to the subject of the transfer of sentenced persons, they will not be described in detail.

Council of Europe

- **Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons;**
- **Additional Protocol of 18 December 1997 to the European Convention on the transfer of sentenced persons.** 


European Union

- **Agreement 25 May 1987 on the application among the Member States of the European Communities of the Council of Europe Convention on the transfer of sentenced persons.**

6.5 Ne bis in Idem

The principle of ne bis in idem or double jeopardy (a person who has once been the subject of a final judgement in a criminal case cannot be prosecuted again on the basis of the same fact)¹⁸⁸ returns in many conventions and agreements. However, it is still uncertain whether a genuine international ne bis in idem exists.

Council of Europe:

- **CoE Convention on Extradition: art. 9** contains the provisions in accordance with which the principle of ne bis in idem should be applied to extradition; 
- **Additional Protocol CoE Convention on Extradition: art. 2** supplements art. 9 of the CoE Convention on Extradition by adding a paragraph dealing with acquittals (not every judgment of acquittal would preclude extradition since it would remain possible in two cases), judgements imposing a term of imprisonment or other measure and the conviction by a court without imposing a sanction. The third paragraph adds exceptions to these rules in which extradition can be granted;¹⁸⁹
- **European Convention of 28 May 1970** on the international validity of criminal judgements: art. 7 and arts. 53-55: the collection of these articles provide in the
- application of the ne bis in idem principle for any final decision delivered by a criminal court of a contracting state as a result of criminal proceedings;
- **European Convention of 15 May 1972** on the transfer of proceedings in criminal matters: art. 10 prohibits a state requested to accept transfer proceedings in a certain case to institute proceedings against a person in respect of whom a final and enforceable criminal judgement has been rendered for the same act under the conditions included in art. 35.

European Union:

- Convention of 25 May 1987 between the Member States of the European Communities on double jeopardy. 
- Schengen Implementation Convention: arts. 54-58 cover the application of the ne bis in idem principle within the scope of the Schengen Implementation Convention.

¹⁸⁸ Cf. "Explanatory report to the Additional Protocol to the Convention on extradition" (<http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>).

¹⁸⁹ Ibid.



European Court of Justice: Gözutök en Brügge case

The ne bis in idem principle, laid down in art. 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 at Schengen, also applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, by which the Public Prosecutor of a Member State discontinues criminal proceedings brought in that state, without the involvement of a court, once the accused has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the Public Prosecutor. [Cf. C 187/01 <http://europa.eu.int/cj>]

European Court of Justice: Miraglia case

The principle ne bis in idem, enshrined in art. 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 at Schengen, does not apply to a decision of the judicial authorities of one Member State declaring a case to be closed, after the Public Prosecutor has decided not to pursue the prosecution on the sole ground that criminal proceedings have been started in another Member State against the same defendant and for the same acts, without any determination whatsoever as to the merits of the case. [Cf. C 496/03 <http://www.curia.eu.int>]

6.6 Transfer of Proceedings

States can decide on the transfer of proceedings to another state that is considered to be more suitable to conduct the proceedings. This means that proceedings in a certain case are transferred for certain reasons (stated in the applicable conventions and agreements) from a state that has the competence to prosecute the case to a state that does not have this competence, but receives this competence by means of the request for transfer of proceedings.¹⁹⁰ The reasons why the prosecution of a certain case can be transferred are for the larger part concentrated on the person of the suspect. The state of which he is a national or an ordinarily resident, or the state where he is undergoing or will undergo a sentence of imprisonment and so on, will determine the state to which the proceedings can be transferred.

United Nations

TOC Convention: art. 21 requires a state to consider the possibility of transferring proceedings of an offence within the scope of the TOC Convention when a transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved. **Council of**

Europe

European Convention of 15 May 1972 on the transfer of proceedings in criminal matters

European Union

Agreement of 6 November 1990 between the Member States of the European Communities on the transfer of proceedings in criminal matters

6.7 Recognition and Transfer of Sentences and other Judicial Decisions

The mutual recognition and the transfer of sentences are instruments that can hardly be separated. When a national of one state is sentenced in another state, she/he cannot escape her/his sentence when the latter is mutually recognised and enforced in the other state. Moreover, mutual recognition redundantises procedures to enforce foreign sentences in another state, although the instrument requires extensive mutual trust in the criminal justice systems of other states.

¹⁹⁰ This instrument should not be confused with the instrument of "denunciation", which is the transfer of proceedings from a state that has competence to prosecute a certain case to another state that also has the competence to prosecute the case. Therefore, this is merely an agreement between states and not a genuine transfer of the proceedings.

The trend for mutual recognition (that has intensified enormously in the EU since the Programme of measures of 30 November 2000 to implement the principle of mutual recognition of decisions in criminal matters, cf. infra) has also spread to other judicial decisions such as the seizing and freezing of property and confiscation orders.

The framework decisions (FD) that have been introduced in accordance with the principle of mutual recognition - the FD execution orders freezing or evidence, the FD on the application of the principle of mutual recognition to financial penalties, the FD on the application of the principle of mutual recognition to confiscation orders and the FD on confiscation of crime-related proceeds, instrumentalities and property – intend to include as little procedural matters as possible and as much mutual recognition as possible, requiring substantial trust from the states in each others criminal justice systems.

Council of Europe

- CoE Convention of 28 May 1970 on the international validity of criminal judgements;
- CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime: art. 22 contains the provisions on the recognition of foreign decisions, mainly regarding the rights of third parties. Practice has shown that criminals often use ostensible "buyers" to acquire property. Relatives, wives, children or friends might be used as decoys. Nevertheless, the third parties might be persons who have a legitimate claim on property which has been subject to a confiscation order or seizure.¹⁹¹



European Union

- Convention 13 November 1991 between the Member States of the European Communities on the enforcement of foreign criminal sentences;
- Schengen Implementation Convention: Art. 67 to 69 are intended to supplement the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons;
- Programme of measures of 30 November 2000 to implement the principle of mutual recognition of decisions in criminal matters;
- FD execution orders freezing or evidence: according to this framework decision a state shall recognise and execute in its territory a freezing order issued by the authorities of another state in the framework of criminal proceedings;
- Framework Decision of 2 April 2004 on the application of the principle of mutual recognition to financial penalties;
- Framework Decision of 17 December 2004 on the application of the principle of mutual recognition to confiscation orders.



6.8 Money Laundering

The laundering of money and property (including the proceeds of crime) is an offence to be situated in the context of a large part of international crime, including trafficking in human beings.

Council of Europe

- Convention of 8 November 1990 on laundering, search, seizure and confiscation of the proceeds from crime



European Union

- Framework Decision of 26 June 2001 on money-laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime;
- Framework Decision of 18 January 2005 on confiscation of crime-related proceeds, instrumentalities and property (cf. supra).



¹⁹¹Cf. "Explanatory report to the Convention on laundering, search, seizure and confiscation of the proceeds from crime", op. cit.

6.9 Data Protection

The applicable regulations on data protection have not been included in the section on cross-border co-operation and co-ordination since the protection of data concerning international crime is wider than the pure co-operation between states.

Council of Europe

- European Convention 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data;
- Additional Protocol 8 November 2001 to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows;
- Second Additional Protocol to the CoE MLA Convention: Art. 26 applies to personal data transferred from one party to another as a result of the execution of a request made under the Convention or any of its Protocols. It applies regardless of whether data are transferred because they are communicated by a "sending state" or because they are otherwise obtained by a "receiving state". It does not apply to personal data that is obtained by a party as a result of the execution of a request made under the Convention or any of its Protocols, by that party or any other party, where that data are not transferred from one party to another.¹⁹²

European Union

- Schengen Implementation Convention: arts. 93–118: this collection of articles covers the operation and utilisation of the Schengen Information System¹⁹³ and the protection of personal data and the security of data under the Schengen Information System;
- Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- Europol Convention: arts. 7–25 contain the provisions on information processing, provisions on the establishment, the content and the right of access to Europol information system¹⁹⁴ and the general rules on the Europol work files for the purposes of analysis. Art. 38 covers the liability rules for unauthorised or incorrect data processing;
- Naples II Convention: art. 25 contains the provisions on data protection for the exchange of data within the scope of the Naples II Convention;
- Act of 3 November 1998 adopting rules applicable to Europol analysis files;
- EU MLA Convention: personal data communicated within the scope of the EU MLA Convention can be used under the conditions stipulated in art. 23.

6.10 Co-operation within the European Union

Trafficking in human beings belongs to the crimes included in the objectives of both Europol and Eurojust.¹⁹⁵ Both European Union organs can fulfil an important role in the international co-operation concerning trafficking in human beings. Eurojust holds annual strategic meetings and regular casework coordination meetings in the field of trafficking in human beings. Europol holds annual experts meetings.

6.10.1 Europol

Through the national units, which second one or more **liaison officers** to Europol, Member States can supply Europol with information and intelligence necessary to fight trafficking in human beings. The liaison officers, working under the national legislation of their home country, represent the interests of their state with Europol.¹⁹⁶

The **supplying** of Europol with information can lead to the following results in function of the investigations and prosecutions related to trafficking in human beings:

¹⁹² Cf. "Explanatory report on the Second Additional Protocol to the European Convention on mutual assistance in criminal matters", op. cit.

¹⁹³ The joint information system set up within the scope of the Schengen Implementation Convention in order to enable authorities to have access to reports on persons and objects for the purposes of border checks and controls and other police and custom checks (art. 92 Schengen Implementation Convention).

¹⁹⁴ A computerised information system directly accessible for consultation by national units and the liaison officers in the framework of the tasks of Europol.

¹⁹⁵ Art. 2, para. 2, of the Europol Convention, explicitly mentioning illegal immigrant smuggling as well as trade in human beings, is also referred to in art. 4 of the decision setting up Eurojust.

¹⁹⁶ Arts. 4 and 5 of the Europol Convention.

- Exchange of information with other Member States;
- Exchange of information with third states and/or third bodies in compliance with the provisions of the agreements Europol made with third states and third bodies (cf. infra);
- Notification by Europol of information concerning the Member States and any connections identified between criminal offences;
- The carrying out of operational analyses by Europol supporting the national investigations in the Member State;
- Advice given by Europol to the Member States concerning their criminal investigations;
- The drawing up by Europol (with or without the involvement of other sources) of general situation reports; and
- The providing by Europol of expertise and technical support for the carrying out of investigations and operations in the Member States.¹⁹⁷

In addition to arts. 14-25 of the Europol Convention, the rules on the **storage, processing and protection of information** are laid down in the following acts:

- Act of 3 November 1998 adopting rules applicable to Europol analysis files;
- Act of 3 November 1998 adopting rules on the confidentiality of Europol information.

It is necessary to point out a special competence included art. 3a in the Europol Convention by the Protocol of 28 November 2002 amending the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol. For all the criminal offences within Europol's competence, Europol officials can participate in **joint investigation teams** (cf. supra: joint investigation teams). This means that Europol officials can assist in all activities and exchange information with all member of the team in accordance with the rules included in the Europol Convention, except for coercive measures.

