

REGIONAL STANDARD FOR ANTI-TRAFFICKING TRAINING FOR JUDGES AND PROSECUTORS IN SEE

TRAINING MANUAL

Implemented by the

**International Centre for Migration Policy Development and
Austrian Federal Ministry for Foreign Affairs**

Within the framework of the

**Comprehensive Programme on Training and Capacity Building to Address
Trafficking in Human Beings in South Eastern Europe**

REGIONAL STANDARD FOR ANTI-TRAFFICKING TRAINING FOR JUDGES AND PROSECUTORS IN SEE

This manual constitutes the agreed regional standard for anti-trafficking training of judges and prosecutors in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, the Federal Republic of Serbia and Montenegro, Kosovo, the FYR of Macedonia, Moldova, Romania, Slovenia and Turkey.

The manual was produced within the framework of the “Programme for the Development of Anti-Trafficking Training for judges and prosecutors”, implemented by ICMPD within the framework of the Stability Pact Task Force on Trafficking in Human Beings’ multi-annual comprehensive strategy for SEE countries.

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FOREWORD

Prosecutors, judges and law enforcement officers who are well-trained and well-informed of the special issues of trafficking in human beings, are an indispensable part of an effective strategy to counter this atrocious crime and human rights violation. To this end, the Stability Pact Task Force on Trafficking in Human Beings (SPTF) has supported a three-pronged training programme -- developed under the leadership of the International Centre for Migration Policy Development (ICMPD) -- which has been adopted by the countries of the region. It consists of multi-day training for:

1. General Police
2. Special Anti-Trafficking Investigators
3. Prosecutors and Judges

This programme is the first of its kind. Such a sophisticated, curriculum-based training programme for universal regional use does not exist anywhere else in the world. It will be implemented in judicial training institutes (or equivalent) to provide regionally harmonised training, and it has been tailored to the laws, needs and experiences of each country in the region.

Key features of the programme include:

1. Country ownership
2. Sophisticated core training material so participants acquire a new knowledge-base and skill set that they have learned as a result of the training
3. Based upon international standards which are regionally harmonized and nationally adapted
4. Victim-centred oriented and human rights centred approach
5. Sustainability

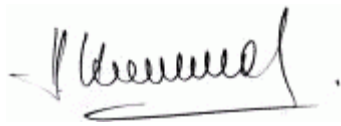
This manual is for use in the training of prosecutors and judges. Each country has agreed to incorporate this material into their training of current judges and prosecutors as well as those who are appointed to these positions in the future.

Both prosecutors and judges play a vital role in countering human trafficking. Their duties are central to the initiation of criminal procedures and conduct of successful trials against traffickers which will lead to more time served in jail by these criminals. At the same time judges and prosecutors hold important responsibilities toward the trafficking victims. Prosecutors must be immediately involved once victims have been identified. Judges have a tremendous responsibility to ensure that victims receive appropriate treatment, protection and, when possible, redress. Together, prosecutors and judges can help to prevent further traumatisation of the victim and to facilitate the appropriate rehabilitation of the victim. This training is designed to help prosecutors and judges respond appropriately before, during and after the trial phases.

Providing anti-trafficking training to prosecutors and judges will immediately improve the handling and redress of the victims of this horrifying human rights abuse. It will also impact upon the formulation of future national laws and regulations regarding this crime. Prosecutors

and judges stand on the frontlines of advancing the fight against organised crime involved in trafficking in human beings in this region.

I must express my deepest appreciation to Ms Gerda Theuermann, Director of Consultancy Services of the International Centre for Migration Policy Development, and her team, for their most valuable effort in making the promise of this project a reality. Their dedicated and professional work has been invaluable in executing this groundbreaking training material. I also would like to thank the International Migration Policy Programme (IMP) and the SECI Regional Centre, our other implementing partners, in collaboration with the International Organisation for Migration (IOM), for their support and role in ensuring the concrete success of these trainings. Finally, I wish to recognize the most valuable and highly appreciated contribution by all the experts to the content of this manual and the training programme.

A handwritten signature in black ink, appearing to read 'Helga Konrad', with a horizontal line underneath.

Helga Konrad
Chair of the Stability Pact Task Force on Trafficking in Human Beings
for South Eastern Europe

Vienna, March 2004

BACKGROUND AND INTRODUCTION: PROGRAMME FOR THE DEVELOPMENT FOR ANTI-TRAFFICKING TRAINING FOR JUDGES AND PROSECUTORS

Background: Programme for the Development for Anti-Trafficking Training for Judges and Prosecutors

The programme for the development of an anti-trafficking training module for judges and prosecutors, is part of the Comprehensive Programme on Training and Capacity Building to Address Trafficking in Human Beings in South Eastern Europe (SEE), and is implemented by the International Centre for migration Policy Development (ICMPD). Albania, Bulgaria, Bosnia-Herzegovina, Croatia, the FYR of Macedonia, Serbia and Montenegro, Kosovo, Hungary, Moldova and Romania, Slovenia and Turkey participate in the Programme.

The programme aims to foster the development of sustainable training structures in the 13 participating countries from South Eastern Europe by way of developing a regional curriculum for training on trafficking in human beings for judges and prosecutors, as well as enhancing its inclusion in the regular training in the relevant judicial training institutions in the region.

To this extent, an experts project group has developed a draft training material (comprising a manual, a curriculum and teaching aids), which would serve as a regional standard for training of future and active judges and prosecutors. As a next step, participating countries were invited to a regional validation seminar, which was held in Sofia, Bulgaria, (10-13 April 2003). The national delegations comprised one judge and one prosecutor each with experience in trafficking related crimes, organised crime, and crimes of violence against persons, as well as a representative of a national judicial training institute or a comparable training agency. The national teams were requested to review and agree upon the draft regional training manual for judges and prosecutors, as well as to develop and present strategies for subsequent implementation of this manual at the national level (national adaptation of the manual, pilot seminars and planned inclusion into the curriculum of judicial training institutes). Experienced international experts instructed the three-and-a-half-day seminar. The regional training draft manual was revised to reflect the outcomes of the validation seminar.

The next stage of the programme was for each country to prepare national adaptations of the manual and, in co-operation with relevant partners at the national level, to deliver three pilot training courses to the identified target audiences between April and November 2003.

The trainer teams were gathered again in November 2003 to share experiences, best practises and suggestions in order to review and finalise the regional manual, as well as agree on the further follow up to ensure the sustainability of this initiative. **Participants reached agreement on the training manual on hand to serve as the regional standard for future anti-trafficking training for judicial personnel in their countries and renewed their commitment to the large-scale and sustained implementation of this training manual, notably its gradual inclusion into the curriculum of the judicial training institutes in participating countries and the holding of regular training courses.** Furthermore, it was agreed to establish mechanisms for the continued exchange of experiences as well as the regular updating of the training material.

Objectives of the Training Material

The training material has been designed for currently practising judges and prosecutors, other judicial personnel as well as future judges and prosecutors and students who have to, or may have to deal with trafficking or trafficking related crimes.

The training material is intended to achieve the following objectives:

- Enhancing the ability of the judiciary to understand the phenomenon of trafficking in human beings as a human rights violation and a criminal offence;
- Enhancing the ability of the judiciary to identify, prosecute and judge cases of trafficking in human beings, including the effective implementation of anti-trafficking legislation on the basis of international law and best practices according to a human rights centred approach;
- Familiarisation with European and international anti-trafficking standards and requirements regarding implementation in their respective country;

The material also seeks to enhance the co-operation between the judiciary, the police and NGOs.

Furthermore, the material fosters the promotion of regional cooperation and networking between trainers of the participating countries, enabling them to share information and improve practical cooperation at national and regional levels.

In order to fulfil the objectives of the training as laid out above, the training is designed as an awareness training.

Human Rights-Centred Approach

In line with the approach of the Stability Pact Task Force on Trafficking in Human Beings, the recommendations of the Council of Europe and the United Nations High Commissioner for Human Rights (UNHCHR)¹, the present training material pursues a human rights based, victim-centered approach.

According to such an approach, States have an equal duty to protect the rights of individuals to exercise their human rights, investigate alleged violations of human rights, punish violators of human rights and provide effective remedies to victims of human rights violations. This basic premise has important implications for the role of the judiciary and the criminal justice system at large in the anti-trafficking response.

This manual supports the primacy of human rights of individuals and stresses the dual responsibility of the criminal justice system to punish the offenders but also and primarily to respect and restore the human rights and needs of trafficking victims. This approach also serves the purpose of ensuring more effective and successful criminal proceedings and convictions of offenders.

The Training Material Package

¹ United Nations, Economic and Social Council, E/2002/68/Add.1, 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.

The training package developed under this programme consists of the **training manual** on hand (soon also available in several of the participating countries' local languages).² The manual is supported by a **training curriculum**, setting out the specific objectives of each of the modules and sub-modules, as well as the means, equipment and time frame needed for the delivery of the module in question. Moreover, **training slides** have been prepared as additional training aid for the trainers.

The training material package constitutes a regional best practice standard as endorsed by participating countries. Bearing in mind the differing national legal systems and traditions, the manual serves as a regional framework, and is to be complemented and adapted to national and local needs and circumstances as well as the specific national and local target groups by the national trainers teams.

The training is designed to last for **three days** and to be delivered by a multi-disciplinary expert team, judges, prosecutors and/or experts from national training institutes active in the field of judiciary training, NGOs active in the field of trafficking as well as trauma experts.

Contents of the training material:

The training manual is divided into 9 Chapters.

- *The first chapter* provides a description of the phenomenon of trafficking in human beings, including root causes, trafficking routes, types of exploitation, human rights abuse and a situation analysis
- *The second chapter* presents an in depth description of the trauma and needs of the victim, especially focusing on the risk of re-traumatisation.
- *The third chapter* attempts to outline a human rights centred response to trafficking of persons and offers elements for a comprehensive anti-trafficking strategy.
- *The fourth chapter* provides an overview of the development of international law relating to trafficking and an analysis of the main international legal instruments. The last section of the chapter contains relevant national legislation on trafficking in persons (to be elaborated by each country).
- *The fifth chapter* focuses on the rights of the victims within the context of criminal proceedings in trafficking cases, taking into account international standards and their relevance within the specific context of such cases.
- *The sixth chapter* deals with victim protection and victim assistance during prosecution and trial, as well as the role of support agencies during the court procedures.
- *The seventh chapter* sets out counter-trafficking specialist investigative techniques as well as prosecutor-police investigation co-operation.
- *The eighth chapter* describes specific aspects of criminal proceedings in trafficking cases such as evaluation of the statements of trafficked persons, forms of evidence and sanctions.

²The draft version of this manual is available in local language versions. The final versions will be made available pending availability of donor funding.

- *The ninth chapter* covers the issue of international co-operation and focuses on the most important features of international cooperation such as extradition, mutual legal assistance, joint investigations and transfer of criminal proceedings.

Focus on the trafficking of women and children for the purposes of sexual exploitation

Whilst human trafficking crime is committed for a range of exploitative purposes, this core training material mainly focuses upon the trafficking of women and girls for the purposes of sexual exploitation and the reason for this is simple:

Trafficking for sexual exploitation is regarded as the largest form of this type of crime given that it generates the largest profits for the traffickers - a trafficked victim exploited as a prostitute may possibly earn for the trafficker in a single day more than a victim who is exploited in forced labour of domestic servitude can earn in a week.

Because of the nature of the market demand, trafficking for sexual exploitation predominantly impacts upon adult and child females. Women and girls still constitute the greatest number of sexually exploited victims.

The modus operandi of trafficking for sexual exploitation inflicts most severe physical and psychological damage upon the victims of the crime.

However, it is vitally important to note that human trafficking crime also impacts upon adult and child males. Young men and boys are particularly vulnerable to exploitation as forced labour, servants and criminal agents. Moreover, boys are increasingly vulnerable to being trafficked for sexual exploitation.

It is also very important to remain aware that whilst sexual exploitation is the predominant form of the crime, human beings are also trafficked for a variety of exploitative purposes such as:

- Forced labour
- Domestic servitude
- Slavery
- Criminal agency, such as begging etc
- Military service
- Removal of human organs

It is therefore crucial that the reader of this manual bears in mind that whilst the focus of this material is upon the trafficking of women and children for the purposes of sexual exploitation, trafficking crime also affects women, men, girls and boys for a variety of other exploitative purposes.

Note on Gender Sensitive Language

It is recognized that the vast majority of trafficking victims referred to in this manual are female. The gender specific personal pronoun “she” has thus often been used. However, please note that this pronoun refers all trafficking victims, irrespective of gender.

Confidentiality

This manual contains sensitive information and should be treated with confidentiality, i.e. should not be distributed indiscriminately.

LIST OF ABBREVIATIONS AND ACRONYMS

CCPR	UN-Covenant on Civil and Political Rights
CEDAW	UN-Convention on the Elimination of All Forms of Discrimination against Women
CEE	Central and Eastern Europe
CoE	Council of Europe
CRC	UN-Convention on the Rights of the Child
ECHR	European Court of Human Rights
EHRC	European Human Rights Convention
EU	European Union
EAW	European Arrest Warrant
ICC	International Criminal Court
ICMPD	International Centre for Migration Policy Development
ICTY	International Criminal Tribunal for the former Yugoslavia
IO	International Organisation
MEP	Member of the European Parliament
MoU	Memorandum of Understanding
NGO	Non-Governmental Organisation
NIS	Newly Independent States
OSCE	Organisation for Security and Co-operation in Europe
SEE	South East Europe
UN	United Nations
UNMIK	United Nations Mission in Kosovo
UN-TOCC	United Nations Convention on Transnational Organized Crime

1. TRAFFICKING IN HUMAN BEINGS AS A PHENOMENON

This chapter gives an overview of the current situation as regards human trafficking as well as the strategic risks involved. It also gives an appropriate background to trafficking through the description of the three core elements of trafficking (recruitment, movement and exploitation), the root causes of trafficking and the difference between trafficking and smuggling.

The definition of trafficking as given below forms the basis of the manual and of the anti-trafficking work as a whole in the region. More specific detail regarding the nature of trafficking is given throughout the manual.

Trafficking in Human Beings:

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons³ (2000), Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, “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, or fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments of 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 of the removal of organs” [Art. 3(a)].

A different though related crime is the smuggling of migrants.

Smuggling of migrants:

According to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000), “Smuggling of migrants” shall mean “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” [Art. 3(a)].

For more information on related definitions, such as migration, forced labour or debt bondage, please see Annex 2 - definitions.

For the distinction between trafficking in persons and smuggling of migrants, please see chapter 1.5.

³Citation forms used in this manual: UN Trafficking Protocol and Palermo Protocol respectively.

1.1 THE CURRENT SITUATION

The crime of human trafficking is a prime example of 21st century globalisation. It impacts every continent and region of the world, and it continues to sustain year-on-year growth.

Many factors make it difficult to accurately assess the number of trafficked victims: the so called clandestine nature of the crime, the common confusion of human trafficking with smuggling of migrants, the frequent lack of proper legal and criminal justice responses, resulting in few statistical data, etc. Estimates offered range between 500,000 and 2,000,000 human beings that are trafficked globally each year. However, South Eastern Europe has been ravaged by this crime with the numbers of victims over the last ten years being counted in the hundreds of thousands. The countries in the region are countries of origin, transit and/or destination for trafficked victims. A recent study⁴ says that ninety percent of foreign women working in the sex industry in SEE are alleged victims of trafficking; ten to fifteen percent of these women are reportedly under the age of 18. At the outset, victims from the region were primarily trafficked to the States of the European Union to be exploited in the sex industry. Today, Balkan victims are trafficked across the globe, to the Americas, South East Asia, the Middle East and South Africa. Whilst sexual exploitation remains the predominant purpose, other forms such as slave labour, criminal agency and organ donation are also present. In 2001, an estimated number of 120,000 women and children originating from Central and Eastern European countries were trafficked to Western Europe.⁵ Other estimates put the numbers as high as 500,000 (IOM).

However, only a small number of trafficking victims are actually identified and assisted. An estimated 35% of all victims of trafficking crime in SEE countries were identified during 2002; this number is believed to have further dropped in 2003.⁶

Turning from the human dimension to the monetary one, the figures are just as phenomenal. The United Nations Centre for International Crime Prevention, now the UNODC Crime Programme, estimates that the annual global turnover from this form of crime is between 7 and 8 billion US Dollars, which is comparable to the turnover generated by the global traffic in narcotics. Given this financial scale, it is perhaps not surprising that the crime is increasingly controlled by international, organised crime syndicates that display a ruthless disregard for the human rights of their victims, who suffer the gravest forms of physical and psychological abuse.

As an extremely abusive form of economic crime, the fundamental features have remained unchanged over recent years. The victims are recruited from economically disadvantaged countries and transported to the wealthier destination countries, or to venues in which the cash-rich citizens of the destination countries are located. Transportation commonly involves the crossing of international borders, but victims can also be transported within one country, from one region to another.

The forms of exploitation, from which the huge profits are generated, are varied, but all require the coercive exploitation and abuse of human beings. The forms of exploitation can range from sexual to labour exploitation, enslavement as domestic workers, illegal activities, organ donation, forced military service, arranged marriages, etc.

⁴UNICEF, UNOHCHR, OSCE/ODHIR, Barbara Limanowska, Trafficking in Human Beings in South Eastern Europe, November 2003 (www.osce.org/documents/odihhr/2003/12/1645_en.pdf)

⁵EC Justice and Home Affairs: "Trafficking in Women, The Misery behind the fantasy: from poverty to sex slavery, A comprehensive European Strategy", Brussels 2001.

⁶See footnote 4.

Trafficking for sexual exploitation is usually seen as the biggest single category of the crime because of the great profits that it generates for the traffickers. The long-term exploitation of young women and children in the sex industries generates in all likelihood more profit than the exploitation of human beings as slave labourers or the one-off business relating to organ traffic. However, trafficking for other forms of exploitation, such as labour exploitation, criminal agency and organ donation continue to grow.

It is reported that trafficking for sexual exploitation in South Eastern Europe very often starts as internal trafficking: victims are sold within the local sex markets before they are trafficked abroad⁷.

In the context of trafficking for sexual exploitation, ethnicity is increasingly playing a role in the demographics of the crime, as clients demand females from ethnic groups different from their own. For example, victims from South Eastern Europe are now working in the sex industry in South East Asia; victims from Africa are working in the sex industries of Europe, and Eastern European victims are working in sex establishments of Central America.

By far the most worrying trend is the lowering of the average age of the victims of trafficking crime in many locations. This development mirrors clients' demand, their perceptions and requirements. For example, in certain regions of the world, trafficked children are increasingly involved in prostitution because the clients hold the belief that sex with children reduces the risk of contracting sexually transmitted diseases or could even cure them of HIV/AIDS. Most trafficked women from Central Eastern Europe (CEE) and the Newly Independent States (NIS) are under the age of 25, and many are aged 12 to 18.⁸

There are also indications that the ready availability of trafficking networks forms an alternative to child sex tourism, in that children are purchased, transported and sold to clients in the West and elsewhere.

Labour exploitation and other forms of trafficking have emerged as a major new trend all over Europe. Although the Palermo Protocol, which is the basis of much of anti-trafficking laws in SEE and soon all EU States, offers a legal framework that covers all forms of exploitation, unfortunately, in practice, forced labour exploitation has not been given the attention that is necessary. Many states, especially Western European, have only developed laws on sexual trafficking and leave out other forms of exploitation, such as forced domestic labour, factory labour or sexual services other than prostitution, such as pornography, striptease or massage.

A recent article published in *The Guardian*, in March 2004, provides a poignant illustration of the prevalence of trafficking in modern times.⁹

“South African workers were found working in one of the UK’s largest fruit packing companies, Staffmasters. Although they held legitimate work permits, the workers were subject to abuses and breaches of employment legislation. Each worker was loaned £1,500 to enable them to apply for visas and pay for their flights. They were told they could easily earn more than £200 per week and were forced to sign contracts agreeing to pay back the loan in 12 weeks at

⁷See footnote 4.

⁸EU Conference on Trafficking in Women for Sexual Exploitation”, Statement by Mr. Marco A. Gramenga, International Organisation for Migration, Vienna 10&11 June 1996.

⁹Felicity Lawrence, “Migrants in Bonded Labour Trap”, *The Guardian*, March 29, 2004, http://www.guardian.co.uk/Refugees_in_Britain/Story/0,2763,1180141,00.html

100% interest. The workers' families were also asked to sign agreements guaranteeing to pay back the loans, if the workers did not.

Once in the UK, the South African workers were charged £55 per week to share a room in crowded, dirty and rundown houses or motels and caravans. Their rent, an administration charge for each shift and interest on their loan was automatically deducted from their pay. Most workers found they had hardly anything left to live on and could not pay back their initial debt sum. One worker was left with 78 pence for a week's work.

When some workers tried to leave, they were told they could not until their debt had been paid back through their work. Ironically, Staffmasters is one of a group of 15 employment agencies that have set themselves up to "help raise standards" and improve the image of gangmasters."

1.2 THE STRATEGIC RISKS

At the strategic level, once organised human trafficking has gained a foothold within a State or region, it will undergo rapid growth and will pose the following strategic risks to the stability and future of a State:

- ◆ **Increased violence among organised crime groups with a financial stake in the existing sex and labour markets**

As trafficked victims are removed from or introduced to illegal sex and labour markets, this will have the potential to lead to violent 'turf wars'. Traffickers must confront local criminal elements for the control of these lucrative forms of human exploitation. This is especially so in the case of trafficking for sexual exploitation as the daily sums of money involved are so high.

UK Home Secretary David Blunkett admitted to the BBC that Balkan crime gangs involved in sex slavery in the UK regularly engaged in "open warfare", and they were more organised than local police.¹⁰

- ◆ **Growth and diversification of organised crime**

Organised trafficking crime does not occur in isolation. Once established, the trafficking networks will quickly diversify and develop mutually beneficial affiliations with existing organised criminal organisations that operate in other spheres, such as terrorism, drugs and weapons trafficking.

From 1998-1999, Ukrainian born Semion Mogilevich laundered \$10 billion through the Bank of New York. FBI and Israeli intelligence reported the earnings as coming from prostitution rings, drug smuggling, weapons sales and investment scams.¹¹

- ◆ **Economic de-stabilisation through growth of money laundering**

¹⁰"UK Warning Over Balkan Gangs", BBC News, November, 2002, <http://news.bbc.co.uk/1/hi/world/europe/2509811.stm>

¹¹Hughes, Donna, "The Natasha Trade: Transnational Sex Trafficking", *Journal of International Affairs*, Spring 2000, pg. 6, http://www.uri.edu/artsci/wms/hughes/natasha_nij.pdf

The financial profitability of trafficking, especially into sexual exploitation, will quickly lead to sophisticated forms of internal and external money laundering which may undermine financial and commercial market conditions and trigger economic de-stabilisation.

Valued at up to US\$1.8 trillion, money laundering is easily transported along already existing illegal trafficking routes. The combination of trafficking in human beings, in addition to increased crime and money laundering, are key inputs to economic stagnation and destabilisation.

◆ Demographic de-stabilisation

Trafficking of human beings on a significant scale can de-stabilise populations on the micro and macro level, whether in respect of the number of victims being trafficked out of an origin country or in respect of the numbers of a particular ethnic or national group that are being trafficked into a specific area or market in the destination country.

Europol reports that an estimated 400,000 women are trafficked from NIS/Eastern Europe to Europe every year.¹²

◆ Growth of public sector corruption

Trafficking crime and corruption could have been designed for each other. The multi-layered nature of the crime creates numerous opportunities for the corruption of officials of various agencies and the daily supply of cash provides the means to undermine the entire counter-trafficking law enforcement effort. Indeed, such is the capacity of corruption, that trafficking crime and its relationship with corrupt practices can be said to threaten the capability of the criminal justice system and the confidence of its civil society.

In its work in South Eastern Europe, Human Rights Watch found evidence of visa and immigration officials visiting brothels for free sexual services in exchange for ignoring the doctored documents produced by traffickers to facilitate transport through the country.¹³

◆ Political corruption and purchase of influence

In a similar fashion, the wealth generated for the traffickers from their criminal activities may allow them to purchase political influence and to corrupt the political system to their personal advantage. Another feature may be their ability to corrupt the political process by means of blackmailing politicians who utilise the services of trafficked prostitute victims.

The corruption of prosecutors and judges often takes a different format to that used to corrupt law enforcement officers. In the case of the latter, the corruption of the official usually starts with the provision of free sexual services and graduates through various stages of sex plus money for omitting to enforce the law through to active criminal participation in trafficking crime. In respect of prosecutors and judges, the initial corruption may come in the form of a direct threat unless the official ensures that a certain course of action is followed or a certain outcome to a case is delivered. This form of blackmail may then be followed up with corrupt rewards for the official's 'co-operative attitude'.

¹² UNESCO Trafficking Statistics Project.

<http://www.unescobkk.org/culture/trafficking/matrix/bring.asp?optFrom=CIS%2FEast+Europe&optTo=&optSex=&optType=&optOrg=&Submit=Submit&optDate2=>

¹³ Taken in part from <http://www.westafricareview.com/war/vol4.1/agbu.html#14> and Yomi Odunuga, "Ex-police Chief, 50 others arrested for human trafficking" *Punch*, 2 August 2001, p. 3.

Former High Commissioner on Human Rights, Mary Robinson, has noted that traffickers are often able to act with immunity due to corruption.¹⁴ Corruption has spread from law enforcement officials, judiciary committees and international peacekeepers to foreign diplomats.

◆ De-stabilisation of economic inward investment

This threat may occur as a cumulative product of one or more of the other strategic risks. For example, in cases where the presence of organised trafficking has led to endemic money laundering and public sector corruption, thus undermining confidence in the basic economic fabric, it may have a negative impact upon the inward investment strategies of the big global conglomerates.

◆ Growing health risks

States should be aware of the spreading health risks associated with trafficking, in particular sexual exploitation. In the transit phases of trafficking, many victims are exposed to health risks such as starvation, asphyxiation, pneumonia, disease, etc. The ensuing sexual exploitation can have a particularly de-stabilising effect on states as it has been associated with the increased spread of sexually transmitted infections (STI) and sexually transmitted diseases (STD), not the least of which includes HIV/Aids.

At the height of Thailand's AIDS epidemic, more than 80% of HIV/AIDS cases could be attributed to prostitutes and their clients.¹⁵

1.2.1. SPECIFICS OF NATIONAL SITUATION

Details with regard to the specific situation in a country should be included in this subchapter.

1.3 THREE CORE ELEMENTS OF TRAFFICKING: RECRUITMENT, MOVEMENT AND EXPLOITATION

When describing the trafficking process, three distinct phases are typically identified, the recruitment, the transit and the destination phase. It has to be mentioned that in reality these phases are partly overlapping and concurrent. Also, one individual trafficking case may have several transit and destination phases, as victims are frequently re-trafficked.

The following describes the three main phases of trafficking:

- ◆ Firstly, trafficking requires the **recruitment** of the 'raw human material' that is to be exploited for profit. This may be achieved forcibly through abduction, but is more commonly conducted on the basis of complete or partial deception of the victims as to either the nature of the 'work' or activity they are given to believe that they will engage in, or deception as to the financial and labour conditions under which they will operate, or both.
- ◆ Secondly, the recruitment is followed by the **movement of the victim**, which is often is

¹⁴Mrs Robinson, speaking before the Cambodian National Assembly in Phnom Penh, August 2002.

¹⁵See Avert, AIDS in Thailand, <http://www.avert.org/aidsthai.htm>. Accessed June 18, 2003.

freely entered into. This movement of a person from one place to another will usually involve the crossing of a national border or a number of national borders; conversely, it may only involve movement within the national borders of the victim's country, as internal trafficking continues to increase. Crossing borders is irrelevant to establishing the crime of human trafficking.

- ◆ Thirdly, after arrival at the final destination point, the trafficked victim is subjected to a regime of **exploitation**. This regime is maintained by a variety of coercive mechanisms ranging from the use or threat of violence through to exploitation of the economic vulnerability and isolation of the victim.

Trafficking normally involves more than one perpetrator and may also involve criminals that 'broker' human beings as a commodity, constituting a complementary element of trafficking.¹⁶ However, from the criminal and moral point of view, it should not make a difference whether such a division of criminal activity takes place or whether one individual trafficker carries out all of the work. However singular or diverse the trafficker(s) may be, their activity has one common outcome that is the abuse and the human misery that is endured by their victims.

For the crime of human trafficking to be committed, it is not essential that the victim is brought across a border. From the traffickers' perspective, the movement is essential to place the victim into a position of physical and/or social isolation for the purpose of exploiting his or her vulnerability.

Human trafficking equates to the deprivation of the social, economic and personal resources of the victim. A means of curing this fundamental form of deprivation and disenfranchisement of the victim lies in legally, socially and personally empowering the victims to enable them to live in safety.

For more information on the three phases of trafficking please see chapter 1.6

1.4 ROOT CAUSES: THE "PUSH AND PULL-FACTORS" OF TRAFFICKING IN HUMAN BEINGS

For the analysis of the causes for human trafficking the "push-pull model" can be applied, which looks at the push factors that literally push people to leave their countries and the pull factors which attract them to their destinations.

The crime of trafficking functions only because there is a ready supply of victims at the start of the chain that are willing to consider migration as a means to improve their and/or their family members' living conditions. This willingness to migrate can be created by a complex combination of social and economic factors.

It must also be remembered that internal trafficking of vulnerable victims continues to grow across the South Eastern European region and that the crossing of borders is not a prerequisite of the trafficking crime. All the current intelligence indicators show an increase in the internal trafficking of victims from rural areas and smaller towns for the purposes of sexual exploitation in the brothels and red-light areas of the major cities.

¹⁶Coomaraswamy, Radhika (2000): Integration of the human rights of women and the gender perspective. Violence against women, E/CN.4/2000/68, 29 February 2000.

The three principal elements, or driving forces, behind human trafficking can be summarized quite simply:

- Within the origin countries, there is often, but not always grinding poverty and little prospect for sustained economic opportunity, especially for women; consequently, a constant supply of victims remains available for exploitation;
- Within the destination countries, constantly growing sex markets and/or a requirement for cheap migrant labour or other forms of exploitative services maintain an increasing demand for the services of the victims (pull factors);
- Organised criminal networks have taken control of this economic 'supply and demand' situation to traffic and exploit the victims in order to generate vast profits for themselves.

1.4.1. THE 'PUSH' FACTORS

Whatever the imperatives of the victim may be, ultimately, it is the effect of socio-economic challenges that is most likely to be at the heart of the victims' readiness to leave home. Restrictive legal migration regimes that are imposed by the stronger economic nations severely limit the possibility of legal migration. Legal migration is mainly only open to individuals who possess qualifications and skills that are in demand in the stronger countries. Accordingly, the level of restriction upon the typical unskilled and untrained trafficked victim becomes even more marked.

As long as an unequal distribution of wealth among national economies persists, and the economically strong nations continue to restrict legal labour migration opportunities into their countries, human trafficking will continue. Success stories of those who "have made it" abroad, leaving out any difficulties that migrants experience, may further intensify a person's desire to migrate. But the attraction of more affluent countries does not only lie in their economic advantages, but also in the prospect of attaining autonomy and independence.

The core elements that create the conditions under which trafficking can flourish are characterised by the following:

- ◆ Significantly unequal distribution of wealth between the countries of origin and the countries of destination;
- ◆ Restrictive legal migration opportunities in the destination countries;
- ◆ Economically disadvantaged persons in the countries of origin that are unable to migrate into the destination country by their own means;
- ◆ Contributory social factors, such as the economic pressure that exists on families that have too many children might make parents to sell one or more of the off-spring - this particularly impacts on girls where the parents may simply decide that female off-spring will not incur any educational costs; however, parents also often act in the good faith that their children's' life will improve;
- ◆ Exploitative criminal organisations based in both the origin and the destination countries, which offer access to the labour markets of the destination countries.