In the framework of its competence, Europol can also request Member States to **initiate, conduct or co-ordinate criminal investigations**.¹⁹⁸

Exchanging information with **third states and third parties** is, in addition to art. 18 of the Europol Convention, regulated by the following acts:

- Act of 3 November 1998 laying down rules concerning the receipt of information by Europol from third parties
- Act of 3 November 1998 laying down rules governing Europol's external relations with third states and non-European Union related bodies

The co-operation with third states and third parties has led to the **conclusion of specific operational agreements**:

- Agreement of 6 December 2001 between the USA and the European Police Office and Supplemental Agreement of 20 December 2002 between Europol and the USA on exchange of personal data and related information
- Agreements with Bulgaria, Iceland, Norway and Romania¹⁹⁹

Strategic agreements were concluded with Colombia, Russia and Turkey.²⁰⁰

Of the agreements concluded between Europol and EU bodies and international organisations, the two most relevant texts in this context are the Operational **Agreement with Eurojust** of 9 June 2004 and the Co-operation Agreement of 5 November 2001 between **Europol and Interpol**.

¹⁹⁷ Arts. 3 and 4 of the Europol Convention.

¹⁹⁸ Art. 3b inserted in the Europol Convention by Protocol of 28 November 2002 amending the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol.

¹⁹⁹ Cf. "Explanatory report to the Convention on laundering, search, seizure and confiscation of the proceeds from crime", op. cit. <http://www.europol.eu.int>.

²⁰⁰ Ibid.

6.10.2 Eurojust

Eurojust is an EU body established in 2002 and based in The Hague, it was set up in order to enhance the effectiveness of the competent investigating and prosecuting authorities within Member States when they are dealing with the investigation and prosecution of serious and organised cross border crime. Each of the 25 Member States is represented within Eurojust by a National Member being a prosecutor, investigator or judge and Eurojust is the first organisation of its kind.

In practical terms, and in the context of operational casework, Eurojust endeavours to improve the operation of existing instruments dealing with all forms of judicial co-operation and mutual legal assistance in use within the EU (examples of the relevant instruments are the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959, the EU Council Framework Decision on Joint Investigation Teams). Eurojust has the additional ability to make recommendations and suggestions in its Annual Report to the EU Council of Ministers, on the improvement of legislation and/or the effectiveness of procedures in the judicial co-operation field.

The main aims of Eurojust are to improve the capability of competent national authorities in the Member States to co-operate with one another and to bring about better co-ordination of cross border investigations, giving added value in the context of concrete cases referred for assistance and co-ordination. Eurojust can also assist Member States in co-operating with the competent authorities of third states where co-operation agreements exist with that third state or where other arrangements have been made (e.g. the appointment of a Eurojust contact point).

Eurojust can play an important part in relation to all cases of organised crime referred to it, including those of trafficking in human beings; in such cases Eurojust has acted at the request of national competent authorities to:

- Stimulate the exchange of information regarding connected investigations and prosecutions;
- Facilitate the execution of requests for mutual legal assistance;
- Facilitate the issue and execution of EAWs and to advise on competing warrants; and
- Ensure the co-ordination of parallel investigations.

Prosecuting and investigating authorities in the EU Member States responsible for dealing with cases of trafficking in human beings are encouraged to contact their National Members at Eurojust in order to benefit from the assistance that Eurojust is able to provide. Casework co-ordination meetings can be arranged by Eurojust National Members at the request of competent national authorities in order to discuss specific cases.

Competent national prosecuting and investigating authorities may also be able to benefit from the use of Eurojust powers and should note that Eurojust acting through its National Members, or as a College may ask the competent authorities of a Member State to consider:

- Undertaking an investigation or a prosecution of specific criminal acts;
- Accepting that another Member State is in a better position to undertake an investigation or to prosecute specific criminal offences (cf. supra: transfer of proceedings). In this case Eurojust is able to act as facilitator between the member states involved;
- Setting up a joint investigation team; and
- Providing it with any information it needs to carry out its tasks.

Eurojust holds regular strategic meetings on trafficking in human beings for practitioners specialised in this field in order to discuss relevant policy and legislative developments within the EU and casework approaches.

6.10.3 European Judicial Network

Council Decision of 28 May 2001 (2001/470/EC)²⁰¹ established a European Judicial Network in civil and commercial matters. The network consists of representatives of the Member States' judicial and administrative authorities and meets several times each year to exchange information and experience and boost co-operation between the Member States as regards civil and commercial law.

²⁰¹ http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_174/l_17420010627en00250031.pdf.

The main objective is to make life easier for people facing litigation of whatever kind where there is a transnational element, that is, where it involves more than one Member State.

The European Union currently has a wide variety of national legal systems, and this diversity often creates problems when litigation transcends national borders.

For legal professions it can be very useful to have access to knowledge about the various national systems of civil and commercial law and the legislative instruments of the European Union and other international organizations, including the United Nations, the Hague Conference and the Council of Europe.²⁰²

²⁰²http://europa.eu.int/comm/justice_home/ejn/index_en.htm, accessed in May 2005.

ANNEX I: Questionnaire Responses Concerning the Legal Framework of Anti-Trafficking Legislation

Austria

Is trafficking in human beings a distinct crime in your legislation and which forms of exploitation are included in the definition of human trafficking in your legislation? What other legislation applies to the prosecution of the crime of trafficking in human beings?

Trafficking in human beings is a **distinct crime** and includes sexual and labour exploitation and organ removal and trafficking (Austrian Penal Code, section 104a). **Related legislation** includes prostitution-related offences, pornographic representations involving minors, sexually abusing minors and abuses committed abroad in the form of "sex tourism."

Is the respective legislation in compliance with the Palermo Protocol and EU Framework Decision of 19 July 2002?

Austria has ratified the Palermo Protocol. It is in compliance with the Framework Decision.

What other international instruments, which, in part, protects against trafficking of human beings, have been incorporated into your countries domestic legislation?

The 1948 Universal Declaration of Human Rights; the 1966 International Convention on Civil and Political Rights; the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1989 Convention on the Rights of the Child and the 2000 Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the 1930 ILO Convention Concerning Forced or Compulsory Labour and the 1998 Rome Statute to the International Criminal Court.

To what extent are the human rights of the victim of trafficking protected?

A **witness protection program** exists for victims and their families. In criminal proceedings, protections include providing a catalogue of the rights of victims, providing translation and compensation, psychological and legal assistance, protecting the witness's identity and allowing the witness to testify remotely.

Can victims of trafficking receive compensation through judicial proceedings? If yes, is this accomplished through a separate civil proceeding or through the criminal proceeding?

Yes. Victims can receive compensation through criminal proceedings.

Belgium

Is trafficking in human beings a distinct crime in your legislation and which forms of exploitation are included in the definition of human trafficking in your legislation? What other legislation applies to the prosecution of the crime of trafficking in human beings?

Trafficking in human beings is a **distinct crime** and includes sexual exploitation and prostitution, exploitation for begging, labour exploitation, organ removal and trafficking and forcing someone to commit a crime against their will (Belgian Criminal Code, Article 433). **Related legislation** includes legislation criminalizing slum landlord practices.

Is the respective legislation in compliance with the Palermo Protocol and EU Framework Decision of 19 July 2002?

No.

What other international instruments, which, in part, protects against trafficking of human beings, have been incorporated into your countries domestic legislation?

The 1948 Universal Declaration of Human Rights; the 1966 International Convention on Civil and Political Rights; the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1989 Convention on the Rights of the Child and the 2000 Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the 1930 ILO Convention Concerning Forced or Compulsory Labour and the 1998 Rome Statute to the International Criminal Court.

To what extent are the human rights of the victim of trafficking protected?

A **witness protection program** exists for the victim of trafficking. During **criminal proceedings**, the witness's identity may be protected and the witness may testify remotely.

There is a forty-five day reflection period. In addition, a victim of human trafficking may obtain a **residency permit** for three months, six months or for a permanent duration depending on whether he or she have accepted state assistance, have filed a complaint against the accused and are willing to make a statement or provide evidence to the prosecution.

Can victims of trafficking receive compensation through judicial proceedings? If yes, is this accomplished through a separate civil proceeding or through the criminal proceeding?

Yes, through either the criminal proceeding or a separate civil proceeding.

Bulgaria

Is trafficking in human beings a distinct crime in your legislation and which forms of exploitation are included in the definition of human trafficking in your legislation? What other legislation applies to the prosecution of the crime of trafficking in human beings?

Trafficking in human beings is a **distinct crime** and includes acts of debauchery, compulsory labour, organ removal and forceful subordination (Article 159, Bulgarian Penal Code).

Is the respective legislation in compliance with the Palermo Protocol and EU Framework Decision of 19 July 2002?

Bulgaria has ratified the Palermo Protocol but does not comply with the Framework Decision.

What other international instruments, which, in part, protects against trafficking of human beings, have been incorporated into your countries domestic legislation?

The 1948 Universal Declaration of Human Rights; the 1966 International Convention on Civil and Political Rights; the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1989 Convention on the Rights of the Child and the 2000 Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the 1930 ILO Convention Concerning Forced or Compulsory Labour and the 1998 Rome Statute to the International Criminal Court.

To what extent are the human rights of the victim of trafficking protected?

Victim protection measures include police protection and temporary accommodation at a safe house. The victim may participate in a **witness protection** program, which protects and makes confidential the personal data of victims. In **criminal proceedings**, the victim or witness's identity may be kept secret and the victim may be provided police protection.

A foreign victim may enjoy a **reflection period** and a **long-term stay** if he or she cooperates with criminal proceedings.

Can victims of trafficking receive compensation through judicial proceedings? If yes, is this accomplished through a separate civil proceeding or through the criminal proceeding?

Victims may receive compensation through the criminal proceeding.

Estonia

Is trafficking in human beings a distinct crime in your legislation and which forms of exploitation are included in the definition of human trafficking in your legislation? What other legislation applies to the prosecution of the crime of trafficking in human beings?

Trafficking in human beings is **not a distinct crime** in Estonian legislation. **Related legislation** includes enslaving, abduction or unlawful deprivation of liberty; illegal human research, illegal removal of organs or tissue and inducing a person to donate organs or tissue; rape and sexual intercourse with a child; stealing, selling, purchasing or substituting children; disposing minors to engage in prostitution and using minors in manufacture of pornographic works; and illegal transportation of aliens across state borders to engage in unlawful activities.

Is the respective legislation in compliance with the Palermo Protocol and EU Framework Decision of 19 July 2002?

No.

What other international instruments, which, in part, protects against trafficking of human beings, have been incorporated into your countries domestic legislation?

The 1948 Universal Declaration of Human Rights; the 1966 International Convention on Civil and Political Rights; the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the

Slave Trade and Institutions and Practices Similar to Slavery; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1989 Convention on the Rights of the Child and the 2000 Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the 1930 ILO Convention Concerning Forced or Compulsory Labour and the 1998 Rome Statute to the International Criminal Court.

To what extent are the human rights of the victim of trafficking protected?

Victim protection measures include offering support counselling and assistance. During **criminal proceedings**, the witness may be declared anonymous and the proceedings can be facilitated remotely through telecommunications. In the case of witnesses under fourteen years of age, the hearing may be conducted in the presence of a child protection official, social worker or psychologist.

Can victims of trafficking receive compensation through judicial proceedings? If yes, is this accomplished through a separate civil proceeding or through the criminal proceeding?

Victims can receive compensation through judicial proceedings.

Germany

Is trafficking in human beings a distinct crime in your legislation and which forms of exploitation are included in the definition of human trafficking in your legislation? What other legislation applies to the prosecution of the crime of trafficking in human beings?

Trafficking in human beings for the purpose of sexual abuse (German Penal Code, Section 180b) and trafficking in children for profit (Section 236) are distinct crimes. Related legislation prohibits rape, sexual abuse of minors, pimping, kidnapping, abduction, deprivation of liberty and exploitation of labour

Is the respective legislation in compliance with the Palermo Protocol and EU Framework Decision of 19 July 2002?

Germany has not ratified the Palermo Protocol but is in compliance with the Framework Decision.

What other international instruments, which, in part, protects against trafficking of human beings, have been incorporated into your countries domestic legislation?

The 1948 Universal Declaration of Human Rights; the 1966 International Convention on Civil and Political Rights, the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1989 Convention on the Rights of the Child and the 2000 Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the 1930 ILO Convention Concerning Forced or Compulsory Labour and the 1998 Rome Statute to the International Criminal Court.

To what extent are the human rights of the victim of trafficking protected?

A victim of trafficking as a victim of a serious crime may participate in a witness protection program if there is tangible danger to the victim's life and the victim agrees to testify. Additionally, victims of serious crimes, including trafficking, may be assigned a lawyer at no-charge based on need. During the investigation phase, a witness' personal details may be kept from a suspect or the accused. Furthermore, the accused or defense counsel may be denied from taking part in the questioning of the witness.

During the criminal proceeding, a defendant may be removed from the courtroom when the witness testifies if there is concern that the witness's testimony may be coerced by the presence of the accused. The witness may be relieved from testifying at trial; instead, a written statement may be entered into the record. The witness may also testify remotely.

There is a four-week reflection period in Germany. Additionally, the victim may receive a temporary residence permit if they agree to testify and there is strong public interest in allowing the foreigner to remain in Germany. The permit exists so long as this interest remains. This permit is not available if the victim entered the country illegally. It may only be awarded so long as the victim participates in a victim protection program.

A victim may receive compensation as part of the criminal proceedings.

Italy

Is trafficking in human beings a distinct crime in your legislation and which forms of exploitation are included in the definition of human trafficking in your legislation?

Trafficking is a **distinct crime** in the Italian penal code (Article 601 of the Penal Code). **Related legislation** also criminalizes forced labour, begging, sexual exploitation, organ trafficking, slavery, sexual abuse of minors, child prostitution, child pornography, tourist initiatives aimed at the exploitation of child prostitution, exploitation of prostitution, kidnapping and rape.

Is the respective legislation in compliance with the Palermo Protocol and EU Framework Decision of 19 July 2002?

Italy has ratified the Palermo Protocol through law no. 146 (March 16, 2006)

What other international instruments, which, in part, protects against trafficking of human beings, have been incorporated into your countries domestic legislation?

The 1948 Universal Declaration of Human Rights; the 1966 International Convention on Civil and Political Rights; the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1989 Convention on the Rights of the Child and the 2000 Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the 1930 ILO Convention Concerning Forced or Compulsory Labour and the 1998 Rome Statute to the International Criminal Court.

To what extent are the human rights of the victim of trafficking protected?

A victim may obtain a **residency permit** for humanitarian reasons when their safety is at risk or when they cooperate with police investigations. The permit has a duration of six months, may be renewed for one year or longer and can be transformed into a residence permit for education or for work, allowing the foreigner to remain in Italy in accordance with the regulations governing the presence of non-European Community foreigners.

There are two ways to obtain the residence permit: the **judicial procedure** and the **social procedure**. The judicial procedure is based on the victim's co-operation with law enforcement agencies and the judiciary. The social procedure does not require a formal report to the authorities, but the submission of a "statement" by an accredited agency or by the public social services of a City Council on behalf of the victim. In both cases the permit grants access to social services and to educational institutions, as well as access to the employment bureau and the possibility of access to employment opportunities.

Individuals granted the permit for humanitarian reasons are obliged to participate in the Programme of Social Assistance and Integration offered by various local NGOs and local public authorities funded by the government. Through such a programme, the hosted persons are offered a series of protection and assistance measures, such as a variety of shelters, psychological support, health care services, legal consultancy and assistance, education, vocational guidance and training activities and support for the reintegration into the labour market.

Poland

Is trafficking in human beings a distinct crime in your legislation and which forms of exploitation are included in the definition of human trafficking in your legislation? What other legislation applies to the prosecution of the crime of trafficking in human beings?

Trafficking in human beings is a **distinct crime** under the penal code, which is broad enough to encompass all forms of trafficking (Polish Penal Code, Article 253). **Related legislation** includes penalizing trafficking in slaves, organizing illicit adoption, enticing or abducting someone for carrying out prostitution abroad and organizing illegal border crossing.

Is the respective legislation in compliance with the Palermo Protocol and EU Framework Decision of 19 July 2002?

Yes.

What other international instruments, which, in part, protects against trafficking of human beings, have been incorporated into your countries domestic legislation?

The 1948 Universal Declaration of Human Rights; the 1966 International Convention on Civil and Political Rights; the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1989 Convention on the Rights of the Child and the 2000 Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the 1930 ILO Convention Concerning Forced or Compulsory Labour and the 1998 Rome Statute to the International Criminal Court.

To what extent are the human rights of the victim of trafficking protected?

During a **criminal proceeding**, the witness may be declared anonymous and may testify remotely if there is a danger of intimidation or concern for the victim's well being. Additionally, a victim may testify once during the preliminary proceedings and during the trial the minutes of that testimony are read in court and are admissible.

A **reflection period** exists for up to two months and during that time the victim may be supported by the NGO "La Strada." He or she may receive accommodation, financial support and assistance by a professional psychologist. Victims may obtain a residency permit to remain in Poland during the criminal proceedings, provided he or she stay within Poland, cooperate with law enforcement and cease all relations with the accused perpetrators.

Can victims of trafficking receive compensation through judicial proceedings? If yes, is this accomplished through a separate civil proceeding or through the criminal proceeding?

Compensation may be obtained either through a separate civil proceeding or during the criminal proceeding.

Portugal

Is trafficking in human beings a distinct crime in your legislation and which forms of exploitation are included in the definition of human trafficking in your legislation? What other legislation applies to the prosecution of the crime of trafficking in human beings?

Sexual trafficking of victims is a **distinct crime** in Portugal if the exploitation takes place in a foreign country (Portuguese Criminal Code, Article 169). **Related legislation** includes slavery, coercion, abduction, sequestration, fraud, child abuse, exploitation of children in begging, criminal association and money laundering.

Is the respective legislation in compliance with the Palermo Protocol and EU Framework Decision of 19 July 2002?

Portugal has ratified the Palermo Protocol but it does not comply with the Framework Decision. It hopes to comply with this decision by the end of 2006.

What other international instruments, which, in part, protects against trafficking of human beings, have been incorporated into your countries domestic legislation?

The 1948 Universal Declaration of Human Rights; the 1966 International Convention on Civil and Political Rights; the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1989 Convention on the Rights of the Child and the 2000 Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the 1930 ILO Convention Concerning Forced or Compulsory Labour and the 1998 Rome Statute to the International Criminal Court.

To what extent are the human rights of the victim of trafficking protected?

In order to protect the victim's human rights and avoid intimidation, **victim protection measures** include protecting the victim's identity and providing them access to information through law enforcement. There is no official **witness protection program**. During **criminal proceedings**, the witness may be provided with psychological and social service support, only the judge may question the witness and the witness may be able to testify remotely through teleconferencing or by a written, taped or anonymous statement. Legal representation is also available to the trafficked victim if he or she legally resides in Portugal.

There is no **reflection period** and victims may only seek a **residency permit** if he or she cooperates with law enforcement.

Can victims of trafficking receive compensation through judicial proceedings? If yes, is this accomplished through a separate civil proceeding or through the criminal proceeding?

Yes, victims can receive compensation through the criminal proceeding.

ANNEX II: Points of Contact in the Field of Anti-Trafficking

Austria

- **Beate Matsching** Court Judge
Court in Vienna · Tel: +43 1 40 127 4052 · bmatschnig@gmx.at
- **Caroline List** Court Judge
Court of Appeal Graz · Tel. +43 316 8064 1134 · Fax. +43 316 8064 1603 · Caroline.list@justiz.gv.at
- **Alexandra Mathes** Court Judge
Court in Vienna · Tel: +43 140127 1285 · Fax: +43 140 25 904 · Alexandra.Mathes@justiz.gv.at
- **Eva Kauffmann** LEFÖ-IBF
Floragasse 7A/7 · 1040 Wien · Tel. +43 +1 796 92 98 · Fax: +43 +1 796 92 99 · email: ibf@lefoe.at
www.lefoe.at · www.femmigration.net

Belgium

- **Ilse Hulsbosch** Project Officer, PAG-ASA (NGO)
Cellebroerstraat 16 · 1000 Brussel · Business: (+32) (2) 511 64 64 · Fax: (+32) (2) 511 58 68
jur.pa@skynet.be · pag.asa@skynet.be
- **Frédéric Kurz** Substitut général près la cour du travail de Liège,
et coordinateur principal du réseau d'expertise Traite des Etres Humains · Rue St. Gilles 89
4000 Liege · Business: (+32) (4) 232 85 75 · frederic.kurz@just.fgov.be · frederic.kurz@tiscali.be
- **Yves Segaert-Vanden Bussche** Public Prosecutor,
Public Prosecutor's Office · Kazernevest 3 · 8000 Brugge · Business: (+32) (50) 47 36 15
Fax: (+32) (50) 47 30 88 · yves.segaert-vandenbussche@just.fgov.be

Bulgaria

- **Animus Association Foundation**
85 Ekzarh Yossif st. · 1000 Sofia Bulgaria · Business: (+359) (2) 983 52 05;
Business: (+359) (2) 983 53 05; Business: (+359) (2) 983 54 05 · animus@animusassociation.org ·
<http://www.animusassociation.org>

Estonia

MINISTRY OF JUSTICE

- **Kristiina Aavik** (general contact person) Criminal Policy Department,
Adviser on penal law and procedure office · Coordinating the implementation of development plan
combating trafficking in human beings 2006-2009 · E-mail: Kristiina.Aavik@just.ee · Tel: 372 6208 288
- **Kaire Tamm** Criminal Policy Department,
Adviser on criminal statistics and analyses · Statistics (register of criminal procedure, register of adjudica-
tions) E-mail: Kaire.Tamm@just.ee · Tel: 372 6208 128

The Public Prosecutor's Office

- **Margus Kurm** Directive prosecutor
Organized crime, including trafficking in human beings · E-mail: Margus.Kurm@just.ee

MINISTRY OF EDUCATION AND SCIENCE

- **Aare Vilu** Youth Department,
Chief Specialist · Special youth work · Tel: 372 7 350 218 · E-mail: Aare.Vilu@hm.ee

National Examination and Qualification Centre

- **Mare Räs** General Education Syllabus and Examination Department,
Chief Specialist Evaluation of materials of education in social subjects and teacher training · Tel: 372 7 350 615 · E-mail: Mare.Rais@ekk.edu.ee

MINISTRY OF THE INTERIOR

- **Cerly Vaerand** (general contact person)
Internal Security Policy Department, Law Enforcement Policy Bureau, adviser · General coordination on combating trafficking in human beings Tel: 372 6125 040 · E-mail: Cerly.Vaerand@sisemin.gov.ee

Citizenship and Migration Board

- **Margit Ratnik** Visa and Illegal Immigration Department,
Head of Department · Problems connected to illegal immigration · Tel: 372 6126 970 ·
E-mail: Margit.Ratnik@mig.ee
- **Koidu Mesilane** Citizenship Department,
Head of Department Documentation of Estonian citizens Tel: 372 6126 960
E-mail: Koidu.Mesilane@mig.ee
- **Martin Karro** Foreigners' Documentation Department,
Head of Department Documentation of foreigners · Tel: 372 6126 990 · E-mail: Martin.Karro@mig.ee
- **Leen Pärdi**
Refugees Department, Head of Department · Revision of application for asylum · Tel: 372 6056 981
E-mail: Leen.Pardi@mig.ee