As has been observed over the course of the last five years, highly organised, international criminal networks have identified and ruthlessly exploited the existence of these human and economic vulnerabilities in order to generate profits.

From the perspective of the victims, this level of social and economic vulnerability acts as the 'push' factor and generates their willingness to leave home, either to explore illegal migration means or legal but high risk opportunities such as 'lap dancing' or 'hostess' employment.

Please see Annex - Case Scenario 1

The below mentioned factors, can be identified as *inter alia* and refer mainly to gender-based reasons for trafficking:

Countries in Transition

The effects of conflict, post-conflict and political transition that have characterised SEE over the past ten years, have resulted in huge political, social and cultural as well as economic changes. There have been beneficial effects, such as the democratisation process, but the region has also seen an unprecedented rise of poverty. This has contributed to increasing unequal power distribution between men and women, as poverty and unemployment are especially prevalent among women.

In a majority of SEE countries, women have to bear the biggest burden of the impact of the social-economic transformation, principally because women remain more vulnerable to unemployment and poverty. This is partially due to the patriarchal structure of society and to the economic and professional discrimination against women. Also welfare services, such as health care and childcare, have seen enormous crises over the past decade as a consequence of the economic transition. The widespread trafficking in women originating in South East and Eastern Europe must be seen in the context of the transformation of the region and as one of the symptoms and results of the feminisation of poverty and labour migration.

Gender Discrimination

While the term "sex" refers to biological differences, "gender" means socially constructed roles for men and women. We are not born with these differences of gender; they are formed by society. And since they are socially created, they can be challenged in order to ensure that men and women enjoy equal rights and opportunities.

Yet today in European societies, an unequal distribution of power and opportunities among men and women still prevails. In some countries there is no specific domestic law addressing non-discrimination between women and men, and relevant research shows that women are not often aware of their rights to equal treatment.¹⁷

In other countries, where the national legislation contains a prohibition against gender discrimination, there is no formal legal definition of the term, nor has a working definition been built up through case law. The application of such law is hindered by the lack of defining terms as well as by the absence of specific programs within the law faculties, or from practicing lawyers and judges, which give guidance on how to take on cases of gender

¹⁷Women 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.

discrimination.¹⁸ Thus, there is a lack of accountability for those who discriminate against women and almost no access to judicial or other types of remedies for the victims.

Please see Annex - Case Scenario 2

Gender Violence

Trafficking, like domestic violence, is one of the most important and destructive forms of “gender related violence”. This term covers not only forms of violence that are directly linked to female gender, such as female genital mutilation or the killing of baby girls or widows, but also forms of violence that, as a consequence of social power-imbalances, affect women significantly more often than men.

For example, men can be victims of domestic violence, yet the violent victimisation of women is by far the greater phenomenon both statistically and in reality. The same holds with regard to trafficking. It is the social and gender discrimination against the female gender, combined with the demand of men in the countries of destination for female prostitutes, that produces the disproportionate impact of trafficking on women and girls compared to men and boys. The abovementioned imbalance of power is the first root cause of gender-related violence (especially trafficking and domestic violence), accompanied by a widespread reluctance of States to decisively counteract discrimination in general and gender-related violence in particular.

The role of violence against women in general, and domestic violence in particular, is a frequent factor in the decision of so many females to migrate. Domestic violence is the most frequent form of severe violation of women’s rights and contributes to their vulnerability to the traffickers. According to a report by the Minnesota Advocates for Human Rights on trafficking of women from Moldova and Ukraine, domestic violence was one of the root factors causing women to migrate abroad for work.¹⁹ The reluctance of many states of that area to address domestic violence against women and children as a primary security concern and to apply due diligence in counter-acting these forms of violence must be acknowledged as one of the major human rights issues in that region (like in so many others).

Unemployment and Discrimination in the Labour Market

High levels of unemployment are a severe problem in the countries of South East Europe and few of the employment opportunities that do exist are available to women. It is often this total lack of opportunity for economic gain, or any other available and legal means of escaping poverty, that makes so many victims acutely vulnerable to the lure of the traffickers.

In the labour market, women are hired last and dismissed first, thus driving them towards the informal sector of the economy in order to earn their livelihood. A rapidly expanding part of the informal sector is prostitution, which makes women extremely vulnerable to high risks.²⁰ On average, women are structurally denied access to the formal and regulated labour market, thus forcing them to enter into un-protected labour relations and criminal networks which may lead to sexual and or domestic exploitation.

¹⁸See footnote 17.

¹⁹Kartusch, Angelika (2001): Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe, Warsaw 2001, 24.

²⁰UNICEF, Women in Transition, 2000.

It should be noted that discrimination in general, and in particular also on the labour market may also affect ethnic groups which are consequently also at higher risk of falling into the hands of traffickers.

Social Factors

There are also non-economic factors that contribute to the persistence of trafficking in persons, especially women and children. Within patriarchal family and social structures women are subordinated to men. Therefore, in difficult economic times, with a more competitive climate in society in general, females become even more degraded in society. Women and girls are often regarded as a burden to the family and far less time and resources are invested in them, which often results in a lack of secondary or tertiary education, or any other form of skills training. This further reduces the ability of women and girls to access the limited alternatives that may exist in the countries of origin.

Discrimination against certain ethnic groups, such as the Roma people, also plays a role as a social factor in the root causes of trafficking, particularly within discrimination on the labour markets.

In summary, especially for females confronting poverty, unemployment, gender and labour discrimination, and domestic violence, a deceptive offer of good pay for working abroad often will seem like a magical escape to a better world.

1.4.2. THE 'PULL' FACTORS

Positioned alongside these 'push' factors are a range of 'pull' factors that augment the vulnerability and susceptibility of men, women and children to the lure of traffickers. Most importantly, the growing demand for cheap labour and other exploitative services are described in the following:

Demand for Cheap Labour or Other Exploitative Services

The most important factor that fuels trafficking in human beings is the ever growing demand for exploitative labour and services in the countries of destination, including sexual exploitation, forced domestic work, forced marriages and child bearing, forced labour services and petty crime (small criminality), slavery and slavery like practices as well as small criminality. Organised crime networks respond to this demand, which ensures that their human commodities can be exploited with a huge profit for these criminal groups. Particularly the ever increasing sex markets create an almost boundless demand for especially females who can be exploited for sexual services.

Perceived Advantages of Life in Wealthier Western Societies

Many trafficked victims initially had high expectations of employment and financial reward; Victims believe that Westerners have a higher access to material benefits and women in particular believe they will have the opportunity of improved social position and treatment.

1.5 DIFFERENCE BETWEEN TRAFFICKING AND SMUGGLING

The UN Convention against Transnational Organized Crime²¹ (UN-TOCC) and its two supplementary Protocols on Smuggling of Migrants and Trafficking in Human Beings have, for the first time, established a clear distinction between the phenomena of trafficking in human beings on the one hand and smuggling of migrants on the other hand. Therefore, according to Article 3a of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,

“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.”

Furthermore, 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”

According to Art. 3a the UN Protocol against the Smuggling of Migrants,²² "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".

The key differences of the two crimes: To smuggle a person means to facilitate the person's illegal border crossing and entering a country of her/his choice. Smuggler and migrant are partners, albeit disparate, in a commercial operation that the migrant enters completely voluntarily. To traffic a person means to intentionally trick or force a person into a situation where she/he can be easily exploited. Thus, smuggling in persons is a crime against the State and its public order regulating the legal entry into its territory, without a specific individual victim, whereas in the case of trafficking, the trafficked persons are the victims of crime who suffer violations of their human rights.

Trafficking entails that targeted individuals are recruited by force, fear, fraud or deception so as to satisfy a (market) demand in the country or region of destination(s) and with the clear intent to exploit the victim. It is a crime against a person, which may or may not entail the crossing of an international border.²³ It does however at least entail the *movement* of a person as a deliberate effort of the criminals to isolate and unsettle and eventually control the victims of their crime.

The Exploitation of the Trafficked Victim

²¹Also called the Palermo Convention, as the high-level signing conference for the United Nations Convention on Transnational Organized Crime took place in Palermo.

²²UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

²³The trafficking definition also covers movements of persons within the borders of one State as the entry into another State is not an element of that definition.

One crucial distinction between human trafficking and smuggling is in the nature and duration of the relationship between the trafficker and the trafficked victim on the one hand, and the smuggler and the irregular migrant on the other.

In the case of trafficking an exploitative relationship between the trafficker and the victim continues after the illegal crossing (or in the case of internal trafficking, the transport) has been achieved.

From the outset, it is the intention of the trafficker that the relationship with the exploited victims will be a continuous one and extend beyond the crossing of the border in the final destination: the trafficker continues to exert control over the trafficked victim in order to achieve the additional aims of the trafficking scheme, i.e. huge profits through the exploitation of the victim, by coercive and exploitative forms of sexual or labour servitude, deprivation of dignity and loss of freedom imposed on the victim.

By contrast, in the case of smuggling, it is the wish to migrate that is exploited; the relationship between the smuggler and the smuggled migrant terminates at the point at which the illegal entry is achieved; the illicit profits are derived from the smuggling itself.

For the purposes of traffickers please refer to sub-chapter 5.2.3.

Importance of the Distinction

The overlap in the conduct involved in trafficking in human beings and smuggling of migrants is responsible for the confusion of the two crimes: in many cases, smuggled migrants and victims of trafficking are both moved from one place to another by organized criminal groups for the purpose of generating illicit profits. Many trafficked persons might start their journey by agreeing to be smuggled from one country to another, but be deceived or forced in an exploitative situation later in the process.

It is absolutely crucial for law enforcement and judiciary officials to clearly distinguish human trafficking from smuggling, as the victim of trafficking has the right to protection and assistance. Without such clear distinction trafficked victims, who are likely to have suffered the most appalling abuse and grave violations of their human rights, will be confused with illegal migrants, and simply detained deported - as very often happens today.

If a trafficking case is wrongly characterized as a smuggling case, then trafficked victims cannot be recognised as victims of violence. When this happens, the civil society institutions that bear the responsibility to protect acutely vulnerable individuals and to punish those that abuse and exploit them violate the victims' rights to security, redress, health and support. This feeling of secondary betrayal significantly adds to the feelings of injustice and re-traumatisation that have already been generated by the abuse of the traffickers. Such a result is in contradiction to international human rights standards while also depriving the criminal justice system of important evidence against the perpetrators.

The following scheme illustrates the differences between smuggling and trafficking:

ELEMENT	SMUGGLING	TRAFFICKING
Victim of crime	No victim; crime against State (Violation of immigration laws/public order; the crime of smuggling by itself does not include crimes which might be committed against the smuggled migrants)	Crime against person (Violation of person' human rights; victim of coercion and exploitation that give rise to duties by the State to treat the individual as a victim of a crime and human rights violation)
Nature of crime and duration of customer relationship'	Commercial; relationship between smuggler and migrant ends after illegal border crossing achieved and fee paid	Exploitative; 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/ movement and (continuous) exploitation of the victim for profit
Illegal border crossing	Illegal border crossing is a defining element	Neither <i>illegal</i> border crossing nor border crossing required
Consent	Migrant's consent to illegal border crossing	Either no consent or initial consent made irrelevant because of use of force, coercion, at any stage of the process

For more information on the legal distinction between trafficking and smuggling, please see chapter 5.2

Please see Annex - Case Scenario 3

1.6 THE THREE PHASES OF THE TRAFFICKING PROCESS

1.6.1. RECRUITMENT OF VICTIMS

The first phase of the trafficking process is commonly referred to the 'recruitment phase' during which traffickers target and acquire potential victims in order to ensnare them into the trafficking scheme. The term recruitment is understood in a wide sense and refers to the fact that victims are recruited or abducted for the purposes of sexual or other forms of exploitation through kidnapping, coercion, fraud and deception.

The methods of recruitment of women and girls by traffickers are varied and depend on the modus operandi and level of organisation of traffickers.

The most common methods include:

- ◆ Individual recruiters looking for interested girls in bars, cafes, clubs and discos;
- ◆ Recruitment via informal networks of families, friends, or acquaintances;

- ◆ Advertisements offering work or study abroad;
- ◆ Agencies offering work, study, marriage or travel abroad;
- ◆ False or arranged marriages;
- ◆ Purchasing of children from parents;
- ◆ Advertisement over the Internet.

In many cases the recruiter is known to the victim and in some cases may be a relative.

Traffickers seek to exploit the 'push and pull' factors highlighted above and focus on women and girls who are searching for new opportunities abroad and who often have difficult economic and social situations at home. The women are offered lucrative careers abroad in jobs as waitresses, dancers, artists, escorts, domestic workers or beauticians. International marriage agencies may also be covers for trafficking businesses. In many cases, it is only when these women arrive in the country of destination that they realise the deceptive nature of the original agreement with the trafficker and find themselves forcibly exploited as prostitutes.

There are few reliable indicators for women to discern which agencies offer legitimate employment opportunities and which are simply 'fronts' for traffickers. In some cases, relatives, "boyfriends" or state institutions such as orphanages may sell women and girls directly to recruiters without their consent. In other cases, women and teenage girls are forcibly abducted from their home surroundings and trafficked internally or externally.

In some cases the victim may have an idea of the kind of work or activity they will be obliged to do, but are not aware of the conditions. It is estimated that more than a quarter of recruited women are aware in advance that they will work abroad in the sex industry. However, also those women are regularly deceived as to the working conditions and the level of self-determination. The women's expectations are of a high level of independence and control over their work, and they may only envisage work as a striptease artist or in a "peep show". None of the women who willingly go abroad to work as prostitutes are made aware of the conditions of their labour upon arrival, the confiscated passports and identification documents, the lack of any personal freedom, the unsafe, un-protected sexual services that they are required to provide and the level of coercion they will encounter if they refuse or try to escape from their circumstances.

There exists a continuum of recruitment means ranging from mere force to less severe means of deception.²⁴

The four basic means of recruitment are:

- ◆ Complete coercion through abduction or kidnapping; this is no longer as rare as it was previously, and there is increasing evidence of it in Albania²⁵ and Kosovo, and it is common in parts of Asia. A variation of obtaining victims by abduction is the sale of a person, typically a child, to the traffickers by someone having control of him or her, typically the parents or an orphanage;
- ◆ Deception by promises of legitimate employment/entry: women believe that they will be

²⁴Council of Europe, Manual: Tips and Tools for Trainers.

²⁵Daniel Renton, "Child Trafficking in Albania", 2001.

working in offices, restaurants, bars or that they are entering for marriage;

- ◆ Deception through half-truths, such as that they will be employed in entertainment, dancing or even striptease;
- ◆ Deception about the exploitative, controlled and coercive working conditions.

Please see Annex - Case Scenario 4

1.6.2. THE TRANSIT PHASE - TRANSPORTATION

The recruitment process is followed by the transportation and transfer phase which can also involve the harbouring and receipt of the victim at a number of stages in the process, including initial receipt and transfer within her own country. The victim may suffer grave human rights and physical abuses and other crimes during the journey (although this is not required for it to be the crime of trafficking).

Many victims have never left their country of origin before and therefore are completely dependent on the traffickers. Some leave their home country without an international passport since they are told 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 as a way of securing the compliance of the victim.

Victims that are in an irregular situation are especially vulnerable to the whims of their agents, 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.

It should be remembered that the majority of victims of trafficking voluntarily leave their homes in search of a better life (legally or illegally). It would be wrong to assume that every person that is or is suspected to be an illegal migrant is also a victim of trafficking. Rather, of the persons who voluntarily migrate (legally or illegally), some may end up being trafficking victims and some may be economic migrants. The voluntary nature of the migration or the movement has nothing to do with the determination of whether a situation is a trafficking case.

The transportation of human beings across borders is not an essential aspect of international trafficking.

Many victims are trafficked across borders by truck, private car or coach that can offer greater flexibility than air or train. Many victims are also transported from the origin country to the destination country 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 often will not be aware that they have been ensnared by traffickers. This is an important point, especially in connection with recognizing the limitations of law enforcement's ability to recognize and intervene in trafficking cases during this phase, including at borders.

1.6.3. THE DESTINATION PHASE - RECEPTION AND EXPLOITATION

It is at this stage that the exploitation that is the objective of the trafficker is fully realised. Once victims have arrived in the country of final destination, they find themselves living under slavery-like conditions, mainly in the sex industry, but also as agricultural, factory, sweatshop or domestic workers, working excessive hours under inhuman and exploitative conditions. It is not unusual for victims in the latter cases of forced labour to also be subjected to sexual abuse.

There are three basic methods of entry into the final destination country:

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

Adults and children are trafficked for a variety of exploitative purposes, with available data for the most part relating to sexual exploitation. Lately the issue of forced labour exploitation has come to the forefront.

Labour exploitation usually occurs within the agricultural, garment and restaurant/catering sectors where adult and child trafficked victims of both genders are coerced into working in slavery-like conditions. It should be mentioned that countries might also have individuals exploited within their borders in “sweatshop” style conditions for little or no wages. Even though classical labour exploitation is not the crime of trafficking (unless the modus operandi of the exploitation could fit within the definition of slavery or practices similar to slavery), this should be prosecuted to the full extent of the law against those who have exploited these individuals.

Children of all ages are also vulnerable to trafficking for the exploitation as criminal agents and military service. The criminal agency traditionally means activities such as pocket picking and other forms of low-level crime. However, teenage boys are also now being trafficked to act as criminal operatives who carry out minor functions associated with the trafficking crime itself, acting as “look-outs” or “runners” (e.g. in the drug trafficking). Children are also forced into street begging.

Also trafficking in babies for the purpose of adoption exists in the region²⁶.

Trafficking for domestic servitude impacts upon adults and children alike. For example, men and women are trafficked from the Asian sub-continent to the countries of the Middle East to act as domestic workers but who, in fact, are exploited and abused as domestic slaves.

Female victims entering 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 un-protected 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.

²⁶Mike Dottridge, Kids as commodities? Child trafficking and what to do about it. Terre des Hommes, 2004.

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 simultaneously prevents police detection and intelligence gathering activity.

Many victims are physically and sexually abused and are held in conditions of actual and/or psychological captivity. Murders are frequent occurrences that also serve as warnings to other victims to prevent them from testifying or seeking assistance. The threat of reprisals against the trafficked victims or their families, in addition to the lack of identity papers or possession of invalid papers, prevents many of the victims from escaping. Constant physical, emotional and sexual abuse often leaves the victims no alternative but to remain in such situations.

Please see Annex - Case Scenario 5

1.6.4. METHODS OF CONTROL AND EXPLOITATION OF THE VICTIMS

The fundamental aim of traffickers is to earn money through the long-term exploitation of their victims. This requires them to protect their investment, i.e. to ensure that the victim will continue to work as instructed and not try to escape. Thus, the trafficker needs to ensure continuous control over his victim, which is done through many different 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 her into the destination country. Exorbitant and cumulative interest rates are usually attached to these costs which are then supplemented by the requirement to pay vastly inflated prices for residential and brothel accommodation, advertising of the prostitution services and transportation costs, all of which adds to an ever-mounting debt bond that becomes effectively impossible to pay off.

◆ Isolation - Removal of the Identification and/or Travel Documents

Traffickers will confiscate the identification and travel documents from their victims, usually immediately after arrival in the final destination country. This robs the victims of their official identity, confirms their illegal entry status and makes it impossible for them to seek help or to escape to another destination. Because 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.

The trafficker reinforces this perception by telling the victim that she is free to go to the police if she wishes, but that the outcome will be that she is immediately deported and that reprisals will be inflicted upon her when she gets back to her origin country. The evidence shows that the trafficker is usually correct in this assertion because most trafficked victims that are caught without documentation by police in EU states, are likely to be immediately deported rather than treated as victims of grave crimes.

Alternatively, the trafficker may tell the victim that there is no point in her seeking police assistance because they are corrupted and in the pay of the traffickers. In some cases, law

enforcement officials are indeed bribed by the traffickers to overlook the victim's plea.

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

Therefore, access to legal temporary residency 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, most 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 residency status so that they can begin to cooperate with the criminal justice system.

This situation is beginning to change as a **Ministerial Statement of Commitments** has been signed by the **countries of South Eastern Europe**²⁷. In this statement, states commit to granting possible victims of trafficking a recuperation period of up to 3 months that entitles them to a range of social and welfare benefits and victims of trafficking a temporary residence permit, when the victims cooperates or whenever appropriate. Subsequently, an increasing number of countries have, when drafting new anti-trafficking legislation, taken the importance of temporary residence permits for victims into consideration, both in humanitarian terms and from a law enforcement perspective, and have included relevant provisions in their national laws.

Furthermore, at the **European Union level**, the Council of Ministers has adopted a directive concerning residence permits to third-country nationals who have been the victims of trafficking in human beings and cooperate with the competent authorities. (See 3.2.7 and 5.2.1 of this manual)

◆ **Isolation - Linguistic and Social**

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 Violence and Intimidation**

Traffickers also make full use of violence and the threat of violence as an effective means of control. Victims are frequently beaten and raped, confined, kept in long periods of isolation, deprived of food and water, drugged and or tortured with knives and cigarettes in order to maintain obedience. These abuses may be inflicted as punishment for some form of disobedient 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 transgression will be. In other cases, the use of physical and/or sexual violence is inflicted simply as a result of sexual sadism on the part of the trafficker.

In cases of sexual exploitation, shame is another powerful mechanism of control. The trafficker may threaten to reveal to the victim's family that she is working as a prostitute. Photographs are often taken while the victim is being raped and used to blackmail her to ensure her strict compliance with the trafficker's orders.

²⁷In Dec 2002, at the 3rd Regional Ministerial Forum in Tirana organised by the Stability Pact Task Force on Trafficking in Human Beings, governments agreed to improve identification of trafficked persons, to develop mechanisms for the legalization of the status of victims and to grant an extended stay to victims. (www.stabilitypact.org/trafficking/021211-tirana-statement.doc).

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. Another example is the added impact that exposure as a prostitute is likely to have on a Muslim trafficked victim, where she may eventually suffer greater physical risk from her own family than from her trafficker. A very real and present risk exists, that trafficked Muslim females that have been exploited as prostitutes will be harmed or even murdered by their own families, if they are repatriated as 'rescued prostitutes'. This adds an even greater burden of fear on the shoulders of Muslim female victims.

◆ **Use and Threat of Reprisals against the Victim's Family**

The most effective and problematic threat, and the one that makes the investigation of trafficking crime uniquely 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 favourite 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 her control. The victim may feel that she simply cannot take risks with the safety of her loved ones or gamble on whether or not her trafficker is 'bluffing' when the perpetrator claims to know intimate details of her family relatives or that violence will be used against them if she misbehaves or tries to escape.

◆ **Psychological Imprisonment and Torture**

To summarise, when each of the above control mechanisms are considered together, the outcome is a regime of actual and psychological imprisonment and torture. It is important to view the situation through the eyes of a (female) 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 re-location, 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 male clients with whom effective communication is impossible, existing under a regime of threats or reprisals against herself and/or her family if she seeks to escape.

Whether all of these factors are applied collectively or singular, it becomes simple 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.

Please see Annex - Case Scenario 6

1.7 TRAFFICKING ANALYSIS

1.7.1. WHO ARE THE TRAFFICKERS?²⁸

Traffickers of human beings exist on many different levels, from spontaneous low-level contacts to highly complex, international, organised networks.

These levels can be categorised within the following three main categories:

◆ Informal Networks

Informal networks usually exist in the form of small groups of individuals within limited family networks and ethnic communities that extend over borders. One or two women are brought over as need arises in communities abroad. Often migrants use contacts with family and community members back home to recruit women for brothels or prostitution rings. Such networks are used frequently in the border regions between the country of origin and the country of destination, and within ethnic communities.

◆ Large-scale Organised Criminal Networks

Large-scale organised criminal networks control every aspect of trafficking, from recruitment and transport to the management of localised brothels and street prostitutes.

The traffic functions like a business with a "recruitment agency office", "document procurement office", "transport office" and "prostitute management office". Traffickers take their job very seriously and professionally and often use extreme violence to maintain order. The victims procured are regarded as merchandise or commodities to be traded, much as in a traditional slave trade.

Such organised crime networks originate mainly in Ukraine, Belarus, Russia and Bulgaria but extend throughout Eastern and Central Europe. Often these networks 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 into locally run brothels and prostitution rings in another country. One may call these "wholesalers" or "distributors" who sell to local "retailers" who manage and control the local prostitution infrastructure.

The victims may be sold several times to different brothels or to gangs in different cities or countries, or they may remain within one ring and be circulated to new markets.

Although all three levels of trafficking exist side-by-side, recent trafficking from the Commonwealth of Independent States (CIS) and South Eastern Europe is primarily done via very professional and well-organised criminal networks. These regions exhibit one of the fastest growing rates of trafficking in the world, allegedly composing roughly one fourth of the world trade in trafficking.

²⁸Excerpts from the homepage of La Strada, local office Poland; <http://free.ngo.pl/lastrada/>

With the recent flood of migration, the political and economic insecurity in the East and the booming sex industry in the West, already established criminal networks have grown aware of the extraordinary profits to be made from trafficking for sexual exploitation. Often, these networks are the same as those developed for smuggling of people, drugs and stolen goods. Yet, the profit made from trafficking in women seems to surpass that made in drug or arms smuggling, and the risk of detection, arrest and adequate punishment remains much lower.

Please see Annex - Case Scenario 7

1.7.2. WHO ARE THE VICTIMS?²⁹

It is essential to remember that there is no exact profile of the potential trafficked victim. Rather, it will depend on the end use for which the trafficker targets the individual, such as begging, forced agricultural labour, or sexual exploitation, or the demand in the destination countries/areas, e.g. children, women of a certain nationality, etc.³⁰

- ◆ Victims are overwhelmingly women and girls, but boys and also men are affected as well, (referred to by less reports though);
- ◆ Victims tend to be between the ages of 18 and 25; although an increasing number of younger women are being trafficked;
- ◆ Victims are mainly, but not exclusively recruited from small rural villages, medium sized towns and cities in impoverished regions;
- ◆ Victims are mostly unemployed and poor;
- ◆ Victims may have low educational capacities, and they may have been discriminated against in their domestic and professional lives;
- ◆ Victims often come from dysfunctional families;
- ◆ Victims rarely speak foreign languages.

The main vulnerable characteristic of a "potential" victim is a strong desire to improve her difficult and poor living conditions by travelling abroad and earning money.

Please see Annex - Case Scenario 8

²⁹In parts from the homepage of La Strada, local office Poland; <http://free.ngo.pl/lastrada/>

³⁰For example, in some parts of the world, traffickers target individuals who they force to beg, sometimes after mutilating or disabling the individual so they will seem more sympathetic and be more successful at begging.

2. THE TRAUMA AND THE NEEDS OF THE VICTIM

The majority of trafficked victims from and in the SEE region are diagnosed as suffering from a serious medical condition known as Post Traumatic Stress Disorder - PTSD - or more commonly referred to as 'trauma'. This condition seriously damages, often irreversibly, the psychological health and quality of life of its victims.

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

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

2.1 TRAUMA

2.1.1. BACKGROUND OF POST-TRAUMATIC-STRESS-DISORDER

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

Victims often suffer acts of extreme violence or abuse such as 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 might even completely deny what has happened to them (dissociation).

The *Diagnostic and Statistical Manual of Mental Disorders*³¹ requires that the traumatic event has to have taken place at least four weeks ago before the diagnosis PTSD is legitimate. This further corroborates the perception that the issuance of a temporary residency permit is necessary, preferably for six months or longer.

2.1.2. PROGRESSION OF TRAUMATIC STRESS

The Traumatic Situation and its Effects

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 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 perception, feelings, consciousness, action and memory.

³¹(4th edition, 1994, published by the American Psychiatric Association).

Another form of “dissociation” is the “depersonalisation” the victim feels as if she were another person, or as if she would leave her body and watch what happens from a distance.³² This is why victims of severe violence, may appear to be astonishingly indifferent or apathetic.

CORE SYMPTOMS OF PTSD

- **“Intrusion”** refers to symptoms as flashbacks. The most painful elements of the traumatic experience may suddenly show up, not in a processed form and not with the distance of a memory, but rather as if it were happening now, again. This can be manifested in daytime fantasies, traumatic nightmares or psychotic re-enactments. The reliving of the events will again overstrain the victim’s mental capabilities. Flashbacks are often associated with loss of capacity to verbalise.
- **“Avoidance”**: The victim may avoid situations that might resemble key elements of the traumatic event (“trauma-mimetic stimuli”). This behaviour will often lead to the victim totally disengaging from certain forms of social contact.
- **“Hyper Arousal”**³³: After the victims have left the first stage of shock they begin to realise that something very dramatic has happened to them, which they cannot yet fully comprehend nor control. This loss of orientation and control will cause strong feelings of fear, timidity, anger, rage or excitement and can often lead to insomnia and a lack of concentration.

Please see Annex - Case Scenario 9

2.2 THE IMPACT OF VIOLENCE

The experience of violence damages the basic concept of “the others”, especially with regard to trust and confidence.³⁴ Victims therefore withdraw from social relations, which adds to the process of isolation and “disempowerment”

2.2.1. SURVIVAL STRATEGIES

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

There are three main survival strategies:

“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.

³²van 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, 250-252.

³³or more risk factors of victims please see the Cologne Model, as realised in the Cologne-Risk-Index.

³⁴Fischer, G./Becker-Fischer, M./Düchting, C. (1998): Neue Wege in der Opferhilfe. Ergebnisse und Verfahrensvorschläge aus dem Kölner Opferhilfe Modell, Köln, 42.

“Identification with the Trafficker” - (also referred to as ‘Stockholm Syndrome’³⁵) the victim feels that she might 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. The victim for that reason will try to put her/himself 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/he can accurately identify and adopt which types of behaviour 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 as to the victims offering 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 re-construct their personality. They will require a lot of respect and support from others enabling this reconstruction process.

Please see Annex - Case Scenario 10

2.3 THE STAGES OF RECOVERY: LEARNING TO COPE WITH THE TRAUMA

The recovery of traumatised victims requires that the victim be allowed both the time and highly specialised support necessary to learn to cope with the trauma. Failure to provide for these needs may result in permanent and severe psychological damage.

In the briefest terms, it is possible to identify a four stage process that victims undergo as they attempt to cope with the trauma:

◆ The “Hostile Victim”

Very often the initial reaction of the victim will be to prevent any intrusion that could destabilise the control of the traffickers. The victim has learnt that anything jeopardising the dominance of the traffickers will lead to immediate violence against the victim in order to secure control over her. The victim will thus avoid any co-operation with law enforcement or judicial authorities.³⁶

◆ Loss of Orientation

These initial reactions may be followed by a period of disorientation, as the victim may not have yet found her orientation within normal society.

◆ Reconstruction and Remembering

For many victims, there then follows a period of re-construction, filled with retrospective thinking, where victims long for everything to be as it was before.

³⁵In a robbery case in Stockholm 1973, the victims kept on defending their captors even after their six-days physical detention was over, and showed a reticent behaviour in the following legal procedures.

³⁶Coomaraswamy, Radhika (1999): Statement, in: Dearing/Förg (1999), 105.

During the cognitive restructuring victims re-interpret and try to come to terms with their experience, to possibly find an explanation for what has happened, or to evaluate the event as leading to personal growth.

◆ **Social Reintegration**

At a final stage, victims have to re-construct social relations in order to overcome social fragmentation caused by the experience of violence.

2.4 INTERROGATION OF TRAUMATISED VICTIMS

2.4.1. THE NEED FOR A TWO-PHASE-STRATEGY FOR SUPPORTING VICTIMS OF TRAFFICKING

Law enforcement officers as well as judges and prosecutors should acknowledge the impact of trauma upon 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 being a deliberate decision not to co-operate.

During an initial intervention phase, traumatised victims will not be able to judge what is in their own interest. 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 will be in a position to make fully informed decisions on her own account or to provide a detailed history of what has been done to her. An early interrogation of the victim will in many cases overstrain the victim's capacity to remember. Victims do not understand themselves 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, because he or she is able to cope with the memory, it will be difficult for him or her to change her 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.³⁷ Prosecutors and judges must recognize that every attempt to force the victim to remember will not contribute to the investigations but rather create an imminent danger of re-traumatisation.