Police Board

- **Indrek Tibar** Police Standards Department,
Police Director · Coordinating the Police Board's activities on combating the trafficking in human beings
Tel: 372 6123 020 · E-mail: Indrek.Tibar@pol.ee

Central Criminal Police

- **Reigo Reimand** Criminal Information Department,
Commissary of Office II · Cross-border cooperation and questions preceding criminal procedure
Tel: 372 6123 623 · E-mail: Reigo.Reimand@kkp.pol.ee
- **Katrin Spiegel** Procedure Department,
Police Chief Inspector of Office · Internal and international criminal procedure and surveillance
Tel: 372 6123 874 · E-mail: Katrin.Spiegel@kkp.pol.ee

Border Guard

- Inge Lindsaar Information Department,
Head of Department · Inspection of unattended children · Tel: 372 6149 008 · E-mail:
Inge.Lindsaar@pv.ee

MINISTRY OF SOCIAL AFFAIRS

- **Kristiina Luht** (general contact person)
Gender Equality Department, Chief Specialist · Trafficking in human beings prevention and notification activities · Tel: 372 6269 254 · E-mail: Kristiina.Luht@sm.ee
- **Anu Rannaveski** Social Welfare Department,
Chief Specialist · Social welfare services and benefits · Tel: 372 6269 228 · E-mail:
Anu.Rannaveski@sm.ee

- **Maarja Kuldjärv** Labour Market Department,
Chief Specialist · Labour market policy · Tel: 372 6269 194 · E-mail: Maarja.Kuldjarv@sm.ee
- **Annika Sepp** Labour Market Department,
Chief Specialist · Labour market policy · Tel: 372 6269 179 · E-mail: Annika.Sepp@sm.ee
- **Signe Kaplan** Social Welfare Department,
Chief Specialist · Contact point for unattended and trafficked children in co-operation with the Council of the Baltic Sea States' risk children project · Tel: 372 6269 220 · E-Mail: Signe.Kaplan@sm.ee

Social Insurance Board

- **Ene Päll** Victim Support Department,
Head of Department · Victim support centers · Tel: 372 6408 132 · E-mail: Ene.Pall@ensib.ee

MINISTRY OF FOREIGN AFFAIRS

- **Karen Tikenberg** (general contact person)
Nordic-Baltic Co-operation's executive committee against trafficking in human beings
E-mail: Karen.Tikenberg@mfa.ee
- **Monika Staneva** Consular Department,
Director of Division 4 · Consular Affairs · Tel: 372 6377 469 · E-mail: Monika.Staneva@mfa.ee

Germany

- **Dagmar Freudenberg** Prosecutor
Prosecution Service of Göttingen · Tel. +49-551-4031634; Fax +49-551-4031633
dagmar.freudenberg@sta-goe.niedersachsen.de
- **Ina Holznagel** Prosecutor – Head of Department for Organised Crime
Dortmund Prosecution, Germany · Tel. +49-231-926 26 213 · Fax. +49-231-926 26 290
poststelle@sta-dortmund.nrw.de
- **Eva Schaab** Leader of Solwodi Counselling Centre in Ludwigshafen
SOLWODI, NGO Germany · Tel. +49-621-529-1277 · Fax. +49-621-529-2038 · solwodilu@aol.com

Italy

- **Dipartimento per le Pari Opportunità**
Segreteria Tecnica della Commissione Interministeriale per la tratta · Largo Chigi 19 · 00187 Roma
Business: (+39) 06 67 79 24 89 · progettarticolo18@palazzochigi.it · <http://www.pariopportunita.gov.it>

This is the governmental operational office that manages the social assistance and integration program aimed at trafficked victims. The commission comprises representatives of the following ministers: interior, justice, welfare and equal opportunities

- **Marco Bufo** Associazione On the Road
via delle Lancette 27-27 A · 64014 Martinsicuro (TE) · Business: (+39) 08 61 79 66 66
Mobile: (+39) 34 88 21 51 45 · Fax: (+39) 08 61 76 51 12 · mail@ontheroadonlus.it
www.ontheroadonlus.it

Poland

- **Mr. Krzysztof Karsznicki** Prosecutor,
National Public Prosecutors Office · Business: (+48) 22 628 81 60 · karsznicki@ms.gov.pl
- **Mr. Piotr Mierecki** Secretary,
Interministerial Group on Combating and Prevention of THB · Business: (+48) 22 60 145 51
zesp.pol.handel@mswia.gov.pl

- **Mr. Mariusz Skowro_ski** Polish national member in Eurojust
skowronski@ms.gov.pl
- **La Strada Foundation** (NGO)
Business: (+48) 22 628 99 99 · strada@pol.pl
- **Caritas Polska**
Program przeciwdzia_ania przymusowej prostytucji · (Programme on counteracting forced prostitution)
Business (+48) 22 334 85 00 (or 85) · caritaspolska@caritas.pl

Portugal

- **Antonieta Borges** Prosecutor
Central Department for Investigation and Penal Action (DCIAP) · Rua Alexandre Herculano 60' 6 - P - 1250-012 Lisbon, Portugal · Business: (+351) 21 384 70 01 (direct) · Fax: (+351) 21 384 70 48
antonieta.borges@pgr.pt
- **Euclides Dâmaso** Prosecutor
Department for Investigation and Penal Action of Coimbra · Rua da Sofia 175' - P -3004-502 Coimbra, Portugal · Business: (+351) 23 985 22 84 · Fax: (+351) 23 985 22 86
euclides.damaso@diap-cmb.mj.pt
- **Rosa Rocha** Gabinete para as Relações Internacionais, Europeias e de Cooperação (GRIEC) do Ministério da Justiça · Rua Sousa Martins 21' 6 -7 - P -105-217 Lisbon, Portugal · Business: (+351) 21 312 1000/007 (direct) · Fax: (+351) 21 312 10 56
rosarocha@griec.mj.pt
- **Carla Amaral** APAV Portugal (NGO)
Rua José Estêvão lote A 135' - P -1150-201 Lisbon, Portugal · Business: (+351) 21 887 63 51
Fax: (+351) 21 887 63 51 · camaral@apavrede.pt, apav.sede@apav.pt, carlamaral@gmail.com

Eurojust

Maanweg 174 · 2516 AB The Hague · The Netherlands
Business: (+31) 70 412 5000 · Fax: (+31) 70 412 5505 · info@eurojust.eu.int

Eurojust is composed of 25 National Members, one seconded from each member state in accordance with its legal system being a prosecutor, judge or police officer of equivalent competence. Several Member States have appointed Deputies and Assistants to help their national member. Some of the Deputies and Assistants are based in The Hague with their national member; whilst other Member States have appointed Deputies who are based in their home country. These Deputies visit The Hague to substitute for their national member or when otherwise required to do so.

Europol

Europol · P.O. Box 908 50 · 2509 LW The Hague · The Netherlands

Visiting address:

Raamweg 47 · 2596 HN The Hague · The Netherlands
Business (+31) 70 302 5000 · Fax: (+31) 70 302 5896 · <http://www.europol.eu.int>

For general enquiries:

info@europol.eu.int

For media enquiries, information requests, visits and events:

corporate.communications@europol.eu.int

Europol is the European Union law enforcement organisation that handles criminal intelligence. Its aim is to improve the effectiveness and co-operation between the competent authorities of the Member States in preventing and combating serious international organised crime and terrorism. The mission of Europol is to make a significant contribution to the European Union's law enforcement action against organised crime and terrorism with an emphasis on targeting criminal organisations.

ANNEX III: UNICEF Guidelines for Protection of the Rights of Children Victims of Trafficking in Southeastern Europe

The following guidelines set out standards for good practice with respect to protection and assistance of child victims of trafficking from initial identification up until the final integration and recovery of the child. These guidelines have been developed on the basis of relevant international and regional human rights instruments and provide a straightforward account of the policies and practices required to implement and protect the rights of child victims of trafficking. They aim to provide guidance to Governments and State actors, international organisations and NGOs, in developing procedures for special protection measures of child victims of trafficking.

1. Definition

- Child trafficking is the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation either within or outside a country. Consent of the child victim to the intended exploitation is irrelevant even if none of the following means have been used: “force, coercion, abduction, deception, abuse of power or actions taken while one is in a state of vulnerability or while one is in the control of another person”
- A child victim of trafficking (“child victim”) is any person under 18 years of age.

2. General Principles

The following principles underpin the Good Practice Guidelines and should be born in mind at all stages of care and protection of child victims of trafficking in countries of destination, transit and origin.

2.1 Rights of the Child

- All actions undertaken in relation to child victims shall be guided by and based on the principles of protection and respect for human rights as set out in the United Nations Convention on the Rights of the Child (1989).
- Child victims are entitled to special protection measures, both as victims and as children, in accordance with their special rights and needs.
- The involvement of a child victim in criminal activities should not undermine their status as both a child and a victim, and his/her related rights to special protection.

2.2 Best Interest of the Child

- In all actions concerning child victims, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration.

2.3 Right to Non-Discrimination

- All child victims, non-national as well as national or resident children, are entitled to the same protection and rights. They must be considered as children first and foremost. All considerations of their status, nationality, race, sex, language, religion, ethnic or social origin, birth or other status shall not impact on their rights to protection.

2.4 Respect for the Views of the Child

- A child victim who is capable of forming his or her views enjoys the right to express those views freely in all matters affecting him or her, for example, in decisions concerning his or her possible return to the family or country of origin.
- The views of the child shall be given due weight in accordance with his or her age, maturity and best interest.

2.5 Right to Information

- Child victims must be provided with accessible information about, for example, their situation, their enti-

lements, services available and the family reunification and/or repatriation process.

- Information shall be provided in a language, which the child victim is able to understand. Suitable interpreters shall be provided whenever child victims are questioned/interviewed or require access to services.

2.6 Right to Confidentiality

- Information about a child victim that could endanger the child or the child's family members must not be disclosed.
- All necessary measures must be taken to protect the privacy and identity of child victims. The name, address or other information that could lead to the identification of the child victim or that of the child's family members, shall not be revealed to the public or media.
- The permission of the child victim must be sought in an age appropriate manner before sensitive information is disclosed.

2.7 Right to be Protected

- The state has a duty to protect and assist child victims and to ensure their safety.
- All decisions regarding child victims must be taken expeditiously.

3. Guidelines for Specific Measures

3.1 Identification

3.1.1 Pro-active identification measures

- States shall take all necessary measures to establish effective procedures for the rapid identification of child victims.
- Efforts should be made to coordinate information sharing between agencies and individuals (including law enforcement, health, education, social welfare agencies, and NGOs), so as to ensure that child victims are identified and assisted as early as possible.
- Immigration, border and law enforcement authorities shall put in place procedures to identify child victims at ports of entry and in other locations.
- Social service, health or education authorities should contact the relevant law enforcement authority where there is knowledge or suspicion that a child is exploited or trafficked or is at risk of exploitation and trafficking.
- NGOs/civil society organisations should contact relevant law enforcement authorities and/or social service authorities where there is knowledge or suspicion that a child is exploited or trafficked or is at risk of exploitation and trafficking.

3.1.2 Presumption of age

- Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child.
- Pending verification of the victim's age, the victim will be treated as a child and will be accorded all special protection measures stipulated in these guidelines.

3.2 Appointment of a Guardian

Appointment process

- As soon as a child victim is identified, a guardian should be appointed to accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented. To the extent possible, the same person should be assigned to the child victim throughout the entire process.
- Social service authorities, or other appropriate institutions, shall establish a guardianship service to be implemented directly or through formally accredited organisation(s).
- The guardianship service will appoint a guardian as soon as it receives notification that a child victim has been identified.
- The guardianship service will be held responsible/accountable for the acts of the appointed guardian.
- The state shall ensure that this service is fully independent, allowing it to take any action it considers to be in the best interests of the child victim.
- Individuals appointed as guardians must have relevant childcare expertise and knowledge and understanding of the special rights and needs of child victims, and of gender issues.

- Guardians should receive specialized training and professional support.

Responsibilities of the guardian

- Regardless of the legal status of the individual appointed as the guardian (e.g. legal guardian, temporary guardian, adviser/representative, social worker or NGO worker) their responsibilities should be:
 - a) to ensure that all decisions taken are in the child's best interest,
 - b) to ensure that the child victim has appropriate care, accommodation, health care provisions, psycho-social support, education and, language support,
 - c) to ensure that the child victim has access to legal and other representation where necessary,
 - d) to consult with, advise and keep the child victim informed of his/her rights,
 - e) to contribute to identification of a durable solution in the child's best interest,
 - f) to provide a link between the child victim and various organisations who may provide services to the child,
 - g) to assist the child victim in family tracing,
 - h) to ensure that if repatriation or family reunification is carried out, it is done in the best interest of the child victim,
- Following initial questioning by law enforcement officials, the guardian shall accompany the child to appropriate accommodation/shelter.
- The guardian shall be responsible for safeguarding the best interest of the child victim until the child is placed in the custody of either IOM, Ministry of the Interior or other competent organisation responsible for the repatriation process or is returned his/her parents or legal guardian. The guardian shall ensure the relevant paperwork is completed that temporarily places the child in the custody of the Ministry of Interior. Until a durable solution has been found for the disposition of the child, the child shall remain a ward of state in ex officio guardianship of the appointed guardian.
- The guardian should have the right to refuse to give testimony in criminal and civil (judicial) proceedings if this is in the best interest of the child.
- The guardian shall attend all police interviews conducted with the child. If the guardian feels at any time during these interviews that the child should have benefit of legal counsel, he/she shall have the right, and responsibility, to inform the police of the need to terminate the interview until legal counsel may be present.

3.3 Questioning, Interviews and Initial Action

3.3.1 Registration

- Law enforcement authorities (i.e. police) should register child victims through initial questioning.
- Law enforcement authorities should immediately open a case file on the child victim and begin to collect information, which will facilitate judicial proceedings as well as measures to be taken for the disposition of the child.

3.3.2 Initial questioning

- Child victims should be questioned in a child-sensitive manner.
- Only specially trained members of the law enforcement authority should question child victims. Wherever possible, child victims should be questioned by law enforcement officers of the same sex.
- Initial questioning of a child victim should only seek to collect biographical data and social history information (i.e. age, nationality, languages spoken etc.).
- Information regarding the experience of the child whilst trafficked, and any knowledge they may have of illegal activities etc. should not be sought at this point.
- Law enforcement authorities should avoid questioning a child victim on their premises or in the location where the child has been exploited and/or in the presence or physical proximity of any suspected trafficker. Whenever possible, initial questioning should be delayed until the child has been relocated to a safe location.

3.3.3 Initial action

- Upon identification of child victim, or when there is presumption that victim is a child, law enforcement

authorities shall be responsible for immediately organising the transfer of the child victim to a shelter/safe location for accommodation.

- Following identification of child victim, police/law enforcement authorities shall contact as soon as possible guardianship services in order to establish appointment of a guardian.
- In the process of appointing a guardian, law enforcement authorities should protect the child's privacy and confidentiality.
- The Ministry of Interior or other relevant law enforcement agencies should make available to every law enforcement station the necessary contact details of the guardianship service.
- Responsibility for contacting the guardianship service and for the formal hand-over of the child into the care of the guardian should rest with the most senior ranking police officer/officer in charge of the investigation.
- Upon presentation of the guardian, the officer responsible will sign the necessary paperwork (which shall be presented by the guardian) confirming that they have handed over the child to ex officio guardianship: as such, they must recognize the right of the guardian to request a halt to proceedings, to speak to the child alone, and take all necessary measures that are in the best interest of the child.
- Relevant law enforcement authorities shall ensure that the appointed guardian accompanies the child victim at all points.

3.3.4 Interviewing the child victims about their experience

- Police and other law enforcement authorities should only question child victims about their trafficking experience in the presence of the appropriate guardian.
- Law enforcement authorities should minimize the length and scope of questioning so as to minimize further trauma or psychological distress to the child victim.
- Law enforcement authorities should defer to the guardian for information that does not legally require the first person testimony of the child.
- As consent of the child is not relevant for legal purposes, law enforcement authorities should use such information for general investigative purposes only.
- The apparent consent of a child victim to the intended exploitation must not be used:
 - as evidence in the pursuit of criminal charges against the child related to the child's status as a victim of trafficking or situation as a child,
 - as the sole basis for retention of the child in police custody for further – whether related or unrelated – questioning.
- **Law enforcement authorities (i.e. prosecutors and judges) should ensure that child victims are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.**
- **Law enforcement authorities should ensure that child victims are never detained for reasons related to their status as a victim.**

3.3.5 Age assessment

- Verification of the victim's age should take into account:
 - the physical appearance of the child and his/her psychological maturity,
 - the victim's statements,
 - documentation,
 - checking with embassies and other relevant authorities,
 - consensual medical examination and opinion.

3.1 Referral and Coordination/Co-operation

3.4.1 Referral to appropriate services

- Child victims shall be referred expeditiously to appropriate services.
- The state, through relevant ministries, shall assist law enforcement authorities, social service authorities, relevant administrative bodies, international organisations and NGOs/civil society organisation in the establishment of an efficient referral mechanism for child victims.

3.4.2 Inter-agency co-operation

- All relevant ministries and government bodies (including police, social service authorities, Ministries of Interior) involved in the referral and assistance to child victims should adopt policies and procedures which

favour information-sharing and networking between agencies and individuals working with child victims in order to ensure an effective continuum of care and protection for child victims.

- The Ministry of Interior shall designate “liaison officers” as responsible for liaison with the social services authorities/guardianship service, and in particular, the guardian of the child victim.
- In order to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the disposition of the child, the Ministry of Interior shall assist in contacts with the corresponding authorities in the child’s country of origin. Such assistance will also be afforded to the relevant authorities in the form of support to and coordination with their dealings with the Ministry of Foreign Affairs, and, where appropriate, their contacts with representatives of the embassies of the child’s country of origin.
- Liaison officers shall also liaise with members of the relevant law enforcement agencies dealing with child victims.
- Liaison officers (along with, where appropriate, legal counsel for the Ministry,) shall be responsible for representing the Ministry of Interior, in meetings in which the final disposition of the child is decided in conjunction with the other relevant administrative and judicial bodies.

3.5 Interim Care and Protection

3.5.1 Care and protection

- Child victims are entitled to receive immediate care and protection including security, food, and accommodation in a safe place, access to health-care, psychosocial support, legal assistance, social services and education.
- Care and assistance shall respect the child’s cultural identity/origin, gender and age.
- Appropriate assistance should be provided to children with special needs, particularly in cases of disabilities, psychosocial distress, illnesses and pregnancies.
- Child victims should be cared for by adequately trained professionals who are aware of the special rights and needs of child victims and of gender issues.
- Social service authorities shall provide such care through the establishment of appropriate services and where appropriate through co-operation with relevant international organisations and NGOs.
- Guardians, in co-operation with social service authorities and NGOs, shall conduct an individual needs assessment for each child victim in order to determine care and protection provisions.

3.5.2 Accommodation in a safe place

- Child victims should be placed in safe and suitable accommodation (i.e. temporary shelter or location of alternative care arrangement) as soon as possible after their identification.
- Social service authorities, in co-operation with NGOs and international organisations, shall develop standards of care for places where child victims are accommodated.
- Under no circumstances should a child be placed in a law enforcement detention facility. This includes detention in, for example, detention centres, police cells, prisons or any other special detention centres for children.

3.5.3 Regularization of Status

- Ministries of Interior and/or other relevant state authorities shall establish policies and procedures to ensure that child victims, who are not nationals/residents of the country in which they find themselves, are automatically granted a Temporary Humanitarian Visa and are entitled to stay in the country on a valid legal basis pending identification of a durable solution.
- For children without documentation, Ministries of Interior and/or other relevant state authorities will provide temporary documents.
- In conjunction with the Ministry of Interior, and where relevant, the social service authorities, the guardian shall be responsible for initiating application procedures for the issuance of a Temporary Humanitarian Visa, and the concordant leave of stay, acting on behalf of the child in any administrative presentations or procedures this may require.
- Such status shall be afforded to the child victim until the relevant judicial and administrative bodies have made a decision regarding the disposition of the child.

3.5.4 Individual Case Assessment and Identification of a Durable Solution

- Child victims should not be returned to their country of origin unless, prior to the return, a suitable caregiver such as parent, other relative, other adult care-taker, a government agency, a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate care and protection.
- The views of the child should be taken into consideration when considering family reunification and/or return to the country of origin and in identifying a durable solution for the child.
- Social service authorities, in co-operation with Ministries of Interior where necessary, should take all necessary steps to trace, identify and locate family members and facilitate the reunion of child victim with his/her family where this is in the best interest of the child.
- The respective Ministries, in conjunction with the relevant social worker authorities and/or guardian, should be responsible for establishing whether or not the repatriation of a child victim is safe, and ensure that the process takes place in a dignified manner, and is in the best interest of the child.
- Ministries of Foreign Affairs, Ministries of Interior and other relevant state authorities shall establish agreements and procedures for collaboration with each other in order to ensure that a thorough inquiry into the individual and family circumstances of the child victim is conducted in order to determine the best course of action for the child.
- The guardian, acting through and with the assistance of the Ministries of Interior or other relevant state authorities, and the relevant social service authority, shall begin the process of obtaining documentation and information from the child's country of origin in order to conduct risk and security assessment, upon which the decision as to whether or not to reunite the child with his/her family or return the child to their country of origin shall be made.
- Once sufficient documentation and information has been gathered, the relevant social service authority shall decide in conjunction with the guardian, the Ministry of Interior (or other relevant Ministries), and, where relevant and/or appropriate, representatives of the embassy of the country of origin, on the final disposition made in favour of the child.
- If the decision is made against family reunification and/or repatriation, then the guardian shall remain responsible for the child victim, until the appropriate judicial appoint a legal guardian for the child.
- In order to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the disposition of the child, Ministries of Interior shall assist those authorities in contacts with the corresponding authorities in the child's country of origin. Such assistance will also be afforded to the relevant authorities in the form of support to and coordination with their dealings with the Ministry of Foreign Affairs, and, where appropriate, their contacts with representatives of the embassies of the child's country of origin.

3.6 Implementation of a Durable Solution

3.6.1 Local integration

- Child victims, both who are nationals and not nationals/residents of the country in which they find themselves, are entitled to receive long-term care and protection including access to health-care, psychosocial support, social services and education.
- In situations where the safe return of the child to his/her family and/or country of origin is not possible, or where such return would not be in the child's best interest, the social welfare authorities should make adequate long-term care arrangements.
- Such arrangements should favour family- and community-based arrangements rather than residential care.
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child.