As it is difficult to tell how much time is needed by the victim to establish a memory of her experiences - the time frame can range from a few weeks to several months - professional advice from psychiatric specialists is indispensable.

All things considered, the optimum method for managing a traumatised victim in a professional and humane way requires a two-stage approach:

- ◆ **First stage:** stabilise the victim through the provision of security and specialist assistance
- ◆ **Second stage:** only start the investigations after the victim has been stabilised

³⁷Fischer, G./Becker-Fischer, M./Düchting, C. (1998): Neue Wege in der Opferhilfe. Ergebnisse und Verfahrensvorschläge aus dem Kölner Opferhilfe Modell, Köln, 62.

2.4.2. RISK OF 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 victim³⁸.

Institutionalised secondary victimisation is most apparent within the criminal justice system. The whole 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 his or her eventual release. Secondary victimisation through the criminal justice process 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 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 agencies set up to help the victims of crime, such as victim services, victim compensation systems, refugee services and mental health institutions may have some policies and procedures that lead to secondary victimisation.

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 and make the victims not to recognise the fact that they have been victimised. Where the state, supposed to be protective, rather mistreats victims, the victims can have difficulties in acknowledging that an offence has occurred. Therefore, fighting corruption and fostering the commitment of law enforcement authorities is an important element of anti-trafficking strategies.

For more information, please see chapter 5.4.

Please see Annex - Case Scenario 11

³⁸UN Handbook, 9.

3. THE CHALLENGE: A HUMAN RIGHTS-CENTRED RESPONSE TO TRAFFICKING OF PERSONS

The human rights-centred response to trafficking in person rests on a strong international consensus. This is expressed in a wide variety of international documents. The most important conventions, protocols, decisions or recommendations directly addressing trafficking in human beings are:

- ◆ United Nations Convention against Transnational Organized Crime (UN-TOCC). This convention entered into force on 29 September 2003. By 24 October 2004, there were 147 signatories and 93 parties to the Convention;
- ◆ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Protocol entered into force on 25 December 2003, and has to be considered the most important international document with regard to trafficking in persons. By 24 October 2004 there were 117 signatories and 75 parties to the Protocol. In SEE the following countries are parties to the Protocol: Albania (August 2002), Bosnia and Herzegovina (April 2002), Bulgaria (December 2001), Croatia (January 2003), Romania (December 2002) and Serbia and Montenegro (September 2001);
- ◆ United Nations High Commissioner for Human Rights - Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002)³⁹;
- ◆ OSCE Action Plan to Combat Trafficking in Human Beings (Decision Nr. 557, 2003)
- ◆ Council of Europe Recommendations;
- ◆ Anti-Trafficking Declaration of SEE;⁴⁰
- ◆ The Europol Convention⁴¹;
- ◆ Brussels Declaration on Preventing and Combating Trafficking in Human Beings⁴².

All these international documents embody the development towards a human-rights-centred approach of anti-trafficking policies. This is particularly the case with regard to the UN Trafficking Protocol and the parent UN-TOCC that form a strong basis for legislation and policies giving due regard to the rights of victims of trafficking.

³⁹Report 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).

⁴⁰The Anti-Trafficking Declaration of SEE was signed at a Regional Ministerial Forum in Palermo 13 Dec 2000 by Government Ministers and representatives of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the former Yugoslav Republic of Macedonia, Moldova, Romania, Slovenia, Turkey, Montenegro and Kosovo. In this politically important declaration, the undersigned Government Ministers and State representatives underline the responsibility of the States to address the phenomenon of trafficking in human beings by implementing effective programs of prevention, victim assistance and protection, legislative reform, law enforcement and prosecution of traffickers.

⁴¹Convention Based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol Convention), 1995.

⁴²www.belgium.iom.int/STOPConference/Conference%20Papers/brudeclaration.pdf

3.1 THE COMPLEXITY OF THE PHENOMENON

To map out a strategy to counteract trafficking in persons is challenging and complex, as the crime is located at the intersection of three phenomena:

- ◆ Organised crime,
- ◆ Violence and
- ◆ Social discrimination.

Each one of these components adds, as described in the following, to the difficulties of effectively countering trafficking and ensuring the victim's human rights.

3.1.1. TRAFFICKING AS A FORM OF (TRANSNATIONAL) ORGANISED CRIME

Trafficking in human beings is a global business largely controlled by criminal networks. Trafficking in persons is organised by clandestine criminal groups that often are also involved in other types of organised criminality. The structures of these groups vary greatly, from loose amateur groups to international structured organisations.

The victim of trafficking will not experience justice unless law enforcement and judicial authorities succeed in effectively prosecuting and sentencing traffickers. Yet this is a highly demanding task when it comes to well-organised and complex criminal networks.

Insofar as trafficking of persons is a form of organised crime operating for profit in an illegal market, it does not in principle differ from drug trafficking or smuggling of illegal migrants with regard to the rationale, structure and logistics of the organisation. Accordingly, many practical and legal difficulties and implications are similar, namely:

- ◆ The need for an *organisational approach to law enforcement*, oriented towards the overall structure of the criminal organisation (and not the single offender);
- ◆ The need for a *pro-active investigative approach*, leading to specific legal issues linked to techniques of covert surveillance or to the admission of offenders performing as witnesses against other, more important members of the organisation;
- ◆ The imperative to *confiscate the assets* of the criminal organisation;
- ◆ The necessity to prevent *money-laundering* with regard to the assets of the organisation;
- ◆ The need for close *transnational co-operation* among police and judicial authorities;
- ◆ The importance of *protecting persons* who pose a risk to the criminal organisation (e.g. as potential witnesses) or have to fear retaliation (e.g. for having testified against the organisation).

3.1.2. TRAFFICKING AS A FORM OF VIOLENCE

Victims of trafficking very often are subjected to particularly detrimental forms of physical and/or psychological violence.

Therefore, they will often be severely traumatised. (See Chapter 2.) All institutions that come into contact with victims of trafficking have to be aware of their specific needs and rights and of the imminent danger of secondary victimisation through further re-traumatization.

Insofar as victims of trafficking resemble persons who have been taken hostage or have experienced severe domestic violence, it is important to take into account all knowledge we have gathered with regard to other forms of relational violence when trying to find an adequate state response.

3.1.3. VICTIMISATION AS AN EFFECT OF MULTIPLE DISCRIMINATION

Victims of trafficking are often affected by multiple discriminations, including:

- *poverty* in their home countries and abroad;
- the discrimination against *women*, again starting in their home countries and continuing in the societies of destination countries;
- the vulnerability of *children*;
- the discrimination of *prostitution*;
- the social (including legal) discrimination against *migrants*;
- *racism* and discrimination on *ethnic* grounds.

Women working as prostitutes are discriminated against socially and legally in many ways and their lack of protection is exploited by traffickers and turned into profit.⁴³

Violence and discrimination are linked to one another. Social discrimination impairs individuals who are discriminated against and makes them vulnerable to exploitation by others who are more powerful as a result of an unequal distribution of power. Social relations characterised by power imbalances very often lead to violence. Therefore, violence is often a means by which a dominant person asserts and reinforces control over another person, and which then occurs also as a consequence of social discrimination.

3.2 ELEMENTS OF A COMPREHENSIVE STRATEGY

State policies are never relevant to only one aspect of human rights, but have concurrent impacts on other human rights issues. Therefore, it is important to assess the effect of state policies and actions in a multi-dimensional way, taking their impact on the whole range of human rights into account. Measures to protect human rights and with a vital role in a comprehensive and effective anti-trafficking strategy are described in the following.

⁴³Butterweck-Uhl (1999): Der Handel mit Frauen in Mittel- und Osteuropa, in: European Strategies to Prevent and Combat Trafficking in Women. Proceedings of the Int. Conference Commemorating the International Day of Action against Violence against Women, 25-26 Nov 1998, Berlin, 126.

3.2.1. POLICY DEVELOPMENT AND IMPLEMENTATION

Article 9 paragraph 1 UN Trafficking Protocol asks State Parties to “establish comprehensive policies, programs and other measures” in order to prevent trafficking and to protect victims from re-victimisation.

Therefore, governments should develop **National Plans of Action** spelling out a consistent and comprehensive policy to counter trafficking of persons. As an institutional basis, the establishment of a **national co-ordination mechanism**, or **National Task Force** responsible for implementing the action plan fosters effective policies. Since 2000, when Ministers of the SEE agreed in the so-called Palermo Declaration (see fn. 35) to establish such mechanisms, nearly all, if not all, of the SEE countries have established such task forces involving governmental, non-governmental and international agencies dealing with the issue of trafficking in human beings. (As have many countries outside this region, such as Bahrain, Canada, Ghana, Pakistan and the United States.)

The task force should develop thorough methods for organising, monitoring and evaluating the implementation of the action plan. Whenever necessary, the task force should recommend to the government improvements to the action plan or the legal framework, or organisational measures relevant to anti-trafficking policies. By recruiting the assistance of NGOs who work closely with victims, the task force/plenipotentiary may strongly improve assessments of the current situation of trafficking. It remains within the responsibility of the government to select as partners 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.

A prominent example is the Belgian policy against trafficking: Belgium has set up a structure that enables an approach on both the federal and the local levels. This policy started out with a government action plan that called upon a number of federal departments to cooperate, namely the departments of Justice (including the magistracy), Foreign Affairs (including diplomatic and consular posts), the Interior (including the Aliens Office and the Federal Police), Labour and Employment, Social Affairs, and the departments for Social and Labour Inspection. A Task Force on Trafficking in Persons, created within the Office of the Prime Minister in 2000, drew up guidelines for the cooperation between the various departments and services, as well as with other Belgian organisations that fight against trafficking in human beings. The Federal Justice Department was assigned the task of ensuring that the actions taken within the various departments coincide with the application of the governmental action plan. It must maintain an overview of the initiatives and issue a report annually.

This approach comprises a component of assistance to victims of trafficking in human beings. Three specialised centres have been set up which take over, once a temporary residence permit and a work permit have been granted and which provide socio-psychological and legal aid to the victims.

International cooperation would greatly benefit from the harmonisation of legislation and policies. This too is something that has to be taken into account when shaping national policies. With regard to transnational organised crime, harmonisation of regulations and

practices should stay on the political agenda of the international community, particularly European countries. The Palermo Convention and the UN Trafficking Protocol together form a basis for global harmonisation relating to both the legal and the policy frameworks. With regard to this, the **EU Council Framework Decision on Combating Trafficking in Human Beings** of 19 July 2002 *obliges* all EU states to harmonise their domestic criminal legislation on trafficking by 1 August 2004, including adopting a common definition consistent with the Protocol and establishing minimum penalties for trafficking.

For more information on the EU Council Framework Decision, please see 4.3.1.

Individual countries are invited to insert information on their national co-ordinating structures and National Action Plans. Specific country information is vital to understanding national policy developments.

3.2.2. PRIMARY AND SECONDARY PREVENTION METHODS

Crime prevention methods can be divided in primary and secondary prevention techniques. Primary prevention is directed at tackling root causes of the crime on a large scale, whereas secondary prevention is aimed at particular groups identified to be most at risk of becoming either offenders or victims of particular types of the crime.

The UN Trafficking Protocol provides for both forms and is groundbreaking in that it includes measures to address the prevention of human trafficking. According to Article 9 paragraph 4 of the UN Trafficking Protocol State Parties

“Shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”

In addition, according to Article 9 paragraph 2 State 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.”

There are many efforts underway to advance the objectives of this Article, ranging from public awareness to developmental programs to strengthened law enforcement, designed to prevent and deter human trafficking.

Most common are programs fostering public awareness of the risks of trafficking. Such an approach can be effective if it is performed in an informative, non-patronizing and non-discriminatory way. Information campaigns should aim at providing individuals with accurate information in order to enable them better understand the risks of human trafficking and to make informed and wise decisions. Information should also be given on referral addresses, such as service providers who can assist trafficked victims in the country of destination.⁴⁴

⁴⁴CCEM (2002) 80.

The improvement of the dissemination of information regarding legal migration could also serve to prevent trafficking.⁴⁵

However, education campaigns can be questionable if they even contribute to the restriction of women's movement or the establishment of harmful or disempowering stereotypes, though just aiming at warning women of the potential danger of trafficking. Therefore, prevention measures must be clearly oriented towards the empowerment - and not the discouragement - of vulnerable groups.⁴⁶

Another prevention approach is to aim to reduce demand with respect to work and services performed by victims of trafficking. Accordingly, Article 9 paragraph 5 UN Trafficking Protocol requires that State Parties

“Shall adopt or strengthen legislative or other measures such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”

Equally, the Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the UN High Commissioner for Human Rights contain the principle: “Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.”

It is imperative that public officials and officers reflect on their responsibility towards communities in this regard. In the human trafficking context, it would e.g. not be appropriate for a public official to engage the service of a person exploited by a criminal network. The same applies to IO and NGO workers, especially but not only whenever they are committed to human rights (as a part of their tasks or corporate design). The prevention of any such involvement should be an element of every code of conduct and on the agenda of internal oversight units, particularly if their staff members are working abroad.⁴⁷ Training programs, which raise the awareness of the staff of state institutions as well as international organisations with regard to gender-related violence, and particularly to trafficking, would serve to contribute to reducing the demand for services of victims of trafficking.⁴⁸

3.2.3. TERTIARY PREVENTION METHODS

When a crime is or has been committed, “tertiary prevention” comes in, comprising all efforts either to end the criminal behaviour or to prevent another crime from being committed, including the re-victimisation of victims. Examples include:

- **Sanctioning Policy**

A strict policy of prosecuting and sentencing traffickers of persons is the most important pillar of tertiary prevention. Sanctions against trafficking of persons should have a deterrent potential and reflect the serious nature of the crime and the severity of human rights

⁴⁵Apap, Joanna/Cullen,Peter/Medved, Felicita (2002): Counteracting Human Trafficking: Protecting the Victims of Trafficking, 35.

⁴⁶Daniel Renton, “Child Trafficking in Albania”, 2001: parents in rural areas fearing abduction of their daughters subsequently refused to send their adolescent girls to school.

⁴⁷With regard to OSCE see Kartusch, Angelika (2002): Menschenhandel - Eine menschenrechtliche Herausforderung für die OSZE, in: OSZE-Jahrbuch 2002, Baden-Baden, 300.

⁴⁸Kartusch, Angelika/Knaus, Katharina/Reiter, Gabriele: Bekämpfung des Frauenhandels nach internationalem und österreichischen Recht, Wien 2000, 201.

violations involved. Consistent with this understanding, judges in the countries throughout the region have been imposing tougher sentences for criminals convicted of human trafficking. The preventative effect of sanctioning policy now requires prosecutors and judges to obtain regular success in convictions coupled with deterrent-level sentences that reflect the gravity of the human rights violations and harm that characterize trafficking of persons.

As per the UN Principles and Guidelines

“States should consider making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals): Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by state officials.” (Guideline 4.3) and

“Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences.” (Principle 15)

Likewise, it is important to consequently treat victims with respect and compassion, and not to sentence them for minor breaches of legal regulations. Only then will victims be encouraged to support the prosecution of traffickers.

The UN Principles and Guidelines are unequivocally specific on the subject of the rights of trafficked victims and the duty upon law enforcement agencies to ensure that trafficked victims are properly identified and not subjected to criminalisation and re-victimisation in respect of criminal conduct that is a consequence of their situation as victims of trafficking.

A measure, which could *supplement*, but not *replace* penalisation and sentencing, are training programs, to mirror to the offenders what their behaviour meant to the victims, to motivate them to accept their responsibility and to change their attitudes and behaviour. Such programs are already regarded as promising in many contexts of violent crime, ranging from rapists to members of skinhead groups.

- **Victim Protection**

Within the complex structure of a comprehensive anti-trafficking strategy, it is the protection of the safety of persons in danger that has the first priority. Police officers as well as all other actors - and particularly the judiciary - have to bear in mind security issues whenever acting in the context of anti-trafficking measures.

For example, whenever a defendant is released, it must first be considered whether his/her release could pose a threat to the safety of others. In that case, it is imperative to inform the police or a victim support organisation housing the victim before releasing the defendant.

If the defendant or his/her lawyer is granted inspection of records, the associated risks must first be taken into consideration. The risks could include the defendant learning about which victim incriminated him/her or about other harmful information about the victim and her whereabouts, that the victim has been summoned to appear before the court at a certain date in the near future, or information about family members of the victim. These risks give good grounds for denying access to records, to the extent permitted by relevant national legislation, in order to protect the victim.

For more information on victim protection, please see 5.3.

- **Disarming Criminal Organisations**

Counteracting organised crime is not so much about isolated acts of single persons but more about weakening or destroying the structures and infrastructure used for criminal activities. It is of crucial importance that national legislation, on seizure and confiscation of criminal assets in line with Art. 12 UN-TOCC is in place.

Whatever a criminal organisation uses as a tool to perform its criminal behaviour should be confiscated, independently from sentencing perpetrators. This refers to bank accounts, houses and business premises, advertising material used for recruitment, means of transportation, telecommunication devices, etc. Within the framework of national law, consideration should be given to closing premises used for housing or for the work of victims of trafficking (bars, brothels) and locations used a criminal “fronts” such as travel or employment agencies used in human trafficking schemes. There is precedence established for confiscation of assets in countries outside of the region.

In Belgium, for example, establishments used for the exploitation of victims of trafficking may be closed in the course of proceedings on the basis that welfare laws were violated on the premises and that there are reasonable grounds to believe that trafficking occurred.⁴⁹ The judgment imposed by the Austrian Supreme Administrative Court, acting in accordance with the views of local police, supported the closure of a dance club on the basis of suspicion that the club owner was involved in trafficking.⁵⁰ As trafficking networks are often involved in other illegal activities, prosecuting these other crimes can also contribute to dismantling such crime networks.

3.2.4. INVESTIGATION AND CRIMINAL PROCEEDINGS

The recovery, restoration, and rehabilitation of victims and the demonstration that justice is done are important elements of an overall anti-trafficking strategy. To achieve these ends, an adequate legal and organisational framework is needed. 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.

3.2.5. INSTITUTIONAL ASPECTS: COUNTERACTING CORRUPTION OF LAW ENFORCEMENT AUTHORITIES AND SAFEGUARDING THE INDEPENDENCE OF THE JUDICIARY

Article 9 UN-TOCC⁵¹ obliges each State Party to “adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials”. Anti-corruption measures are an indispensable pre-requisite for securing the resistance of law enforcement and judicial authorities against the influence of criminal organisations.

To ensure effective action against corruption, State Parties are bound to provide authorities “with adequate independence to deter the exertion of inappropriate influence on their

⁴⁹Kartusch, Angelika (2001): Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe, Warsaw 2001, 44.

⁵⁰Niesner, Elvira/Johns-Pauly, Christina (2001): Trafficking in Women in Europe. Prosecution and Victim Protection in a European Context, Bielefeld, 49, 153.

⁵¹Before being able to sign and ratify the UN Trafficking Protocol, States must be Party to the UN-TOCC.

actions". This obligation stresses the importance of safeguarding the independence of judiciary bodies. All political actors have to be aware of the importance of an independent judiciary and have to respect this independence as a crucial element of democratic societies, committed to the rule of law and to the right of defendants and victims to a fair trial.

3.2.6. VICTIM SUPPORT

Next to the protection of victims, their right to physical, psychological and social recovery must be given the highest priority. According to Art. 6 of the UN Trafficking Protocol Each State party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

This includes (see also chapter 5):

- ◆ 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.

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 are adequately funded by governments. Article 9, paragraph 3, of the UN Trafficking Protocol obliges State Parties to include in their policies and programs cooperation with NGOs, other relevant organisations and other elements of civil society.

In most SEE countries, cooperation between law enforcement authorities and NGOs is in place. (See also chapter 6).

Health Care

Victims of trafficking who were exploited in the sex industry often suffer from venereal diseases. Therefore, 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.

3.2.7. RESIDENCE STATUS

Destination countries have a responsibility to limit damage to the victim by providing a legal residence status to those who have been trafficked. The provision of legal immigration status on humanitarian grounds is indispensable.

A temporary residence permit forms a crucial element of any effective victim protection policy. However, granting the victim of trafficking a regular residence status will not only create the basis for support and protection of the victim, but also very often at the same time advance prosecution.

A residence permit, which is a basic pre-requisite that enables the victim to recover and to regain security, should not depend on the willingness (or ability) of the victim to co-operate with law enforcement authorities. Indeed, a policy linking support for the victim to the prosecution of the offenders would tend to instrumentally use the victim for the achievement of the goals of law enforcement. This could give the victim the impression that she has been transferred from being controlled by a criminal group to being controlled by state authorities. Whenever, for the sake of the recovery of the victim, it is necessary for the victim to be offered unconditional support, it is imperative that the victim be allowed to remain in the country where she finds herself. Human rights clearly should not be subjected to any conditions. E.g. Italy therefore pursues a policy based on the victim's need for protection rather than on her contribution to the State's prosecution efforts.⁵²

Example: Italy's Human-Rights Centred Approach

One of the current regulations closest to a human rights-approach is the Italian Law on Immigration (Law n. 286 of 25.7.98) that provides for a residence permit for victims of trafficking for humanitarian reasons. The residence permit is connected to the participation in a programme aimed at supporting and protecting the victim.⁵³

Trafficked persons receive the residence permit on the basis that they have been subject to violence or serious exploitation and that they are currently in danger. This danger can result from the statements made in criminal proceedings or simply from the trafficked person's attempt to escape from the criminal group exploiting her.

There are two different ways through which a residence permit may be granted, the so-called "judicial way" and the "social way".

In the "judicial way", if a trafficked person files a report to the police as a first step, the local police officer refers her to the closest shelter and then the prosecutor asks for a residence permit if her statements are useful in the proceedings.

In the "social way", the trafficked person first turns to a social worker of an outreach unit. The NGO provides her with safe housing and assistance and then applies directly to the police authority for a residence permit, giving the reasons for the application. In this case, the police authority checks into the existence of the conditions envisaged by the law and grants the residence permit regardless of whether the person has reported or acted as a witness in the criminal procedure.

⁵²Kartusch, Angelika (2001): Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe, Warsaw 2001, 67.

⁵³For an account of the Italian model refer to *Davide Petrin/Valeria Ferraris*, General guidelines: placing the research in the context of observations concerning Article 18, in: Article 18 (2002), p. 29-55.

The “social way” is independent of criminal proceedings in the first stage, but there is a link in the second stage. In fact, the information contained in the application of the NGO is a *notitia criminis*, and the police must inform the prosecutor’s office. In the Italian legal system prosecution is mandatory *ex officio* for the majority of crimes involved in the cases of trafficking. Hence, at a certain point, the victim is obliged to act as a witness. But by this stage, the person has already obtained a residence permit; she is sheltered and protected.

The residence permit has duration of six months, renewable for one year, or more, if the presence of the person is required in criminal proceedings. During the duration of the residence permit, the victim can obtain gainful employment. In this latter case, victims can apply for a work permit to stay in Italy even after the end of the criminal proceedings.

On 29 April, 2004, the **EU Council of Ministers**, adopted a directive (Council Directive 2004/81/EC⁵⁴) on residence permits issued to third-country nationals victims of trafficking in human beings or third-country nationals who have been the subject of an action to facilitate illegal immigration who co-operate with the competent authorities. (See also chapter 5.) Members of the European Parliament say victims should have at least a thirty-day reflection period before deciding whether to take up the offer. The permit would be valid for at least six months and would allow the victim access to the labour market, education and vocational training. The Parliament says that victims should also benefit from free legal aid. Previously, the Parliament passed other pro-victim amendments opening the possibility for victims’ families to be granted permits. Parliament has also noted that the absence of identity papers or possessing fake ID should not count against the victim when applying for the permit. When giving evidence, the identity of the victims should be protected and legal proceedings should be held in private. Where a permit is withdrawn or not renewed, authorities should take the victims’ safety as a primary consideration before expelling them.⁵⁵

Article 7 paragraph 1 UN Trafficking Protocol urges State Parties to consider adopting legislative or other appropriate measures that permit victims to remain in their territory, temporarily or permanently, in certain cases. In implementing this provision, State Parties are asked to “give appropriate consideration to humanitarian and compassionate factors”.

With regard to this, the Ministerial Statement of Commitments has been signed by the countries of South Eastern Europe in Tirana in December 2002. (See 1.6.4.) Governments agreed to improve identification of trafficked persons, to develop mechanisms for the legalization of the status of victims of trafficking and to grant an extended stay to victims of trafficking.

Granting victims a residence permit increases their trust in authorities. But telling the victim that she might be deported would confirm what the traffickers have predicted. Recently, Italian researchers have emphasized this point, stating:

“The research work showed clearly that the certainty not to be expelled immediately is a sine qua non to build the necessary trust to convince the woman to file a complaint, or at least to accept to join a programme for social assistance and integration.”⁵⁶

⁵⁴europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_261/l_26120040806en00190023.pdf

⁵⁵European Report - Anti-Trafficking Centre - Belgrade,

<http://www.legislationline.org/index.php?topic=14&subtopic=0&subsubtopic=0&intst=0&eu=0&country=0>

⁵⁶Davide Petrini/Franco Prina/Maria Virgilio, Conclusions, in: On the Road (2002), p. 227.

The duration of the residence permit should allow for the recovery of the victim, both physically and mentally, and leave time to consider prospects for her future and to claim compensation. Regularly, a time period shorter than six months will not suffice.⁵⁷

Often, returning home is too dangerous for the victim. The safety of victims might require to provide them with a permanent residence permit, irrespective of the victim's choice to act as a witness in criminal proceedings or not. Again, the example of Italy should be mentioned in this context, which allows victims to stay and to integrate into the labour market.

It is also important to be fully aware of the responsibility of governments who place restrictions on policies of immigration, and by doing so may possibly play into the hands of traffickers or smugglers. Because a likely consequence of restricting legal migration possibilities could be the steady increase of extra-legal migration and the dependence of migrants on criminal intermediaries.⁵⁸

For more information on residence permits, please see chapter 5.4.

3.2.8. REPATRIATION

In the long run, many victims of trafficking might return to their countries of origin. In the case of their return they have to be supported in finding their way back into their home communities safely and consistent with their program of long-term assistance, so as to avoid any re-victimisation. Cooperation on the NGO-level can foster this re-integration process.

According to Article 8 of the UN Trafficking Protocol the country of origin has the obligation to accept and facilitate the return of a victim and contains the following regulations with regard to repatriation:

- ◆ A State Party has to accept and facilitate the return of a victim who is a national of or had the right of permanent residence in the territory of this State party, with due regard for the safety of that victim;
- ◆ for this reason, at the request of a receiving State party, a requested State party has to verify whether a victim of trafficking is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State party;
- ◆ in order to facilitate the return of a victim without proper documentation, the home country of the victim has to issue documents enabling the victim to return;
- ◆ the return shall preferably be voluntary;

One of the most important points to remember is that a State Party returning the victim has to pay due regard to the safety of the victim and to “the status of any legal proceedings related to the fact that the person is a victim of trafficking”. This clarifies that the return should not jeopardise the rights of the victim to redress and to compensation and therefore to participate in the relevant court proceedings to the necessary extent. In SEE victims are often only offered the option to return to their home countries, without offering also the

⁵⁷Kartusch, Angelika (2001): Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe, Warsaw 2001, 65.

⁵⁸Coomaraswamy, Radhika (2000): Integration of the human rights of women and the gender perspective. Violence against women, E/CN.4/2000/68, 29 February 2000, paragraph 84.

necessary support. There are also cases of women choosing to be deported as illegal migrants rather than to be repatriated and to be stigmatised as prostitutes”⁵⁹

3.2.9. COMPENSATION

Victims should be entitled to receive compensation for physical and psychological harm suffered, either through mandatory restitution, in seeking compensation or from punitive damages from traffickers through civil action. Article 6, paragraph 6, UN Trafficking Protocol obliges State Parties to offer victims of trafficking the possibility of obtaining compensation for damage suffered.

For more information on victim compensation, please see chapter 5.6.

3.2.10. INTERNATIONAL CO-OPERATION (POLICE AND JUDICIARY)

Article 10 Trafficking UN Protocol obliges law enforcement authorities of State Parties to co-operate with one another by exchanging information to enable them to determine whether persons illegally crossing borders are perpetrators or victims of trafficking. This information is to be used generally to determine the means and methods used by organised criminal groups for trafficking, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in trafficking and possible measures for detecting them. Moreover, the UN-TOCC contains a wide range of regulations referring to international judicial co-operation.

Effective co-operation has to be established on two levels:

◆ Regional Level

Along the major routes of trafficking, cooperation among law enforcement authorities has to be established on an operational level. It is important that experts working in the field of countering trafficking know and mutually trust each other to form a strong network. Joint seminars or workshops not only facilitate sharing experiences, but also help foster cooperation in many ways. For example, for many years the Middle European Police Academy⁶⁰ has served to strengthen cooperation among law enforcement agencies dealing with issues of combating organised crime. The SECI⁶¹ Center has also contributed to co-operation on the regional level. Learning about the legal and organisational framework in place in other countries involved helps to understand the possibilities and difficulties law enforcement authorities face.

Within the context of the European Union, judicial co-operation has advanced during recent years. In 1997 the **European Council** adopted an Action Plan to combat organised crime, which was prepared by a High Level Group of experts from the Member States. Several of the recommendations of this Action Plan aim at improving the standards of co-operation between judicial authorities in criminal matters. On the basis of this Action Plan and amongst other measures, the Council adopted, on 29 June 1998, a Joint Action on the Creation of a European Judicial Network. The Network meets regularly and is active as an

⁵⁹Barbara Limanowska, Trafficking in Human Beings in South Eastern Europe, 2003 (Update) UNICEF, UNOHCHR, OSCE/ODIHR.

⁶⁰An education institute, jointly maintained by Austria, Czech Republic, Germany, Hungary, Poland, Slovak Republic, Slovenia, Swiss Confederation, which draws up and organizes advanced training events for managers of the medium level police government. (www.mepa.net).

⁶¹Southeast European Cooperative Initiative, SECI Center Bucharest.

intermediary with the tasks of facilitating judicial co-operation between Member States, providing legal and practical information on mutual legal assistance to practitioners in their own countries and abroad, and improving co-ordination of judicial co-operation between Member States. Contact points, identified by each Member State, carry out its work.

◆ International Co-operation

As such a close co-operation cannot be carried out with all countries possibly involved in a trafficking case, it is important that international regulations are in place allowing for communication on the basis of globally recognised, standardised and formalised procedures. The UN-Convention against Organized Crime and the additional protocols have decisively contributed to create such effective means of international co-operation for the judiciary systems of State Parties.

For more information on international co-operation, please see chapter 9.

3.3 HUMAN RIGHTS AS THE BASIS FOR COUNTERING TRAFFICKING OF PERSONS

States respond to the phenomenon of trafficking of persons in various ways. Governments differ in designing anti-trafficking policies, depending on their (and the general public's) perception of the phenomenon of trafficking of persons.

3.3.1. THREE BASIC MODELS OF RESPONDING TO TRAFFICKING

When looking into the attitudes and procedures in place, three basic approaches can be distinguished:

Approach I: Immigration/Prostitution-centred Policies

Policies that can be grouped under this heading tend to ignore the complex phenomenon of trafficking and instead focus on the aspect of the illegal immigration and/or the prostitution of the victim and, accordingly, react by arresting and deporting the victim. Not only do such approaches violate the basic rights of the victim to be recognised as a victim of a violent crime, to experience rehabilitation and to be supported in the process of recovery, such a procedure also plays into the hands of organised crime by not allowing the deported victim to exit from a cycle of violence. Interviewing persons while in custody or detained at the border is likely to influence what and how much these persons are willing to say.