3.6.2 Return to country of origin

- Child victims, who are not nationals/residents of the country in which they find themselves, are as a general principle entitled to return to their country of origin.
- Child victims shall not be returned to their country of origin if, following a risk and security assessment, there are reasons to believe that the child's safety or that of their family is in danger.
- Ministries of Interior or other relevant state authorities shall establish agreements and procedures for the safe return of child victims to their country of origin.
- Guardian or a social worker assigned to the case should accompany child victims who are being returned

until placed in the custody of Ministry of Interior, IOM or other organisation responsible for return.

- States shall establish procedures to ensure that the child is received in the country of origin by an appointed responsible member of the social services of the country of origin and/or child's parents or legal guardian.

3.6.3 Integration in country of origin- reception and reintegration

- Child victims, are entitled to receive long-term care and protection including security, food, accommodation in a safe place, access to health-care, psycho-social support, legal assistance, social services and education with a view to their social reintegration.
- Appropriate assistance should be provided to children with special needs, particularly in cases of disabilities, psychosocial distress, illnesses and pregnancies.
- Child victims should be cared for by adequately trained professionals who are aware of the special needs and rights of child victims, and of gender issues.
- Social service authorities shall provide such care through the establishment of appropriate services and where appropriate through co-operation with relevant international and non-governmental organisations.
- Social service authorities shall conduct an individual needs assessment for each child victim in order to determine care and protection provisions.
- Social service authorities, in co-operation with relevant international and non-governmental organisations should monitor the life situation of the child following his or her family reunification and or placement in alternative care.
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child.
- Social service authorities shall ensure that alternative care arrangements for child victims deprived of a family environment favour family- and community-based arrangements rather than residential care.
- Ministries of Education shall establish special inclusive education and vocational programs for child victims.

3.6.4 Resettlement and integration in a third country

- In situations where the safe return of the child to his/her country of origin and the integration in the country of destination are not possible, or where these solutions would not be in the child's best interest, the states in both countries should ensure the child victim's resettlement in a third country.
- Such arrangements should favour family- and community-based arrangements rather than residential care.
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child, including for education needs.
- Child victims are entitled to receive long-term care and protection including access to health-care, psychosocial support, social services and education.

3.7 Access to Justice

3.7.1 Criminal proceedings

- Child victims have the right to be fully informed about security issues and criminal procedures prior to deciding whether or not to testify in criminal proceedings against persons who are suspected of involvement in the exploitation and/or trafficking in children.
- Child victims of trafficking have the "right to recovery time" before deciding whether or not to pursue criminal proceedings against the trafficker.
- Assistance to the child victim of trafficking should not, under any circumstances, be conditional on the child's willingness to act as a witness.
- The taking of a statement by a law enforcement officer or investigating judge shall in no way inhibit or delay family reunification or the return of child victim to the country of origin if it is in the best interest of the child.
- Direct contact should be avoided between the child victim and the suspected offender during the process of investigation and prosecution as well as during trial hearings as much as possible.
- Law enforcement authorities, in co-operation with social services and non-governmental organisations, should make available necessary legal representation, as well as interpretation into the native language of the child, if necessary.
- States should consider, if necessary, amendments of their penal procedural codes to allow for, inter alia, video-

taping of the child's testimony and presentation of the videotaped testimony in court as an official piece of evidence. In particular, police, prosecutors, judges and magistrates should apply child-friendly practices.

3.7.2 Civil proceedings

- Child victims should be provided with information regarding their right to initiate civil proceedings against traffickers and other persons involved in their exploitation.
- Law enforcement authorities should adopt measures necessary to protect the rights and interests of child victims at all stages of judicial proceedings against alleged offenders and during procedures for obtaining compensation.
- Law enforcement authorities should undertake to ensure that child victims are provided with appropriate access to justice and fair treatment, restitution and compensation including prompt redress.
- Law enforcement authorities, in co-operation with social services and non-governmental organisations, should make available necessary legal representation to bring an action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary.

3.8 Victim/Witness Security and Protection

- Child victims who agree to testify should be accorded special protection measures to ensure their safety and that of their family members in both countries of destination, transit and origin.
- Ministries of Interior and other relevant law enforcement authorities should adopt all measures necessary to protect the child victim and their family members, including through international co-operation.
- When the victim/witness protection cannot be ensured in neither country of destination nor in country of origin, measures should be taken to allow resettlement in a third country.

3.9 Training

- All agencies dealing with child victims should establish special recruitment practices and training programmes so as to ensure that individuals / persons responsible for the care and protection of child victims understand their rights and needs, are gender-sensitive, and possess the necessary skills to assist children.

4. Implementation at country level

The guidelines represent only the beginning of establishing a system of protection and assistance appropriate to the rights and needs of child victims of trafficking.

At national level, national working groups within the frameworks of the National Plans of Action to combat trafficking should establish a specialised group with representatives of appropriate ministries, police, administrative and judicial authorities, etc, to begin a thorough examination of the existing mechanisms and legislative structures, including identification of the following:

1. Roles and responsibilities of different government authorities, including, police, social service authorities, Ministries of Interior, etc;
2. Roles and responsibilities of NGOs and international organisations;
3. Mechanisms and modalities of co-operation;
4. Resources necessary to implement the guidelines, including human and financial.

For the annexes to the guidelines, please refer to www.anti-trafficking.net

ANNEX IV: International Co-operation

Alphabetical list of conventions, agreements and (framework) decisions and entry into force

- **Act of 3 November 1998** adopting rules applicable to Europol analysis files
- **Act of 3 November 1998** laying down rules concerning the receipt of information by Europol from third parties
- **Act of 3 November 1998** laying down rules governing Europol's external relations with third States and non-European Union related bodies
- **Additional Protocol 8 November 2001 to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows:** entry into force: 1 July 2004
- **Additional Protocol of 15 October 1975 to the Council of Europe Convention on extradition (Additional Protocol CoE Convention on Extradition):** entry into force: 20 August 1979
- **Additional Protocol of 17 March 1978 to the Council of Europe Convention of 20 April 1959 on mutual assistance in criminal matters (Additional Protocol to CoE MLA Convention):** entry into force: 12 April 1982
- **Agreement of 25 June 2003** on extradition between the European Union and the United States of America: not entered into force yet
- **Agreement of 25 June 2003** on mutual legal assistance between the European Union and the United States of America (MLA Agreement EU-US): not entered into force yet
- **Agreement of 26 May 1989** between the Member States of the European Communities on the simplification and modernization of methods of transmitting extradition requests: not entered into force yet (except in the relations between the member states who made a declaration of accelerated entry into force)
- **Agreement of 6 November 1990** between the Member States of the European Communities on the transfer of proceedings in criminal matters: not entered into force yet (except in the relations between the member states who made a declaration of accelerated entry into force)
- **Convention of 10 March 1995** on simplified extradition procedure between the Member States of the European Union: not entered into force yet (except in the relations between the member states who made a declaration of accelerated entry into force)
- **Council of Europe Convention of 21 March 1983** on the transfer of sentenced persons: entry into force: 1 July 1985
- **Convention of 13 November 1991** between the Member States of the European Communities on the enforcement of foreign criminal sentences: not entered into force yet (except in the relations between the member states who made a declaration of accelerated entry into force)
- **Convention of 18 December 1997** on mutual assistance and co-operation between customs administrations (Naples II Convention): not entered into force yet (except in the relations between the member states who made a declaration of accelerated entry into force – with the exception of Art. 23!)
- **Convention of 19 June 1990** applying the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the gradual abolition of checks at their common borders (Schengen Implementation Convention) : entry into force: 1 March 1995
- **Convention of 25 May 1987** between the Member States of the European Communities on double jeopardy: not entered into force yet (except in the relations between the member states who made a declaration of accelerated entry into force)
- **Convention of 27 September 1996** relating to extradition between the Member States of the European Union: not entered into force yet (except in the relations between the member states who made a declaration of accelerated entry into force)
- **Convention of 29 May 2000** mutual assistance in criminal matters between the member states of the European Union (EU MLA Convention): not entered into force yet (except in the relations between the member states who made a declaration of accelerated entry into force)
- **Convention of 8 November 1990** on laundering, search, seizure and confiscation of the proceeds from crime (CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime) : entry into force: 1 September 1993

- **Convention on the establishment of a European Police Office (Europol Convention):** entry into force: 1 October 1998
- **Council of Europe Convention of 13 December 1957 on Extradition (CoE Convention on Extradition):** entry into force: 18 April 1960
- **Council of Europe Convention of 20 April 1959 on mutual assistance in criminal matters (CoE MLA Convention):** entry into force: 12 June 1962
- **Decision of 28 February 2002** setting up Eurojust with a view to reinforcing the fight against serious crime (Decision setting up Eurojust)
- **Directive 95/46/EC of 24 October 1995** on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- **European Convention 28 January 1981** for the Protection of Individuals with regard to Automatic Processing of Personal Data: entry into force: 1 October 1985
- **European Convention of 15 May 1972** on the transfer of proceedings in criminal matters: entry into force: 30 March 1978
- **European Convention of 28 May 1970** on the international validity of criminal judgements: entry into force: 26 July 1974
- **Framework Decision 13 June 2002** on joint investigation teams (FD Joint Investigation Teams)
- **Framework Decision 13 June 2002** on the European arrest warrant and the surrender procedures between Member States
- **Framework Decision 22 July 2003** on the execution in the European Union of orders freezing property or evidence (FD execution orders freezing or evidence)
- **Framework Decision of 17 December 2004** on the application of the principle of mutual recognition to confiscation orders²⁰³
- **Framework Decision of 18 January 2005** on confiscation of crime-related proceeds, instrumentalities and property²⁰⁴
- **Framework Decision of 2 April 2004** on the application of the principle of mutual recognition to financial penalties²⁰⁵
- **Framework Decision of 26 June 2001** on money-laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (FD on money laundering)
- **Programme of measures of 30 November 2000** to implement the principle of mutual recognition of decisions in criminal matters
- **Protocol 15 November 2000 against the Smuggling of Migrants by Land, Air and Sea (Smuggling Protocol):** entry into force: 28 January 2004
- **Protocol 15 November 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol):** entry into force: 25 December 2003
- **Protocol of 16 October 2001 to the Convention on mutual assistance in criminal matters between the member states of the European Union (Protocol to EU MLA Convention):** not entered into force yet (except in the relations between the member states who made a declaration of accelerated entry into force)
- **Protocol of 28 November 2002** amending the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol (Protocol amending the Europol Convention): not entered into force yet
- **Second Additional Protocol of 17 March 1978** to the Council of Europe Convention on extradition: entry into force: 5 June 1983
- **Second Additional Protocol of 8 November 2001** to the European Convention on mutual assistance in criminal matters (Second Additional Protocol to CoE MLA Convention): entry into force: 1 February 2004
- **UN Convention 15 November 2000 against Transnational Organized Crime (TOC Convention):** entry into force: 29 September 2003

²⁰³ This decision has not yet been published in the Official Journal and has therefore not entered into force yet.

²⁰⁴ This decision has not yet been published in the Official Journal and has therefore not entered into force yet.

²⁰⁵ This decision has not yet been published in the Official Journal and has therefore not entered into force yet.

ANNEX V: Reference Material

The following section contains a list of the recommended reference material to be used for the implementation of the training. The material is presented in two sections: Legal Instruments and References.

The complete reference material can be downloaded from the ICMPD Anti-Trafficking Website (www.anti-trafficking.net).

Legal Instruments

UN

- UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME; 2000
- PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME; 2000
- PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME; 2000
- CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN; 1979 (CEDAW)
- OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, JULY 2002
- CONVENTION ON THE RIGHTS OF THE CHILD (1989) AND OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (2000)

EU

- COUNCIL DIRECTIVE OF 29 APRIL 2004 ON THE SHORT-TERM RESIDENCE PERMIT ISSUED TO VICTIMS OF ACTION TO FACILITATE ILLEGAL IMMIGRATION OR TRAFFICKING IN HUMAN BEINGS WHO COOPERATE WITH THE COMPETENT AUTHORITIES
- COUNCIL FRAMEWORK DECISION 2002/629/JHA OF 19 JULY 2002 ON COMBATING TRAFFICKING IN HUMAN BEINGS
- BRUSSELS DECLARATION ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS; ADOPTED BY THE EUROPEAN CONFERENCE ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS - GLOBAL CHALLENGE FOR THE 21ST CENTURY - ON 18-20 SEPTEMBER 2002
- COUNCIL FRAMEWORK DECISION OF 15 MARCH 2001 ON THE STANDING OF VICTIMS IN CRIMINAL PROCEEDINGS

CoE

- CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (EHRC-1950); SEE ALSO ETS 117 – PROTOCOL N°7 TO THE CONVENTION (1984)
- EUROPEAN CONVENTION ON EXTRADITION (1957)
- ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON EXTRADITION (1975)
- SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON EXTRADITION (1978)
- EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS (1959)
- EUROPEAN CONVENTION ON THE INTERNATIONAL VALIDITY OF CRIMINAL JUDGEMENTS (1970)
- EUROPEAN CONVENTION ON THE TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS (1972)
- CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA (1981)
- ADDITIONAL PROTOCOL TO THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA, REGARDING SUPERVISORY AUTHORITIES AND TRANSBORDER DATA FLOW (2001)
- CONVENTION ON THE TRANSFER OF SENTENCED PERSONS (1983)
- ADDITIONAL PROTOCOL TO THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS (1997)
- EUROPEAN CONVENTION ON THE COMPENSATION OF VICTIMS OF VIOLENT CRIMES (1983)

- EUROPEAN CONVENTION ON THE RECOGNITION OF THE LEGAL PERSONALITY OF INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS (1986)
- EUROPEAN CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME (1990)
- CRIMINAL LAW CONVENTION ON CORRUPTIONS (1999)
- ADDITIONAL PROTOCOL TO THE CRIMINAL LAW CONVENTION ON CORRUPTION (2003)
- CIVIL LAW CONVENTION ON CORRUPTION (1999)
- ADDITIONAL PROTOCOL TO THE CRIMINAL LAW CONVENTION ON CORRUPTION (2003)
- CIVIL LAW CONVENTION ON CORRUPTION (1999)
- EUROPEAN CONVENTION ON CYBERCRIME (2001)
- RECOMMENDATION NO. R (81) 12 ON ECONOMIC CRIME
- RECOMMENDATION NO. R (85) 11 ON THE VICTIM'S POSITION IN THE FRAMEWORK OF CRIMINAL LAW AND PROCEDURE
- RECOMMENDATION R (87) 19 ON THE ORGANISATION OF CRIME PREVENTION
- RECOMMENDATION R (87) 21 ON ASSISTANCE TO VICTIMS AND THE PREVENTION OF VICTIMISATION
- RECOMMENDATION R (88) 18 CONCERNING LIABILITY OF ENTERPRISES HAVING LEGAL PERSONALITY FOR OFFENCES COMMITTED IN THE EXERCISE OF THEIR ACTIVITIES
- RESOLUTION (97) 24 ON THE TWENTY GUIDING PRINCIPLES FOR THE FIGHT AGAINST CORRUPTION
- RECOMMENDATION R (2000) 10 ON CODES OF CONDUCT FOR PUBLIC OFFICIALS, AND MODEL CODE OF CONDUCT FOR PUBLIC OFFICIALS
- RECOMMENDATION R (2000) 11 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION, ADOPTED BY THE COMMITTEE OF MINISTERS ON 19 MAY 2000, AT THE 710TH MEETING OF THE MINISTERS' DEPUTIES
- RECOMMENDATION (2000) 19 ON THE ROLE OF PUBLIC PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM

OSCE

- OSCE ANTI-TRAFFICKING GUIDELINES

Stability Pact

- STABILITY PACT ANTI-TRAFFICKING DECLARATION OF SOUTH EASTERN EUROPE, PALERMO, 13 DECEMBER 2000
- STATEMENT OF COMMITMENTS ON THE LEGALISATION OF THE STATUS OF TRAFFICKED PERSONS (TIRANA, 11 DECEMBER 2002)

Additional Instruments

UN

- UN DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER; 1985
- ECOSOC RESOLUTION 2005/20 OF 22 JULY 2005.
- ILO CONVENTION 29 CONCERNING FORCED OR COMPULSORY LABOUR (1930)
- ILO CONVENTION 138 CONCERNING THE MINIMUM AGE FOR ADMISSION TO EMPLOYMENT (1973)
- ILO RECOMMENDATION 190 CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR (1999)
- FORMER REPORT BY UNICEF, UNHCHR AND ODIHR, JUNE 2002: 'TRAFFICKING IN HUMAN BEINGS IN THE SEE: CURRENT SITUATION AND RESPONSES TO TRAFFICKING IN HUMAN BEINGS IN ALBANIA, BOSNIA AND HERZEGOVINA, BULGARIA, CROATIA, THE FEDERAL REPUBLIC OF YUGOSLAVIA REPUBLIC OF MACEDONIA, MOLDOVA AND ROMANIA'
- REPORT BY UNICEF AND UK 'STOP THE TRAFFIC!', JULY 2003

EU

- COUNCIL FRAMEWORK DECISION 2004/68/JHA OF 22 DECEMBER 2003 ON COMBATING THE SEXUAL EXPLOITATION OF CHILDREN AND CHILD PORNOGRAPHY
- JOINT ACTION 97/154/JHA OF 24 FEBRUARY 1997 ADOPTED BY THE COUNCIL ON THE BASIS OF ART. K.3 OF THE TREATY ON EUROPEAN UNION CONCERNING ACTION TO COMBAT TRAFFICKING IN

HUMAN BEINGS AND SEXUAL EXPLOITATION OF CHILDREN. AMENDED BY COUNCIL OUTLINE DECISION 2002/629/JHA OF 19 JULY 2002 CONCERNING TRAFFICKING IN HUMAN BEINGS

- COUNCIL DECISION OF 9 JUNE 2000 TO COMBAT CHILD PORNOGRAPHY ON THE INTERNET
- COUNCIL DECISION OF 23 NOVEMBER 1995 ON THE PROTECTION OF WITNESSES IN THE FIGHT AGAINST INTERNATIONAL ORGANISED CRIME
- EUROPEAN PARLIAMENT (DIRECTORATE-GENERAL FOR RESEARCH): WORKING PAPER ON "TRAFFICKING IN WOMEN" (CIVIL LIBERTIES SERIES - LIBE 109 EN - 3-2000)
- EUROPOL'S THREAT ASSESSMENT - THE USE OF THE APPLICANT COUNTRIES AS TRANSIT POINTS FOR ILLEGAL IMMIGRATION AND TRAFFICKING IN HUMAN BEINGS INTO THE EUROPEAN UNION - NOVEMBER 2001 (DOCUMENT REFERENCE 2530-66)
- HAGUE MINISTERIAL DECLARATION ON EUROPEAN GUIDELINES FOR EFFECTIVE MEASURES TO PREVENT AND COMBAT TRAFFICKING IN WOMEN FOR THE PURPOSE OF SEXUAL EXPLOITATION (1997)

CoE

- RECOMMENDATION REC (2001) 11 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING GUIDING PRINCIPLES ON THE FIGHT AGAINST ORGANISED CRIME, ADOPTED BY THE COMMITTEE OF MINISTERS ON 19 SEPTEMBER 2001, AT THE 765TH MEETING OF THE MINISTERS' DEPUTIES
- RECOMMENDATION REC (2001)16 OF THE COMMITTEE OF MINISTERS ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION, ADOPTED BY THE COMMITTEE OF MINISTERS ON 31 OCTOBER 2001 AT THE 771ST MEETING OF THE MINISTERS' DEPUTIES.
- RECOMMENDATION NO. R (91) 11 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING SEXUAL EXPLOITATION, PORNOGRAPHY AND PROSTITUTION OF, AND TRAFFICKING IN CHILDREN AND YOUNG ADULTS ADOPTED BY THE COMMITTEE OF MINISTERS ON 9 SEPTEMBER 1991 AT THE 461ST MEETING OF THE MINISTERS' DEPUTIES
- RECOMMENDATION NO. R (97) 13 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING INTIMIDATION OF WITNESSES AND THE RIGHTS OF DEFENCE, ADOPTED BY THE COMMITTEE OF MINISTERS ON 10 SEPTEMBER 1997
- RECOMMENDATION REC (2001) 18 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON SUBSIDIARY PROTECTION, ADOPTED BY THE COMMITTEE OF MINISTERS ON 27 NOVEMBER 2001 AT THE 774TH MEETING OF THE MINISTERS' DEPUTIES
- RECOMMENDATION REC (2002) 5 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE PROTECTION OF WOMEN AGAINST VIOLENCE, ADOPTED BY THE COMMITTEE OF MINISTERS ON 30 APRIL AT THE 794TH MEETING OF THE MINISTERS' DEPUTIES
- RECOMMENDATION 1325 (1997) ON TRAFFIC IN WOMEN AND FORCED PROSTITUTION IN COUNCIL OF EUROPE MEMBER STATES ADOPTED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE
- RECOMMENDATION 1450 (2000) ON VIOLENCE AGAINST WOMEN IN EUROPE ADOPTED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE
- RECOMMENDATION 1467 (2000) ON CLANDESTINE IMMIGRATION AND THE FIGHT AGAINST TRAFFICKERS ADOPTED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE
- RECOMMENDATION 1523 (2001) ON DOMESTIC SLAVERY ADOPTED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE
- RECOMMENDATION 1526 (2001) ON A CAMPAIGN AGAINST TRAFFICKING IN MINORS TO PUT A STOP TO THE EAST EUROPEAN ROUTE: THE EXAMPLE OF MOLDOVA ADOPTED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE
- RESOLUTION 1307 (2002) ON SEXUAL EXPLOITATION OF CHILDREN: ZERO TOLERANCE ADOPTED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE
- RECOMMENDATION 1545 (2002) ON A CAMPAIGN AGAINST TRAFFICKING IN WOMEN ADOPTED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

OSCE

- VIENNA MINISTERIAL DECISION, ADOPTED IN THE OSCE MINISTERIAL COUNCIL OF 27-28 DECEMBER 2000
- BUCHAREST MINISTERIAL DECISION, ADOPTED IN THE OSCE MINISTERIAL COUNCIL OF 4 DECEMBER 2001
- PORTO MINISTERIAL DECLARATION ON TRAFFICKING IN HUMAN BEINGS, OSCE MINISTERIAL COUN-

CIL, 7 DECEMBER 2002

- OSCE ACTION PLAN TO COMBAT TRAFFICKING IN HUMAN BEINGS, ADOPTED BY PERMANENT COUNCIL ON 24 JULY 2003
- REFERENCE GUIDE FOR ANTI-TRAFFICKING LEGISLATIVE REVIEW; SEPTEMBER 2001