Prioritisation is a key element of all policy development. An effective policy against trafficking must prioritise the unconditional recognition of victims of trafficking rather than focusing on their breaches of regulations governing public order, such as immigration and prostitution laws.⁶² The legal system should allow the trafficking victim to be excused for not abiding by such regulations on the grounds that she/he has acted under constraint. However, today trafficked persons very often are treated as criminals rather than as victims, both in countries of destination and origin.

⁶²Kartusch, Angelika/Knaus, Katharina/Reiter, Gabriele: Bekämpfung des Frauenhandels nach internationalem und österreichischem Recht, Wien 2000, 200.

In court procedures it is of great importance to avoid any impression of blaming the victims or making their behaviour a legal or moral issue. Whether or not the victim has worked in the sex industry before is of no relevance for the victim status and should be avoided. The right of the victim to privacy has to be respected in every possible way.

Approach II: Crime Control-centred Policies

Crime control-centred policies stress the importance of effectively conducting investigations and prosecuting traffickers. They tend to perceive the victim instrumentally, primarily as a potential witness. Within the logic of such an approach, it is tempting to let law enforcement benefit from the weak position of the victim by offering the victim support if she is ready to co-operate with law enforcement agencies.

Such a policy not only inherently tends to disregard the unconditional status of the victim's rights but also does not pay from a law enforcement perspective. Victims are frequently asked to decide whether they are ready to co-operate and willing to testify at a time, when they are not yet in a position to decide on these issues. Only after some period of recovery victims might, be in a position to remember the past and make an independent decision on the question of collaborating with the authorities. Attempts to exert pressure on the victims will most likely harm and lead to a re-victimisation of the victim. In addition, that procedure will not result in a reliable and valid testimony. (See already Chapter 2).

The comprehensive assistance afforded to victims should be based on their status and rights as victims, and not as a reward for contributing to the prosecution of traffickers.

Approach III: Human Rights-centred Policy

The UN Principles and Guidelines start with "the primacy of human rights". The first recommended principle reads:

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

Trafficking of persons should be recognised as an extreme form of human rights violation. Indeed, it seems that unless the harm done to the victim becomes the primary focus of anti-trafficking policies, States will be reluctant to place trafficking of persons high on the list of issues with priority and will tend to perceive trafficking of persons as a "nuisance" rather than in a context of severe violence and violations of human rights.⁶³ The only way to adequately deal with the phenomenon of trafficking in persons, therefore, is to move the needs and rights of the victims into the centre of the fight against trafficking. This is of particular importance with regard to the roles of prosecutors and judges.

Until recently, the victim has been seen as a third party in the criminal justice system. Yet research has demonstrated that many victims are dissatisfied with their treatment by the criminal justice system. Moreover, in many cases victims are severely traumatised, resulting in so-called "secondary" victimisation.⁶⁴

This manual is designed to particularly underline the importance of the rights of the victim, based on a clear understanding of the situation of victims of trafficking and their needs. At

⁶³IOM (2000): Migrant Trafficking and Human Smuggling in Europe: A review of the evidence with case studies from Hungary, Poland and Ukraine, Geneva, 295.

⁶⁴UN (1999): Offenders and victims: accountability and fairness in the criminal justice process. Working paper prepared by the Secretariat, A/CONF.187/8, 2.

the same time, law enforcement is of highest importance and it is one of the basic rights of victims that traffickers are made accountable. Indeed, law enforcement officials tend to be most successful in securing convictions when trafficked persons' rights have been respected rather than disregarded. Cases of best practice exist where there have been committed teams of law enforcement/judiciary, prosecutors, lawyers and service providers, who all displayed sensitivity to the needs and rights of trafficked persons in each case.

Unfortunately, in the vast majority of cases, the trafficked person is seen primarily as a witness, a tool of law enforcement. If this continues to be the case, the right of victims to have access to justice will continue to be denied, and prosecutions will fail because trafficked persons will be neither willing nor able to testify.⁶⁵

The human-rights-centred approach has proven to be the most effective basis for law enforcement and therefore may not be seen as opposed to but rather as an improvement of the crime control-centred approach outlined above.

The UN Declaration of Basic Principles of Justice for Victims has established clear standards of fairness for the victim of crime, including

- ◆ the right to be treated with respect and recognition;
- ◆ the right to be informed about the progress of the case, the right to counsel and the right to actively participate in the decision-making process;
- ◆ the right to be referred to adequate support services;
- ◆ the right to protection in the form of physical safety;
- ◆ the right to privacy and
- ◆ the right of compensation, from both the offender and the State.

The mere assumption that a person is a victim of trafficking should lead to the immediate and unconditional concession of these rights. Yet, although this declaration dates from 1985, in many jurisdictions, the needs, concerns and rights of victims have still not received the attention that they deserve. There is an urgent need to provide more effective remedies and protective mechanisms to victims to enable them to gain access to, and participate actively and effectively in, the justice system. In order to sensitise practitioners to the specific needs and concerns of victims, these issues are highlighted throughout this training manual.

3.3.2. THE CONCEPT OF HUMAN RIGHTS AND THE ROLE OF THE JUDICIARY

◆ Human Dignity

The concept of human rights is based on the assumption of the dignity of all persons. A person who has suffered violence, therefore, is entitled to measures of (moral and legal) redress, reaffirming her/his dignity and rights that form the basis of her/his social personality.

⁶⁵Elaine Pearson, Human traffic, human rights: redefining victim protection, 2002.

To give justice to the victim is therefore to be recognised as one of the central functions of the judiciary. It is owed to the victim that law enforcement authorities would make all possible efforts to effectively prosecute and sentence traffickers.

◆ Non-/Anti-discrimination

The concept of equal dignity does not allow for unjustified differences in the way the legal system treats persons and above all adjudicates rights and duties. As social discrimination is a main cause of violence, States must be careful not to add to the vulnerability of marginalized social groups.

The UN 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 para. 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.

State policies therefore have to take a further step by *actively* counter-acting discrimination, e.g. by granting children additional rights to support in criminal proceedings or by placing emphasis on the necessity to counter-act violence directed against women or against migrants. E.g. particular efforts have to be made to assist women and children as victims of violence, and there is a need for specialised organisations in this respect.

3.3.3. HUMAN RIGHTS AND THE ISSUE OF PROSTITUTION

Approaches to counter trafficking historically have been and still are strongly influenced by different attitudes towards prostitution and the legal paradigms for addressing prostitution. Basically the following views regarding prostitution can be distinguished:

- ◆ Criminalisation of prostitution: prostitution is illegal or criminalized
- ◆ Legalization: prostitution is a legal business in the economic sector; supporters of legalization argue that this enables official control of public order and public health, and protection to prostitutes, as labour laws can protect them; offenders say that this leads to an increase in the activity, exploits women and gives social and moral legitimacy to the sale of the women’s body;
- ◆ Decriminalisation combined with mere toleration: legislation remains silent on the issue of prostitution and therefore basically adheres to a neutral position, (e.g. as regards the status of prostitution, matters of social security, tax law issues, the possibility of claiming payment through a civil lawsuit, etc.)
- ◆ Decriminalisation combined with a human rights approach calls for the protection of the legal rights of prostitutes and the application of standards of labour rights to prostitutes and sex work.⁶⁶

Regardless of the different approaches, any victim of a human rights abuse needs to be treated with respect by law enforcement and judiciary irrespective of whether the person

⁶⁶Coomaraswamy, Radhika (2000): Integration of the human rights of women and the gender perspective. Violence against women, E/CN.4/2000/68, 29 February 2000, paragraph 21.

has worked as prostitute before. Nevertheless, it has often been observed that women who are or were working as prostitutes are treated with disrespect in court proceedings, though they were victims of trafficking, which entitles them to particular care, support and respect.⁶⁷

3.3.4. STATE RESPONSIBILITY FOR NON-STATE ACTORS

In the past, because of a narrow understanding of the function of human rights, it was believed that States would be responsible solely for their own action. Human rights were understood as protecting private persons against public interference. Therefore, actions of non-state persons were perceived as a matter of criminal justice only.

Later on, the evolution of international law led to the recognition of the “*due diligence*”-*standard*, meaning that States must act with due diligence to prevent, investigate and punish acts of violence committed by non-state actors. The emergence of this state responsibility “plays an absolutely crucial role in efforts to eradicate gender-based violence”.⁶⁸

3.3.5. HUMAN RIGHTS AND THE TASKS OF STATE INSTITUTIONS IN DEMOCRATIC SOCIETIES

In democratic societies, the needs and rights of the people set the standards for State activities. It is particularly important to keep this in mind when dealing with issues of the criminal justice system. Sometimes the criminal justice system is perceived as acting in the interests of the State, enforcing its own rights. This conception runs the risk of placing the judiciary in an antagonistic position relative to the people and their rights. It is therefore crucial to understand that the legitimacy of the criminal justice system strictly depends on its ability to enforce the human rights at stake, meaning both the rights of the actual victim and the rights of potential victims. The system must also take into account the rights of the offender/the accused and of all other persons affected in the course of the proceedings. (See e.g. Art. 25 UN-TOCC and Art. 6 2b UN Trafficking Protocol: measures to protect victim should be without prejudice to the rights of the defendant)

In addition, it should not be overlooked that victims take particular interest in questions related to the behaviour and responsibility of the perpetrator. With regard to questions like: “Why has he done that to me?” and “Does he understand what he has done to me?” it would be ideal to enable perpetrators to recognise their responsibility, to learn to respect the dignity of others and to change their behaviour accordingly, meeting crucial interests of the victims as well as of society.

3.3.6. MAINSTREAMING HUMAN RIGHTS

The criminal justice system is designed to give justice to the victim and to other persons. By doing so it enforces the entire system of human rights: sentencing a theft-case reinforces everybody’s right to property; sentencing violence reaffirms dignity of persons, the right to health and to security etc. Furthermore, when counteracting violence against women, children or migrants, the criminal justice system engages in positive action directed towards diminishing discrimination against these groups. Accordingly, anti-trafficking policies, from a

⁶⁷van Dijk, Jan J.M. (2002): Empowering Victims of Organised Crime; on the Compliance of the Palermo Convention with the UN Declaration on Basic Principles of Justice for Victims, ERA-Forum I/2002, 35.

⁶⁸Coomaraswamy, Radhika (1999): Statement, in: Dearing/Förg (1999), 103.

human rights perspective, have to be evaluated as (potential) means of anti-discrimination policies empowering women, children and migrants in our societies.

The UN Principles and Guidelines (Guideline 1 paragraph 7) therefore encourage States to “monitor the human rights impact of anti-trafficking laws, policies, programs and interventions. Consideration should be given to assigning this role to independent national human rights institutions where such bodies exist. Non-governmental organisations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures.”

4. SUBSTANTIVE CRIMINAL LAW

This chapter gives an overview of the development of international law relating to trafficking and the defining terms of this crime. International law with regard to appropriate sanctions will also be discussed. Finally, the process of legal harmonisation and national implementation will be reviewed.

4.1 DEVELOPMENT OF INTERNATIONAL LAW RELATING TO TRAFFICKING⁶⁹

The long, varied history of international documents on trafficking reflects the difficulties of the international community to reach a consensus and, even more so, to effectively implement a common understanding. This history starts from the International Agreement for the Suppression of the White Slave Trade, dating back to 1904. This treaty, focused on the protection of victims rather than the punishment of perpetrators, but was always ineffective probably due, at least in part, to this lack of comprehensiveness in addressing this multi-faceted issue. Therefore in 1910 the International Convention for the Suppression of White Slave Traffic was adopted, which bound the 13 ratifying countries to punish procurers.

Under the Auspices of the League of Nations, the 1921 Convention for the Suppression of Traffic in Women and Children and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age were concluded.

These four conventions on trafficking were eventually consolidated by the UN in the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.

For a fuller account, it has to be added that States have a duty to protect the human rights of persons subjected to trafficking pursuant to

- ◆ the Universal Declaration of Human Rights,
- ◆ the International Covenant on Civil and Political Rights,
- ◆ the International Covenant on Economic, Social and Cultural Rights,
- ◆ the Convention on the Elimination of All Forms of Discrimination against Women,
- ◆ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- ◆ the Convention on the Rights of the Child,
- ◆ the Convention on the Protection of the Rights of Migrant Workers and Members of their Families,
- ◆ the Slavery Convention⁷⁰,

⁶⁹Based on 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, paragraph 18ff

- ◆ the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery⁷¹,
- ◆ the International Labour Organisation (ILO) Convention No. 29 concerning Forced Labour⁷² and
- ◆ the ILO Convention No. 105 concerning the Abolition of Forced Labour⁷³.

4.1.1. INTERNATIONAL PROTOCOLS, CONVENTIONS AND THE LEGAL FRAMEWORK⁷⁴

The United Nations Convention Against Transnational Organized Crime and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime ('Palermo Protocol') constitute the internationally agreed basis for all anti-trafficking efforts.

These instruments are reinforced by a range of international laws, Conventions, Protocols, Decisions or Recommendations the most important of which include:

- Annex II of the United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- United Nations High Commissioner for Human Rights - Recommended Principles and Guidelines on Human Rights and Human Trafficking
- International Convention of the Elimination of all Forms of Discrimination against Women (CEDAW);
- Europol Convention;
- EU Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA)
- Council of Europe Recommendations;
- Anti-Trafficking Declaration of SEE
- Brussels Declaration on Preventing and Combating Trafficking in Human Beings

For a comprehensive overview of an anti-trafficking legislative framework and related documents, please visit the website of the Comprehensive Programme for Training and Capacity Building to Address Trafficking in Human Beings in South-eastern Europe, (www.anti-trafficking.net),⁷⁵ as well as the websites of the Council of Europe⁷⁶ and OSCE ODIHR⁷⁷.

⁷⁰www.unhchr.ch/html/menu3/b/f2sc.htm

⁷¹www.unhchr.ch/html/menu3/b/30.htm

⁷²www.unhchr.ch/html/menu3/b/31.htm

⁷³www.unhchr.ch/html/menu3/b/32.htm

⁷⁴See list chapter 3.

⁷⁵To receive a password to the anti-trafficking website, please send an email to: anti-trafficking.net@icmpd.org

⁷⁶<http://www.coe.int>

⁷⁷www.osce.org/odihr

4.1.2. THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR) AND THE EU CHARTER OF FUNDAMENTAL RIGHTS

Article 4 of the **European Convention on Human Rights and Fundamental Freedoms (ECHR)**⁷⁸, 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”.

Article 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.

The **ECHR** does not contain a definition of forced or compulsory labour. However, a definition of forced or compulsory labour can be found in Article 2 of the ILO Convention no. 29 adopted on June 29th 1930, which states:

“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”.

“Forced or compulsory labour shall not include: military service; civil obligations of the citizens; any work or service exacted as a consequence of a conviction; any work or service exacted in cases of emergency; minor communal services performed by the members of the community.” (Article 2.1)

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

The Convention does also not define slavery and servitude. The interpretation of these terms must imply a progressive interpretation of customary law, taking into account modern forms of slavery.

However, in the “Barcelona Traction Case” of February 5th 1970, the International Court of Justice included slavery among the violations that, because of the importance of the rights affected, create a so called *erga omnes* obligation for States. A consequence of the decision of the Court is the unconditional prohibition of slavery, provided that all the elements that qualify the violation as an international crime are in place.

The **Charter of Fundamental Rights of the European Union**⁷⁹ envisages the prohibition of slavery and forced labour by adopting the same formulation as the European Convention on Human Rights.

Article 5 of the Charter states:

⁷⁸www.echr.coe.int/Convention/webConvenENG.pdf

⁷⁹ww.europarl.eu.int/charter/pdf/text_en.pdf

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

Article 5 paragraph 3 introduces an important innovation, which takes into account modern forms of slavery, stating:

“3. Trafficking in human beings is prohibited”.

4.1.3. THE CONVENTION ON SLAVERY

At the UN level, different international instruments comprise provisions concerning trafficking in human beings.

The starting point is the Convention on Slavery, signed in Geneva 25 September 1926, which contains a definition of slavery and slave trade:

“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.

Slave trade includes all acts involved in the capture, acquisition or disposal of a person with the 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”.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, done at Geneva 7 September 1956, adds to the scope of the prohibition of slavery by including practices similar to slavery.

The Supplementary Convention envisages 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:

- ◆ debt bondage;
- ◆ serfdom;
- ◆ any institution and practice whereby
 - ◇ a woman is given in marriage on payment of an obligation without the right to refuse;
 - ◇ the husband or his family or clan has the right to transfer her to another person;
 - ◇ a woman on the death of her husband is liable to be inherited by another person;
 - ◇ a child or young person is delivered by his parents with a view to the exploitation of the child or of his labour.

4.1.4. THE INTERNATIONAL CRIMINAL COURT STATUTE

Article 7 of the Statute includes among the crimes against humanity the crime of enslavement, which is defined 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”.

In the same context the crimes of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other forms of sexual violence of comparable gravity” are mentioned.

Like the EU Charter, 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.

4.2 INTERNATIONAL LAW WITH REGARD TO DEFINITIONS AND SANCTIONS AGAINST TRAFFICKING

4.2.1. ARTICLES 3, 4 AND 5 UN TRAFFICKING PROTOCOL

Until recently, a universal and legally binding definition of trafficking was lacking at the regional and international levels and different national and international actors used differing definitions. That situation has now been improved by the completion of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime. 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 basic purpose of the UN Trafficking Protocol is to prevent and combat trafficking, to protect and assist victims and to promote international cooperation. 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.⁸⁰

Article 3 UN Trafficking Protocol, as referred to in other places of this manual, defines the basic terms used in the Protocol as follows:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

(b) The consent of a victim of trafficking to 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.

⁸⁰http://www.unodc.org/unodc/en/trafficking_convention.html

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

(d) "Child" means any person under the age of eighteen years of age.

This definition has several positive aspects that reflect the reality of trafficking.

- It does not restrict trafficking to sexual exploitation, but also includes the conditions of forced labour, servitude, slavery and slavery-like practices, each of which are defined in international law.
- It does not focus on women and girls exclusively but recognizes that women, men, girls and boys can all be victims.
- It does not require that the victims cross an internationally recognized border, taking into account that persons are also being trafficked internally from one region to another 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, e.g. 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.

It is the combination of involuntary transfer, resulting in an unintended deprived social position and the exploitation of this position that make trafficking in persons a genuine crime distinct from other crimes or their mere combination, and comparable to the slave-trade.

It should be noted that the UN Trafficking Protocol applies to the defined criminal acts regardless of how State Parties address prostitution in their respective domestic laws. It neither advocates criminalisation of prostitution nor its legalisation. This neutrality is the result of a yearlong dispute among the delegations that negotiated the language of the Protocol.

Trafficking in persons under eighteen years of age exists irrespective of the means or the 'consent' on the part of the victim. Given that increasing numbers of mid-teenage girls are now trafficked from SEE region to Western Europe and beyond, the relevance of this provision can hardly be overestimated.

Article 5 UN Trafficking Protocol obliges State Parties to criminalize the conduct outlined in Article 3, when committed intentionally. Participating as an accomplice in such an offence, as well as organising or directing other persons to commit such an offence, have to be criminalized as well. It has been noticed that, theoretically, Article 5, paragraph 2, could be misunderstood as giving a basis for prosecuting trafficked persons (victims) who could be accused of "participating" or "assisting" in trafficking, which is, of course, not the intention of this section. The UN Trafficking Protocol aims at punishing the traffickers, not the victims.

Domestic legislation could clarify that trafficked persons are never punishable in connection with their own trafficking or the trafficking of persons moved together with them.⁸¹

According to Article 4, the UN Trafficking Protocol shall apply to the prevention, investigation and prosecution of the offences established in accordance with Article 5, but restricted to offences that are transnational in nature and involve an organised criminal group, as well as to the protection of victims of such offences.

- According to Article 2a UN-TOCC, the term “organised criminal group” means “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 established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”. (See 4.2.4.)
- According to Article 3 paragraph 2, an offence is transnational in nature if it is committed:

in more than one State; only in one State but a substantial part of its preparation, planning, direction or control take place in another State; only in one State but involves an organised criminal group that engages in criminal activities in more than one State; or in one State but has substantial effects in another State.

However, it is important to point out that according to Art. 34 paragraph 2 UN-TOCC *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 UN 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.

In recognition of this, the new national anti-trafficking laws adopted in the SEE are criminalizing also internal trafficking.

4.2.2. THE MEANS OF TRAFFICKING, ART. 3 UN TRAFFICKING PROTOCOL

Trafficking can involve violence to intimidate the targeted person at the recruitment stage, but can take place in any stage of the trafficking process. And even if a person has consented to illegal migration, there is a case of trafficking - not of smuggling of migrants - if violence (or other means as listed by the protocol) are used to advance the exploitative scheme, be it in a country of origin, transit or destination.

Deception is often connected with false promises of a regular job, but can also mean a deception on working conditions and personal freedom. Under the UN Trafficking Protocol even if a woman knows e.g. that she will be a prostitute in the country of destination, deception is present if she is not (made) aware of the real conditions into which she will be forced. (Serving customers without break, not being able to refuse customers and their requests, payments taken away, etc.).

⁸¹Jordan, Ann D. (2002): The Annotated Guide to the complete UN Trafficking Protocol, Washington, 15.

In addition to violence, threats, coercion, abduction, fraud, deception and abuse of power, a new formulation was introduced in the definition: the abuse of a position of vulnerability. The *Travaux préparatoires* (interpretive notes) of the UN Trafficking Protocol clarify that the notion of an 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”.

Thus, the abuse of a position of vulnerability should deal with situations where certain conditions, which may include conditions of extreme poverty, isolation, lack of any support and/or conditions of subordination of the woman under other family members, cause the trafficked person in a particular case to have no choice but to submit. The precise parameters of this must await future legal application. The language of the Travaux also has been adopted and explicitly incorporated in the European Council Framework Decision of 19 July 2002 (Article 1).

4.2.3. THE PURPOSES OF TRAFFICKING

The definition of trafficking in persons includes different illicit purposes, under the general concept of exploitation. In addition to sexual exploitation, forced labour or services and servitude are mentioned.

The term forced labour and slavery are not defined in the UN Trafficking Protocol, there are, however, several international instruments in this regard.⁸² Also the purpose of servitude is mentioned in the Protocol. “Servitude” is an underestimated phenomenon, which shares some elements of slavery and some elements of forced labour.

4.2.4. ADDITIONAL MANDATORY PROVISIONS OF THE UN-TOCC TO THE UN TRAFFICKING PROTOCOL

◆ Participation in an Organised Criminal Group

Article 5 UN-TOCC obliges all State Parties to the Convention to criminalise the participation in an organised criminal group. According to the UN-TOCC Art. 2a "organised criminal group" shall mean:

- ◆ 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", Art. 2b UN-TOCC shall mean:

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 covers.⁸³

⁸²E.g. Convention No. 29, No. 105 of the International Labour Organization (ILO) & UN Slavery Convention, UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions similar to Slavery and others.

⁸³In detail see article 5 paragraph 1 UN-TOCC.

- ◆ agreeing with other persons to commit a serious offence in order to obtain material benefits;
 - ◆ 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.
- ◆ **Laundering of the Proceeds of Crime**

Article 6 UN-TOCC obliges State Parties to the Convention to criminalise the laundering of proceeds, particularly with regard to the proceeds of the activities of organised criminal groups. Indeed, to detect financial flows and to disrupt money laundering processes has to be seen as an indispensable second branch of an effective investigation against trafficking.

◆ **Corruption**

According to article 8 of the UN-TOCC, public officials must be held criminally accountable for both active and passive bribery. **Active bribery** means that the participation as an accomplice in an offence, either on the side of the person giving or receiving the undue advantage (paragraph 3), will be criminalised. **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. While not limited to public officials performing functions related to crimes covered by the UN-TOCC, Article 8 signals the need for countries to squarely address the role that public corruption plays in facilitating human trafficking. The term “public official” relates to anyone who provides any public service (paragraph 4).

In paragraph 2 of Article 8, it is suggested that the criminalisation be extended to foreign public officials or international civil servants as well as to other forms of corruption.

◆ **Obstruction of Justice**

Article 23 UN-TOCC protects criminal proceedings against unlawful interference. This includes criminal groups interfering in investigations or proceeding by intimidating or bribing witnesses and officials.

Paragraph (a) - including the pre-trial phase of proceedings⁸⁴ related to crimes covered by Articles 5, 6 and 8- protects the evidence in proceedings. It 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.”

Paragraph (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”.

⁸⁴UN, 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 (cited: Report of the Ad Hoc Committee), A/55/383/Add.1.

◆ Liability of Legal Persons

Liability for offences must be established both for natural or biological persons and for legal persons, such as cooperations, in accordance with Article 10 UN-TOCC.

4.2.5. “WITHHOLDING OF IDENTIFICATION PAPERS”, “USING OR PROCURING SEXUAL SERVICES OF PERSON IN A SITUATION OF SEXUAL EXPLOITATION”

It should be noted that in the United Nations Mission in Kosovo (UNMIK) Regulation no. 2001/4 of 12 January 2001, two definitions were established that serve to supplement the criminalisation of trafficking of persons and may well be of interest to legislators in other countries.

Section 3 of this regulation criminalises the “Withholding of Identification Papers”. A person who acts as another person’s employer, manager, contractor or employment agent, and in this capacity intentionally withholds another person’s identification documents or passport, commits a criminal act and is liable to a penalty of six months to five years’ imprisonment.

According to Section 4 of the same regulation, any person who uses or procures the sexual services of a person, with the knowledge that that person is a victim of trafficking in persons, commits a criminal act and shall be liable to a penalty of three months to five years’ imprisonment. Where the person providing the sexual services referred to is under the age of 18 years, the maximum penalty is up to ten years’ imprisonment. Although this regulation is restricted to sexual services, legislators may want to consider it broader applicability to other forms of trafficking in persons as well.

4.2.6. SANCTIONS AGAINST OFFENDERS

According to Article 11 UN-TOCC State Parties are obliged to make the offences listed in Articles 5, 6, 8 and 23 liable to sanctions (i.e. sentencing) that take into account the gravity of these offences. Furthermore, they shall ensure “that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences” (Article 11 paragraph 4 UN-TOCC).

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 does not only fail to serve as a means of effective prevention, but also impairs the effectiveness of proceedings.⁸⁵

⁸⁵Kartusch, Angelika (2001): Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe, Warsaw 2001, 43.

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 give guidelines for establishing the severity of the sanctions.

Nevertheless, there are legal instruments which shed light on this. At the **EU level**, Article 3 of the Framework Decision of 19 of July 2002 (which is binding for the Member States and that should be incorporated in the national legislation by August 2004 - See section 5.3.1 below), 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 organization, the Framework decision provides a penalty of not less than eight years.

More and more countries in South Eastern Europe and beyond are providing in their new anti-trafficking laws for sentences in excess of ten years. Even higher sentences are beginning to be imposed upon traffickers in humans by judges across the region.

4.3 THE PROCESS OF HARMONISATION AND IMPLEMENTATION OF NATIONAL LEGISLATION

4.3.1. IMPORTANCE OF A CLEAR AND DISTINCT DEFINITION OF TRAFFICKING ALONG INTERNATIONAL STANDARDS

The importance of identifying victims of trafficking on the basis of a clear definition of trafficking of persons is underlined by the Recommended Guidelines issued by UNHCHR as follows (see guideline 2):

“Trafficking means much more than the organised movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout, or at some stage, in the process - such deception, force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. 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.”

The lack of a clear definition of the crime of trafficking of persons in national laws forms an obstacle to effective prevention and prosecution, to the recognition of the human rights violations involved, to research and criminal statistics on the phenomenon, and to the shaping and coordination of effective policies and cross-border cooperation. (Guideline 4 of the UN Principles and Guidelines)

As described earlier, trafficking is often prosecuted under provisions on smuggling, illegal entry into the state territory or on prostitution-related crimes, such as pimping or the promotion of prostitution.

The limited scope and minor punishments associated with these laws allow traffickers to receive a relatively low penalty, which is very often a nominal fine. This situation does not

reflect the serious nature of trafficking and creates the ‘**high-profit - low-risk**’ perception of the crime that encourages organised criminals to engage in it.

A distinct definition of trafficking also facilitates international co-operation, e.g. when it comes to the question of whether the act of trafficking in another country is punishable *ius civile*, under national law. Unless countries are all focusing on the same crime and identifying the same set of victims, transnational co-operation will not be effective.

Worldwide, progress has been made towards harmonising anti-trafficking legislation through the ratification of the UN Trafficking Protocol and its subsequent implementation at the national level. Also at the **European Union level**, efforts have been made to bring anti-trafficking legislation in line with this new international standard. The **European Council Framework Decision** of 19 July 2002 represents a landmark towards harmonising the legislation of EU Member States on combating trafficking in human beings. In fact, it sets out the obligation for EU Member States to incorporate the provisions on the UN Trafficking Protocol into their national legislation by 1 August 2004.

According to 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.

Additional articles of the decision refer to penalties and sanctions (Art. 2), the liability of legal persons (Art.3-4), jurisdiction and prosecution (Art. 6), protection and assistance to the victims (Art.7)

For more information on Article 7, please see chapter 5.

4.3.2. TRAFFICKING IN THE CONTEXT OF THE CRIME OF EXPLOITATION OF PROSTITUTION

Many States that have a distinct definition for trafficking only penalise trafficking for the purposes of the exploitation of the prostitution of women and girls. This means that victims trafficked for the purpose of forced domestic labour, factory labour or sexual services other than prostitution as well as male victims are not or insufficiently protected by the anti-trafficking law and that perpetrators cannot be prosecuted and punished for trafficking.

However, until specific national legislation on trafficking is passed, the provisions of the penal codes concerning exploitation of prostitution should be, at the very least, 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 criminalized, 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.

4.3.3. TRAFFICKING IN THE CONTEXT OF THE CRIME OF SLAVERY

For several reasons placing the definition of trafficking of persons in the context of definitions covering slavery and practices similar to slavery, deserves priority. Trafficking in persons is even often referred to as a modern form of slavery and trafficking according to the UN Trafficking Protocol includes practices similar to slavery⁸⁶.

Furthermore, placing the trafficking-definition next to the slavery-definition in criminal codes highlights trafficking as a crime against individual autonomy and freedom of action, a violation of basic dignity and human rights.

Until the adoption of new, national legislation concerning a specific crime of trafficking, the crime of slavery can be used to punish trafficking, since 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, involving the decisions of the Supreme Court: The crime of slavery should apply not only to cases of the exercise of ownership over a person, which is an essential element of historical slavery, but also to slavery-like conditions. Slavery-like conditions do not necessarily imply that the victim is totally deprived of *any* self-determination. This situation typically occurs when the trafficked person is a minor or is kidnapped, controlled by sight, has no freedom of movement, cannot take any decision about her/his job and cannot keep any proceeds of her/his activity. But even if the victim is an adult person, is allowed to keep a small amount of money and exercises a limited freedom of movement, slave-like conditions are still present if these limited liberties are subjected to the will and the control of the trafficker, who in any moment can limit or revoke them. In fact, these forms of subjection, based on abusive means, are often more effective than cruel violence. Moreover, violence is more often reserved as a punishment of violations of the rules and limits imposed by traffickers.

⁸⁶As defined in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

4.3.4. TRAFFICKING IN THE CONTEXT OF THE CRIME OF FACILITATING ILLEGAL BORDER CROSSING

In addition to applying de facto slavery laws, where trafficking laws are lacking, illegal border migration laws can also be used. It is of extreme importance to note that these laws should *only* apply to the trafficker and not to 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.

If sufficient evidence is lacking to convict under trafficking laws or if specific national legislation on trafficking has not yet been adopted, the crime of facilitating illegal border crossing can be used to prosecute trafficking involving the element of illegal entry.

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

4.3.5. 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 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.

4.3.6. ILLEGAL ACTIONS BY THE VICTIM

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 prostitution or illegal border crossing.

A special clause of exemption from punishment for the victims of trafficking should be introduced in national legislation. 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.

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 complete lack of self-determination as a consequence of a slavery-like practice. If national legislation allows this practice, the possibility of granting immunity under certain conditions to victims of trafficking, who collaborate with justice, should be considered by prosecutors.

4.4 NATIONAL LEGISLATION

This section will contain relevant national legislation on trafficking of persons or comparable offences such as slavery-related definitions. It will be elaborated by the national team.

5. THE RIGHTS OF THE VICTIM WITH REGARD TO THE CRIMINAL JUSTICE SYSTEM

In addition to the human rights and relevant legal framework described in chapter 3, this chapter is designed to consider the importance of the rights of victims within the context of criminal proceedings in trafficking cases. It will further clarify international standards and discuss the relevance of these standards within the specific context of trafficking cases.⁸⁷

5.1 INTERNATIONAL STANDARDS WITH REGARD TO THE RIGHTS OF VICTIMS OF TRAFFICKING

International standards today clearly recognise that the criminal justice process must not only be fair to the defendants, but also to the victims of crime. A landmark for this development was the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the General Assembly in 1985.

5.1.1. DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁸⁸ outlines a catalogue of basic principles for victims of crime regarding access to justice and fair treatment, restitution, compensation and assistance. This Declaration was adopted by consensus of the UN General Assembly and thus reflects the collective will of the international community to restore the balance between the fundamental rights of suspects and offenders, and the rights and interests of victims. The impact of the UN-Declaration was further enhanced by the elaboration by the UN-Crime Commission of a Guide for Policy Makers and a Handbook on Justice for Victims.⁸⁹

Hence legal provisions safeguarding the rights of victims of crime have been incorporated in UN law, e.g. in the Statute and Rules of the International Criminal Tribunal for the former Yugoslavia (ICTY) and in the Rome Statute of the International Criminal Court (ICC). In practice, for example, the ICTY in The Hague has established a special unit for witness reception and allows victims to give testimony through video links.

5.1.2. COUNCIL OF MINISTERS: COUNCIL DIRECTIVE ON THE RESIDENCE PERMIT FOR VICTIMS WHO COOPERATE WITH THE COMPETENT AUTHORITIES

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 cooperate with the competent authorities (See also 3.2.7. of this manual). According to Art. 3 (3) of the directive, it applies primarily to adults, but may be extended to minors.

⁸⁷See also chapter 8. 6.2. "Management of the Trial Process", for practical applications of these standards.

⁸⁸UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by way of the General Assembly resolution 40/34 of 29 November 1985.

⁸⁹www.uncjin.org/Standards/policy.pdf and www.uncjin.org/Standards/9857854.pdf

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

The first stage is to grant the victim a reflection period, and after the expiry of this period to issue a residence permit if the victim has shown a clear intention to cooperate with competent authorities. The duration of the reflection period is to be determined by national law, during this time the victim may not be deported. The possibly issued residence permit shall be valid for at least six months and is renewable. 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. Victims that are holding a residence permit shall additionally have access to education and the labour market; special provisions for minors call for measures appropriate for children.

However, for all the benefits described, it must be kept in mind, that according to the directive, a residence permit is only issued to a cooperative, “useful” victim, that has stopped any contact with the perpetrators. And moreover, the stay permit under the directive depends on the duration of the criminal proceedings. States, for the sake of the best possible recovery and protection of victims should preferably exceed the system of the directive and issue residence permits to victims on humanitarian grounds, independent of their willingness to testify.

5.1.3. COUNCIL OF EUROPE: RECOMMENDATION OF THE COMMITTEE OF MINISTERS NO. R (85) 11 ON THE POSITION OF THE VICTIM IN THE FRAMEWORK OF CRIMINAL LAW AND PROCEDURE

On a European level the most important, though not legally binding, instrument is the **Council of Europe Recommendation on the position of the victim**⁹⁰ Next to the UN-Declaration (see 5.1.1.), it forms the starting point of placing the protection and recuperation/recovery of the victim in the centre of the system.

This turn 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” (paragraph 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”.

⁹⁰wcm.coe.int/ViewDoc.jsp?id=697267&Lang=en

5.2. RECOMMENDED PRINCIPLES AND GUIDELINES ON RIGHT TO JUSTICE

In May 2002, as a corollary to the UN Trafficking Protocol, the United Nations High Commissioner for Human Rights published the ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’, a document that is of specific importance to the interpretation of the rights of victims of trafficking and that is, among other documents, referred to frequently throughout this section.

5.2.1. THE RIGHT OF THE VICTIM TO AN EFFECTIVE REMEDY (ARTICLE 13 EHRC)

The **European Court of Human Rights** has ruled in several cases, that the State’s obligation to protect the *right to life* under *Article 2* European Convention on Human Rights (**EHRC**) in conjunction with the State’s general duty under Article 1 EHRC “*to secure the rights and freedoms for everyone within its jurisdiction,*” requires that there should be some form of effective official investigation when individuals have been killed as a result of the use of force.⁹¹ This investigation must be “thorough, impartial and careful.”⁹² Although the Court referred to Article 2 EHRC, there is no plausible reason not to extend this jurisdiction at least to Article 3 EHRC, i.e. “**prohibition of torture**”, which the Court also regards as relevant to the entire concept of human rights.⁹³

Hence, if there is preliminary evidence that a victim of trafficking has experienced ill-treatment in the sense of Article 3 EHRC, then the reluctance of the State to conduct an effective, thorough, impartial and careful official investigation would violate the State’s obligations under Article 3 in conjunction with Article 1 EHRC.

So far, this is just about State duties and not yet about the rights of the victim. But the Court has indeed taken a further step by pointing to Article 13 **EHRC**, obliging States to provide an effective remedy in respect of alleged violations of the Convention. The Court reaches the conclusion that

“Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure.”⁹⁴

The Court states that the requirements of Article 13 are broader than just the obligation to investigate as imposed by Article 2⁹⁵. Indeed, it is (only) in conjunction with Article 13 that Articles 2 and 3 EHRC⁹⁶ can amount to *the victim’s right* of being offered a *remedy allowing for an effective access to criminal investigation procedures by national law*. These

⁹¹Case of McCann and Others v. United Kingdom, 27 September 1995; this line of jurisdiction has become particularly relevant in a number of cases dealing with the killing of Kurds in Turkey, see Case of (Abdülmenaf) Kaya v. Turkey, 19 February 1998; Case of Tanrikulu v. Turkey, 8 July 1999; Case of Mahmut Kaya v. Turkey, 28 March 2000; Case of Avsar v. Turkey, 10 July 2001, § 393; case of Semse Önen v. Turkey, 14 May 2002, § 87; case of Ülkü Ekinci v. Turkey, 16 July 2002, § 144 and others.

⁹²E.g. Anguelova v. Bulgaria, 13 June 2002, § 136.

⁹³The formula used by the Court is: “Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe.” Avsar v. Turkey, § 390; Anguelova v. Bulgaria, § 109.

⁹⁴Avsar v. Turkey, § 430; Ekinci v. Turkey, § 157; Semse Önen v. Turkey, § 100.

⁹⁵Kaya v. Turkey, § 107; Case of Tanrikulu v. Turkey, 8 July 1999, § 119; Avsar v. Turkey, § 431; Ekinci v. Turkey, § 158.

⁹⁶Again in the Anguelova-Case the Court mentions explicitly Articles 2 and 3, stating: “The Court finds that the applicant had an arguable claim under Articles 2 and 3 of the Convention in respect of her son’s death and ill-treatment and that, for the purposes of Article 13, she should accordingly have been able to avail herself of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation.” Anguelova v. Bulgaria, § 162.

procedures have to be “capable of leading to the identification and punishment of those responsible” for the crime. In this regard, criminal justice authorities - from the police through to the prosecution service and the courts - need to reconstruct themselves as *service providers* for victims of serious crime, particularly for trafficked women.

5.2.2. ACCESS TO THE JUSTICE SYSTEM: THE RIGHT OF THE VICTIM TO BE PRESENT AND HEARD

An important way to express the recognition of the victim is victim notification, which entails criminal justice authorities keeping victims informed of the developments in their case. Research indicates that victims who are kept informed by the authorities are more likely to judge the proceedings as fair and to feel that authorities treated them with dignity and respect. Keeping the victim informed acknowledges the significant position of the victim in criminal proceedings.

Both the UN-TOCC and the UN-Trafficking Protocol allow for this aspect: Article 25 paragraph 3 UN-TOCC obliges States Parties, subject to their domestic law, to “enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence”. Article 6 paragraph 2 UN-Trafficking Protocol obliges State Parties to provide assistance to victims in order to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders. However, this shall be restricted to “appropriate cases”, leaving it to state authorities to decide what cases are deemed “appropriate”.

During the negotiations [of the Protocol] many delegates made it clear that their governments would only provide assistance to victims who agreed to be witnesses.⁹⁷ However, from a legal point of view, the term “appropriate” does not leave an unlimited discretion to State Parties, but has to be interpreted along the aims and principles of the convention and the protocol. And whether the rights of victims can be limited in a way forcing the victim to serve state interests is highly disputable. As it is one of the main purposes of the Trafficking Protocol to protect and to assist victims of trafficking, with full respect for their human rights, all victims of trafficking should be supported in their efforts to actively participate in proceedings, e.g. through

- ◆ timely notification of critical events and decisions,
- ◆ provision, in full, of information on the procedures and processes involved,
- ◆ legal assistance,
- ◆ support of the presence of victims at critical events and
- ◆ assistance when there are opportunities for the victim to be heard.

The judiciary should take into account the obstacles, which many victims of trafficking encounter in seeking such access, owing to factors such as culture, race, language, resources, education or age. Hence for example translation services are essential for the victim’s full participation in court and administrative procedures. It should also be considered that interpreters and other assistants, especially those who were sexually exploited, are of the same sex. Victims, moreover, often have a great mistrust of the

⁹⁷IV. The UN Trafficking Protocol and Its Limitations, dated June 2002, taken from the GAATW website on March 6th 2004.

authorities. This mistrust tends to reflect the fact that criminal justice authorities have, in the past, responded to female victims of crime with a lack of respect and compassion.

In encouraging women to co-operate with the authorities, it is important to recognise the right of the victim to be involved during court proceedings and to actively participate, irrespective of the fact that the victim may choose not to cooperate with the authorities. Certainly, victims of trafficking - for fear, shame or other reasons - will often hesitate to confront their offenders. Nevertheless, the victim is entitled to decide her/himself. It should be kept in mind that one aim of criminal justice is to affirm the victim as a person entitled to dignity and self-determination, making her own choices. On that account, the victim should neither be forced to contribute to the proceedings nor be denied the right to do so.

In trafficking cases, the readiness of victims to support the prosecution will strongly depend on their conviction that effective protection measures are in place. But even when it can be foreseen that, for reasons of her safety or her reluctance to stay in the country of destination, the victim will not be present in the courtroom, it is important to look for possibilities enabling the court to use a former statement of the victim as an element of evidence. This requires correct investigation protocols that take the rights of the defence into consideration, particularly the right to confront a witness who gives incriminating evidence.

Victims should be made known the date of release of their offender, accordingly.

Consideration should also be given to the possibility of victim allocution, which is the right of the victims to “voice” their account of events as they have impacted on them practically and personally. This can be in the form of a victim statement that is added to the case file and acts as a point of reference for sentencing purposes. A competent authority should take down the victim’s statement: a trained police officer, prosecutor, or member of an NGO. To an extent, the inclusion of a victim statement in the case file can act as a form of victim rehabilitation.

5.2.3. TREATMENT OF VICTIMS WITH COMPASSION, RESPECT AND RECOGNITION

Prosecutors and judges have a leadership role in ensuring that victims and witnesses are treated with courtesy, respect and fairness. The professional prosecutor or judge should recall that what to them might be one case out of many is of central importance to the victim. Granting the victim respect and dignity not only reflects the core element of human rights but also will also very often be a precondition for the recovery of the victim and her ability to find a way back into a normal life. Additionally, treating victims in a respectful manner contributes to their greater willingness to assist in the investigation and judicial process.

It has been argued that the right of victims to be treated with compassion and respect does “not lend itself for inclusion in a legally binding text and should rather be seen as guidance for law enforcement and courtroom practices”.⁹⁸ Still, there are a number of ways in which the justice system can demonstrate its recognition of, and respect for, the victim. Indeed, if prosecution is conducted in a committed and determined attitude, and if this leads to the conviction of the traffickers, then this also reflects that the dignity and the rights of the victim violated by the criminal offence are taken seriously (provided that the framework of the

⁹⁸van Dijk, Jan J.M. (2002): Empowering Victims of Organised Crime; on the Compliance of the Palermo Convention with the UN Declaration on Basic Principles of Justice for Victims, ERA-Forum I/2002, 34.

proceedings allows for such interpretation and does not demonstrate that the criminal justice system is merely a matter of state interests directed against the offender).

5.2.4. INDEPENDENT LEGAL ASSISTANCE TO FULLY INFORM VICTIMS OF THEIR RIGHTS

Victims of violence need and deserve legal assistance, enabling them to make use of their rights. This assistance can be provided by lawyers or by the staff of private organisations sufficiently trained to inform the victim with regard to legal issues.

The UN-Trafficking Protocol also refers to this right of victims as “counselling and information, in particular regarding their legal rights, in a language that the victims of trafficking in persons can understand”.

Victims of trafficking will only realise their right of access to justice if they are offered independent legal advice about their rights and position in criminal proceedings. Given the fact that trafficked persons who recently have been rescued or escaped the control of the traffickers are usually impecunious, they cannot pay for a lawyer themselves. Therefore a state paid legal counselling should be made available to the victims.

Within the EU, the **Council Framework Decision 2001/220/JHA**⁹⁹ on the standing of victims in criminal proceedings obliges states to ensure that victims have access to legal aid, when they have the status of parties to criminal proceedings. Such provision also covers certain measures to assist victims before or after criminal proceeding. Art. 4 is about the “right to receive information” and provides 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” including possibilities for support, protection, legal advice, legal aid.

5.3 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 need of victims of trafficking to be protected is obvious and requires the attention of prosecutors and judges at every moment of proceedings. Each victim’s right to safety is established under international law, including, Art. 9 UN-CCPR¹⁰⁰ and the EHRC.¹⁰¹

5.3.1. ELEMENTS OF THE RIGHT TO SAFETY

The victim’s right to protection is an important element of the UN-TOCC and a core element of the UN-Trafficking Protocol.

Obligations with regard to the safety of the victim comprise four distinct elements:

- ◆ Article 25, paragraph 1, of the UN-TOCC obliges State Parties to take appropriate measures within their means to provide protection to victims for offences covered by the

⁹⁹www.euforumrj.org/readingroom/council%20framework%20decision.htm

¹⁰⁰International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, *entry into force* 23 March 1976.

¹⁰¹Nowak, Manfred (2000): *Polizei und Menschenrechte - Schutz und Bedrohung*, in: Fehérváry, János/Stangl, Wolfgang (Ed.): *Menschenrecht und Staatsgewalt*, Wien, 90.

Convention, in particular in cases of threat of retaliation or intimidation. Accordingly, Article 6, paragraph 5, of the UN Trafficking Protocol obliges a State party to “endeavour” to provide for the physical safety of victims while they are within its territory.

- ◆ Secondly, decisions to repatriate victims of trafficking must be made “with due regard for the safety” of the victims (Article 8 paragraph 2 UN Trafficking Protocol). It has been argued that the Protocol restricts the obligation of State Parties to protect the safety of victims during the time period while they are within its territory. If true, the Protocol would not oblige the authorities of the country of destination to offer protection against retaliation to victims after their repatriation.¹⁰² Once the victim has returned to her country of origin, the means of the destination country to protect her are clearly limited. Nevertheless, the destination country should make the decision to repatriate the victim with due regard for her safety, i.e. if it is convinced that repatriation does not violate the rights of the victim to physical safety.¹⁰³

For more information on victim repatriation, please see chapter 3.2.8.

- ◆ Thirdly, the receiving State must also facilitate and accept the return of the victim with due regard for her safety (Article 8 paragraph 1 UN Trafficking Protocol). Therefore, the country of origin will have to co-operate with the destination country in providing the highest possible level of safety for the victim.
- ◆ Finally, Article 23 UN-TOCC obliges State Parties to criminalise the obstruction of justice, including means of threats or intimidation in order to induce false testimony or to interfere in the giving of testimony or the production of evidence. Such comprehensive definitions shielding the victim against all forms of intimidation could prove an important tool of victim protection.

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 the judiciary, the police and victim support agencies. Precise logistics and preparation of for 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 victim’s safety also entails that victims are informed of what to expect during the criminal case and beyond, with respect to potential dangers, should they agree to testify against traffickers.

5.3.2. THE RIGHT TO PREVENTIVE PROTECTION MEASURES

The **European Human Rights Convention (EHRC)** does not just oblige State Parties to secure specific rights by putting in place criminal law provisions which deter offences against the victim, secure effective means of investigation or punish breaches of such provisions. The **EHRC** also implies, “in certain well-defined circumstances, an obligation of

¹⁰²van Dijk, Jan J.M. (2002): Empowering Victims of Organised Crime; on the Compliance of the Palermo Convention with the UN Declaration on Basic Principles of Justice for Victims, ERA-Forum I/2002, 34.

¹⁰³See Jordan (2002) 27: The “due regard”-clause imposes a positive obligation upon governments to ensure that there is no danger of retaliation or other harm (such as arrest for leaving the country or working in prostitution abroad) that could meet the trafficked person upon returning home.

the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual”.¹⁰⁴

Within the framework of the **Council of Europe**, the Committee’s of Ministers Recommendation No. R (97) 13, concerning intimidation of witnesses and the rights of the defence, forms an important point of reference. The recommendation calls upon Member States to take appropriate legislative and practical measures to ensure that witnesses may testify freely and without intimidation. The recommendation also stresses the necessity to shape the framework of the criminal justice system in a manner that encourages witnesses to contribute to proceedings. Article 5 states:

“Subject to legal privileges, witnesses should be encouraged to report any relevant information regarding criminal offences to the competent authorities and thereafter agree to give testimony in court.”

According to the recommendation

“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;

The recommendation extends the range of necessary measures to the protection of the victims’ relatives “and other persons close to them” and makes it clear that protection measures may not be limited to the time of the proceedings but have to cover the phases before and after the trial as well. In May 2000 the Committee of Ministers adopted the Recommendation No. R (2000) 11¹⁰⁵ “on action against trafficking in human beings for the purpose of sexual exploitation”. The recommendation emphasizes the importance to protect victims of trafficking from traffickers.

5.3.3. VICTIMS AND WITNESS PROTECTION PROGRAMMES

Many countries have designed witness-protection programs primarily targeted at securing persons who have insider-knowledge (typically obtained as criminal co-conspirators) that can contribute to the prosecution of members of criminal organisations. These programs are for persons who are expected targets of criminal organisations. Very often these programs involve a new identity and the witness being transferred to another country. Usually these measures are also extended to close family members of the witness.

When it comes to trafficking, witness protection and victim protection are often mixed up. The UN-TOCC obliges State Parties to provide for the protection of both, witnesses *and* victims. The term witness is not defined in the UN-TOCC. However, for the purpose of the Convention, a broad interpretation of ‘witness’ is indicated, so as to make it irrelevant if testimony *is* or apparently *will* be given, but rather to apply the term to persons who cooperate or provide relevant information, irrespective of a later testimony. As regards the protection of victims, State Parties, according to the UN-TOCC and the Protocol, have to grant protection irrespective of the cooperation of the victim.

¹⁰⁴Case of Mastromatteo v. Italy, 24 October 2002, § 67.

¹⁰⁵cm.coe.int/ta/rec/2000/2000r11.htm

It is beyond dispute that victims' safety may be at risk regardless of whether they act as witnesses or not. For the criminal organisation engaged in trafficking, it is fundamental to harshly sanction any attempt of victims to free themselves, or at least to threaten the victim 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 behaviour challenges the control of the traffickers. Therefore, the victim is at risk of retaliation regardless of whether or not she testifies. Trafficking victims are at risk long before the proceedings start and the question of the victim performing the role of a witness arises.

The protection of victims 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 programs will assess the risk to the physical safety of the victim (and his/her family) and dedicate protective resources to assure no harm comes to the individual (and his/her family). Long-term, the state response may change due to a continuing risk assessment. Ultimately, the aim of these programs, in combination with assistance programs provided by appropriate NGOs, IOs and state institutions, will be to empower the victim and to enable her to overcome victimisation and, in the end, ideally, to live her life in safety without depending on protection measures of state institutions for the rest of her life.

5.3.4. PRE-TRIAL DETENTION

It is evident that pre-trial detention of defendants can serve many purposes:

- ◆ to protect the victim against acts of retaliation or intimidation;
- ◆ to secure the presence of the defendants;
- ◆ to prevent the defendants from agreeing on their stories, from destroying material evidence or from influencing witnesses.

Therefore, prosecutors and judges will find it advisable to put the suspects in pre-trial detention. In the interest of both the victim and the suspect, proceedings should be conducted without undue delay and finished within a reasonable time. Very often the victim will not give evidence until she is confident that the offenders are kept in detention and, therefore, do not threaten her safety or that of her family.

Yet, should it occur that a defendant is released before the court hearings or during the court trial phase, then it is absolutely indispensable that the victim be given notice in advance, either directly or - preferably - by way of the victim support organisation, so that necessary measures for victim protection can be considered and implemented. Sometimes, prosecutors or judges tend to overlook the security implications of their actions. However, the risk should not be taken of giving the trafficker the possibility of hurting the victim as a result of her not being warned of his release.

5.3.5. DECISIONS ON DEPORTATION

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 her life. Therefore, it is highly desirable that this decision is taken by a court, or at least under strict scrutiny of a court. As discussed above, (see 3.2.8. and 5.3.1) countries are not to return, deport or expel individuals without due consideration for their safety.

Such decisions have to be taken in light of Article 3 EHRC, **prohibition of torture**. The **European Court of Human Rights (ECHR)** decided in several cases¹⁰⁶, that the deportation of persons, who run the risk of being ill-treated in their home country, would violate Art. 3 EHRC. The Court also decided, owing to the absolute character of the right guaranteed, that it would not rule out the possibility that Article 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.¹⁰⁷

The Court has maintained in several decisions, that Article 3 EHRC 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.¹⁰⁸

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 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 home country. In accordance with the jurisdiction of the ECHR, 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.

5.4 RIGHT TO RECOVERY, ASSISTANCE IN THE PROCESS OF RECOVERY AND PROTECTION AGAINST SECONDARY VICTIMISATION - INTERROGATION METHODS

The necessity to “give absolute priority to assisting the victims of trafficking through rehabilitation programmes” was first spelled out by 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. 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 can benefit from legal assistance in their own language.

This recommendation, 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

¹⁰⁶ H.L.R. v. France, 22 April 1997; cases available on Internet: <http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

¹⁰⁷ H.L.R. v. France, § 40.

¹⁰⁸ A. v. United Kingdom, 23 September 1998, Reports of Judgments and Decisions 1998-VI, p. 2699, § 22; D.P. & J.C. v. United Kingdom, 10 October 2002, § 109.

protect their private lives and their dignity and reduce the number of official procedures and their traumatising effects”.¹⁰⁹ A key element of the victim’s right to recovery and protection is to actually allow for a reflection period. This would include a temporary residence permit.

For more information on victim residence permits, please see chapter 3.2.7

One of the progressive elements of the UN-TOCC, and even more so the UN-Trafficking Protocol, is an extensive, though not unconditional, obligation of State Parties to assist the recovery of (traumatised) victims. Article 25, paragraph 1, UN-TOCC obliges State Parties to take appropriate measures within their means to provide assistance to victims of offences covered by the Convention. Under Article 6 paragraph 3 UN-Trafficking Protocol, each State party shall

“consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organisations, other relevant organisations and other elements of civil society, and, in particular, the provision of:

- (a) appropriate housing;*
- (b) counselling and information, in particular regarding their legal rights, in a language that the victims of trafficking in persons can understand;*
- (c) medical, psychological and material assistance; and*
- (d) employment, educational and training opportunities.”*

This wide range of measures of assistance aim at supporting the recovery process of the victim from trauma. It is striking that even the right of the victim to legal counselling is perceived as an element of the victim’s social recovery. By asking State Parties to “consider” implementing measures of assistance, however, the Protocol does not create a binding legal obligation to do so.¹¹⁰ Even if assistance measures are restricted to “appropriate cases”, state authorities will, nevertheless, have to implement a system of assistance that meets the standards of Article 6 paragraph 3 UN Trafficking Protocol.¹¹¹ This has to be said with regard to the provision of “appropriate housing”. State Parties to the Trafficking Protocol will have to provide shelters for victims of trafficking, even when these shelters are needed in “appropriate cases” only. Certainly, to place a victim of trafficking in a detention centre, jail or prison is incompatible with the obligations under the Protocol.

The UN Principles and Guidelines state in Principle No. 8 very clearly:

“States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to co-operate in legal proceedings.”

¹⁰⁹Kartusch, Angelika (2003): Internationale und europäische Maßnahmen gegen den Frauen- und Menschenhandel, Dezember 2003, gender politik online, www.fu-berlin.de/gpo/pdf/kartusch/angelika_kartusch.pdf, 17.

¹¹⁰van Dijk, Jan J.M. (2002): Empowering Victims of Organised Crime; on the Compliance of the Palermo Convention with the UN Declaration on Basic Principles of Justice for Victims, ERA-Forum I/2002, 35: While delegates representing countries of origin of victims argued in favour of a mandatory provision, this view was opposed by representatives of some countries of destination due to the financial implications

¹¹¹Jordan, Ann D. (2002): The Annotated Guide to the complete UN Trafficking Protocol, Washington, 20.

Indeed, the right of the victims to recover can be violated if pressure is put on them to give evidence against the traffickers. This has to be taken into account particularly with regard to tendencies in some countries to link the right of a victim to stay and to receive support to her willingness to co-operate with law enforcement authorities.

It is likewise disputable to link the readiness of the victim to give evidence to her criminal responsibility. Section 8 of UNMIK-Regulation no. 2001/4 of 12 January 2001 states: "A person is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo if that person provides evidence that supports a reasonable belief that he or she was the victim of trafficking." Thus the criminal liability of a victim of trafficking is linked to her capability to provide evidence. Yet it is obvious that precisely the most heavily traumatised victims will not be able to give evidence before they have recovered, and that to place pressure on them at an early stage of proceedings involves a severe risk of secondary traumatisation. The responsibility for establishing a criminal offence - the burden of proof - lies with law enforcement authorities.

The victim is generally in the best position to provide the investigating authorities, the prosecutor and the court with information on various aspects of the incident. It is thus self-evident that one of the most important roles of the victim can be as a witness. And if the victim is treated in a respectful manner, this involvement may well be sufficient. Research clearly shows that victims treated with respect are more willing to co-operate and make better witnesses.

Basically, it is in the victim's own interest to tell what she has experienced. To give testimony and to feel that what she has gone through, thus being acknowledged by the public authorities representing justice, will indeed help the victim to come to terms with her experiences. Therefore, there is, in principle, no antagonism between the victim's rights to respect and assistance in recovering from trauma on the one hand and the efficiency of prosecution on the other.

Still, there may be many good reasons why victims would be reluctant to testify, such as traumatisation, caution towards authorities, fear of retaliation and that protection cannot be granted sufficiently, fear of mental overstrain, etc. The reluctance of victims to testify has to be accepted, in order to avert any re-victimisation/re-traumatisation and health damages for the victim. Nonetheless, these factors do not diminish the "victim status" nor the need and right to receive help and support.

For example, in the Italian system (art. 18 of the legislative decree n. 286/98 - the Immigration Consolidation Act), besides the so-called "judicial path" also a "social path" is foreseen, through which the victim can benefit from a special residence permit and a social assistance and integration program. Within the "social path" the victims have to 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.¹¹²

¹¹²On the Road (2002): Article 18: protection of victims of trafficking and fight against crime. Italy and the European scenarios. Research report, Martinsicuro, On the Road Edizioni 2002

All in all, to treat the victim with care and to convince her that she is in a safe position to give evidence against the defendant will be the best means of enabling and encouraging her to testify and to foster effective prosecution of trafficking cases. (However, this requires adequate protections schemes to be in place.)

The role of NGOs, working in partnership with criminal justice authorities, should not be underestimated when considering the right of the victim to recovery and assistance. 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.

Particular consideration has to be given to the risk of victims being confronted with traffickers during court proceedings. Obviously, such a confrontation can threaten the physical safety of victims, and will, in many cases, cause secondary victimisation. As a result, the ability of the victim to participate actively in court proceedings will be undermined.

There are two different strategies to avoid such confrontation. The first is to secure a well-documented, preferably videotaped statement of the victim before court hearings and to later introduce this statement into proceedings. The second is to involve the victim in court hearings, while shielding her against secondary victimisation by implementing certain measures. These measures include, but are not limited to, ensuring that the trafficker is not in the room while she is testifying or having the witness testify in another room which transmits her testimony via live feed to a court television (more information below).

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 Article 6 ECHR) that criminal proceedings should be adversarial. This means that both prosecution and defence must be given the opportunity to comment on the evidence introduced by the other party.¹¹³

With regard to witnesses, according to Article 6 paragraph 3(d) ECHR, everyone charged with a criminal offence has, as a minimum right, the right to "examine or have examined witnesses against him".

The Court, though, has ruled in a number of cases, 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-judgment states:

"It is true that Article 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 Article 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

¹¹³Brandstetter v. Austria, 28 August 1991, Series A no. 211, §§ 66, 67; Case of Rowe and Davis v. The United Kingdom, 16 February 2000, § 60; P.G. and J.H. v. The United Kingdom, 25 September 2001, § 67.

interests are not unjustifiably imperilled. Against this background, principles of fair trial also 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, e.g. 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, Article 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.¹¹⁴

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.¹¹⁵ 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.¹¹⁶

It has to be remembered that the court does not stop at finding that one of the elements of Article 6 (fair trial) has been disregarded, but goes further to indicate a breach of the whole of Article 6. The requirements of Article 6 paragraph 3 are seen as particular aspects of the right to a fair trial guaranteed by Article 6, paragraph 1. Therefore, in the end the crucial question with regard to Article 6 is always whether or not “the proceedings as a whole, including the way in which the evidence was obtained, were fair”,¹¹⁷ even including appeal procedures.¹¹⁸

In the present context, the recent case of *S.N. v. Sweden*¹¹⁹ 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 Courts' 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 Article 6 of the Convention in respect of the evidence given by M.”¹²⁰ The Court then remarks:

¹¹⁴*Doorson v. the Netherlands*, 26 March 1996, Reports of Judgements and Decisions 1996-II, § 70; *van Mechelen and Others v. the Netherlands*, 23 April 1997, Reports of Judgements and Decisions 1997-III, §§ 54 and 58; *Rowe and Davis-Case*, § 61; *P.G.&J.H.-case*, § 68.

¹¹⁵*Case of Birutis and Others v. Lithuania*, 28 March 2002, § 29.

¹¹⁶*Birutis-Case*, § 34.

¹¹⁷*E.g. Case of Allen v. United Kingdom*, 5 November 2002, § 42.

¹¹⁸*Case of Sipavicius v. Lithuania*, 21 February 2002, § 30.

¹¹⁹*Case of S.N. v. Sweden*, 2 July 2002.

¹²⁰*S.N.-case*, § 46.

*“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”.*¹²¹

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 Article 6 EHRC.

The possibility of giving evidence anonymously will be out of question when, by what the victim reports, it is easy for the offenders to recognise who she is. 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.

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 Article 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 video-taping her 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.

There are several interests of the victim at stake that have to be taken into account:

- ◆ Security risks: 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.
- ◆ Secondary victimisation: Excessive questioning can result in a mental overstrain and cause secondary victimisation, particularly when questions show disrespect to victims.
- ◆ Moral stress: 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.

¹²¹S.N.-case, § 47.

Obviously a variety of measures are needed to cope with these various issues.

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.

Even under these circumstances the public should be excluded from the hearings if the victim is asked to report on matters of intimacy or sexual violence. The right of the victim to have her privacy respected by far outweighs the interest of the public to monitor court proceedings during the statement of the victim. Of course, this is even more necessary when the victim is present in court.

If victims are asked to attend the court hearings, then 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. In addition, at the courthouse victims should be protected by providing, where possible, separate waiting facilities, so that they do not come into contact with the offenders or their friends or family members.

The questioning of the victim should, in this case, be restricted to what is absolutely indispensable. 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 statement of the victim.

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.

For more information on victim protection, please see chapter 3.2.3

At the **EU level**, Article 8 of the **Council Framework Decision** on the standing of victims in criminal proceedings provides that the contact between victims and offenders within the courts premises should be avoided, "unless criminal proceedings require such contact" and when appropriate special waiting rooms for the victims should be provided. In particular, paragraph 4 of the same article 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".

5.5 RIGHT TO PRIVACY

Particularly in cases when victims of trafficking have been working in the sex industry, there is an imminent danger that the publication of their identities or other personal information and the circumstances of the case and shelter locations will lead to secondary victimisation, or even to their being re-trafficked. Publication or distribution of photographs of the

individual or the shelter in which they are recovering is equally compromising and dangerous.

Several jurisdictions seek to protect victim privacy and confidentiality by restricting reporting of details related to the sexual life of the victim, either by prohibiting publication of details that may lead to the identification of a victim, or by treating the addresses of victims as confidential in court proceedings.

According to Article 6 paragraph 1 UN Trafficking Protocol, “State Parties shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, making legal proceedings relating to such trafficking confidential”. However, this is not made a strict obligation, but shall apply only to “appropriate cases” and to the extent possible under domestic law. Particularly if the victim is repatriated, the publication of her name or the community in which she and her family members live can contribute to retaliation against her and her family and sometimes even to the victim being re-trafficked.¹²²

The right to privacy also serves e.g. to reassure women that their experience of prostitution will not come to the attention of their families and communities in their home country. As women often come from communities where the responsibility for their own victimisation rests with them, and they are effectively “shamed” and bring shame upon their families for what they have experienced, there is an additional need to protect women’s privacy.

During court hearings the protection of the rights of the victim is not merely a matter of the circumstances of the statement-taking but also at stake when the judge decides about the admissibility of questions. In particular, the *victim is not to be questioned about her personal history unless it is absolutely indispensable* to establish the facts relevant under national legislation. The defence counsel may try to undermine the trustworthiness of the victim by showing that, because of the victim’s personal history, she is not a person who can be trusted. Although this might be in the interest of the defendant, to question the personality of the victim adds to the disrespect shown against her, enhances her feelings of guilt and her inclination to blame herself, it can cause secondary victimisation. This conflict of interest clearly has to be solved in favour of the victim.

Therefore, it is important not to allow questions referring to the personality or the personal history of the victim. Most of all, it is irrelevant what sexual experiences the victim had before the crimes happened and whether or not she has worked in the sex industry before.

Section 7 of the UNMIK-Regulation No. 2001/4 provides explicitly that, except with the leave of the president of the panel of judges, it shall not be permissible for a defendant charged with trafficking “to introduce evidence of the alleged character or personal history of the alleged victim”. A defendant may petition the president of the panel of judges to allow the introduction of such evidence. The president will then conduct a hearing *in-camera* allowing for the defendant and the prosecution to be heard on the subject. But the introduction of such evidence will only be allowed if the president is satisfied that the evidence is of such relevance and its omission would be so prejudicial to the defendant, that this would result in a miscarriage of justice for the defendant. In such cases, the president will still establish the limits within which such evidence or questions that may be introduced.

¹²²Jordan, Ann D. (2002): The Annotated Guide to the complete UN Trafficking Protocol, Washington, 19.

Within the **EU framework**, Article 8, paragraph 2 of the Council Framework Decision on the standing of victims in criminal proceeding, states that if necessary, appropriate measures to protect the privacy and photographic image of the victims and also of their families or persons in similar position.

5.6 RIGHT TO COMPENSATION

The UN Trafficking Protocol is very clear about the right of victims of trafficking to obtain compensation: According to Article 6 paragraph 6 “each State Party has to ensure that its domestic legal system contains measures that offer victims the possibility of obtaining compensation for damages suffered”. Yet, both the UN-TOCC and the Protocol, while creating obligations to introduce offender compensation, do not impose any obligation on State Parties to provide compensation from state funds, as this would constitute insurmountable financial burdens for many developing countries.

However, according to Article 2 of the **European Convention on the Compensation of Victims of Violent Crimes** of 1983

“when compensation is not fully available from other sources the state shall contribute to compensate:

- a. those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;*
- b. the dependants of persons who have died as a result of such crime.”*

In such cases State Parties are asked to award compensation even if the offender cannot be prosecuted or punished.

Also, one can argue that, according to Article 25, paragraph 2 UN-TOCC and Article 6 paragraph 6 UN Trafficking Protocol, there is an obligation on States to provide for state compensation to victims of trafficking where alternative sources of compensation are not available; that is, when compensation from the offender cannot be secured either in the course of criminal proceedings, or through the process of a criminal trial. And, for countries where access to State compensation for victims of violent crime is already in place, there is a strong argument to be made that this should also be available to trafficking victims.

Preferably, the victim would not have to wait for the outcome of criminal proceedings in order to then be able to file action in another court, but it would be the criminal court also deciding on the matter of compensation.

Within the **EU framework**, Article 9 of the **Council Framework Decision** on the standing of victims in criminal proceedings contemplates the right to compensation by the offender “except where, in certain cases, national law provides for compensation to be awarded in another manner”.

For more information on victim compensation, please see chapter 3.2.9.

5.7 SPECIAL NEEDS AND ADDITIONAL RIGHTS OF CHILD-VICTIMS

According to Article 6 paragraph 4 UN Trafficking Protocol, State Parties, when applying the provisions of this Article, are bound to take into account the age, gender and special needs

of victims, in particular the special needs of children, including appropriate housing, education and care. The term “child”, in the context of the Protocol, means any person less than eighteen years of age (Article 3 lit d UN Trafficking Protocol). In case where the age of a victim is uncertain and there are reasons to believe that the victim is a child, a State Party may, to the extent possible under its national legislation, treat the victim as a child, according to the Convention on the Rights of the Child, until the victim’s age is verified.

State Parties may also wish to consider¹²³: (See also below, UN Principles and Guidelines:)

- ◆ Appointing a guardian, who accompanies the child throughout the entire process;
- ◆ Ensuring that, during investigation as well as prosecution and trial hearings where possible, direct contact between the child victim and the suspected offender be avoided;
- ◆ Where in the best interest of the child, informing the child fully about security issues and criminal proceedings, prior to the decision of whether or not to testify;
- ◆ Providing legal safeguards and effective protection of child witnesses;
- ◆ Providing appropriate shelters for child victims, in order to avoid the risk of re-victimisation (safe and suitable accommodations);
- ◆ Establishing special recruitment practices and training programmes in order to ensure that individuals responsible for the care and protection 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;
- ◆ Returning the child only when this is in the best interest of the child and after ensuring prior to a possible return that a suitable caregiver, such as a parent, another relative, another adult caretaker, a government agency or a child-care agency in the country of origin has agreed and is able to take responsibility for the child and to provide him or her with appropriate care and protection

Principle No.10 of the UN Principles and Guidelines state:

“Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Child victims of trafficking shall be provided with appropriate assistance and protection. Full account shall be taken of their special vulnerabilities, rights and needs.”

In particular, the corresponding guidelines suggest that States and, where applicable, also inter- and non-governmental organisations consider: (Guideline No. 8)

- ◆ Ensuring that definitions of trafficking in children, in both law and policy, reflect their need for special safeguards and care, including appropriate legal protection.
- ◆ Ensuring that procedures are in place for the rapid identification of child victims of trafficking.

¹²³Legislative 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

- ◆ 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.
- ◆ In cases where children are not accompanied by relatives or guardians, taking steps to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of trafficked children with their families where this is deemed to be in their best interest.
- ◆ In situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child's best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked child.
- ◆ Ensuring that a child, who is capable of forming his or her own views, enjoys the right to express those views freely in all matters affecting him or her, in particular concerning decisions about his or her possible return to the family, the views of the child being given due weight in accordance with his or her age and maturity.
- ◆ Adopting specialised policies and programs to protect and support trafficked children, providing them with appropriate physical, psychosocial, legal, educational, and housing and health-care assistance.
- ◆ Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.
- ◆ Protecting the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.
- ◆ Taking measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking.

It is mandatory that child victims are accompanied by family members or social services when they are asked to give evidence. Depending on the age and maturity of the child and the circumstances, interrogation will have to be carried out by a person trained to work - and communicate - with children in order to protect the child and to foster the outcome of the interrogation. Often the statements of a child need special interpretation and translation into the language of adults.

In line with the **Council of Europe** Recommendation No. R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults, the Recommendation No. R (2001) 16 on the protection of children against sexual exploitation comprises measures aimed at ensuring that the rights and interests of children are safeguarded during criminal proceedings. The document recommends "providing special conditions for the taking of evidence from children who are victims of or witnesses to sexual exploitation in order to reduce the number of statements and hearings of the child and thus minimize the harm caused to the victims, witnesses and the families and increase the credibility of their statements while respecting their dignity".

Many jurisdictions provide for assistance for children whenever they are asked to give evidence. Indeed, often the testimony will not be valid unless it is given in the presence of a parent or, in situations when such presence cannot be achieved, under the supervision of a person representing the competent authority of child welfare.

Jurisdictions should consider looking to “best practice” in consideration of how child victims of sexual and physical abuse are treated and to adapt these practices to the particular needs of child victims of trafficking.

6. THE ROLE OF VICTIM SUPPORT AGENCIES DURING PROSECUTION AND TRIAL

In order to protect the rights of the victim and, as a consequence, encourage the co-operation of the victim during criminal proceedings, it is essential that close co-operation is established between law enforcement authorities, the judiciary and victim support agencies, primarily NGOs, on a regular basis. When police and prosecutors believe there is a victim of trafficking, they must be able to call on established contacts that will help the victim receive professional support.

Additionally, the police must take extra precautions when contacted by a victim support agency that has located a victim. The victim may be in additional danger simply because she has contacted an NGO in an attempt to escape from her traffickers. Therefore, even when national legislation does not provide for the formal recognition and funding of support agencies, co-operation should be established at least on an informal basis, such as a memorandum of understanding. It is of great importance that the specialised staffs of NGOs or public social services are allowed to accompany the victim in court proceedings and to interact with the judiciary system in their supportive and intermediary role.

6.1 STATUS OF VICTIM SUPPORT AGENCIES

Law enforcement authorities and victim support agencies, particularly when they are local NGOs, have little in common. They differ in power, in resources, in most aspects of internal organisation, in working methods, in flexibility and often also in the way social problems are perceived. The first step towards good co-operation is not to ignore these issues but to become fully aware of these differences and their implications. NGOs have to understand that more or less simple, strict and uniform routines are a method to secure equal treatment of similar cases of many actors and over a long time period and that hierarchy is an indispensable element of the complex bureaucratic machinery for which a minister has parliamentary responsibility. Authorities have to understand that NGOs, in spite of their very small staff, poor budget and almost complete lack of power, would like to be treated as partners with equal rights when it comes to co-operation.

An **effective co-operation** between the judiciary and victim support agencies will need as a basis:

- ◆ a sufficiently overlapping understanding of the problems to be solved;
- ◆ agreed aims of the co-operation and methods of solution;
- ◆ a clear understanding of the distinct roles of the actors;
- ◆ respect and a sufficient understanding of the other actors and the way they work.

Means to foster the basis for co-operation include:

- the establishment of a “liaison committee” or “co-ordination group” meeting regularly including law enforcement authorities, magistrates (especially prosecutors) and victim support agencies;

- the organisation of joint trainings involving the professional groups mentioned above;
- the joint elaboration of common strategies and procedures;
- the signing of a Memorandum of Understanding (MoU) between the organisations represented in the “liaison committee” or a similar body, spelling out in detail the roles and functions of all actors at the different stages of proceedings; the MoU can set out the options and conditions for victims who decide to testify or co-operate by other means; the representatives that decide on such a MoU must be appropriately qualified to guarantee that the agreed conditions are valid and will be relied on throughout the entire proceedings;
- co-operation will profit from the establishment of units of specialized prosecutors;
- the ability of NGOs to understand the work of the judiciary and to co-operate will improve when their staffs includes members with a legal background who can function as effective mediators of the MoU.

Particularly, state actors have to keep in mind that victim support agencies are not created to help the State but the victim. Full solidarity and confidentiality in favour of the victim, therefore, are basic principles of the entire work of victim support agencies, just as impartiality and transparency are principles governing public authorities and, most of all, the judiciary. Victim support agencies should not, therefore, be required to perform any kind of monitoring of victims as they are not performing law enforcement functions. Belgium and Italy, very clearly display the difficulties of NGOs to draw a distinct line between their functions and the tasks of law enforcement authorities.¹²⁴

6.2 FUNCTIONS OF VICTIM-ASSISTANCE

Basically, the functions of victim-assistance during the court proceedings are the following:

- ◆ measures to give the victim mental and social support in order to reassure and empower the victim; accompaniment during court investigation hearings and trial to ensure that attendance is not more inconvenient than necessary; very often this will include cross-cultural aspects that are far beyond being only a matter of language;
- ◆ measures to ensure the safety of the victim in close co-operation with the prosecutor, the judiciary and the police. Often victim shelters that are organised by an NGO are the primary resource of victim protection, and it is left to the support agency to mobilise additional protection measures by the police if necessary;
- ◆ measures to protect the privacy of the victim, primarily in protecting the victim against harmful media coverage;
- ◆ provision of information to the victim about the criminal justice process and the role of the victim, including the rights of victims in court proceedings;

¹²⁴Niesner, Elvira/Johns-Pauly, Christina (2001): Trafficking in Women in Europe. Prosecution and Victim Protection in a European Context, Bielefeld, 56, 57, 81, 82;

- ◆ assistance to the victim in learning about developments and the status of proceedings, such as the arrest or release of offenders, the filing of charges, the schedule of court proceedings, the outcome of the trial;
- ◆ assistance to the victim in making use of available mechanisms to express her concerns and interests and to see to it that they are taken into consideration. It is an important function of the victim support agency to encourage and enhance an active participation of the victim during court proceedings;
- ◆ assistance with filing claims for compensation or receiving other financial assistance, unless the victim receives legal advice from a lawyer.

6.3 INFORMATION AND ASSISTANCE IN THE COURT ROOM

Providing victims with information about the criminal justice process and their rights serves to empower the victims. Information can relieve victims' anxiety about the unknown, prepare them for what to expect and enable them to participate actively in court proceedings. Therefore, the provision of information should include instructions on how victims are entitled to participate in the proceedings and make their views and concerns known.¹²⁵

If the victim has to attend in the courtroom, preparations need to be made well in advance. The victim should be informed who will be present in the courtroom, what the roles and functions of the different actors are and what the course of proceedings will be. Visiting the courtroom or attending preceding proceedings will often prove to be helpful in the victim's preparation process. During this time, it should be explained to the victim who will be seated where.

Within the **EU**, the **Council Framework Decision** on the standing of victims in criminal proceedings contemplates that the member states should promote the involvement of victim support systems responsible for victim assistance before, during and after the trial, through "the provision of specially trained personnel within its public services or through recognition and funding of victim support organizations".

¹²⁵Victim advocacy introductory manual, Pristina (2002), 20.

7. SPECIALIST INVESTIGATIVE TECHNIQUES

This chapter will discuss the alternative pro-active option that is available in prosecution and the various means of collecting evidence to further support a case without the victim's testimony. Although many of the topics covered (Surveillance Operations, Undercover Resources, Controlled Deliveries, etc.) pertain mainly to law enforcement officials, it is important for judges and prosecutors to be aware of these issues. In most legal systems, special investigative techniques have to be approved by the judiciary, as many of these techniques can constitute serious interventions in base rights of the suspects. Judges must keep in mind the international protocols for legally collecting evidence. Prosecutors must work with police to help ensure evidence collected is done so in ways that will allow it to be used in court. Prosecutors must also be aware of the various resources available to help build their case.

However, the all pro-active investigative measures must be implemented in strict compliance with the legislative and procedural requirements of the legislation of the country concerned, therefore this chapter aims at offering a sort of guideline that needs further to be adapted in accordance with the national legislative provisions.

7.1 RATIONALE FOR PRO-ACTIVE, INTELLIGENCE LED COUNTER-TRAFFICKING OPERATIONS

What is the pro-active option and why use it?

The pro-active option in the context of trafficking in human beings has the following objective:

- ◆ The investigation, arrest and successful prosecution of traffickers without having to rely upon the co-operation and testimony of the victims.

By using a combination of intelligence gathering, human and technical surveillance, undercover deployments and standard investigative techniques, the objective is to identify the traffickers and prosecute them for the offences that are most appropriate both to the circumstances of the case and the country within which the investigation is being conducted. The tactics can be used to gather quality evidence in relation to the majority of the various crimes committed by traffickers and is not restricted just to the investigation and prosecution for the crime of trafficking; the intention is to use the tactics to interdict the traffickers at whichever level works the best.

The use of these tactics is most effective against, but is not limited to, trafficking for sexual exploitation. The techniques and tactics can be equally applied to trafficking for labour exploitation or other forms of trafficking.

The use of this option is simply an acknowledgement on the part of law enforcement agencies of the real and often insurmountable difficulties confronting the victims of trafficking who may wish to testify against the exploiters but who are prevented from doing so for fear of reprisals against themselves or their loved ones. Their reluctance through fear is compounded by a lack of confidence and trust in the criminal justice system. This effectively disenfranchises the victims from their legal rights as victims of serious crime.

However, the potential of such operation will only be realised if the law enforcement and prosecution agencies co-ordinate and co-operate with each other from the start of pro-active operations.

The pro-active option is not intended to add to the disenfranchisement of the victims from the prosecution process - the testimony of the victim will always remain the prime source of quality evidence - this option simply acknowledges the current reality that such testimony is not always forthcoming.

It has to be acknowledged that pro-active operations can be resource intensive, take time and be expensive. However, given the gravity of the human impact upon the victims of trafficking and the global strategic threat trafficking poses to civil society, the expenditure of the resources can be justified and should be committed.

Trafficking in human beings can and should be considered in the same vein as terrorism/drug related crime and should be subject to the same investigative options. Experience has shown that pro-active investigation is an effective weapon and should be considered whenever and wherever possible. Traffickers are particularly vulnerable to pro-active, intelligence-led investigation for the reasons set out below.

Many countries in the region include special or judicial police investigators that feature in the investigative process in addition to the counter-trafficking specialist investigator. Where this is the case, they must also be included in the consultation process as they have a critical role in the evidence gathering process and often form the link between the investigator and the prosecutor.

7.1.1. THE STRUCTURAL WEAKNESS OF THE TRAFFICKERS

Experience and best practice has shown that the pro-active option is a very effective method of combating traffickers. The explanation for this can be found by considering the crime from the same commercial perspective that is used by the traffickers.

Traffickers regard human beings as commercial commodities, to be recruited, transported and exploited for profit - it is criminal business that is ultimately all about money. The traffickers may vary their modus operandi, alter the routes, switch their identities and use a range of other tactics to maximise their profits and avoid detection. But there is one feature of the crime that they cannot disassociate themselves from if their business is to be profitable. This feature is the need to recruit the human commodities, traffic them and market them as a product, either as prostitutes or slaves etc.

As with most commercial activity, trafficking cannot operate successfully without advertising, either to attract and recruit the raw material (in this case, human beings) or to advertise their availability as prostitutes, domestic workers, slaves etc to the potential buyers. This commercial imperative creates the 'Achilles Heel' of all traffickers, and they cannot escape it.

There is no commercial point in undertaking trafficking crime unless the recruits are available and the clients or others individuals that wish to exploit them as employees are made aware of their arrival. This can only be achieved by some form of advertising, irrespective of whether the marketing and advertising is simply by word of mouth on the street in a rural village, via a newspaper advertisement or from a sophisticated Internet advertisement site.

The basic foundations of this trafficking can always be identified, particularly when it comes to the recruitment and/or public exploitation (prostitution) of the victims. For law enforcement, this means that if an investigator can locate the victim, the traffickers can be located as well.

7.2 PRE-OPERATIONAL PLANNING AND PREPARATION

7.2.1. PROSECUTOR-POLICE INVESTIGATOR CO-OPERATION

Before considering the range of strategies and tactics that can be used in the pro-active investigations, it is important to put the entire pro-active option into context and identify its objective:

- ◆ The objective is to use the most effective and lawful range of pro-active investigative techniques in order to secure sufficient, sustainable evidence to arrest and successfully prosecute the trafficker, and, where possible, to identify, sequester and confiscate his assets.

To secure this objective within the criminal justice system requires commitment on the part of the police and the prosecutors. The first point to note is the inherent inter-dependency of the dual structure of police and prosecutors; police investigators cannot achieve investigative success against the traffickers without the efforts of the prosecutors. Likewise, the prosecutors cannot achieve prosecutorial success against them without the evidence gathering efforts of the police investigators. This mutual interest and inter-dependency creates an overwhelming logic for the development of a professional relationship of the closest possible co-ordination between the two structures.

There is no point in police investigators pursuing evidence-gathering tactics that may be inadmissible or of no practical use to the prosecutor in the conduct of the trial. Equally, the prosecutor needs to be made aware of the operational difficulties that the police investigators may encounter in the conduct of the tactical surveillance options or in seizing and securing evidential material.

The majority of pro-active operations will only be undertaken following consideration of all of the available intelligence. To maximise the potential of the operation, a number of key management issues need to be addressed before a decision is taken to launch a pro-active operation.

The police investigators and prosecution representatives should convene a review meeting where these key issues should be carefully considered. This process will enable the different but inter-related skills and experiences of the two sectors in the assessment of the proposed courses of action and the selection of the best strategies and tactics to secure the objective of successfully prosecuting the trafficker.

KEY CONCLUSIONS AND RECOMMENDATIONS:

- In the SEE region, prosecutors already have a supervisory role in the conduct of investigations albeit, usually after a criminal case has been opened;

- Pro-active counter-trafficking operations are complex, resource expensive investigations;
- The review and planning process enables the different but inter-related skills and experience of the specialists to be combined in the assessment of the proposal and the selection of the best legal and operational strategies and tactics to secure the objective of successfully prosecuting the trafficker;
- There is no point in the investigators pursuing evidence-gathering tactics that may be inadmissible or of no practical use to the prosecutor in the conduct of the trial;
- Equally, the prosecutor needs to be made aware of the operational difficulties that the investigators may encounter in the conduct of the tactical surveillance options or may encounter in seizing and securing evidential material;

The intention of the meeting is to conduct a full and frank review of the options so as to identify and formulate the most effective and realistic plan for success.

The investigative team and the prosecutor(s) should meet as a group and consider the following points:

◆ **Operational Subject and Intelligence Profile**

The group should *review* the potential subjects of the proposal and all of the available intelligence that has been gathered and analysed by the police or that has been derived from other sources.

◆ **Operational Objective**

A brief outline of the crime, the perpetrators and the *overall objective of the operation* (i.e. the rescue of the victims; arrest and prosecution of the suspects; identification and confiscation of the assets.)

◆ **Strategy and Tactics that are Going to be Used to Deliver the Objective**

The strategy should be agreed and set out, including issues such as the scale of the operation, whether it is confined to national borders or will require international joint operational co-operation, if multi-agency partners will be involved, and what the policy issues are. Tactical options that may be deployed should be set out, such as human and technical surveillance, interception, controlled deliveries etc.

Once these issues have been considered and addressed, the decision can be taken as to whether the authority and implementation of the pro-active investigative tactics is justifiable in operational terms.

If it is decided that the outlined plan justifies the operation, the group will have to address the next set of issues:

7.2.2. RISK ASSESSMENT

◆ **Risk Assessment in Respect of the Victim(s)**

The risk assessment process must be completed prior to the commencement of any operational activity. The assessment poses the question; what is the level of risk to current, outstanding and potential victims being exploited by the operational subjects and is it acceptable. If the answer is no, then the issue of a pro-active operation does not arise.

7.2.3. FINAL GO-AHEAD AND CONTINUITY OF REVIEW

If the group is satisfied that the intelligence justifies the implementation of the pro-active investigative techniques and that the tactics and risks can all be managed, then the decision to implement the plan should be recommended by the group.

The same group should conduct the review process that should be maintained throughout the operation. Progress should be regularly reviewed and any new developments that were not foreseen should be reported as soon as possible. Any requisite adjustments to the strategy, tactics or risk management plan can then be made and logged as the operation progresses.

7.2.4. DECISION LOGGING

As can be seen from the above, the management and authorisation of pro-active operations is a complex matter involving critical decisions across a number of issues. It is very important therefore to ensure that accurate records are maintained of these decisions and the thought processes behind them. The planning group should maintain a record of their deliberations and decisions.

This record keeping process not only helps to clarify and structure the reasoning and decision making of the investigation from the outset and as it progresses, it also serves to remind and protect the group should any of the decisions be challenged at a later date, either during the trial process or from any other source.

Where entries relate to the action and agreement of other agencies, they should be counter-signed by the representatives of those agencies. For example, if it has been agreed with immigration and customs agencies that a controlled delivery will be allowed to go ahead, the details of the plan, the parameters of it and their agreement to it should be recorded and counter-signed by each agency official.

Once the initial decision-making entries have been completed at the start of the operation, entries should be made, as the operation progresses, of any new issues or developments that may arise, such as the inclusion of new subjects or tactics or any adjustment to the original operational objectives.

Given the importance of the records, it is essential that it is retained in secure conditions so as to be available for inspection if required.

7.3 STEP-BY-STEP SURVEILLANCE OPERATIONS

The tactics follow a step-by-step approach and the methods are set out in two ways:

- ◆ Continuous enquiries conducted throughout the pre-arrest and post-arrest phase of the investigation that are used to develop the evidence and facilitate asset identification and seizure

- ◆ Specialised evidence gathering techniques designed to be utilised at various stages of the investigation as it progresses

In both of these steps, prosecutors should be involved to protect and further the interests of the victims.

For more information on investigative techniques, please see chapter 8.4.

7.3.1. SURVEILLANCE - STEP-BY-STEP APPROACH

The best way to approach the surveillance phase is on a step-by-step basis whereby the surveillance operation is developed as the evidence is gained. How quickly the evidence can be developed will depend on the quality and extent of the intelligence already to hand. Where high grade intelligence is available, such as known addresses of recruitment premises or bars, safe houses, addresses of identified suspects or known dates and points of departure or arrival, the surveillance operation can be started in a much more focused way. The evidence collected (and appropriate manner in which the evidence is collected so it is admissible in court) is of key interest to the prosecutors who may want to try the traffickers without using the victim's testimony. The more corroborating evidence of criminal acts is found, the more likely the chances of conviction.

◆ Step One - Static Surveillance

This is the usual starting point for any pro-active operation. This first phase is designed to get a feel for the operation, the modus operandi of the network and to identify key players and the victims they are exploiting.

◆ Step Two - Static and Mobile Surveillance

Unless already identified during the earlier intelligence-gathering phase, the purpose of the next mobile surveillance phase is to establish the home addresses of the suspects and victims.

This will be achieved by deploying mobile surveillance resources to follow the key players when they leave the venues at the close of business, for example, to follow a suspect from the address used for the recruitment phase to his or her home address or to follow the prostitutes home from the brothel.

Once the suspects and victims have been successfully followed to home addresses, the static surveillance phase returns in respect of these new addresses.

◆ Step Three - Developing Evidence of the Lifestyle of the Suspects from Mobile Surveillance

There are two main points to be covered here:

- That the suspects do not work or have any form of legitimate employment, or that if they do, it is intrinsically linked to the trafficking itself - such as tourist, escort, bridal or employment agency owner, brothel owner, bar owner, landlord etc.
- That, notwithstanding the above fact, the same suspects are spending money

The mobile surveillance may disclose avenues of expenditure such as visits to casinos, betting offices, nightclubs, bars and restaurants. It may disclose expenditure of clothes, jewellery or vehicles.

Establishing the absence of legitimate employment, the lifestyle of the suspects and any form of expenditure becomes important evidence for use at both the post-apprehension interview stage and the trial. In evidential and trial terms, the objective is to prove the lifestyle and expenditure of the suspect and then pose the question - 'Where did the money come from'? This form of evidence, when linked to the financial investigation stage, creates a powerful evidential platform for the prosecution of the case.

This tactic causes severe difficulties for suspects because they are left with two options: to offer no explanation at all with the result that the prosecution can exploit this silence at the trial, or to offer a false explanation as to the source of income that can then be investigated and proved to be bogus at the trial.

In addition to the general objectives set out above, the mobile surveillance phase offers the prospect of securing evidence on critical points of fact:

- The general association of the suspects amongst themselves and with the victims in a variety of scenarios
- The presence of suspects at key premises, such as the recruitment address, be it an agency office or nightclub or bar or visiting the advertiser
- The presence of the suspects at embassy visa sections, travel agents and point of departure such as airports or train stations
- The presence of the suspects at key premises such as the brothel, safe house, letting agents etc
- At any stage, presence at banking institutions, bureaux de change or any other scenario that may indicate a financial transaction.

In addition to showing the modus operandi of the crime and the general association between the suspects and the victims, the objective here is to evidentially link the suspects to as many of the specific component parts of the crime as possible. By these means, it is possible to secure compelling evidence that links the suspect to the crime.

7.3.2. SURVEILLANCE CORROBORATION

Experience has shown that it is important to secure all possible sources of the surveillance evidence. Apart from the fact that to do so is a matter of good practice in all cases, it is particularly important in trafficking cases for the following reasons: traffickers are wealthy individuals for whom the cost of defence lawyers is not a problem; they will invest heavily to attack the prosecution case at every stage because conviction will not only result in imprisonment but may also result in the confiscation of their money.

Therefore, it is incumbent on the investigator and prosecutors to build as strong a case as possible to secure the conviction of the suspects. Independent corroboration forms a key part of the strength of the case.

7.4 INTRUSIVE TECHNICAL SURVEILLANCE OPERATIONS

7.4.1. GENERAL POINTS OF BEST PRACTICE - TECHNICAL SURVEILLANCE AND OTHER SPECIALIST INVESTIGATIVE TECHNIQUES

The potential evidential value from the deployment of both intrusive technical surveillance and undercover resources is extremely high. Their deployment is not only likely to secure quality evidence but should also provide early warning of developments in the crime which themselves create further opportunities to secure additional good evidence; for example, interception techniques may provide intelligence on the next scheduled transportation of new victims which can then be monitored and recorded and or intercepted.

However, when using surveillance operations, the following must always be kept in mind:

- The techniques are highly intrusive, sensitive and often controversial
- These methods are particularly subject to the provisions of human rights conventions
- Their implementation and management is highly sensitive
- Their use will be subjected to intense scrutiny by the defence legal team

Given the national legislative and procedural diversity within the region, it is clearly not possible within the ambit of this guide to do other than address key general points of best practice in respect of each category:

- The standard test under the European Convention on Human Rights is worth considering as a best practice template when making these decisions: does the technique proposed pass the four following criteria - *is it proportional; is it legal; is it accountable and is it necessary?*
- The use of any of the techniques must be in *full and strict compliance* with the relevant Articles of the relevant criminal procedure code and related legislation
- Full case file records and protocols should be maintained of the reasoning behind their use, the decision to deploy them and the operational instructions that were issued concerning them.
- These records should all be kept as part of the decision logging process and be retained within a separate confidential section of the case file that is not disclosed to the defence legal team.

Unless these conditions can be fulfilled, the use of the techniques may not only be a waste of effort and resources but may actually jeopardise the confidentiality and safety of the techniques and the undercover operatives. Ultimately, the chances of a successful prosecution may be hindered. As already stated, it can be assumed that the traffickers will spare no expense on their defence and that their lawyers will scrutinise and probe for any weakness in the prosecution evidence. Prosecutors must always keep this in mind when encouraging surveillance techniques or when considering the use of surveillance evidence in a trial.

7.4.2. USE OF INTRUSIVE TECHNICAL SURVEILLANCE

It is essential that there is a shared understanding of the mutual roles and obligations of police and prosecutors, as well as clearly defined co-operation schemes in order to have successful investigations. The use of intrusive technical surveillance plays an important role in these investigations. Judges and prosecutors should bear this in mind when reviewing the following two sections.

The use of communication interceptions or covert equipment such as tracking, listening and filming devices and other means of intercepting correspondence can provide high-grade evidence. However, they should not be regarded as the panacea to all investigative problems. It should be borne in mind that the top echelon of organised international criminals are very aware of the capacity of law enforcement to intercept communications or otherwise monitor their conversations.

They are likely to deliberately avoid incriminating themselves during the course of telephone conversations or conduct their meetings with associates etc in public places. Consequently, investigators should remain aware that the ability to intercept communications might not always bring results.

A number of issues should be considered before technical surveillance is put into use:

- Is it legal?
- What is the objective to be achieved and can it be attained by other means?
- Will it work - do the traffickers use mobile or landline telephones or emails or do they, for example, confine themselves to a rolling program of public telephone kiosks; do they use particular premises or vehicles at the key stages of the crime?
- Is it practically feasible and what are the assessed risks involved in the deployment and retrieval of the equipment?
- Will it be possible to act upon the information disclosed by the technical surveillance without risking the security of the operation, i.e., if the intercept discloses details of the trafficker's future intentions will it be possible to react to their actions without disclosing to them the existence of the interception or monitoring equipment - this is particularly sensitive in extended operations where the arrest phase maybe some weeks away
- Does the capacity exist to react urgently to developments that come to notice as a result of the interception - i.e., is there a 24hour response capability for urgent situations where a vulnerable victim might be in immediate danger?
- Are there procedures in place for the recording and secure storage of the evidential product of the techniques?

7.5 THE DEPLOYMENT OF UNDERCOVER RESOURCES

The trafficking crime not only naturally creates a number of structural opportunities for the insertion of undercover and test purchase officers, it also creates a number of additional problems for the investigators in charge of the operation when considering whether they should be deployed.

A number of undercover and test purchase deployments may prove useful in the investigation of trafficking crime. For example, it may be possible to introduce an undercover and or test purchase officer to infiltrate a trafficking network and seek to sell or purchase trafficked victims, or to seek to purchase visa entitlements to leave the country for non-existent females or to purchase the sexual services of a prostitute that has been trafficked internally.

7.5.1. SAFETY CONSIDERATIONS

In every instance, the overriding issue and overarching responsibility of investigators is one of safety. Whilst accepting that by their very nature, all undercover or test purchase deployments entail a level of risk that cannot be completely eliminated, it remains the paramount duty of the officers responsible to ensure that the risk has been fully assessed and that the risk has been minimised to the fullest extent possible.

The deployment of undercover officers is one of the most dangerous techniques available to law enforcement agencies. The risks are particularly acute in trafficking cases because of the ruthless and violent characteristics of the trafficking networks. The risks are augmented by the international nature of the crime that may require deployment and management in more than one jurisdiction.

The deployment should only be undertaken and managed by experienced officers who have undergone the most rigorous training and in-depth preparation for the role. This precondition applies equally to the undercover officer and the officer in charge of the operation. The supervisor's role in these types of deployments is critically important in terms of the safety and welfare of the undercover officer and there must be complete confidence between the two.

There are two principal forms of undercover deployment:

- ◆ The use of undercover officers who are specifically tasked to penetrate the criminal conspiracy
- ◆ The use of test purchase undercover officers tasked to establish the availability of certain evidential categories.

7.5.2. BEST PRACTICE POINTS

The following best practice points must be considered:

- What is the deployment intended to achieve and can the objective be obtained by other means?
- Does the undercover officer possess the range of skills and knowledge to fulfil the task - awareness of the risk of crossing into 'conspiracy', 'entrapment' and acting as 'agent provocateur'; knowledge of trafficking crime; linguistic and cultural knowledge?
- Does the supervising investigator responsible for the undercover officer possess the range of skills and knowledge to fulfil the task?

- What is the structure of the introduction of the undercover officer into the criminal network - is it feasible to utilise a participating special agent; is it possible to introduce a second undercover officer?
- What is the undercover officer's legend and at what stage in the trafficking process is the insertion most likely to succeed?
- Where is the undercover officer likely to operate; what are the operational instructions as to the limit of the penetration; where are they recorded?
- Does the plan envisage the undercover officer operating in more than one jurisdiction - if so, how will it be managed; is it agreed with the authorities in the other jurisdiction(s); is it secure to establish liaison with the other jurisdiction(s) and what are the safety implications?
- What method will be used to record the evidence and how will the product be managed and secured?
- Within the overall context of the planned penetration, what are the risks to the safety and welfare of the undercover officer and what is the plan to manage those risks?

7.5.3. METHOD OF RECORDING AND GIVING THE EVIDENCE

The deployment of undercover officers is a potential source of highly valuable evidence and it is for this reason that the inherent risks are accepted and managed. Both the police and the prosecutor must consider the methods of recording this high-quality evidence. The normal method is for the use of concealed miniature audio and or video recording devices.

Audio recording creates an unassailable record of who said what to whom at any given meeting and is virtually impossible for the defence legal team to challenge. Where technically possible to do so, the deployment of concealed miniature video recording devices should also be considered. Such devices can be concealed in a number of ways - briefcases, handbags, tiepins etc - and will provide evidence of an even higher quality than audio recording

However, the paramount consideration in these deployments is the safety of the officer or agent. If it is not safe to wear recording devices, they should not be worn.

In such cases, the evidence should be recorded in written form as soon as possible after the events to which the record relates has finished. It should be borne in mind that the quality of the evidence will be reduced by the absence of an audio record and this may effect the decision as to whether or not to deploy the undercover officer or special agent.

The final but crucial consideration is: can the evidence gained by the undercover officer be used in criminal proceedings in a manner that preserves the confidentiality of his identity?

7.5.4. DEPLOYMENT OF TEST PURCHASE OFFICERS

The use of test purchase officers can be of great value in trafficking cases. They can adduce evidence in two main ways:

- To act as potential recruits to establish the existence of trafficking activity

- To act as potential clients to establish the existence of prostitution services

In addition to the best practice points made above, the following points must be considered before deploying test purchase officers in any scenario:

- Safety of the operatives, especially female officers
- Corroboration of the evidence obtained
- Instruction to the officers - rules of engagement
- Controlled payments - cash, cheque or credit card - financial potential

7.6 CONTROLLED DELIVERIES

The use of controlled deliveries in the context of trafficking in human beings for sexual exploitation is a complex and highly sensitive issue.

A controlled delivery occurs where law enforcement officers knowingly permit the transit and importation of an illegal commodity to occur in order to secure the identification and arrest of the perpetrators without losing control of the illegal commodity.

The tactic can produce high quality evidence and is a valuable investigative tool that is usually confined to the trafficking of commodities such as drugs or weapons. The question of whether it should be applied to human trafficking operations is a controversial and potentially dangerous one.

7.6.1. POTENTIAL RISKS

The source of the potential danger is the fact that, as experience has shown, controlled deliveries do not always remain 'controlled' and have on occasions gone out of the control of the operational team. Therefore, the following critical points must be considered:

- It is crucial that the risk assessment and the risk management plan of the tactic is authorised.
- In cases of trafficking, the commodity to be delivered consists of vulnerable human beings who are most likely to be physically and sexually abused.
- Exploitation and abuse of the victims takes place after the delivery, unlike the majority of straightforward illegal immigration investigations where the association between illegal immigrant and smuggler ceases once the immigrant has been delivered to the country of destination.
- ***If it is known that there is a victim under 18 years of age, the controlled delivery must not be allowed to proceed.***
- The golden rule in cases of controlled deliveries of human beings is that if the risk cannot be managed, the tactic must not be implemented.

7.6.2. ACUTE RISK ASSESSMENT

Therefore, it is the assessment of the risks to the victims to be delivered under controlled conditions that becomes pivotal. The risk must be assessed on the basis of all available intelligence and or evidence on the modus operandi of the trafficking network being investigated.

If, for example, it is known through intelligence from an undercover officer who has penetrated the network or from some other source that the victims have been completely deceived and are unaware that the intention of the traffickers is to exploit them as prostitutes after their arrival in the destination country, the risk assessment should not allow the controlled delivery to proceed with the risk that innocent victims would be forced into prostitution soon after their arrival.

The same is true, if intelligence from a rescued victim or other source indicated that whilst the victims were aware that prostitution was part of the package, the modus operandi of the traffickers also included physical and sexual abuse after arrival in the destination country.

However, if the intelligence to hand does not include such factors as physical abuse or ruthless coercive exploitation so as to make the risk untenable, the delivery could proceed to the point of departure in order to exploit opportunities to secure the best possible evidence against the traffickers, subject to the risk assessment and risk management plan being prepared and agreed in advance of the delivery.

7.6.3. POINT OF INTERVENTION

Once the risks around a controlled delivery have been assessed, a number of further decisions require consideration. Where the risk assessment precludes any delivery, it does not necessarily preclude continued investigation up to the point whereby evidence can be obtained to prove the sale, transfer for payment, recruitment and transportation phases, or a conspiracy or an attempt to traffic victims. This might be particularly applicable in cases where undercover officers have penetrated the network, evidence of planning and discussion on the part of the suspects is being obtained by undercover means.

7.6.4. BEST PRACTICE POINTS¹²⁶

Having considered the various issues, if it is decided that a controlled delivery or one limited to interception at the exit or entry port can be allowed to proceed, prosecutors must work with the police to ensure:

- That the use of controlled delivery tactics is legal and that all the requisite authorities are obtained and relevant procedures are complied with.
- Where the delivery is to take place in the context of a joint international operation, the same level of compliance must be achieved within each national jurisdiction involved in the joint operation.

¹²⁶Best Practices: Law Enforcement Manual for Fighting Against Trafficking of Human Beings", Users Manual, UNDP, 2003

- A full risk assessment must be prepared together with the risk management plan for the task. Given the potential risks attached to the tactic, it should be able to cover all foreseeable contingencies.

7.7 PARALLEL FINANCIAL INVESTIGATION

It would be difficult to overstate the critical role of financial investigations in the successful investigation of the trafficking crime. There are two principal reasons for this.

Firstly, the crime itself is all about money; the initial investment to create and staff the recruitment infrastructure, secure appropriate documentation and visa entitlements and to traffic and deliver the victims; the on-going management of the proceeds of the exploitation and, finally, the laundering and movement of the profits.

Secondly, trafficking is a network crime that takes time to establish and develop - therefore it becomes a 'lifestyle' crime. Such lifestyle topics such as the mode of travel; expenditure on luxury items such as houses, apartments, cars and jewellery; leisure activities such as restaurants and casinos etc all require means and methods of purchase.

All of the activities within these two categories require some form of financial transaction and the pro-active financial investigation of these areas will always produce results. They can be applied both during the pre-apprehension and post-apprehension investigative phase.

7.7.1. CO-ORDINATION DURING THE PRE-APPREHENSION PHASE

Financial investigation during the pre-apprehension phase is of particular value for two further reasons:

- ◆ The investigation of financial transactions and the analysis of the results will often provide important information that can be used to ensure that the operation progresses in the most efficient and productive manner.

For example, investigation of the purchase of travel tickets might reveal details of future travel arrangements which can then become the focus of surveillance activity at the exit and entry points; analysis of credit card expenditure may reveal details of the airline, hotel, restaurant or casino most regularly used by the trafficker, or where he or she buy their petrol or groceries etc and this intelligence can again be used in the allocation of surveillance resources.

- ◆ As far as is possible in the circumstances of the case, pre-arrest financial investigation is designed to identify the amount and location of the criminal assets derived from the crime.

Provided that this has been achieved, it is then possible to co-ordinate the arrest phase with the financial sequestration procedures in order to arrive at the optimum position of synchronised arrest of the traffickers and sequestration of their assets.

7.7.2. ADDITIONAL BENEFITS

There are yet two further benefits to be gained from the parallel financial investigation of traffickers:

- ◆ Investigators and prosecutors get double value from the same evidence

Firstly, the evidence of large-scale financial gain and expenditure, far in excess of any legitimate source of income that the trafficker may claim to engage in, supports the prosecution case in a way that is almost impossible for the trafficker to rebut - the evidence is in the form of documentary financial transactions, usually computerised, that are extremely difficult for defence lawyers to challenge; and, secondly, the same financial evidence forms the basis of the post conviction confiscation of property.

- ◆ The ability of law enforcement agencies to identify, investigate, sequester and confiscate the assets derived from trafficking sends a powerful and symbolic message to the criminals

This is particularly important in the current climate where trafficking is perceived as a 'high profit - low risk' crime and where traffickers regard the relatively short prison sentences handed down for this crime as simply a 'business risk'. The situation is immediately transformed once the successful financial investigation means that the final equation reads - 'short term of imprisonment - release - no profits - all confiscated'.

7.7.3. MONITORING OF FINANCIAL TRANSACTIONS

Where a parallel pro-active financial investigation is implemented, the objectives are clear: the financial enquiries are designed to establish three facts:

- How much money was generated by the crime?
- How much is left now?
- Where is it now?

As already stated above, the dual-purpose evidence adduced by the financial investigation to prove the above three points will also be of great value in the trial process itself by requiring the suspect to account for the generation and possession of the money in the absence of or in excess of any legitimate source.

Many of the financial transaction documents will also have the ability to 'place' a suspect at a given location at a given time. This not only applies to major transactions conducted in bank premises, but small items such as petrol receipts or restaurant bills.

The documentary evidence of financial transactions, combined with the preliminary work carried out during the pre-apprehension phase, should be analysed and examined for the following types of evidence:

- Payments for accommodation, advertising, travel expenditure, visa payments, personal expenditure on items such as vehicles, jewellery, restaurant, casinos, nightclubs etc.

- Receipts for any such expenditure listed above including fuel receipts, road and bridge toll payments, car parking receipts, receipts from Internet cafes, phone cards etc.
- Any documentary records relating to the payments made by victims to the traffickers. These may simply be handwritten daily totals kept in small school type books or money transfer receipts through companies such as Western Union showing monies being transferred back to the countries of origin to the favour of a specified individual.
- The named beneficiary may bear the same family name as a victim but enquiries should still be made as to whether the individual exists as these beneficiaries are often false and the accounts being credited are under the control of the traffickers.
- Any documentation relating to the method and route by which the money is laundered or transferred out of the country. These may include money transfers, inter-bank transfers to intermediary bank accounts in a number of countries, transfers of funds between credit card accounts etc.

It is also important to bear in mind that the method of laundering or removing the profits does not always follow the pattern of computerised, international bank transactions through multiple accounts before arriving at the final destination.

Traffickers use a variety of methods to launder their profits and this may include converting the money into other forms of proceeds such as vehicles or bulk purchases of clothing or other items to be re-sold in the countries of origin, transit or destination.

7.8 JOINT PRO-ACTIVE INTERNATIONAL OPERATIONS

As with any form of international organised crime, successful investigation depends on the ability of law enforcement officers to investigate on the same international-level playing field as the traffickers and to identify and gather evidence from other jurisdictions.

Experience has shown that pro-active operations can be an effective counter-trafficking option for law enforcement agencies. Moreover, experience indicates that joint international pro-active operations can be the most effective and productive option that is currently available to counter-trafficking investigators.

The reasons for this are simple:

- Traffickers commit the crime in more than one jurisdiction and joint investigations reflect that situation.
- Joint operations allow for the collection of evidence in each of the jurisdictions involved in the crime.
- Whilst traffickers are more vulnerable whilst present in the countries of destination, they also tend to be surveillance conscious and more cautious in their activities whilst they are present in the destination country.
- They are often less concerned to conceal and protect themselves from investigation in the countries of origin or transit because they feel safer because they are distant from the exploitation phase

- Joint international operations mean that investigators in the origin, transit and destination countries can exploit these evidential opportunities and gather valuable corroborative evidence of the recruitment, transportation and exploitation phases of the crime.
- Joint pro-active operations increase the ability of law enforcement agencies to combat traffickers because they allow the investigators to agree in advance the overall strategy best suited to deliver the objective of convicting the suspects.
- This includes not only agreement as to where the main investigative effort is to be focused but also decisions as to the method of co-ordination, the tactics to be employed to collect the evidence, the offences being targeted and the best location for the prosecution that will arise from the investigation.

Police and prosecutors must consider which offences and which locations offer the best prospect of securing sufficient quality evidence upon which to base a trafficking prosecution.

It does not necessarily follow that the prosecution must take place within the jurisdiction in which the best evidence was secured. In normal circumstances, this will be the case and the trial will take place in the same location in which the evidence was obtained, particularly in the case of re-active investigations.

However, given the flexibility of the pro-active option, it is possible to consider a number of other factors that may arise when deciding where the prosecution will be based. Subject to the existence of appropriate extradition and judicial co-operation agreements, it is possible for two or more law enforcement agencies in the region to develop joint operational investigative strategies that would allow for the prosecution to be exclusively based in either of the origin, transit or destination countries, or for simultaneous investigations but separate prosecutions of traffickers in each of the jurisdictions. This flexibility is one of the key strengths of joint pro-active operations. It is a case of deciding which of the options offers the best prospect of success.

For example, subject to extradition law and the circumstances of the case, investigators from the origin and destination countries could implement a pre-agreed, pro-active joint operation whereby the evidence would be simultaneously collected in each country with the objective of mounting the prosecution of the traffickers in the country of origin.

This might be because the origin country had specific legislation prohibiting trafficking that carried more severe penalties upon conviction and would therefore offer the best chance of successful prosecution and punishment. Also, the origin country might be the best venue for the trial because it would be easier to persuade the victims to testify there. Depending upon the circumstances, the same factors could equally apply in respect of the destination country.

The more likely scenario is that the investigators in the origin country could only gather a limited amount of corroborative evidence against the traffickers that may not warrant prosecution for trafficking in their own jurisdiction, but which would be of great value to the prosecution of the same suspects for trafficking in the country of destination or transit.

The key point is that because the pro-active investigative option has this built-in flexibility, the investigators are able to decide their strategy and tactics and are able to set the agenda - not the traffickers.

7.8.1. THE KEY POINTS

A number of important points will need to be considered before carrying out a pro-active joint investigation:

- The law enforcement agency seeking to establish joint pro-active operation with another country must first identify an investigative counterpart in that country that does not pose a security risk to the operation;
- The investigative counterparts in the co-operating country must not pose a security risk to the victims involved;
- The participating counterpart must have the capacity and ability to conduct the type of investigation that is being proposed.
- At the legal level, extradition provisions must allow for the extradition of the following:
 - The suspects that are the target of the operation.
 - Extradition to the country that has been identified as the optimum location for the prosecution.
 - Extradition is valid for the offences that are being targeted by the investigation.
- Mutual legal assistance provisions must exist between the countries that allow for the collection and transfer of supporting evidence from the other country to the country where the prosecution is being conducted.
- The operational strategy and tactics must be clearly defined and agreed to by all the parties involved - before the operation is launched.
- A review mechanism must be established to allow for review and revision of the operational objectives if it becomes necessary.
- The method of co-ordination and communication must be agreed upon and established.

7.8.2. THE 'GOLDEN RULES'¹²⁷

- The key to success with joint pro-active investigation is close co-ordination from the outset.
- Before seeking to conduct a joint international pro-active operation, the requesting counter-trafficking unit should meet with their prosecutor to discuss and agree on a strategy.

Joint international operations are major undertakings. Implementation of such operations therefore requires full consultations between the originating police investigator and the prosecutor who will ultimately conduct any criminal proceedings relating to the operation in question.

¹²⁷"Best Practices: Law Enforcement Manual for Fighting Against Trafficking of Human Beings", Users Manual, UNDP, 2003

Prior to pursuing any request for joint, pro-active, international co-operation, a joint meeting between the two should be convened that will enable them to review the available material, identify the operational objectives to be secured by the investigation and to ensure that all the legislative and procedural points have been considered. There is no point in seeking to obtain co-operation and evidence from another jurisdiction if it later becomes apparent that the material in question cannot be used in subsequent criminal proceedings.

A number of issues need to be considered in such situations. Procedures regulating joint operations vary from country to country. In some States, the decision to conduct a joint operation is taken by the police officer in charge of the squad concerned; in other countries, the decision rests with the prosecutor or examining magistrate. In some countries, a formal Letter of Request may be required before a joint operation can commence. It is not possible within the scope of this manual to cover all of these variations.

- ◆ The essential factor is to establish early liaison with the bi- or multi-lateral counterparts prior to taking action.

It may be that the pro-active investigation under consideration is on a bi-lateral level only, and can be efficiently co-ordinated between counter-trafficking units in both countries. It may be that the proposal is on a multi-lateral level involving a number of countries involved in a particular network and which may require the use of co-ordination facilities of the SECI Centre or Interpol.

8. OTHER SPECIFIC ASPECTS OF CRIMINAL PROCEEDINGS IN TRAFFICKING CASES

This chapter identifies, in addition to those covered in the previous chapter, specific aspects of criminal proceedings that must receive special attention. The prosecutors should focus on improving their identification process of trafficking cases, taking into consideration how the victim's experience will affect her statements and using multiple sources of evidence. Judges should pay special attention to the legality of evidence introduced and appropriate measures to confiscate the convicted defendant's property in order to compensate the victim. Basic organisational problems will be discussed at the end.

8.1 IDENTIFYING TRAFFICKING CASES

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

To make the judgement as to whether a person is a victim of trafficking, it helps to have an understanding of what legally constitutes the crime of human trafficking as defined by Article 3 of the UN Trafficking Protocol. To breach the Article, three features must be present:

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

Purpose - for the purpose of exploitation within one of the exploitative forms specified within the Article

Each of the three stages must be present and linked to each other for the crime of human trafficking to be complete.

Especially in legal systems where the prosecutor is head of investigations from an early stage of the proceedings, the prosecutor will have to hear the statements of illegal migrants, at least when there are grounds to suspect that he/she could be a victim of trafficking. Thus, a procedure involving the prosecutor before the deportation of illegal migrants should be adopted as a general intervention. In particular, such a procedure should be in place before the deportation of persons is effected who have been working in un-protected and highly vulnerable work places, such as domestic workers or prostitutes.

8.2 EVALUATION OF THE STATEMENTS OF TRAFFICKED PERSONS

From what has been said above about the trauma of victims of violence, it is obvious that the criteria for evaluating the statements of traumatised victims, and in particular of victims

of trafficking, cannot be the same as in the case of other victims of crime. Trafficked persons are not in a position to give a full account of their experiences until they have regained a stable position of safety and started to recover from the trauma. An inconsistent or contradictory statement does not mean that the trafficked person is not reliable but rather indicates that she is suffering from a trauma. The interview should be postponed until the victim has recovered, particularly with the help of a victim support agency.

Sometimes, trafficked persons will protect offenders who have treated them less inhumanely relative to the treatment that they received from others. In many cases, the victim will be so scared of retaliation against them or their family members that they will not say anything.

In any case, it will take time until the victim is in a position to deliver a complete and consistent statement. Therefore, it is important to allow a “reflection period” for the victim, giving the trafficked person enough time to recover and to decide about her future.

For more information on the victim’s reflection period, please see 3.2.7 and 5.4.

8.3 USING ALL FORMS OF EVIDENCE

In general, it is important to stress the necessity of making use of all available evidence and not focus exclusively on the evidence provided by the victim. As reported by a comparative assessment of criminal proceedings in several European countries, other forms of evidence are too often ignored.

“As a rule, too little importance is attached to the testimony provided by the sex customer, for example. Belgium and individual cities in Germany have set up investigatory groups who look upon the evidence given by the victims/witnesses as just one piece in the overall mosaic that makes up the chain of evidence. This demands extensive and detailed knowledge of the red-light milieu.”¹²⁸

Apart from the statements by the victims, other forms of evidence must be taken into consideration systematically. In principle, the testimony of the sex customer is to be accorded more importance. Furthermore, one precondition for more comprehensive and detailed working procedures is the availability of sufficient resources for the investigatory sector.¹²⁹

For more information on the use of evidence, please see chapter 7.

8.4 SPECIAL INVESTIGATIVE TECHNIQUES, COVERT SURVEILLANCE AND THE ROLE OF THE JUDICIARY

As pointed out in chapter 7, covert surveillance techniques, such as the interception of communication or the employment of undercover officers, although not a “quick-fix-solution” to all problems of investigation, can provide high-grade evidence. Indeed, Article 20 UN-TOCC addresses the issue of “special investigative techniques” and, “for the purpose of

¹²⁸Niesner, Elvira/Johns-Pauly, Christina (2001): Trafficking in Women in Europe. Prosecution and Victim Protection in a European Context, Bielefeld, 236.

¹²⁹Niesner, Elvira/Johns-Pauly, Christina (2001): Trafficking in Women in Europe. Prosecution and Victim Protection in a European Context, Bielefeld, 236.

effectively combating organised crime”, encourages State Parties to “take the necessary measures to allow for the appropriate use of controlled delivery and ... for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations”. Still, Article 20 underlines the necessity to adopt such investigative techniques for the sake of an effective state response to organised crime.

However, such investigative techniques severely intrude into the rights of the defendants, and particularly fall within the range of protection of Article 8 EHRC

“Everyone has the right to respect for his private and family life, his home and his 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.”

and therefore call for an effective control by the judiciary, as is clearly indicated by the case-law of the European Court of Human Rights.

When assessing the conformity of measures of surveillance with regard to Article 8 EHRC, the European Court of Human Rights follows a highly complex and sophisticated pattern, which consists of the following steps:

- ◆ **1) Applicability of Article 8:** Firstly, the Court examines whether the contested measures *in abstracto* fall within the range of Article 8 EHRC, which is obvious as regards techniques of covert surveillance. In particular, the tapping of telephone lines constitutes interference in the right to respect for private life and correspondence.¹³⁰
- ◆ **2) Conformity of the Measure with Article 8:**
 - **a) Existence of Interference:** This criterion serves to clarify the extent of actual interference in the applicant’s rights
 - **b) Justification for the Interference:** Any interference breaches Article 8 EHRC unless it is in accordance with the law, pursues one or more of the legitimate aims referred to in paragraph 2 of Article 8 and is necessary to achieve those aims.¹³¹
 - ***In accordance with the law:*** It refers, to the fact that the impugned measures should have some basis in domestic law, as well as to the quality of that law and to the rule of law
 - ***Legal basis in domestic law.*** The term “law” is understood in its “substantive” sense, not formally, including in particular case and even unwritten law;¹³²
 - ***“Quality of the law”:*** Relevant domestic laws - consistent with the “*rule of law*”- must be ***accessible*** to the person concerned and sufficiently precise to allow “*predictability*” of measures: The law in question has to enable a person concerned to foresee the consequences of the law for him, “the domestic law must be sufficiently clear in its terms to give citizens an adequate indication as

¹³⁰ Relevant cases available on internet: <http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

¹³¹ Kopp-Case, § 50; Contreras-Case, § 46.

¹³² Kopp-Case, § 60.

to the circumstances in and conditions under which public authorities are empowered to any such secret measures".¹³³ The Contreras-judgment e.g. comes to the conclusion that Spanish law "did not indicate, with sufficient clarity, the extent of the authorities' discretion in the domain concerned or the way it should be exercised" and therefore asserts a violation of Article 8.¹³⁴

In the Malone-case, the Court assumed that the quality-of-law-criterion implied there must be a *measure of legal protection* in domestic law against arbitrary interference by public authorities with the rights safeguarded by paragraph 1. It concluded: "Especially where a power of the executive is exercised in secret, the risks of arbitrariness are evident".¹³⁵

- ***Legitimate purpose of interference.*** Investigations in the course of criminal proceedings are aimed to prevent disorder or crime in the sense of Article 8 paragraph 2.¹³⁶
- ***Necessity of interference in a democratic society.*** Within the context of the criterion of necessity, one element highlighted by the Court is again the existence of an effective mechanism of control, safeguarding the lawful application of national regulations¹³⁷.

Therefore, under the law of the EHRC, the judiciary has to perform crucial functions in ordering and effectively monitoring the implementation of all surveillance measures.

With regard to telephone tapping, the Contreras-judgment lists minimum safeguards that should be set out in the statute in order to avoid abuse of power and secure compliance with the rule of law:

- ◆ a definition of the categories of people liable to have their telephones tapped by judicial order;
- ◆ the nature of the offences which may give rise to such an order;
- ◆ a limit on the duration of telephone tapping;
- ◆ a procedure for drawing up the summary reports containing intercepted communication;
- ◆ the precautions to be taken in order to communicate the recordings intact and in their entirety for possible inspection by the judge and by the defence and
- ◆ the circumstances in which recordings may or must be erased or the tapes destroyed, in particular where an accused has been discharged by an investigating judge or acquitted by a court.¹³⁸

Again, this stresses the functions of the judiciary. It should also be noted that not only the court, but also the defence (at least in principle) has the right to receive the entire recordings.

¹³³ Kopp-Case, § 64.

¹³⁴ Contreras-Case, § 61; likewise Amann v. Switzerland, 16 February 2000, § 62.

¹³⁵ Case of Malone v. United Kingdom, § 67.

¹³⁶ Case of Lambert v. France, 24 August 1998, § 29.

¹³⁷ Klass and Others v. Germany, Series A no. 28, §§ 50 and 54.

¹³⁸ Contreras-Case, § 46.

Methods of covert surveillance by their nature are hidden to the person affected, who, therefore, is not in a position to seek legal protection against his/her surveillance. Some European law systems try to overcome this structural weakness by introducing an ex officio counsel empowered to engage legal remedies in order to protect the rights of a person affected by measures of covert surveillance.

The Austrian code of criminal procedure provides for the information of a specific ombudsperson for legal protection (“Rechtsschutzbeauftragter”), who has to be informed beforehand when instruments of covert surveillance are used. To this ombudsperson, strong means to oppose and to challenge the legality of measures of covert surveillance are available. Generally speaking, it is important that laws on criminal proceedings, when allowing for measures of covert surveillance, seek to maintain the balance between the effectiveness of law enforcement on the one hand and the effectiveness of the protection of the rights of the affected persons on the other.

For more information on surveillance and surveillance techniques, please see chapter 7.3 and 7.4

8.5 SEIZURE AND CONFISCATION

The **Council of Europe** Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 provides for a comprehensive legal framework aimed at securing confiscation of proceeds from crime, including for investigational and provisional measures, special investigative powers and techniques.

Article 12, paragraph 1, of the UN-TOCC obliges State Parties to provide all necessary legislation to enable the confiscation of proceeds of crime, or property representing their value, as well as the confiscation of property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention. Article 1 UN Trafficking Protocol extends this provision to cover trafficking of persons.

At the same time, Article 12, paragraph 2, requires that State Parties should adopt the necessary measures “to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this Article for the purpose of eventual confiscation”. Therefore, the judiciary will have to secure the freezing and/or seizure of such items, thereby taking into account the following: “If proceeds of crime have been transferred or converted, in part or in full, into other property”, according to Article 12 UN-TOCC, paragraph 3, such property shall be liable to the freezing and/or seizure as well.

- ◆ If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation up to the assessed value of the intermingled proceeds; yet this provision is without prejudice to any powers relating to freezing or seizure; therefore legislation may provide that, when it comes to this measure, it can be left to the judiciary to decide what part of the intermingled properties shall be confiscated.
- ◆ Income or other benefits derived from proceeds of crime, or items representing such proceeds, shall also be liable to be frozen or seized.

- ◆ For the purpose of the freezing or seizure of assets, State Parties shall empower their courts or other competent authorities to order that bank, financial or commercial records be made available or seized, bank secrecy not being an obstacle to such measures.
- ◆ With regard to the issue of burden of proof, State Parties may consider requiring an offender to demonstrate the lawful origin of alleged proceeds or other property liable to confiscation.
- ◆ On the basis of Article 13 UN-TOCC and relevant national law, courts are required to freeze or seize proceeds and property with regard to proceedings conducted by the authorities of another State, if these authorities request such cooperation for the purpose of eventual confiscation to be ordered, either by the requesting State's authorities or by the court of the requested State.

In the Convention, these provisions are related to offences covered by the Convention itself, yet by way of Article 1 Trafficking Protocol, they also apply to the trafficking of persons. (I.e. offences according to the Protocol shall be regarded as offences according to the Convention.)

If the assets to be confiscated are situated in the territory of another State, and if both States are parties to the UN-TOCC, then Article 13 provides the obligation of the requested State to implement the confiscation of a requesting State. In this case, Article 14 paragraph 2 UN-TOCC urges the requested State to give priority consideration to returning the confiscated proceeds of crime or property to the requesting State "so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners."

However, such consideration to use confiscated assets for the sake of redress or compensation of victims is reasonable also in "domestic" cases and not restricted to international cooperation. The International Human Rights Law Group has urged that national laws in many countries would need to be revised in order to ensure that disposal of the assets is done in a manner that benefits trafficked persons. "The assets should be used to pay compensation, restitution and damage awards to trafficked persons and to support services for trafficked persons in countries of destination, transit and origin. ... Assets from human trafficking represent the forced labour, suffering and human rights violations suffered by human beings and they should be distributed to and for the benefit of those victims."¹³⁹

Again, UNMIK-regulation no. 2001/4 is of interest, where it, in section 6, deals with the confiscation of property and the closure of establishments.

According to paragraph 6.1, property used in or resulting from the commission of trafficking of persons or other criminal acts under the present regulation, particularly the withholding of identification papers, may be confiscated in accordance with the applicable law. However, the personal property of the victims of trafficking shall not be confiscated wherever it can be immediately identified as such by the law enforcement officer. This regulation intends to prevent prolonging the withdrawal of property of the victim during the process of seizure and confiscation.

¹³⁹Jordan, Ann D. (2002): The Annotated Guide to the complete UN Trafficking Protocol, Washington, 17.

Moreover, paragraph 6.3 provides that a reparation fund for victims of trafficking shall be established by administrative direction and shall be authorized to receive funds from, inter alia, the confiscation of property pursuant to section 6.1. This regulation intends to hand the fruits of the labour of victims of trafficking back to them and, therefore, is perfectly in line with the suggestions of the International Human Rights Law Group cited above.

Paragraph 6.2 contains a regulation on the “Closure of Establishments”. Where there are grounds for suspicion that an establishment, operating legally or illegally, is involved in, or is knowingly associated with, trafficking of persons or other criminal acts under the present regulation, an investigating judge may, upon the recommendation of the public prosecutor, issue an order for the closing of such establishment. This too is clearly a wise regulation. It is not only fair and a deterrent with regard to the owners of such establishments, it can also help to prevent women, who have worked in that establishment, from going back, at least during the very first time period when mechanisms of control are still powerful and dangerous.

8.6 ORGANISATIONAL ISSUES

8.6.1. SPECIAL UNITS IN THE PROSECUTOR’S OFFICE

Experiences in many countries support the recommendation of the establishment of a special unit in the prosecutor’s office dealing with trafficking cases. Such a unit not only fosters the gathering of expertise, it also enhances the close co-operation with other actors such as the police and victim support agencies. Therefore, in every prosecutor’s office a special unit responsible for trafficking cases should be appointed.

If, in order to secure an appropriate extent of utilisation, such a special unit is asked to deal with other offences, some thought should be spent on the overall orientation of this unit. In practice, we find special units dealing with trafficking in the broader context of organised crime, dealing with smuggling and trafficking or dealing with severe forms of violent crime, including violence against women or against children.

For more information on prosecution, please see chapter 7.

8.6.2. MANAGEMENT OF THE TRIAL PROCESS

Within the framework of national legislation judges should use their powers to organize hearings in a manner aimed to reach a proper balance between the rights of the defendants and the rights of victims.

It should however be taken into account that the rights of the defendant often are clearly stipulated in the code of criminal procedure. However, victims’ rights - within the context of the notion of a fair trial - are a fairly new issue and therefore are not yet, or at least not adequately, recognised by national legislation.

For more information on victim protection, please see chapter 5.3.3.

The protection of victims of trafficking cannot be left to the police implementing a comprehensive protection scheme, but has to rest on a close co-operation between victim support agencies, law enforcement and the judiciary. Therefore, prosecutors and judges have to play a crucial role within this cooperation. This implies:

- To use every flexibility allowed by the criminal procedure provisions to allow victims to give evidence before the trial. For example, some systems stipulate the possibility of using a testimony given before the police or of the prosecutor with the participation of the defendant and his/her lawyer. In other legislation, a testimony can be given in a special hearing before the preliminary judge. In both cases, the testimony can be used in the trial.
- Pre-trial detention should be used to ensure evidence and protect victims from intimidation. It is absolutely necessary to inform in advance the victims, their lawyers and the NGOs that assist victims when the defendant is scheduled to be released.
- As far as possible under national rules of procedure, avoid the repetition of the victim's testimony during the proceedings.
- Avoid direct confrontation between the victim and the defendant or at least any visual contact between the two, by the use of audio-video facilities, the examination of the victim in a separate room, and the removal of the defendant as soon as he tries to intimidate the victims, or displays lack of respect.
- Protection of victims and witnesses should be ensured, according to the rules of procedures or special provisions concerning protection programmes.
 - It is at the discretion of the judge to order that any of the actors in the trial are accompanied by the police to the hearing.
 - Special national provisions on witness protection must be applied to victims of trafficking in a broad way. This implies that victims can be in danger even though their testimony is not crucial for the arrest or conviction of the perpetrator, but simply when their statements are helpful for the development of investigation.

Protection of Privacy and Anonymity of the Victim

- Order closed-door sessions whenever possible, on grounds of protection of the privacy of the victim.
- Apply national provisions which protect the anonymity of victims. Even if national rules of procedure do not allow any use of anonymous testimony or information as evidence, when the victim is seriously threatened, the prosecution could have the option to ensure the anonymity of the victim and use her/his anonymous information only as an input for the development of investigation.

Ensure a Victim Friendly Procedure, to avoid that Criminal Proceedings in Itself becomes a Factor of Re-Victimisation.

- As far as possible, avoid cross-examination of the victim.

- Avoid excessive questioning, and avoid any question on the previous private and sexual life of the victim, unless it is absolutely necessary to ascertain the facts which are at the core of the indictment.
- Use the discretion of the judge to allow the victim to be assisted by a trusted person, besides her lawyer.
- Give importance to the role of the victim's lawyer.
- It is at the discretion of the judge to set the date of the hearing. This discretion should be used to reach a proper balance between the necessity of giving time to the victim to recover her/himself from the trauma and the opposite necessity to avoid any useless delay in the definition of the proceedings. In order to reach these goals, the judge should have a direct contact with NGOs that assist victims.
- Always consider the special needs of child victims/witnesses (see 5.7.)

8.6.3. COUNTERACT CORRUPTION AND SECURE THE INDEPENDENCE OF THE JUDICIARY BY ORGANISATIONAL MEASURES

Article 9, paragraph 1, of the UN-TOCC obliges State Parties to take measures to promote integrity and to prevent, detect and punish the corruption of public officials. Paragraph 2 focuses on the necessity to provide authorities with adequate independence in order to deter the exertion of inappropriate influence on their actions.

This, of course, is particularly pertinent with regard to the judiciary and calls for a number of organisational measures in order to:

- ◆ establish checks and controls that form an effective obstacle against corruption;
- ◆ to select officials who work in particularly vulnerable environments such as dealing with issues of organised crime;
- ◆ to sensitise officials with regard to the effects of corruption or a lack of independence of the judiciary;
- ◆ to motivate and encourage the personnel of the judiciary to adhere and be committed to their professional tasks;
- ◆ to encourage prosecutors and judges to decisively resist and report any attempt to influence their action and as well to report any case of corruption they detect involving other prosecutors or judges.

9. JURISDICTION AND INTERNATIONAL CO-OPERATION

Taking into consideration the trans-border nature of trafficking, the criminal prosecution of traffickers demands bi-lateral and multilateral co-operation among relevant actors.

The UN-TOCC is a landmark on the path to enhancing and strengthening international co-operation between the judiciary systems of State Parties; therefore this chapter will especially focus on its provisions

9.1 JURISDICTION

All crimes covered by the UN-TOCC and the UN Trafficking Protocol by nature are linked to more than one country.

Article 15 paragraph 1 UN TOCC, in combination with Article 1 UN Trafficking Protocol, obliges State Parties to establish jurisdiction over the below mentioned offences. It is important that all State Parties adopt the widest possible range of jurisdiction with regard to the crimes in question. These are: participation in an organised criminal group (Article 5 UN-TOCC), laundering of the proceeds of crime (Article 6 UN-TOCC), corruption (Article 8 UN-TOCC), obstruction of justice (Article 23 UN-TOCC) and trafficking of persons (Article 5 Trafficking Protocol).

9.2 ELEMENTS OF INTERNATIONAL COOPERATION

9.2.1. EXTRADITION

Perpetrators may flee a country to evade prosecution, seeking safe haven in other countries. Extradition is a formal and mostly treaty-based process, which leads to the return or the delivery of fugitives to the jurisdictions in which they are wanted.

At the **European level**, the **Council of Europe** Convention on Extradition of 1957 and its two additional protocols of 1975 and 1978 set the general framework for extradition.

With regard to the UN-TOCC, Article 16 UN-TOCC, dealing with extradition, comprises not less than 17 paragraphs. Again, this regulation, according to Article 1 Trafficking Protocol, is applicable in proceedings dealing with trafficking of persons.

One effect of Article 16 is to amend existing treaties among State Parties with regard to extradition. Article 16, paragraph 3, stipulates that any offence to which Article 16 UN-TOCC is applicable (e.g. trafficking) is deemed to be included as an extraditable offence in any extradition treaty existing between State Parties. By this provision, regimes already in place should be extended to cover trafficking of persons. However, if no such treaty exists between two State Parties, then the UN-TOCC takes over this function as the (sole) legal basis for extradition with regard to offences covered by Article 16 UN-TOCC.

State Parties are required to endeavour to expedite extradition procedures and to simplify evidentiary requirements (paragraph 8). Again it has to be pointed out that this serves the interest of victims to feel that justice is done within a reasonable time period.

In accordance with the principle of international law “*aut dedere aut iudicare*,” the Convention requires that a State Party, that does not extradite an alleged offender on the ground that he or she is one of its nationals, is obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution and to co-operate with the requesting State in particular on procedural and evidentiary aspects to ensure the efficiency of such prosecution (paragraph 10). In this case, it is important that the requested State has established its jurisdiction with regard to crimes of trafficking committed by its own nationals.

However, instead of establishing its own proceedings, the requested State can be discharged of the obligation to prosecute, if extradition of own nationals is permitted upon the condition that the requesting State agrees to return the offender to his/her country of origin to serve the sentence imposed by the requesting State. This will be more effective in cases where all the evidence is within this country.

At the **European Union level**, the **EU Council of Ministers** adopted a framework decision on the European arrest warrant and the surrender procedures between EU Member States, which obliged the Member States to introduce legislation to bring the European arrest warrant (EAW) into force by 1 January 2004.

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 recognized and executed as quickly and as easily as possible in the other Member States¹⁴⁰.

9.2.2. MUTUAL LEGAL ASSISTANCE

The “**European Convention on Mutual Legal Assistance in Criminal Matters**” of 1959 and its additional Protocols of 1978 and 2001 are the most relevant international instruments at the European Union level and serve as a good practice guide.

In 2001 the **second additional protocol to this convention** has established new measures aimed at improving mutual legal assistance, especially at an early stage of criminal proceedings. Some of the new provisions are of the greatest importance with a view to strengthening the fight against trafficking.

- A request for mutual assistance, in addition to the traditional channels of communication, may be forwarded directly by the administrative or judicial authorities of the requesting party to the administrative or judicial authorities of the requested party, or through Interpol in urgent cases.

¹⁴⁰http://europa.eu.int/comm/justice_home/fsj/criminal/extradition/wai/fsj_criminal_extradition_en.htm

- Requests for mutual assistance and any other communications may be forwarded through any electronic means of telecommunication.
- Hearings by video-conference may take place if a person has to be heard as a witness or expert by the judicial authorities of the requesting state party and the person is in another parties territory, where it is not desirable or possible for the witness or expert to be heard or to appear in person. In this case measures for protection are agreed when necessary between the competent authorities of the two parties.
- If the person to be heard agrees, the hearing can take place by telephone conference.
- A State Party may, without prior request, forward spontaneous information obtained within the framework of their own investigation, when the disclosure of such information might assist the receiving party in initiating or carrying out investigations or proceedings.
- Cross-border observations are allowed when police officers have been keeping a person under observation in their country and it is necessary to continue this observation on the territory of another party. Cross-border observations may take place only for the most serious criminal offences, including trafficking, kidnapping, rape and sexual abuse of children.
- Controlled deliveries may be permitted on the territory of the requested party in the framework of criminal investigation into extraditable offences.
- Covert investigation may take place on the basis of an agreement of two parties to assist one another in the conduct of such investigation.
- Joint investigation teams may be established for a specific purpose and a limited period, in particular when a party's proceedings requires difficult investigation having links with other parties or when a number of parties are conducting investigation in which the circumstances of the case necessitate coordinated action in the involved parties' territories.

On 29 May 2000, the **EU Council of Ministers** adopted the Convention on Mutual Assistance in Criminal Matters. This Convention aims to encourage and modernise co-operation between judicial, police and customs authorities within the Union as well as with Norway and Iceland by supplementing provisions in existing legal instruments and facilitating their application¹⁴¹.

Furthermore, Article 18 **UN-TOCC** provides that State Parties are requested to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the convention and the supplementing protocols.

According to Article 18 paragraph 3 UN-TOCC, mutual legal assistance may be requested for any of the following purposes:

- ◆ taking evidence or statements of persons;
- ◆ effecting service of judicial documents;

¹⁴¹http://europa.eu.int/comm/justice_home/fsj/criminal/assistance/wai/fsj_criminal_assistance_en.htm#General

- ◆ executing searches and seizures, and freezing;
- ◆ examining objects and sites;
- ◆ providing information, evidentiary items and expert evaluations;
- ◆ providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- ◆ identifying or tracing proceeds of crime, property, instruments or other things for evidentiary purposes;
- ◆ facilitating the voluntary appearance of persons in the requesting State;
- ◆ any other type of assistance that is not contrary to the domestic law of the requested State.

Even without prior request the authorities of a State Party may transmit information relating to criminal matters to the competent authority of another State party where they believe that such information could assist inquiries or criminal proceedings.

With regard to the legal and factual difficulties arising from formal extradition procedures, Article 18, paragraphs 10 to 12, provide the possibility of the transfer of a person who, at the time of a request for assistance, is being detained on the basis of the free and informed consent of this detainee.

9.2.3. JOINT INVESTIGATIONS

Article 19 UN-TOCC encourages State Parties to consider concluding agreements on the establishment of joint investigative bodies with relation to matters that are the subject of investigation, prosecution or judicial proceedings in one or more States. In the absence of such agreements, joint investigations may be undertaken by agreement on a case-by-case basis.

In 2002, in order to better combat organised crime and to better co-ordinate investigation and prosecution in the Member States, the European Union established a new body, **Eurojust**, a high-level team of senior magistrates, prosecutors, judges and other legal experts seconded from every EU country.

Eurojust can give immediate legal advice and assistance in cross-border cases to the investigators, prosecutors and judges in different EU Member States and advises judges and prosecutors where to look for information that they need from another EU country and on how to proceed in cross-border cases¹⁴².

9.2.4. TRANSFER OF CRIMINAL PROCEEDINGS

Article 21 UN-TOCC asks State Parties to consider transferring proceedings to one another for the prosecution of an offence covered by the Convention or a Protocol in cases where such transfer is considered to be in the interest of the proper administration of justice, in

¹⁴²<http://www.eurojust.eu.int/index.htm>

particular, in cases where several jurisdictions are involved, with a view to consolidating the prosecution.

Such a transfer can be highly reasonable to prevent a multitude of proceedings from being administered in different countries, each with regard to single elements of the trafficking chain. Instead, it is advisable to enable the authorities of one country to deal with the entire trafficking chain within one proceeding. This presupposes an effective flow of evidence to the authorities of the country carrying out the proceedings.

ANNEX 1 - CASE STUDIES

It would be impossible to describe all the aspects and situations that trafficked victims find themselves in. The following case studies exist only to give the reader a general sense of multifarious nature of trafficking and its complex components.

Although the cases can be read as stand-alone illustrations, the chapters they correspond to have been provided. The cases should help the reader identify the key points of the chapters listed.

Chapter 1.4.1.

Case Scenario 1: The 'Push' Factors

Anna, a young Albanian woman, witnessed her father and brother killed during the Balkan War. Though now the head of the family, she has never had any job experience. She looked for a cashier job in Albania, but was not hired because companies had an open preference for male employers. Lacking any income, she attempted to migrate to Western Europe to send money back to her mother. What little money she had did not last long, and she stayed in a refugee camp in a neighbouring country. There, she befriended a woman who said she had once worked in Germany. The woman told her they could travel to Germany to find work in a restaurant and facilitated her travels. Upon arrival, Anna was kept locked up in a private house and forced to work as a prostitute. In an undercover investigation, Anna is discovered by the police.

Discussion Points

- What “push factors” exist in Anna’s situation?
- Should Anna be immediately returned to Albania?
- Does Anna fall under the definition of trafficking or smuggling?

Chapter 1.4.3

Case Scenario 2: Gender Discrimination

Eliska is a 40-year-old Moldovan woman from the countryside. She is educated but has found it difficult to find or keep a job. She feels that she is getting older and is insecure about her future. She often sees that men less qualified than her are hired before her. In order to improve her position, she responds to an advertisement for a job as a kitchen help in Western Europe. It is a job below her qualifications, but she could earn comparatively much every month, and no

language skill would be required. She accepts to pay \$5,000 for her travels which she agrees to work off. Instead of travelling to Western Europe, Eliska is forced to work in a factory in Hungary to pay back her food and housing debt which is added on top of her debt for the transport. She is kept in the workspaces of the factory, without possibility to leave or talk to people outside, and for the purpose of intimidation, she is beaten and deprived of regular food. Eliska does not speak any other language besides Moldovan and is unable to ask for help to escape also her documents are in the hands of the agency.

Discussion Points:

- How was Anna recruited? What other methods of recruitment can traffickers use?
- What elements of gender discrimination were present?
- What factors were present that facilitated the trafficking?
- What evidence could prosecutors use in Eliska's case? How could advertisements in newspaper and on the Internet be used to track down illegal recruitment?
- How would you inspect an agency such as the one above? What would you look for?

Chapter 1.5

Case Scenario 3: Difference between Trafficking and Smuggling

A Serbian woman, Aleksandra, was out of work for one year and desperate to search for work in another country. A friend's boyfriend recommended an agency to help her find work in Saudi Arabia. Aleksandra asked many friends for loans in order to pay the agent fee \$5,000 up front. She was never told where in Saudi Arabia she would go or what she would do when there. It was agreed that the friends would pay a remaining \$5,000 halfway through the trip. Aleksandra was picked up by a man and they travelled on a train to Bulgaria. There, 5 more women joined them, and they were given false documents. Another man accompanied them to Turkey. On the way, they were forced to cross a large river at night. One of the women was not a good swimmer. She drowned and was left behind. A third man picked them up in Turkey. Then the women were asked to call home to ask for the second payment instalment. Aleksandra was unable to reach her friends and thus was unable to pay. She was beaten and left behind in Turkey.

Discussion Points:

- Is this a case of trafficking or smuggling? What aspects of the case lead you to your conclusion?

- Why is it important to distinguish between trafficking and smuggling?

Chapter 1.6.1.

Case Scenario 4: Recruitment of Victims

A 25 year-old Macedonian woman, Anita, has been dating a Macedonian man, Goran, for three weeks. Goran has told Anita that he is in love with her and intends to marry her. To Anita, this is a dream come true because her family is very poor and cannot provide very much for her. Anita has been out of work for a year. Goran proposes to take Anita to Italy to celebrate their love. Anita is at first reluctant because she has never been out of the country and does not speak Italian. Goran promises to take care of her. Goran refuses to tell Anita where they are going because he says it should be a surprise. Once they arrive in Italy, he takes her documents and forces her to work as a prostitute. If she tries to leave, Goran threatens to take her sister in her place. Goran also threatens to tell Anita's family, and the village, that she has been prostituting herself voluntarily.

Discussion Points:

- How did Goran recruit Anita?
- Were means of deceit or coercion present? If so, which ones?
- What social factors caused Anita to make an error in judgement?

Chapter 1.6.3.

Case Scenario 5: The Destination Phase - Reception and Types of Exploitation

Milena, a single Czech woman with two children, responds to a newspaper advertisement looking for factory workers in Belgium. A man meets with her and promises to pay her enough money that she will be able to support her children from abroad. She leaves her children with a neighbour, promising to send money as soon as possible. Milena is given a real Belgium passport with a picture of a woman who looks similar to her. She passes through customs without any problem. Upon arriving in Belgium, she is locked inside an illegal textile sweatshop. She, together with ten others, is dependent on the packages of food the man drops off every weekend. The man threatens that if any one of them tries to escape or go to the police, he will harm all of their families.

Discussion Points:

- Was the method of entry covert or overt?
- What elements of exploitation were present?
- What leverage do the traffickers have over Milena?
- Which specific measures should be taken in destination countries to identify and assist victims in this or similar situations?

Chapter 1.6.4.

Case Scenario 6: Control and Exploitation of the Victims

Maryam is a Turkish woman who answers an advertisement to pursue strip-tease opportunities in Austria. She does not have money on hand to travel, but she borrows the amount from her two brothers. She promises to repay them once she begins making money in Austria. She pays a man named Soleil \$1,000 for her travels.

Soleil meets Maryam at a train station and tells her to get into the back of his truck. In the back, Maryam sees that there are 5 other women concealed behind a fake wall. Maryam does not have a passport and is never told what countries she passes through. The women are let out once a day, only in deserted areas. They are given only one meal a day.

When they arrive in Austria, it is cold and Maryam is not appropriately dressed. She and the other women are told that there are several strip clubs a few miles up the road. Soleil immediately drives off, leaving the women alone. Maryam walks alone for three miles and finally arrives at a club at 1 AM. She is hungry, sick and shivering from the cold.

The club manager expects her to dance and strip tease from 3 PM - 9 PM and again from 11 PM - 3 AM. She works Monday through Saturday. Sundays she is usually too tired to do anything but stay at home. Maryam is not paid much, but her housing and food is provided. Occasionally she has sex with customers in order to make a little extra money for herself.

Two months later, there is a police inspection of the club and Maryam is found and deported back to Turkey. She never made enough to return the payment to her brothers.

Amira is a young Bosnian widow, with a 5-year-old daughter. Due to the lack of economic opportunities in Bosnia, she wants to go to another country to make money. A neighbour, Nadim, suggests working as a dancer in the U.S. Amira has worked in cabarets in Bosnia and has always dreamed of travelling to the U.S. She feels she has a good chance to succeed. Amira is told she will make

enough to cover her lodging and food, but an exact amount is never specified. Amira pays Nadim \$2, 500 to arrange transportation and travel documents. Nadim tells Amira she should bring as much money with her as possible “just in case” something happens along the way. Amira is able to collect \$100 from her mother. Amira also leaves her daughter with her mother, promising to send money as soon as possible.

Nadim brings Amira to the Bosnia - Croatia border, where they meet a Hungarian truck driver named Henrik. Nadim and Henrik appear to be good friends. Henrik appears to be happy to give Nadim a handful of money. Nadim tells Henrik that Amira has some money on her “just in case”. Henrik tells Amira to climb in a hidden compartment of his car. Amira asks after her passport and travel documents. Nadim tells her not to worry, and the two men climb in the front seats of the car.

Amira unknowingly crosses several borders until she reaches Germany. Amira has spent several days hidden in the car, without food and only a little water. Upon getting out of the car, Amira asks how long it will take to get to the U.S. Henrik hits Amira to the ground and tells her not to ask so many questions. She is told to go into a house in a wealthy neighbourhood. Nadim and Henrik accompany her into the house, where the two men are given money by a third man, Alvin. Before leaving, Nadim tells Amira to do whatever Alvin asks or he will severely beat her daughter. He tells Amira that in order to pay for her food and housing, she will have to prostitute herself.

Over the next few days, several men come to the house. When Amira asks for help or tries to refuse sex, the “clients” do not react. When Alvin finds out, she is locked in a room, raped and beaten. After 5 days, she agrees to prostitute herself. She is only given a little food after having sex with a customer.

Discussion points:

- Is Maryam an illegally smuggled migrant or a victim of trafficking? Explain why.
- Is Amira an illegally smuggled migrant or a victim of trafficking? Explain why.
- Can a victim of trafficking also be an illegal migrant?
- Do either of the women have the freedom to leave their situation?
- How does national and international law apply differently to each woman?
- If trafficking is present in either case, what means, activities and exploitive situations exist?

*Chapter 1.7.1.***Case Scenario 7: Who are the Traffickers**

Hilda is a Hungarian woman who is desperate for work. Through a friend of her neighbour, Hilda meets a man who offers her a job working for a diplomat in Italy. The man claims to be good friends with the diplomat, so she should have no troubles with the job. Her contract says that she is to work as a babysitter and will be paid an acceptable wage. Once in Italy, she is often beaten by the diplomat and by the other workers. She has never received any payment. The diplomat once beat Hilda in front of a police officer attending a dinner at the house. The police officer did nothing to help Hilda.

Discussion Points:

- Which of the three types of trafficking networks are present?
- How can corrupt law enforcement personnel be identified and removed from service?

*Chapter 1.7.2.***Case Scenario 8: Who are the Victims**

Petrusa, a 17-year-old Ukrainian girl from a rural village, hangs out at a local café on the weekends. One day, two men invite her out for a drink. She gets into their car and drives to another café a few kilometres outside of town. The girl becomes completely drunk. The men offer to drive her home but instead drive her to a brothel in the countryside. During the journey, the girl is physically and sexually abused. At the brothel, she is confined to her room and is sexually exploited.

Discussion Points:

- Should Petrusa have made a greater effort to escape?
- What characteristics does Petrusa have that are often found in victims of trafficking?

*Chapter 2.1.2***Case Scenario 9: Progression of Traumatic Stress**

Lupe is a Haitian woman who was arrested for public drunkenness and prostitution in the U.S. Lupe has a large bruise on her thigh, which she says she

got from falling off of a bed. She speaks some English. At first she is reluctant to talk to the police and demands a lawyer. A female lawyer and a male translator are brought in. After speaking privately with her lawyer, Lupe agrees to tell the police who her pimp is and where she usually works. When told that her pimp is also connected with drug dealing, Lupe agrees to further co-operate if she is re-located and given some money.

Masha is a Russian woman arrested in a raid a brothel in Germany. She has many bruises and burns on her body. Several of her teeth are missing. Masha does not speak any German but is very hostile towards the police. When a male translator is brought in, she either refuses or is unable to speak. She begins to visibly shake. Later, a female translator is brought in. Masha says that she is not a prostitute and that her bruises and burns were entirely her fault. When pressed on the issue, she says she knows that some girls in the brothel have been raped or beaten but that she does not know who they are. Masha says she is the girlfriend of the man who owns the brothel. She refuses to identify any of the owners or known associates by name. When Masha is told that the owners of the brothel are connected with an international criminal network, she refuses to acknowledge that she knows them.

Discussion Points:

- Which, if any, symptoms of PTSD do Lupe and Masha display?
- How should Lupe or Masha be treated after their arrests?
- Does the sex of the lawyers/translators make a difference when dealing with presumed prostitutes?

Chapter 2.2.1

Case Scenario 10: How Do Victims Cope During the Traumatic Experience?

A 36-year-old woman, Alena, from an Eastern European country is a victim of human trafficking. Over many years, she was sexually exploited and victimised.

Over the years she has had to tolerate this situation without any emotional contact (Numbing). With the criminal proceedings, her situation changed. She went through many hours of interrogation by the police, the judge and the prosecutor. She had the opportunity to stay in a shelter for raped women for a couple of months. Unfortunately, she lost contact with her home country and family. During this time, she developed sleep disturbances with nightmares (Intrusion). During daytime she lacked concentration, which makes her unable to communicate with her lawyer effectively. She experiences flashbacks with memories of traumatic

events in her past. She avoids personal relation, especially to men (Avoidance). She feels guilty about what happened. Finally, she visits a physician, because of panic attacks and irregular heartbeat (Hyperarousal).

Discussion Points:

- Why would Alena develop the symptoms described above?
- Does Alena seem to have PTSD?

Chapter 2.7

Case Scenario 11: The Risk of Secondary Victimisation from the Criminal Justice System

Metka is a 16-year-old Ukrainian girl who has been sent by her family to be a servant in a neighbouring village. She works for Alexander, a wealthy local businessman. Eventually, Alexander finds he has no need for her, but he gives her the opportunity to be smuggled into England to work in his brother's Russian restaurant. Once in England, Metka's life changes drastically. She works in the restaurant from 10 AM to 11 PM. In the evenings, she is forced to perform sexual favours for the brother and his friends. Five years later, the police inspect the restaurant and find her working there illegally.

Metka, now 21, is taken to the police station and is repeatedly questioned. Metka is too afraid to speak honestly with the police. She is kept in jail for two weeks while her case is brought before the courts. Although Metka has signs of abuse, the police do not further investigate her boss, the owner of the Russian Restaurant. When Metka tries to speak English to a female police officer, the woman laughs at her poor attempt. She is told that she has violated several laws, will not be allowed back into the European Union and will be immediately deported back to the Ukraine. Metka fears that the Alexander's brother will tell her parents about her sexual performances. She knows that her family cannot take her in and that she will not find any work in the Ukraine.

Discussion Points:

- Why might not Metka have sought help from the police earlier?
- Could Metka have suffered from PTSD?
- How might have the police's action caused secondary traumatising for Metka?

ANNEX 2 - DEFINITIONS

Trafficking:

According to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations 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' (art. 3 (a)).

The recruitment, transportation, transfer, harbouring or receipt child for the purpose of exploitation shall be considered "trafficking persons" even if this does not involve any of the means set forth subparagraph (a) of this article; (art.3 (c))

"Child" shall mean any person under eighteen years of age. (art.3 (d))

Smuggling:

According to the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised 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' (art. 3 (a)).

Victim of crime:

According to the United Nations 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' (1.).

‘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’ (2.).

Migration:

Migration is the general movement of people who leave their place of origin in a free search of a better life or who feel compelled to leave it. Migration for employment is the movement of people in search of a job or of a better job. At the beginning of the 21st century it was estimated that around 150 million people were living outside their home countries.

Forced Labour:

According to the ILO Forced Labour convention No. 29 (1930) “forced or compulsory labour shall mean all work and service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (art. 2.1)

Debt Bondage:

This is an example of forced labour. It is a situation that arises when a person has a debt towards another and uses his/her labour/services, or those of another person over which he/she has control, to pay the debt. When the value of the work, as reasonably assessed, is not applied towards the liquidation of the debt, the situation becomes one of debt bondage.¹⁴³

¹⁴³ILO, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers-Training Manual*

10. 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).

10.1. LEGAL INSTRUMENTS

UN

- UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME; 2000
- UNITED NATIONS PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME; 2000
- UNITED NATIONS PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME; 2000
- UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN; 1979 (CEDAW)
- UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, JULY 2002
- UNITED NATIONS-CONVENTION ON THE RIGHTS OF THE CHILD (1989) AND OPTIONAL PROTOCOL TO THE UN-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

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)

CoE

- CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ECHR-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 THEI 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

Additional Legal Instruments

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

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 Article 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)

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 Council, 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)

UN

- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; 1985
- 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'
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