Stability Pact

- STATEMENT OF COMMITMENTS ON VICTIM/WITNESS PROTECTION AND TRAFFICKING IN CHILDREN (SOFIA, 10 DECEMBER 2003)
- STATEMENT OF COMMITMENTS ON THE DEVELOPMENT OF AN INFORMATION EXCHANGE MECHANISM CONCERNING TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE (ZAGREB, 27 NOVEMBER 2001)

Others

- STOCKHOLM DECLARATION AND AGENDA FOR ACTION AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (1996)
- YOKOHAMA GLOBAL COMMITMENT (2001)

References

- American Psychiatric Association (1994):** Diagnostic and Statistical Manual of Mental Disorders, 4th ed., Washington D.C.
- Apap, Joanna/Cullen, Peter/Medved, Felicita (2002):** Counteracting Human Trafficking: Protecting the Victims of Trafficking.
- Bales, Kevin (2000):** I Nuovi Schiavi: la Merce Umana nell'Economia Globale, Milano.
- Bonacich, E. (1973):** A theory of middleman minorities, *American Sociological Review*, vol. XXXVII.
- Braun, BG (1989):** Psychotherapy of the survivor of incest with a dissociative disorder, *The Psychiatric clinics of North America*, vol. 12, No.2.
- Brewin and others (2000):** Meta-analysis of risk factors for posttraumatic stress disorder in trauma exposed adults, *Journal of Consulting and Clinical Psychology*, vol. 68, No.5.
- Brunovskis, Anette/Tyldum, Guri (2004):** Crossing Borders: an Empirical Study of Transnational Prostitution and Trafficking in Human Beings, Oslo.
- Butterweck-Uhl (1999):** Der Handel mit Frauen in Mittel- und Osteuropa, in: *European Strategies to Prevent and Combat Trafficking in Women. Proceedings of the International Conference Commemorating the International Day of Action against Violence against Women, 25-26 November 1998, Berlin.*
- Carchedi, Francesco (2004):** Piccoli Schiavi senza Frontiere: Traffico die Minori Stranieri in Italia, Rome.
- Carchedi, Francesco/Mottura, G./Pugliese, E. (2004):** Lavoro Servile e Nuove Schiavitù, Milan.
- Commission on Crime Prevention and Criminal Justice (2005):** Guidelines on Justice Matters involving Child Victims and Witnesses of Crime, Vienna.
- Comité contre l'esclavage moderne, CCEM(2002):** Perspectives on trafficking in human beings.
- Coomaraswamy, Radhika (2000):** Integration of the human rights of women and the gender perspective. *Violence against women*, E/CN.4/2000/68, 29 February 2000.
- Covre, P./Corso, P. :** A profile of the target in: Brussa, L. (Ed.): *Health Migration Sex Work.*
- Dearing, Albin/Förg, Elisabeth (ed.) (1999):** *Police Combating Violence against Women*, Vienna.
- European Commission (2005):** Green paper on an EU approach to managing economic migration, Brussels.
- European Commission, Group on Trafficking in Human Beings (2004):** Report of the Experts Group on Trafficking in Human Beings, Brussels.
- Fischer, Gottfried/Riedesser, Peter (1998):** *Lehrbuch der Psychotraumatologie*, 1st. ed., Munich.
- Fischer, G./Becker-Fischer, M./Düchting, C. (1998):** *Neue Wege in der Opfer-hilfe. Ergebnisse und Verfahrensvorschläge aus dem Kölner Opferhilfe Modell*, Köln.
- Flatten/Gast/Hofmann/Liebermann/Reddemann/Siol/Wöller (2004):** *Posttraumatische Belastungsstörung-Leitlinie und Quellentext*, eds. Rudolf and Eich, 2nd ed., Stuttgart.
- Frances/First/Pincus (1995):** *DSM-IV Guidebook*, 4th ed., Washington.
- Global Alliance Against Traffic in Women/Foundation Against Trafficking in Women/International Human Rights Law Group (cit. GAATW et al. 1999):** *Human Rights Standards for the Treatment of Trafficked Persons*, <http://www.thai.net/gaatw> (11.01.2003).
- Grossi, Veronique (1999):** Measures to Prevent and Combat Trafficking in Women in Belgium, in: *European Strategies to Prevent and Combat Trafficking in Women. Proceedings of the International Conference Commemorating the International Day of Action against Violence against Women, 25-26 November 1998 in Berlin.*
- Hecter, M. (1978):** Group formation and cultural division of labor, *American Journal of Sociology*, vol. 84, No. 2.
- Hughes, M./Roche, Claire (1999):** *Making the Harm Visible: Global Sexual Exploitation of Women and Girls. Speaking Out and Providing Services*, Rhode Island.
- ICMPD (2005):** *Regional Best Practice Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response*, Vienna.
- ICMPD (2004):** *Regional Standard for Anti-trafficking Training for Judges and Prosecutors in SEE*, Vienna.
- ICMPD (2004):** *Regional Standard for Anti-Trafficking Police Training in SEE*, Vienna.
- ILO (2000):** *Employer sanctions: French, German and US experiences.*
- ILO (2002):** *Forced Labour, Child Labour, and Human Trafficking in Europe: An ILO Perspective*, Technical paper, Brussels.
- ILO (2005):** *Human Trafficking and Forced Labour Exploitation – Guidance for Legislation and Law Enforcement.*
- ILO (2004):** *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers-Training Manual.*
- IOM (2000):** *Migrant Trafficking and Human Smuggling in Europe: A review of the evidence with case studies from Hungary, Poland and Ukraine*, Geneva.
- Jordan, Ann D. (2002):** *The Annotated Guide to the complete UN Trafficking Protocol*, Washington.

- Kartusch, Angelika/Knaus, Katharina/Reiter, Gabriele (2000):** Bekämpfung des Frauenhandels nach internationalem und österreichischem Recht, Wien.
- Kartusch, Angelika (2001):** Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe, Warsaw.
- Kartusch, Angelika (2001a):** Das Geschäft mit der Ware Frau – Maßnahmen gegen den Frauenhandel und zum Schutz der Opfer, in: Elisabeth Gabriel (Ed.): Frauenrechte, Wien.
- Kartusch, Angelika (2002):** Menschenhandel – Eine menschenrechtliche Herausforderung für die OSZE, in: OSZE-Jahrbuch 2002, Baden-Baden.
- Kartusch, Angelika (2003):** Internationale und europäische Maßnahmen gegen den Frauen- und Menschenhandel, Dezember 2003, gender politik online, http://www.fu-berlin.de/gpo/pdf/kartusch/angelika_kartusch.pdf
- Koelges, Barbara/Thoma, Birgit/Welter-Kaschub, Gabriele (2002):** Probleme der Strafverfolgung und des Zeuginnenschutzes in Menschenhandelsprozessen – eine Analyse von Gerichtsakten, Boppard.
- Loncle, Francois (2001):** La tratta delle donne dell'est in Europa occidentale, *Le Monde diplomatique*-II Manifesto, no. 11, vol. VIII.
- London School of Hygiene and Tropical Medicine (2003):** The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study.
- Niesner, Elvira/Johns-Pauly, Christina (2001):** Trafficking in Women in Europe. Prosecution and Victim Protection in a European Context, Bielefeld.
- Nowak, Manfred (2000):** Polizei und Menschenrechte – Schutz und Bedrohung, in: Fehérváry, János/Stangl, Wolfgang (Ed.): Menschenrecht und Staatsgewalt, Wien.
- On the Road (2002):** Art. 18: protection of victims of trafficking and fight against crime. Italy and the European scenarios. Research report, Martinsicuro, On the Road Edizioni 2002.
- OSCE (2004):** National Referral Mechanisms: Joining Efforts to protect the Rights of Trafficked Persons: A Practical Handbook, Warsaw.
- Ozer and others (2003):** Predictors of posttraumatic stress disorder and symptoms in adults: a meta-analysis, *Psychological Bulletin*, vol.129, No. 1.
- Palazzo, Sabato:** La tratta delle donne immigrate per sfruttamento sessuale di provenienza nigeriana, dai paesi dell'est europeo e dall'Albania, in: Istituto Italiano per gli Studi Filosofici, *Il Traffico di Esseri Umani e il Ruolo della Criminalità Organizzata*.
- Pearson, Elaine (2004):** Coercion in the Kidney Trade?: Background Study on Trafficking in Human Organs Worldwide, Sector Project against Trafficking in Women, GTZ.
- Rall, Heidemarie (1999):** Police Experience and Problems in Combating Trafficking in Women, in: *European Strategies to Prevent and Combat Trafficking in Women. Proceedings of the International Conference Commemorating the International Day of Action against Violence against Women, 25-26 November 1998 in Berlin*.
- Sassen, S. (1997):** *Le Città nell'Economía Globale*, Il Mulino.
- Save the Children:** *Child Trafficking in Albania*.
- UN-Handbook on Justice for Victims On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, New York 1999 (quoted: UN-Handbook).**
- UN (1999):** Offenders and victims: accountability and fairness in the criminal justice process. Working paper prepared by the Secretariat, A/CONF.187/8.
- UN, Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1** (cited: UN-Principles and Guidelines).
- UN, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime** on the work of its first to eleventh session. Addendum: Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (cited: Report of the Ad Hoc Committee), A/55/383/Add.1.
- UN, Report of the Special Rapporteur on Violence Against Women**, submitted to the Commission on Human Rights at its fifty-sixth session, E/CN.4/2000/68.
- UNHCR (2004):** Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/07.
- UNICEF et al. (2002):** Trafficking in Human Beings in South-eastern Europe. Current Situation and Responses to Trafficking in Human Beings.

UNICEF, Trafficking in Human Beings in South Eastern Europe, 2003 Update on Situation and Responses to Trafficking in Human Beings in Albania, Bosnia Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Moldova, Serbia and Montenegro, including the UN Administered Province of Kosovo and Romania, Published by UNDP, November 2003.

UNODC (1999): Handbook on Justice for Victims, New York.

UNODC (2004): Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, New York.

U.S. Department of State (1996): Forced Labor: the Prostitution of Children, Washington D.C.

U.S. Government (2004): Assessment of U.S. Government Activities to Combat Trafficking in Persons.

van der Ent, D.W./Evers, Th.D./Komduur, K. (1998): Violence Against Women. The Police's Responsibility, Den Haag.

van der Kolk, Bessel A. (2001): The assessment and treatment of complex PTSD in: Traumatic Stress: Rachel Yehuda, ed.

van der Kolk, Bessel A./Mc Farlane/Weisaeth (1996): Traumatic Stress, New York/London

van der Kolk, Bessel A./van der Hart, Onno/Marmar, Charles R. (2000): Dissoziation und Informationsverarbeitung beim posttraumatischen Belastungssyndrom, in: Bessel A. van der Kolk et al., Traumatic Stress: Grundlagen und Behandlungsansätze, Paderborn.

van Dijk, Jan J.M. (2002): Empowering Victims of Organized Crime; on the Compliance of the Palermo Convention with the UN Declaration on Basic Principles of Justice for Victims, ERA-Forum I/2002.

Victim advocacy introductory manual, Pristina (2002).

Women 2000, An Investigation into the Status of Women's Rights in Central and South Eastern Europe and the Newly Independent States, Helsinki Federation for Human Rights.

WHO (2003): Ethical and Safety Recommendations for Interviewing Trafficked Women, Geneva.

WHO, Regional Office for South-East Asia: List of Guidelines for Health Emergency, Nr.70, 10/99.

ICMPD Project Partners:

