

Dutch policy on human trafficking for the purpose of sexual exploitation

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Executive summary

Human trafficking is a distressing form of international organised crime. Annually, hundreds of thousands of people are being trafficked across borders. Human trafficking is morally suppressive, illegal, it robs people of their lives, it violates human rights and it is a highly lucrative “business”. Mainly women and girls become victims of the most common form of trafficking: sex trafficking. It is a global issue and thus the Netherlands deals with it as well. The Netherlands is a source, transit and destination country for victims of trafficking. It is not unusual that victim and offender have the Dutch nationality. And every year, the number of victims reporting themselves to NGOs is rising. Human trafficking is therefore high on the priority list of politicians. At international and European level numerous conventions have been signed, programmes set up and the debate continues. The United Nations Protocol and the European Union Council Framework are two important tools that make up the skeleton of Article 273f of the Dutch Criminal Code. This Article has adopted the UN definition of human trafficking. The Netherlands has several (non-)governmental organisations focusing on human trafficking. They work together in one way or the other, for example, on investigations, criminal proceedings, the protection of victims, on prevention of human trafficking etc.

The protection of victims is regulated by the B9-regulation which can be applied if an authority has the slightest suspicion that a person could be a victim of human trafficking. The B9-regulation is a temporary residence permit given to a victim *if* the victim cooperates in tracing the offender. However, in practice it appears that it is still difficult for authorities to pick up signs that this could be the case and/or to communicate with possible victims to find out more on their situation. Often victims are mistaken for illegal aliens, which results in them being taken into illegal alien custody. On a different note, the authorities have also noticed that people make up fictitious stories of trafficking in order to apply for the B9-regulation.

From researching jurisprudence it appears that judges never issued the maximum penalty of fifteen years nor have they been giving the penalty demanded by the Public Prosecution. There are several reasons for this. First of all, victims are often afraid to report the crime and press charges and if they do, they sometimes withdraw their charges after all. This reduces the number of victims and facts on which the judge can base his sentence. Another reason is the questionable reliability of victims' story; defence lawyers often argue they make up stories only to get the B9-residence permit. Other reasons include mistakes made by the Public Prosecution and the lack of sufficient evidence to support the victims' stories.

Since parliament agreed on raising the maximum prison sentence, it would be desirable to see the organisations involved in the investigation and the prosecution work together more closely. Protection of victims should also be improved in order to encourage them to report the crime and to cooperate with investigations. The Article (273f CC) itself seems clear on sex trafficking, leaving the judge very little to interpret. Nevertheless, sentences issued against offenders are very low, which makes it look as if the Netherlands is not taking human trafficking seriously enough.

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Abbreviations used

AMA	<i>Alleenstaande minderjarige asielzoeker</i> Unaccompanied underaged asylum seeker
BLinN	Bonded Labour in the Netherlands
BNRM	<i>Bureau Nationaal Rapporteur Mensenhandel</i> Office of the Dutch National Rapporteur on Trafficking in Human Beings
CC	(Dutch) Criminal Code
EC	European Commission
EMM	<i>Expertisecentrum Mensenhandel en Mensensmokkel</i> Expertise Centre on Trafficking in Human Beings and People Smuggling
EP	European Parliament
EU	European Union
Eurojust	<i>Europees orgaan voor de justitiële samenwerking</i> European Union Judicial Cooperation Unit
Europol	European Police Office
ILO	International Labour Organisation
IND	<i>Immigratie- en Naturalisatiedienst</i> Immigration and Naturalisation Service
LJN	<i>Landelijk Jurisprudentie Nummer</i> National Case-law Number
MvT	<i>Memorie van toelichting</i> Explanatory Memorandum
NAM	<i>Nationaal Actieplan Mensenhandel</i> National Action Plan on (Combating) Trafficking in Human Beings
NRM	<i>Nationaal Rapporteur Mensenhandel</i> National Rapporteur on Trafficking in Human Beings
PPS	Public Prosecution Service
SIOD	<i>Sociale Inlichtingen- en Opsporingsdienst</i> Social Information and Investigation Service
Sr	<i>Strafrecht</i> Criminal Law
STV	<i>Stichting Tegen Vrouwenhandel</i> Dutch Foundation against Trafficking in Women

TEU	Treaty on European Union
THB	Trafficking in Human Beings
TK	<i>Tweede Kamer</i> Lower House (of the Dutch parliament)
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

Preface

This thesis is written in order to complete my Bachelor studies at The Hague School of European Studies (HEBO) at the Haagse Hogeschool.

This thesis would not have been made possible without the help and support of some people whom I would like to thank. I would like to express my gratitude to my supervisor Marjo van den Haspel for her professional guidance and feedback. To Astrid, thank you very much for tweaking and tuning my English into readable prose. I wish to express my greatest thanks to my parents and my sister for their everlasting support in everything that I have ever wanted to do. Finally, I thank Joeri, for his infinite patience and faith in me.

I hope this thesis may contribute to a better understanding of human trafficking in the Netherlands.

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Anita Bharos

Introduction

Routine activity theory developed by Marcus Felson says that crime simply needs an opportunity: “(..) a likely offender, a suitable target, and the absence of a capable guardian against crime” are three elements for a crime to occur (Felson & Clarke, 1998, p.4). The International Labour Organisation (ILO) estimates that at least 2.4 million people are victims of human trafficking for the purpose of forced labour around the world, generating an estimated US\$32 billion in annual profits (ILO, 2008, "Vienna Forum to Fight Human Trafficking, 13-15 February 2008 - Passport wanted: combating human trafficking and forced labour", para. 1). Human trafficking for the purpose of sexual exploitation, which mainly victimises girls and women, also occurs in the Netherlands. This thesis explores sex trafficking in the Netherlands in terms of Dutch policy and laws.

1.1 Central question and sub questions

On 1 January 2005, the new Article 273f of the Dutch Criminal Code came into effect. This thesis tries to explain how Article 273f CC works in practice, and reviews international and European conventions, special programmes, laws and Dutch jurisprudence to find an answer to the following central question:

"How does Dutch policy, in particular article 273f in the Criminal Code, prevent, suppress and punish trafficking in human beings for the purpose of sexual exploitation in the Netherlands?"

The following sub questions, derived from the central question, were also part of the research:

- What is human trafficking?
 - How does sex trafficking occur?
 - Who are the victims?
 - How do the victims enter the Netherlands?
 - Who are the offenders?
 - What are the pull factors of the Netherlands?
 - How and by whom are the victims traced?
- Which global solutions are there for this global issue?
 - What are the European and international discussions, treaties and policies concerning human trafficking?

- What does Article 273f say about the Dutch Criminal Code?
 - How is Dutch policy based on European and international treaties, policies and reports?
 - What is the role of the victim in prosecuting the offenders?
 - How are the criminal proceedings against the offenders?

1.2 Relevance

This thesis is meant as an evaluation of the law and its implementation. Therefore it could be interesting to policy advisers and the executing branch and it could provide humanitarian organisations with some insight into actual implementation of the law and subsequent implications. Naturally, this thesis could also be useful to anyone interested in the subject of human trafficking for the purpose of sexual exploitation in the Netherlands.

1.3 Justification of research methods

This thesis is the product of extensive desk research of international and European treaties, reports by Dutch organisations dealing with human trafficking such as BNRM, Parliamentary Papers and Explanatory Memoranda, reports by governmental organisations such as the Ministry of Justice, reports by Dutch NGOs, Dutch jurisprudence and several Internet sources. An analysis was made of Article 273f CC, using literature mainly from 2003 and beyond, written mostly by scholars. Many other documents used were written and published by international, European and/or governmental organisations. It is therefore assumed that the information gathered comes from reliable sources. Unfortunately, there was no possibility during the research to get in contact with victims for privacy reasons. Many organisations and individuals were not willing to cooperate, claiming there is a huge amount of literature available.

1.4 Preview

The first chapter defines human trafficking and explains how human trafficking for the purpose of sexual exploitation occurs in the Netherlands. It also elaborates on the victims and offenders in the Netherlands. The second chapter discusses relevant international and European conventions, programmes and developments, some of which form the skeleton of Article 273f CC. The third chapter discusses this Article and other Dutch policy and legislation and it also examines the victims' role in criminal proceedings. The fourth chapter takes a closer look at two significant human trafficking cases in the Netherlands. Both dealt with human trafficking for sexual exploitation. The conclusion provides recommendations concerning Dutch policy, and the working of Article 273f CC in particular.

Chapter 1

What is human trafficking?

Millions of men, women and children all over the world are exploited by other people. Some examples of severe exploitation are: (a) forced labour: people are forced into involuntary servitude or slavery; (b) bonded labour/peonage/debt bondage: a system whereby labour is demanded in order to repay a debt or a loan; (c) exploitation of persons for the international trade in human organs: poor and less educated people will sell a kidney for as a little as \$100 to brokers who then sell the organ to patients for \$100,000 to \$200,000; and (d) the most common form, exploitation of persons in the sex industry. These victims are very often recruited and exploited with major physical and psychological violence and threat. It goes without saying that each of these forms of exploitation takes place against the will of the victim. An internationally accepted definition of trafficking in human beings is provided by Article 3, paragraph (a) of the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (hereafter 'The Protocol'):

“‘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” (See Appendix II).

Human trafficking is often compared to and described as modern-day slavery. The current interest in human trafficking, modern forms of exploitation and slavery are inevitably part of rising globalisation, economic liberalisation and migration. Due to high technology, advanced transportation and communication means, distances can easily be bridged. Therefore, countries that are relatively remote from each other are connected socially and economically, which increases transport of goods and movement of persons. Unfortunately, it also increases international organised crime. Trafficking in persons is a multi-billion dollar form of international organised crime. It severely violates basic human rights and completely destroys its victims' lives. Because of its international aspect, various countries are affected in different ways. Trafficking in persons occurs in the home country of the victims itself as well as across national borders.

On the website of the U.S. Department of State one can find the chart shown below, which is extrapolated and simplified from The Protocol definition. The chart is a useful tool to determine whether a case constitutes trafficking. The chart identifies three categories -Process, Means and Goal- and lists several elements within these categories. In order to classify a case as trafficking it must have at least one of the elements in those three categories.

Process	+	Way/Means	+	Goal
Recruitment	A N D	Threat	A N D	Prostitution
Transportation		Coercion		Pornography
Transferring		Abduction		Violence/Sexual Exploitation
Harbouring		Fraud		Forced Labour
Receiving		Deceit		Involuntary Servitude
		Deception		Debt Bondage (with unfair wages)
		Abuse of Power		Slavery/Similar practices

When it comes to adults, victim consent is irrelevant if the case has one of the elements of the category Means. However, when it comes to minors, consent is irrelevant regardless of elements of the category Means because a minor is not considered capable of making a decision to work as, for example, a prostitute (U.S. Department of State, 2008, "Trafficking in Persons Report 2008 - Human Trafficking Defined").

At this point it is important to make a clarification. There is a tendency to confuse "human trafficking" and "migrant smuggling". They seem similar because both involve distressing examples of desperate people seeking a better life but whom somehow, somewhere down the road end up being exploited. A definition of migrant smuggling by the Dutch National Rapporteur (NRM) on trafficking in human beings reads: *"Migrant smuggling is assisting people for money or other gain to enter or stay in a country illegally. In the case of migrant smuggling the territorial integrity of a state comes into play. The State is the victim of migrant smuggling, or at least the party whose interest is directly prejudiced, and not the person who is smuggled. That does not detract from the fact that the conditions under which people are smuggled may be so bad or degrading that the smuggled person themselves can in fact also be called a victim. Yet, he or she is therefore more a victim of the circumstances than of the smuggling itself"* (NRM, 2002, "Trafficking in Human Beings; First report of the Dutch National Rapporteur, p.2).

Compared to human trafficking, migrant smuggling occurs generally with the consent of the person being smuggled. Migrant smuggling always involves illegal border crossing and illegally entering a country and therefore it implies that the person has an illegal status in the country he or she is smuggled into. Smuggling does not have exploitation as a primary purpose but it is a profitable "business" for the smuggler. The ways of moving a person from one country to another is often hazardous and therefore it is reasonable to qualify these persons as victims as well.

Trafficking and smuggling sometimes overlap. Many trafficked persons willingly and legally migrate but end up being trafficked, while smuggling people can also result in trafficking. The following random example illustrates the complexity of the issue of human trafficking which differs from "migration" or "smuggling".

Sasha left Ukraine after she responded to an advertisement for a nanny in London. When Sasha landed at Heathrow airport, she was met by two Russian mobsters who told there was no nanny job and that she owed them the money for her flight. The mobsters took away her passport and gave her the job choices of stripping in a bar in London or working in a massage parlour in Birmingham. Sasha worked to pay off her travel expenses and the expenses she incurred while living in the United Kingdom.

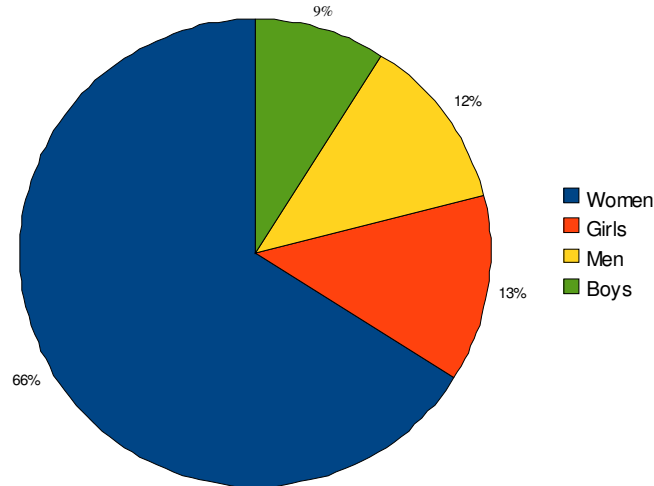
1.2 Human trafficking for the purpose of sexual exploitation

This thesis will focus on human trafficking for the purpose of sexual exploitation (also called sex trafficking) which is the most commonly identified form of human trafficking (79%), followed by forced labour (18%) (UNDOC, 2009, *Global Report on Trafficking in Persons*, p. 6). These two forms of exploitation are often mentioned together because in both cases the misfortune starts with people searching for economic prosperity. Moreover, as will be shown later on, these two forms of exploitation can sometimes also be linked together.

1.2.1 Who and how many victims?

Victims of sex trafficking could be men, women or children. Children are, due to their vulnerability, an easier prey to offenders. Children are exploited for commercial sex, child sex tourism, child pornography but they are also used as child soldiers in combat activities and to perform child labour. This thesis will not discuss exploitation of children.

It is estimated by various bodies that every year approximately 700,000 to 2,000,000 people are trafficked worldwide. However, due to the hidden nature of this international organised crime and the fact that victims are reticent to come out and talk, it is difficult to get a precise count of victims. Over the last decade there have been several studies by the EU, the UN and many NGOs, providing statistics. The UN Palermo Conference in 2000 stated that human trafficking was considered to be the second largest source of income for mafia groups worldwide. It was estimated that worldwide 200 million people were living in some form of slavery (de Pauw, 2001, p.15). Statistics show that the victims are mainly women because of the demand in the sex industry for women. Due to gender inequality women are considered to be weaker: economically, socially and they hold a weaker juridical status. In society women are often in a subordinate position, they are very often little educated and therefore they have little or no chance of finding employment. And if they do have a job, they are the first ones to lose it in times of economic crisis.



(Source: UN Global Report on Human Trafficking, 2009)

1.2.2 How does sex trafficking occur?

Sex trafficking can exist on its own, meaning that victims are trafficked with the direct purpose of exploitation in the sex industry. There is a distinction between commercial sex and sex trafficking. In commercial sex, the prostitute receives the benefits and payments for performing a sexual act. But in sex trafficking, payments and benefits go to the person who is in control (the trafficker) of the person performing the sexual acts (the victim).

Typically, the women come from countries and regions suffering economic deprivation. They are weak and isolated, live a poor life with a lack of social services. They have a low standard of living and they have hardly any prospect of a better life in their home country. They often have no income, have little or no education, or they have debts or they need money to take care of family. Circumstances that may weaken their situation even more are, for example, natural disasters, political turmoil (dictatorship or war), discrimination against minority groups such as women, violation of human rights etc. All these can be considered push-factors that strengthen the drive to seek a better life, thus making recruitment easy.

Recruiting women happens in different ways. Obviously, deceit about the work the women will be doing is part of the recruitment tricks. Offenders find their victims through people and through advertisements. They typically recruit their victims in developing countries, in vulnerable parts of society, making false promises of jobs in rich countries such as work as nannies, waitresses or factory workers. They promise the victims a better life. But it also happens that women in serious need of money will intentionally choose to go abroad to work as a prostitute, thinking their work will take place in a luxurious brothel and that they will earn lots of money in a short period of time. But they do not realise how dangerous that can be. In many other cases, women are 'simply' kidnapped or sometimes even sold by their parents to traffickers.

According to Europol, victims are not always poor or ill-educated. Higher educated people who do not have many opportunities to find better employment in their home country could become victims as well. The common denominator is: victims are lured by offenders who promise a better paid job in rich industrialised countries (Europol, 2008, "Trafficking in human being in the European Union: A Europol Perspective", p.2).

After recruitment, the traffickers need to "transport" their victims. The traffickers sometimes take the victims' personal and travel documents under the pretext that it is safer for them to keep it or that they need it to make travel arrangements. In many cases the traffickers arrange false documents, such as passports, for the victim and pay for the travel abroad, which could be by aeroplane, train, bus or by car. Victims sometimes travel with their own documents but once they arrive at the destination, traffickers take their documents from them. Often, victims do not even know their destination and depend on the people who are waiting for them at their arrival or who travelled with them. Without personal documents victims find themselves in an even more vulnerable position with no way out. They do not speak the language and sometimes do not even know where they are. Many victims only then realise that they have been conned.

Once they end up in prostitution, and not in the job they were promised, the real trouble begins. The women are then totally controlled. Very often physical threats and violence are used against the women. Basically the women are "made" dependent on the trafficker. The traffickers and pimps will make up an extremely high debt-bondage, which the victim will never be able to pay off. Escaping is often not an option because the women either have an illegal status or their documents have been taken away from them. Traffickers or pimps often have connections in the women's home country. They often threaten these women that if they do not cooperate their relatives in their home country would be hurt or that they would tell the relatives about their work as a prostitute, in which case they fear becoming excluded from society back home. When victims entered a country illegally, the traffickers/pimps also threaten to report them to the police. Bottom line is, these victims have no freedom at all, not even the freedom to choose their clients in the brothels.

1.3 Victims and offenders in the Netherlands

The previous section described several situations and reasons why and how women are trafficked from their home country. What makes the Netherlands an attractive destination country? According to Justice Minister Hirsch Ballin, the Netherlands is an attractive destination country for human trafficking because of its geographical location; the good infrastructure makes it easy to reach the Netherlands by air, sea or land. Obviously, the Netherlands is also an attractive destination because it is a rich country or there is at least a huge economic difference with the home country of the victims. They find the luxurious lifestyle in the Netherlands alluring and they see it as a country where they can fulfil their dreams of a prosperous future. Another reason that makes the Netherlands attractive is the demand for cheap labour in sectors where it is hard to find local workers, such as the agricultural sector or for domestic work.

1.3.1 Who are the offenders?

The NRM collected data from the Public Prosecution Services (PPS) about age, gender and country of origin of suspected offenders and of convicted offenders. The statistics for suspected offenders cover the period from 2000 to 2006 and the statistics for convicted offenders cover the period from 2003 to 2006¹. The numbers of both suspected and convicted offenders fluctuate from year to year. In 2006 there were 201 suspected and 70 convicted offenders. Surprisingly, female suspected offenders and female convicted offenders are not unknown in the Netherlands. Moreover, their number has even increased in recent years.

Between 2002 and 2006, the average age of suspected offenders was 32 but the average age of female suspected offenders was 29. In nearly 70% of the cases registered in 2006 the suspected offenders were aged between 18 and 41 at the time of their first offence in human trafficking. In 2006 there was also an alarming 5% increase in the number of juvenile suspected offenders. Looking at the age of the convicted offenders, data show that 81% was between the age of 18 and 41. Four of the convicted offenders were minors at the time of the offence.

When it comes to nationality, it can be stated that most (suspected) offenders come from similar countries as their victims. Over a period of six years, the Netherlands dealt with suspected offenders from 55 different countries. But since 2002, the Netherlands has been ranking number one on the list of top five countries of origin of suspected offenders, followed by Morocco, Bulgaria, Turkey and Romania. Suriname also ranks high with 11 suspected offenders and India is a newcomer with seven. Albania seems to have vanished from the “black list” while the number of Nigerians on the list is diminishing. However, recent reports suggest this might change². Statistics for convicted offenders are not much different. In 2006, the Netherlands had the highest number of convicted offenders, followed by Morocco, Bulgaria and Turkey. Countries such as (the former) Czechoslovakia and Hungary also had many convicted offenders. However, in the period 2003-2006 convictions of Bulgarians, Romanians and Turkish showed a decline contrary to Moroccans with 2, 7, 3 and 13 convictions, respectively.

When it comes to the gender of (suspected) offenders one can state that most suspects are male; in 2006 males made up 83% of the total number of suspects. However, surprisingly, 32 of 201 suspects were women. But only few of these were Dutch (5%) in contrast to suspects from Bulgaria (38%) and Romania (36%). Another interesting fact is the increase in female Moroccan suspected offenders from 2-3% in 2001-2005 to 23% in 2006. Yet most female suspected offenders are from Nigeria: 78% of the Nigerian suspected offenders in 2002 - 2006 were women.

Among the 70 offenders convicted in 2006, 13 (19%) were women which is slightly more than in 2005 but

¹ Data was first available in 2003.

² See chapter four on the *Koolvis* case.

similar to the situation in 2003 and 2004³. The majority (35%) came from the former Soviet Union, 8% came from the Netherlands and Morocco but surprisingly none from Nigeria. (NRM, 2008, p.24-25)

1.3.2 Lover boys/pimps

The so-called lover boys have become a common phenomenon in the Netherlands in the past decade. Unlike the romantic sound of the word, lover boys are ordinary pimps. Justice Minister Hirsch Ballin recently announced that the term lover boys will be replaced by the term “pimp boys” (pooier-jongens) which would properly reflect the reality of this type of men/boys (Parliamentary Papers II, 2008/2009, 28638, no. 39, p. 24). Lover boys are mostly good-looking young men who initially use their charm to get girls and women work as a prostitute for them. A lover boy gradually seduces girls and women by giving them a lot of attention and (expensive) gifts. He develops a romantic relationship with them and declares his indefinite love. The girls/women completely fall in love with him and become emotionally dependent on him. The lover boy will then come up with a fictitious story of needing money and that the ‘girlfriend’ could help him out. That is when he insidiously introduces her into prostitution and takes the money she makes. Along the relationship, when the ‘girlfriend’ has become emotionally dependent on him, the lover boy moves from using his charm to using physical violence to keep ‘his girl’ working as a prostitute. In more extreme cases, a lover boy would drug his victim, videotape her sexual acts with several men and then threaten to show the tape to her family in order to put her under pressure on her to continue working as a prostitute. It has to be noted that lover boys also use women for other purposes than sexual exploitation. For example, they will talk women into taking out a loan, thus forcing them into debt bondage. In other cases women are forced to become drug couriers (Comensha, 2009, "Sexuele uitbuiting", para. 1-2).

1.3.3 Who are the victims?

In order to get a better understanding of who the victims are, this part includes statistics of Comensha⁴. In 1992 Comensha started regional and local networks to offer support and shelter to victims of human trafficking in the Netherlands. The chart below reflects the number of reported (possible) victims but Comensha notes that the number of victims reported with its networks does not represent the actual number of victims. The NRM points out that the victims were reported in various ways and cannot be "regarded as 'official victims' on the basis of a formal assessment against specific criteria", claims the NRM. The NRM notes that "this is an important point because these statistics on victims are often compared with data from other countries which usually relate exclusively to the ‘officially recognised victims’" (NRM, 2008, p.7). Comensha believes there are many more victims out there and pleads for national cooperation in order to improve the situation. Comensha’s 2007 annual report notes an increase in the number of reported victims of 23.7% compared to 2006. Of the 716 reported victims, 667 were women and 49 men. More than half, 374, were exploited in the sex industry.

³ Convictions of women for human trafficking: 13 in 2003 (16%), 21 in 2004 (18%) and 10 in 2005 (12%).

⁴ The Dutch Foundation against Trafficking in Women (Stichting Tegen Vrouwenhandel/STV) changed its name into Comensha in 2007. Comensha is acting on behalf of women and men that are being trafficked in the Netherlands.

Year	Number of reported victims	Growing percentage compared to the year before
2008 ⁵	809	13%
2007	716	23.7%
2006	579	36.5%
2005	424	5%
2004	405	57%
2003	257	-25%
2002	343	21%
2001	281	-17%
2000	341	18%
1999	287	26%
1998	228	27%
1997	180	49%
1996	121	-25%
1995	161	-3%
1994	166	89%
1993	88	26%
1992	70	

(Source: Comensha, 2008, "Jaarverslag 2007", p.6)

Of the 49 men, 11 were exploited in the sex industry, 5 in restaurants and 3 in construction work. Ten others had not started any employment at the time they were discovered and of the remaining victims it is unknown where they worked. Comensha states that the majority of the women (40%) were between the ages of 18-23 years. However, a shocking second place is taken by the age group of 15-17 years (24%), which is a clear increase from 2006 (16.4%) and 2005 (approx. 5.5%⁶).

More on the nationality of the victims in the chart below that reflects the most common countries of origin of (possible) victims as registered by Comensha. Particularly surprising is the fact that the Netherlands has been ranking number one for four years in a row⁷. This confirms that the Netherlands is also a source country for sex trafficking⁸. Nigeria and Bulgaria have been steady source countries in the top four. Two newcomers China and Sierra Leone conclude the top five; especially China is interesting because it was not even in the top ten in 2005 or 2004. The appendix contains a complete list of all nationalities according to Comensha (see Appendix I).

⁵ The numbers for 2008 were not yet published by Comensha but were already provided to the Dutch newspaper NRC: http://www.nrc.nl/nieuwsthema/mensenhandel/article2182746.ece/Zes_vragen_over_mensenhandel

⁶ The age chart of 2005 does not divide men and women but compared to 2006 and 2007 it is a reasonable estimation.

⁷ While writing the thesis, I am still awaiting the 2008 statistics.

⁸ The chart is an indicator for all human trafficking but since most victims are used for the sex industry it is reasonable to assume for sex trafficking.

Country of origin	2001	2002	2003	2004	2005	2006	2007
The Netherlands	5	4		1	1	1	1
Nigeria	4	2	3	4	3	2	2
Bulgaria	1	1	1	2	2	3	3
China						5	4
Sierra Leone							5
Romania		3	2	3	4	4	
Czech Republic					5		
Russia	2	5		5			
Ukraine	3		4				
Brazil			5				

(Source: NRM, 2008, p.8)

In absolute numbers, Comensha has registered a majority of foreign nationals; 445 to 260 Dutch victims. The nationalities of the others are unknown. Most of the victims come from Western European countries (268), Africa takes a second place (210) followed by Central and Eastern Europe (159), Asia (60) and Latin America (18).

1.3.4 How and by whom are the victims traced?

There are several authorities dealing with tracing sex trafficking victims: the *vice squad*, better known as the 'prostitution police', and the *immigration police* are able to trace possible victims in the prostitution business. The *military police* can trace possible victims at the border and at Schiphol Airport. The *Social Intelligence and Investigation Service* (SIOD) can trace (possible) victims during its inspection of organisations. The *Immigration and Naturalisation Service* (IND) deals with illegal aliens and asylum seekers and could spot victims among these. *Counsellors* and also the *social workers* could spot victims in their work. All these authorities should be able to pick up signs of possible human trafficking and should be able to inform (possible) victims of their rights in the Netherlands.

Conclusion

Human trafficking is an extremely lucrative type of international organised crime and it severely violates the human rights of millions of people each year. Human trafficking for the purpose of sexual exploitation is the most common form all over the world and it mainly victimises women and girls. The recruitment of victims goes hand in hand with excessive violence, coercion and threats, making victims dependent on their traffickers. Victims could be anyone; however, women are an easier prey for the offenders because they are often poor, little educated, and find themselves at the lower scale in society. A remarkable fact is that in the Netherlands, Dutch women are the most victimised group. As for the offenders, these are mainly males even though there is a rise in female offenders. As is the case with victims, the majority of offenders in the Netherlands are Dutch. A significant problem in the Netherlands is the phenomenon of so-called lover boys: young men who romance girls and women to then force them to work in the sex industry.

Chapter 2

Global solutions for a global issue

One of the first international attempts to find a solution for human trafficking for sexual exploitation was the 'United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others' (1949). However, one of the fundamental problems in addressing human trafficking for sexual exploitation is its definition or rather the lack of consensus on a definition. As previously explained, trafficking refers to a number of different situations. The ambiguity causes confusion in identifying cases of women trafficking, in international debates, at European level and in law enforcement. This also has to do with the fact that different countries have different views of (exploitation of) prostitution.

Nevertheless, the UN Protocol definition is used as the appropriate definition. It makes a clear distinction between working voluntarily as a prostitute and victims of human trafficking forced to work as prostitutes and between human trafficking and human smuggling; the latter is addressed in another protocol. In order to successfully combat sex trafficking, all countries that deal with sex trafficking in one way or another should take action and should work together. Many countries also receive guidance from international organisations in setting up their own policy plans to prevent (and protect) women from becoming victims of sex trafficking. And one step further is the aim and responsibility of both non-governmental and governmental institutions to raise awareness amongst possible victims, and relevant authorities to trace victims

This chapter gives an overview of, and some background information on, policy documents and legal instruments of governmental organisations. However, it goes too far for this thesis to explain all treaties, policies and actions taken at international level. The policies and instruments discussed in this chapter were selected because of their relevance to prevent, suppress and punish women trafficking for the purpose of sexual exploitation during the twentieth and twenty-first centuries. Two international instruments, the UN Protocol and the EU Council Framework Decision, are considered the skeleton for the most recent Dutch law, in particular for Article 273f of the Dutch Criminal Code and its adjustments, concerning human trafficking. The next chapter will elaborate on the relevant Dutch legislation.

2.1 International law

Following sections will review some examples of important international conventions and efforts to fight human trafficking.

2.1.1 The United Nations

In 2000 the United Nations adopted the Convention against Transnational Organised Crime, also called the Palermo Convention, and two Palermo Protocols (see Appendix II) there to: (a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and (b) Protocol against the Smuggling of Migrants by Land, Sea and Air (hereafter 'The Protocol'). The first came into effect in December 2003. The UN Protocol meets the need for an international instrument in combating human trafficking and is

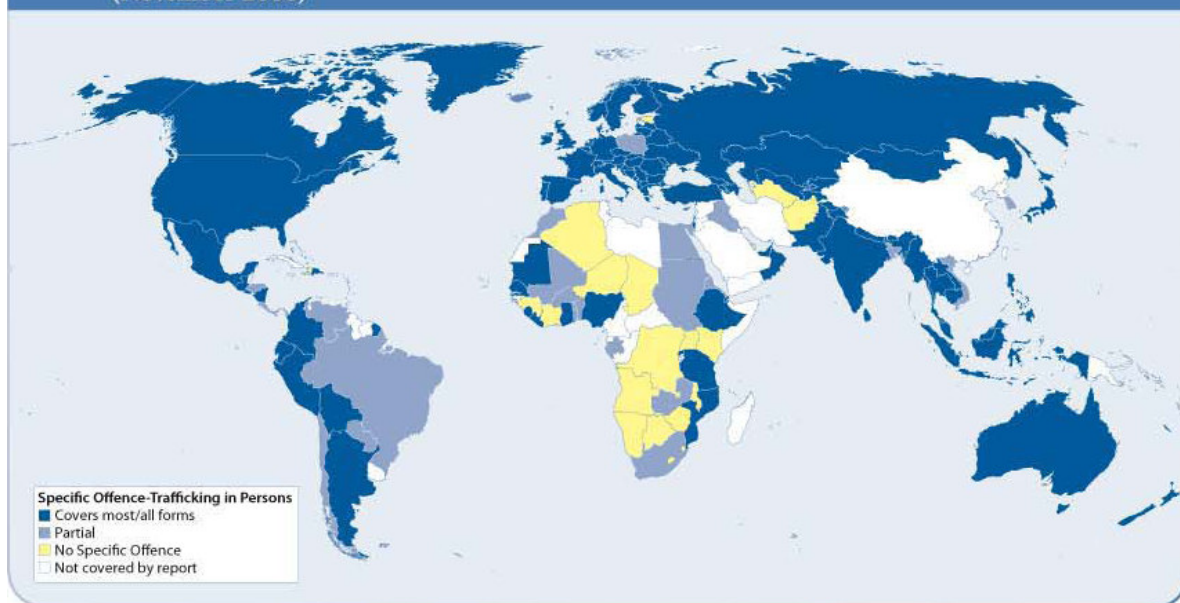
therefore primarily a law enforcement tool obliging⁹ States to prosecute traffickers, extradite suspects and share information. Regarding assistance to and protection of victims, The Protocol states the measures to be taken in Articles 6 and 7 but the language seems rather weak: "In appropriate cases and to the extent possible under its domestic law (...)". It is the first internationally legally binding instrument with an accepted definition of trafficking in persons and it forms the base for other (international) documents such as the EU Council Framework Decision.

According to the UNDOC Global Report on Trafficking in Persons of February 2009, the Protocol to Prevent, Suppress and Punish Trafficking in Persons has been very successful. *"As of November 2008, 63% of the 155 countries and territories covered in this report had passed laws against trafficking in persons addressing the major forms of trafficking. These laws criminalize, at the very least, sexual exploitation and forced labour and have no restriction regarding the age or gender of the victim. Another 16% had passed anti-trafficking laws that cover only certain elements of the Protocol definition. For example, laws limited to sexual exploitation or apply to female and child victims. The number of countries having anti-trafficking legislation more than doubled between 2003 and 2008 in response to the passage of the Protocol. In addition, 54% of responding countries have established a special anti-human trafficking police unit, and more than half have developed a national action plan to deal with this issue"* (UNDOC, 2009, "Global Report on Trafficking in Persons", p.8).

The same UNDOC report also researched the number of convictions and prosecutions. However, the outcome is not to their satisfaction. Because there is no legislation specifically to criminalise human trafficking, it is difficult to get a number of actual prosecutions and convictions. UNDOC explains for Western and Central Europe: *"(..) National authorities aggregate the figures for trafficking in persons together with those for other offences. An additional complication is that some countries have more than one authority or institution providing official data on different aspects of trafficking"*. (UNDOC, 2009, "Global Report on Trafficking", p. 43) The conclusion of the report is that many countries have a few or no convictions on record thus if separately recorded, the outcome could be different.

⁹ The convention and the protocol are international law instruments and as such only bind the states that have ratified them. Individuals are not bound by them. Ratification of the protocol is only possible if the underlying convention is also ratified (NRM, Trafficking in Human Beings: first report, 2002, p. 29).

Map 2: Criminalization of trafficking in persons – status of national legislation, by country (November 2008)



Source: UNODC/UN.GIFT

Cover most/all forms: Countries where the specific offence of trafficking in persons is in force, criminalizing at a minimum sexual exploitation and forced labour, with no restrictions concerning the profile of the victim.

Partial: Countries where the specific offence of trafficking in persons is in force, but legislation does not criminalize all or most forms listed in Article 3 of the UN Trafficking Protocol or does not define trafficking in persons.

No specific offence: Countries where forms of trafficking in persons are criminalized through other offences due to the absence of a specific trafficking in persons offence.

2.1.2 The Council of Europe¹⁰

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Council of Europe on 16 May 2005. It applies to men, women and children as victims of all forms of trafficking. At the same time it does not distinguish national from transnational-based crime and whether or not it is an organised crime. The purposes of the convention are "*(a) to prevent and combat trafficking of human beings, while guaranteeing gender equality, (b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution and (c) to promote international cooperation on action against trafficking in human beings*". The Convention entered into force on 1 February 2008¹¹. Of the 47 member states of the Council of Europe, so far 41 have signed the convention and 23 have ratified it^{12 13} (Council of Europe, 2009, "Council of Europe Convention on Action against Trafficking in Human Beings"). In line of the Convention, the 'Group of Experts on Action against

¹⁰ The Council of Europe is not to be mistaken with the Council of the European Union or the European Council. The Council of Europe is an international organisation in Strasbourg which comprises 47 democratic countries of Europe. It was set up to promote democracy and protect human rights and the rule of law in Europe. The Council or the European Union is the principal decision making institution of the EU. The European Council is another institution of the EU, it consists of the heads of state or government of the Member States and the President of the EC http://www.coe.int/T/E/Com/About_Coe/Member_states/default.asp

¹¹ The Convention would enter into force after 10 ratifications

¹² Website consulted on 16 April 2009:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=4/16/2009&CL=ENG>

¹³ The Netherlands have signed the Convention, yet still not ratified to date

Trafficking in Human Beings' (GRETA) was established and had its first meeting 24-27 February 2009 at the Council of Europe in Strasbourg. GRETA's task is to monitor the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties. It will publish reports reviewing how the parties are doing and those parties which do not fully observe the measures of the Convention will be required to increase their actions. (Council of Europe, 2009, "GRETA").

2.2 European initiatives

Since 1986, the EU has been actively involved in developing an extensive and multidisciplinary approach towards the prevention of and the fight against trafficking in women. Following is an illustration of previous and recent important EU contributions.

2.2.1 Treaty of the European Union

The past EU actions against trafficking begin under Title VI of the Treaty on European Union (TEU), the provision on police and judicial cooperation in criminal matters. One of these criminal matters is trafficking in persons and offence against children. Its initial purpose was to promote functional cooperation among law enforcement agencies and judicial authorities of the Member States in order to prevent and fight all forms of trafficking, particularly women trafficking for the purpose of sexual exploitation. Several measures concerning trafficking have been adopted. One example is the Europol Convention of 1995 when the mandate of the European Drug Unit (Europol's predecessor) was expanded to include trafficking of human beings by increasing effective collaboration between competent Member States. Europol was introduced as the appropriate organisation to participate in the fight against trafficking in women. At the same time, some kind of a protection programme was introduced for victims of human trafficking by giving them a legal right to residence and protection during and after the legal proceedings (Rijken, 2003, p.93). The broadened activities of Europol started 1 July 1999, a day after EDU ceased to exist (Obokata, 2006, p. 387-389).

2.2.2 Joint actions

The Council of the EU is also responsible for the adoption of several documents on trafficking in persons. In February 1997 the Council adopted the most relevant action, the "Joint Action of 24 February 1997, concerning action to combat trafficking in human beings and sexual exploitation of children". This document is a first step towards harmonising legalisation. It called on EU Member States to review their existing national criminal law and practice, and to make trafficking in human beings for sexual exploitation a criminal offence. Police and judicial cooperation and coordination between Member States were regarded important. Moreover it required Member States to enlarge the enforcement of actions concerning both investigation and technical assistance by allowing information exchange at a local level and cooperation with other organisations involved. In addition, each Member State was to take necessary measures in order to ensure appropriate protection and assistance for witnesses and their families who provide information (Obokata, 2006, p. 389). However, the European Commission noticed that this joint action was difficult to put into practice because of differences between the national laws of the Member States.

Following this joint action, a new document was adopted under the Dutch EU Presidency on 26 April 1997: The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation. It reaffirmed the commitment of Member States to cooperate at national, European and international level involving the UN and Interpol. More importantly, this document was one of the first to stress the need for effective victim and witness protection measures. It called on Member States, among others, to grant victims a temporary residence status during the criminal procedures, to set up witness protection programmes, provide compensation to victims and to encourage victims to act as witnesses in order to successfully prosecute the offenders. As for the prevention of trafficking, the document urges Member States to assign a national rapporteur to report to their governments on human trafficking in their country and on the impact of relevant policies. At the time of writing, only the Netherlands, Belgium, Sweden and the Czech Republic had appointed a national rapporteur. Other countries, also outside the European Union, have parliamentary committees to focus on human trafficking and related human rights, and more specifically on women's and children's rights. The United States Department of State monitors and reports annually on trafficking in persons¹⁴ and Canada and Spain, too, have established a committee that advises on appropriate measures to fight human trafficking. Another form of national reporting is the establishment of a so-called task force whose function includes researching and reporting human trafficking and government efforts to combat it. Countries with such a task force include, Romania (2001), Bulgaria (2003), Croatia (2003), Moldova (2001), Greece (2001) and Egypt (2007) (UNDOC, 2009, "Combating trafficking in Persons: a Handbook for Parliamentarians", p. 98-102).

2.2.3 Programmes financed by the European Commission

The European Union has set up many programmes specifically focusing on the public and on people who work in the field of combating (sex) trafficking. One example of a successful programme is **STOP**: a programme launched in 1996 (Joint Action of 29 November 1996) and which ran until 2000 when it was succeeded by the **STOP II** programme. According to the European Commission (EC) Justice and Home Affairs website, its mission was: *"(..)to create a framework for training, information, study and exchange programmes for persons responsible for combating trade in human beings and the sexual exploitation of children in all its forms, to prevent those phenomena and to fight them more effectively"* (European Commission, Justice and Home Affairs, 2009, "STOP II - to help prevent and combat trade in human beings and all forms of sexual exploitation", p. 2). This programme was for judges, public prosecutors, police departments, civil servants, public services involved in immigration and border control and public services dealing with social and tax legislation (Rijken, 2003, p. 98).

The STOP programmes were linked to the European Parliament's (EP) **Daphne Initiative**, a funding programme launched in 1997 to fund measures to combat all types of violence against children, young persons and women. It was particularly aimed at supporting pilot projects and the European network, research and cooperation between organisations (including NGOs active in this field) and local public

¹⁴ See their website for extensive information, reports and statistics: www.state.gov/g/tip

authorities (Obokata, 2006, p. 390). Based on this Daphne Initiative was the **Daphne Programme**, launched in 2000. As stated in the Commission's final report of 2004: "Daphne encourages the exchange of ideas and best practices through the formation of networks and partnerships and the implementation of specific projects" (European Commission, "Commission Final Report to the European Parliament and the Council on The Daphne Programme 2000-2003", p.6). In February 2003 the European Commission adopted a proposal, establishing a **Daphne II Programme** for the period 2004-2008. Rather than changing the objectives, the EC proposed a number of improvements in order to enhance the impact of the programme (European Commission, "The Daphne Experience 1997-2003: Europe against Violence towards Children and Women", p. 7). According to the EC website, the European Parliament and the Council approved the **Daphne III Programme** for the period 2007-2013. Combating all types of violence will still be the general objective but because of recent studies, issues of sexual abuse and exploitation and trafficking of human beings will be added to the Daphne III priority list (European Commission, "The Daphne III programme 2007-2013", p. 2).

2.2.4 The Council Framework Decision

On 19 July 2002, the Council of the European Union adopted the Council Framework Decision on combating trafficking in human beings in order to facilitate cooperation between EU Member States in combating this crime. The Framework Decision adopted the UN Protocol, except for the part which discusses the involuntary removal of organs. Furthermore, the Framework Decision stated minimum and maximum sentences as well as the liability and punishment of legal persons involved in trafficking (NRM, Trafficking in Human Beings: first report, 2002, p. 30). As stated in Article 3 of the Council Framework Decision, the minimum sentence should be no less than eight years of imprisonment (see Appendix III). Jacques Barrot, Vice President of the European Commission and responsible for Justice, Freedom and Security, stated on 25 March 2009: "Our message is clear. These crimes which know no borders are unacceptable. Europe will continue to set the highest and most ambitious standards in fighting them" (European Commission, 2009, "The EU Commission cracks down on modern slavery and child sexual abuse"). During this meeting, the EC adopted two new proposals for new rules to replace the existing legislation of the Council Framework Decision. The new proposals call for better guidance and protection for the victims, better legislative tools to punish traffickers and sharpen prevention. Independent national bodies would be set up to monitor implementation.

Conclusion

It is clear that human trafficking is intensely discussed in all countries affected by it and therefore governments and international organisations are eager to work together in eliminating this crime. However, it is not as simple as perhaps fighting other crimes, since the definition of exploitation of women for sex trafficking can differ from one country to another. That is a significant obstacle in law making and law enforcement. Looking at the documents of international organisations such as the United Nations, the European Union, the Council of Europe and many others, there seems to be a shift of importance from

making law to encouraging implementing law. There is an emphasis on the importance of international cooperation, exchanging information and appointing a national rapporteur. A good outcome of many years of developing laws is the increased focus on care for victims and to taking a more human approach. It is important to realise that these victims have suffered severe violation of their human rights and that needed more attention. If that is not possible in their country of origin, the country they have been trafficked to must act upon the situation. Unfortunately, there still seems to be a lack of law making when it comes to the prosecution and conviction of human trafficking offenders.

Chapter 3

Dutch legislation

The first Dutch law Article on the matter of human trafficking was the previous Article 250ter CC, which dates from 1911 and related to women trafficking for the purpose of exploitation in prostitution. The maximum prison sentence for trafficking then was five years (Pieters, 2006, p.203). From that point on, Dutch legislation on human trafficking has been expanded through the years. In 1994, a description of trafficking was incorporated in the Article and trafficking was defined as forcing someone into prostitution by means of violence, deceit etc. The law then also spoke of human trafficking without specifying gender, meaning that also men (and boys) became subject of sexual exploitation. Both the trafficker and the exploiter were penalised by this Article and the maximum prison sentence went up from five to six years. However, there was also the possibility of getting an additional fine of maximum €45,000 (Pieters, 2006, p. 204). On 1 October 2000, the Netherlands adopted a law to abolish the ban on brothels. Daalder explains: "The essence of the amendment of the law is that under certain conditions, prostitution performed by prostitutes of age who voluntarily engaged, was no longer prohibited. At the same time, the legislator intends to crack down forcefully on unacceptable forms of prostitution (in particular various forms of trafficking in human beings)" (2007, p.64). Introducing strict rules should make it unattractive (and impossible) for brothel owners to employ illegal immigrants as prostitutes and trafficking in women would be reduced in the Netherlands. As a result, the Article had to be amended. It included the criminalisation of intentionally receiving financial gain from human trafficking¹⁵ and, moreover, it made all forms of exploitation in prostitution punishable by law. Two years later the law was amended once more to criminalise all forms of exploitation (not only in prostitution) in the sex industry.

On 1 January 2005, the previous Article 250a CC was replaced by the Article 273a CC. Two important amendments were made to the new Article. First of all, the Article is placed into the section of "Crimes against Personal Freedom" in contrary to the initial "Sexual Offences". By doing this, the Article stresses the character of the offence rather than stressing the sector in which the offence took place. This means that exploitation is a crime against personal freedom, or human rights if you will, whether that is sexual exploitation, labour exploitation or involuntary organ removal. At the same time, the new Article contains another significant amendment, also criminalising all the other forms of human trafficking in addition to sexual exploitation. The purpose of this new Article was to implement UN¹⁶ and EU¹⁷ legislation, in anticipation of the (proposed) ratification and implementation of these documents in Dutch legislation. On 1 September 2006, Article 273a Criminal Code was renumbered, without any substantive alteration to the text, to Article 273f CC (see Appendix IV) (NRM, 2007, "Trafficking in Human Beings; Fifth report of the Dutch

¹⁵ Article 250 CC became Article 250a CC.

¹⁶ In particular: the United Nations Convention against Transnational Organised Crime, also called the Palermo Convention, and two Palermo Protocols: a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and (b) Protocol against the Smuggling of Migrants by Land, Sea and Air (2000, New York). The Netherlands ratified the UN Convention on 26 May 2004, the first protocol on 27 July 2005 and the second protocol on 23 August 2005.

¹⁷ In particular: the Framework Decision by the Council on combating trafficking in human beings (2002, Brussels).

National Rapporteur, p.9).

Because this Article is amended in context and in the categories of punishable offences, it has not only become a very complex Article but also the longest Article of the Dutch Criminal Code. Several subsections were added to the Article in order to distinguish the different forms of human trafficking and to distinguish minors from adults. The Article also contains several expressions which are not explained in greater detail. These expressions are drawn from international documents which form the basis for the Article. Korvinus, Koster & de Jonge van Ellemeet give an example of how Article 273f (1) can be interpreted: *"(..)according to paragraph 1 sub 4, trafficking in persons could already be said to occur when a person 'induces' another person, by means of 'deception', to make himself available for performing work or services. Subsection 6 places the bar even lower: for example, the informed consumer buying a product produced elsewhere in the world under exploitative conditions, may be guilty of the offence of trafficking. An informed buyer of a cheap, hand-knotted Persian rug or a delicious chocolate bar manufactured from cocoa harvested by children may be a profiteer and a trafficker within the meaning of this subsection"* (2006, p.1). In order to interpret Article 273f CC, in line with the Explanatory Memorandum, legislation leaves defining to the judge (Parliamentary Papers II, 2003/2004, 29291, no. 3, p. 13). At its core, Article 273f CC has the objective to criminalise *excessive* abuse of individuals in a work or service provision relationship as well as putting anyone into such a position. The offence of trafficking of persons also includes *profiting* from such circumstances and *forcing* someone to surrender income from sex work (NRM, 2007, p.12).

The Article is split into three elements in line with the UN Protocol: *(a) the activity*¹⁸, which includes recruiting, transporting, transferring, harbouring, receiving, *(b) the means*, which includes the use of force, violence, threat, fraud, coercion, abduction, deception, abuse of power or of a position of vulnerability, *(c) the goal*, which includes exploitation in the broadest sense of the word (see chapter I). Exploitation is the central element in the crime of trafficking in persons, as stated in the Explanatory Memorandum (Parliamentary Papers II, 2003/2004, 29291, no.3, p.2). Subsection 2 states "Subsection 2 states "Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude". However, neither the Article nor the Explanatory Memorandum explains what exactly exploitation means in relation to work or services. It does mention the following example: "working extreme long hours under severe conditions with disproportionate payment" (Parliamentary Papers II, 2003/2004, 29291, no.3, p.18).

As for the prison sentences and fines, the Article penalises the trafficker and the exploiter in various subsections with a maximum prison sentence of six to fifteen years (in case the victim died) and a possible fine of a maximum of €67,000 (see Appendix IV). On 12 November 2008, Dutch newspaper *Trouw* reported that a majority of Parliament voted in favour of a proposal submitted by Justice Minister Hirsch Ballin to raise the maximum penalty for human trafficking from six to eight years; in some cases the maximum prison

¹⁸ Not to be confused with smuggling (see chapter I).

sentence can even be raised, for example to eighteen years if the victims die. Hirsch Ballin also said that raising the maximum penalties would better reflect the gravity of the crime. (Trouw, 2008, "*Straffen mensenhandel verhoogd*" para. 1-5).

3.1 The B9-regulation

"The B9-regulation (Chapter B9¹⁹ of the Aliens Act Implementation Guidelines) allows foreign nationals who are (or might be) victims or witnesses to trafficking in human beings to reside legally in the Netherlands on a temporary basis during the investigation and prosecution, so as to be available to the police and the Public Prosecution Service (PPS). The police ought to inform any foreign national who might possibly be a victim of trafficking, when there is a slight indication of trafficking, of the rights described in the B9- regulation, and offer him or her a period for reflection. The reflection period gives victims time to decide whether or not they want to report the criminal offence. For a period of maximum three months the expulsion of the victim from the Netherlands is suspended" (NRM, 2007, p.15).

During those three months the victim is entitled to a place to stay, welfare benefits and medical help. This temporary residence permit, the B9 residence permit, will be extended if the victim decides to cooperate with the authorities and will be valid for as long as the detection, prosecution and trial of the offender(s) last. Moreover, the victim is also entitled to work while holding the B9-residence permit.

In 2006, there were 180 applications for a B9-residence permit, 150 of which were granted. This was twice as many as the year before. The applicants had an illegal status in the Netherlands, were victims and willing to cooperate with law enforcement authorities. About half of the applicants were between the ages of 18-26. In some cases, children of the victims were also granted a B9-residence permit. There were also men among the applicants because the amendment of the law in 2005 made all forms of trafficking punishable. However, the majority of the applicants were women (89%). Most of the B9-applicants were from Nigeria (25%), followed by Romania and Bulgaria. After termination of their B9-residence permit, many women said they wanted to stay in the Netherlands. Reasons for wanting continued residence could be, for example, fear of punishment upon returning to their home country, fear of being prosecuted for prostitution, facing humiliation but also having very little chance of reintegrating into society in their home country. In 2006, the Immigration and Naturalisation Service²⁰ received 34 applications for continued residence, half of which were granted while the other half were denied (NRM, 2008, p.14-18).

Unfortunately, the Comensha annual report shows that even though the conditions to obtain a B9-residence permit have been liberalised, the number of victims reporting a crime is decreasing. In 2006, 35.6% of the victims reported the crime committed against them. In 2007 that number was only 29.6%. The reason for this decrease is the fact that offenders usually do not get caught and when they do, they are out on the streets in three to four years, as the jurisprudence shows. This means that the offenders can go after their victims again.

¹⁹ Previously B17-regulation.

²⁰ Immigratie- en Naturalisatie Dienst (IND).

Moreover, victims do not have the guarantee of getting a safe place to stay.

Using the B9 regulation caused several difficulties. One is the interpretation of the sentence "*when there is a slight indication of trafficking*". In the beginning of this year, BLinN²¹ published a report on victims of human trafficking who are not recognised as victims and therefore end up in *illegal alien detention*. The report "Uitgebuit en in de Bak" is a result of three years of research and working with victims in illegal alien detention. BLinN calls this situation highly undesirable. Despite the fact that Deputy Justice Minister Albayrak declared in November 2008 that "the (military) police had been specifically trained to recognise signs of human trafficking and that they were to apply the B9-regulation to possible victims. The staff at the illegal alien detention should be alert of signs and pass the information on to the police who should then end the detention"(BLinN, 2009, "Uitgebuit en in de bak", preface"). However, the report shows the opposite: signs, indicating possible victimisation of human trafficking are not always picked up. There are cases where the police label a case as a rape case instead of trafficking. In some cases the police have the tendency to put victims under pressure and have them press charges right away. Experts add that in certain cases, victims were not even offered the B9-residence permit or were not offered the appropriate reflection period of three months (van Vianen, Maaskant, Wijers & ter Woerds, 2007, p.54).

Abusing the B9 residence permit by people who are not victims of trafficking, is another issue. Many women know exactly what story to tell when reporting a fake crime. Many offenders never get caught, so they have nothing to worry about. Therefore, Adriana van Dooijeweert from the Advisory Commission on Alien Affairs (Adviescommissie Vreemdelingenzaken) argues in an interview that in case a victim fails to report the crime and/or fails to cooperate with the authorities for a period of one and a half year, the victim should be expelled (Kamerman & Wittenberg, 2009, "Ze zijn doodsbang voor hun uitbuiters", para. 8).

3.2 Single minor asylum seekers (AMAs)²²

Single minor asylum seekers (AMAs), often girls, arriving in the Netherlands are taken to an open shelter. Even if the situation in their home country is considered to be safe, which makes them not eligible for asylum, the girls are not being sent back to their home country until proper shelter is found, either with relatives or in a children's home. The Netherlands has been appealing as a transit country to traffickers from Nigeria because of the direct flight connection between the Nigerian cities Abuja and Lagos and Amsterdam. Since the AMAs were always taken to the same shelter it was easy for traffickers to find the girls and kidnap them. Deputy Justice Minister Albayrak responded to this problem: "*(..) it took us a while to realise the scope of this problem and how traffickers took advantage of our system. The policy concerning AMAs has drastically changed. We have replaced the open shelters for closed ones and improved protection of the victims. However*", she adds, "*this is not sufficient. I realise the importance of cooperating with other*

²¹ BLinN is a non-governmental organisation, set up in 1999 as a joint initiative of Humanitas and Oxfam Novib. Their main goal is supporting victims of human trafficking. This includes improving their position as a victim, helping them to rebuild their independence and their future in their home country or in the Netherlands.

²² Alleenstaande Minderjarige Asielzoekers.

countries that are affected by trafficking as well as cooperating at European level. In this particular case we have invested in working with Nigerian police and social workers. It is important to start at the source of the problem and that is why we have deployed a team in Nigeria to carry out pre-boarding checks to prevent young girls from getting on the plane. It has proven to be successful and I am willing to copy this program in other source countries". The number of missing Nigerian AMAs dropped from twenty in 2007 to one in 2008 (Kamerman & Wittenberg, 2009, "*Bendes hinderen is niet lastig*"). One of BLinN's spokesperson, Ms Kroon, criticises Albayrak's policy, saying that it is easy for traffickers to choose a different route to the Netherlands, because the parents keep paying the travel costs for the girls to go abroad to do, as they think, domestic work. She suggests focussing on the perpetrators rather than on prevention. It is equally important to support the victims in the Netherlands so they will come forward with their story, which will help the authorities to arrest the perpetrators. "Use resources on criminal investigations to start trials in order to tackle the offenders. "Furthermore", she adds, "victims should receive better protection. Getting testimonies from the victims is crucial to get offenders convicted, but the victims are afraid to talk. It is essential that victim and suspect should be kept separated at all times during the trial and options should be explored about protecting the relatives of the victim in the home country since they, too, face threats". (BLinN, 2009, "Straffen daders enige effectieve middel om mensenhandel te bestrijden").

3.3 Task force Human Trafficking

On 27 February 2008, Justice Minister Hirsch Ballin launched the Task force Human Trafficking, a national tool to fight human trafficking. He says "it is important that we not only tackle the offenders, but also suppress human trafficking and take care of the victims. Once the offenders have been tackled, it is necessary to prevent others from taking their place by creating sufficient obstacles" (Hesen, 2008, "Harde aanpak mensenhandel", para. 4). The task force is set up to support all existing policies concerning human trafficking and to intensify previous measures²³.

The task force is part of the cooperation between the National Rapporteur Human Trafficking, and the Ministry of the Interior and Kingdom Relations, the Ministry of Social Affairs and Employment, Health, Welfare and Sports, the Ministry of Foreign Affairs, the police, the local government and the judiciary. The Public Prosecution Service (PPS) chairs the task force. The reason why there are so many bodies involved, stems from the idea of a comprehensive approach. Hirsch Ballin points out that, because of its geographical location, the Netherlands should take the lead in Europe in setting up instruments to combat this type of organised crime. He also stresses the importance of cooperating with other European source and transit countries in tackling this problem efficiently. As a result, projects have been or are being set up with Bulgaria, Romania and Nigeria.

The task force launched the campaign "Schijn Bedriegt" to raise public awareness. The campaign is

²³ Two examples are the improvement of the B9-regulation and the establishment of the Expertise Centre Human Trafficking (Expertisecentrum Mensenhandel) in Zwolle.

particularly aimed at the clients of prostitutes to make them aware of signs²⁴ that could indicate whether the prostitute seems to work voluntarily or not. The campaign urges them to report any suspicious situation, something they could do in an anonymous phone call to the police. The campaign led to 147 cases reported in 2008, which was a quarter more than the year before. The police managed to arrest eight suspects and solve five cases. The campaign appears to be a successful tool.

3.4 National Rapporteur on Human Trafficking

In line with the Ministerial Declaration of 1997²⁵, the Netherlands has appointed a National Rapporteur on Trafficking in Human Beings on 1 April 2000. The Rapporteur, Mrs C.E. Dettmeijer-Vermeulen, is assisted by six staff members who together constitute the Bureau of the Dutch Rapporteur on Trafficking in Human Beings (BNRM). The rapporteur's main task is to report on the nature and extent of human trafficking in the Netherlands, and on the effects of the anti-trafficking policy pursued. The reports contain information on relevant regulation and legislation, as well as information on prevention, criminal investigation regarding human trafficking, prosecution of perpetrators and victim support. They also contain policy recommendations aimed at improving the fight against human trafficking. The rapporteur works independently and reports to the Dutch government. The BNRM keeps in contact with, and gathers information from individuals and authorities involved in prevention and combating of human trafficking and in giving assistance to trafficking victims. For their information, the rapporteur and her staff have access to criminal records held by police and judicial authorities. Because human trafficking often occurs across borders, the BNRM also has many contacts abroad and cooperates with international organisations. (NRM, 2009, "About us" para. 1-5). The latest BNRM report contains over 60 policy recommendations concerning different aspects of combating human trafficking, for example, on legislation, investigation, prosecution but also on prevention, raising public awareness and identifying trafficking, counselling of victims and research. These recommendations concerned trafficking in and outside the sex industry.

As a response to the national rapporteur's call in 2003, a National Plan of Action to Combat Human Trafficking was adopted, pleading the need to focus more on the victims of trafficking in policy making and implementation of policy. This is the so-called *human rights based* or *victim centred approach*. The B9-regulation is one example of a more humanitarian approach of the victim.

Conclusion

Even though the Netherlands has had a law on the matter of human trafficking since 1911, it took almost a century to amend legislation to meet the need. On a more positive note, the Netherlands has been taking human trafficking more seriously in the last couple of years which is demonstrated by raising the maximum

²⁴ The website of the campaign lists signs such as physical abuse, fear or anxiety, not enjoying the work, speaks only English or other foreign language etc.

²⁵ See chapter II on 'The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation'.

penalties for this crime and also in the tools it is using to prevent and suppress human trafficking for purpose of sexual exploitation. Both the Task force Human Trafficking and the National Rapporteur on Human Trafficking are crucial in evaluating the situation in the Netherlands and reporting to the government. But maybe even more importantly, there is more political attention for the protection and care of the victims. Nevertheless, there is a point of criticism of the current policy regarding the B9-regulation. Victims who do not dare to report a trafficking crime because they fear retaliation are left out of the system. This means that there is no counselling nor do they have the right to stay in the Netherlands. Another point of criticism is that authorities seem to find it difficult to identify victims of human trafficking and as a consequence many are mistaken for illegal aliens. This leads to detention of the victims who already have an enormous traumatic experience. In conclusion: as long as the crime exists, the Netherlands will continue debating human trafficking.

Chapter 4

Case Law

This final chapter will explain two main sex trafficking cases in the Netherlands in which hundreds of women from different countries were victimised. It also tries to show how Article 273f CC works in practice.

4.1 Case: Sneep

One of the most successful human trafficking cases in the Netherlands was *Sneep*, the name of a fish and the code for large scale investigation in this case. *Sneep* resulted in the prosecution of two Turkish-German brothers who led a violent gang of women traffickers that had more than a hundred prostitutes working for them in Amsterdam, Utrecht and Alkmaar, The Hague (as well as in Belgium and Germany). *Sneep* is the largest trafficking case that took place in the legal prostitution sector.

In 1998, the two brothers Saban and Hasan came from Mannheim (Germany) to Amsterdam and started with a small group of prostitutes working for them in the Red Light district in Amsterdam. Even though German police had already informed the Dutch police in 1998 about the criminal activities of the two in Germany, a large scale investigation did not take place until 2006. Public Prosecutor, Ten Kate, explained that they made several attempts but lacked sufficient staff to work on the case. However, with the cooperation of the Expertise Centre on Human Trafficking and Smuggling they planned a new approach according to the *National Action Plan on Human Trafficking* which was successful.

Some of the young girls and women were recruited from Eastern Europe and others were already working, voluntarily, in the prostitution sector. By using excessive violence, threat and coercion, the criminal duo established a group of around 50 pimps, bodyguards and other aides around them who controlled the women 24/7. The women were taken from one place to another so they were not able to bond with clients or with other women. The women led an isolated life and were forced to “work” even when they were ill. Some of the women had the initials of one of the brothers tattooed in their neck. Others were forced to get breast enlargements. Several of the women had an abortion during the period there were held by the gang. The trial revealed how the two brothers and their gang first romanced the women with gifts and attention to then force them into prostitution. Their personal documents were taken from the women and they were threatened not to go to the police.

Eventually, after years of collecting evidence and information, the police was ready to invade and end the criminal activities in April 2007. In the summer of 2006, a bank in Mannheim (Germany) which was providing Dutch authorities information about the two brothers, leaked information about the investigation to a relative of the brothers. The brothers then fled to Germany but the Dutch police were able to catch them near Cologne (Germany) - (NRC, 2008, "Geslagen, getatoeërd en geprostitueerd").

4.1.1 Verdict

On 11 July 2008, six men, including the two brothers and suspect Bekir I, another leader of the gang, were tried by the Court of Justice in Almelo. The Public Prosecution (PPS) charged the three men with an exhaustive list of offences which included trafficking eleven women for sexual exploitation as defined in Article 273f CC. The sentences issued by the Court were much lower than the PPS had demanded while the Court also rejected several of the charges, claiming they had not been presented properly. One example from the comprehensive dossier is the testimony of a woman who had stated that the suspect had misled her with promises of a wonderful life but because the testimony was not presented in the charges, the Court could not take it into account. Other mistakes made by the PPS included, for example, charges of general physical and mental battery of all the victims but since this had not been proven for each of the women individually, there was no conviction on those charges. The Court was shocked about the fact that the PPS did not pay proper attention to all the details while this case was the largest human trafficking case in the Netherlands ever.

Nevertheless, the Court found other charges proven in line with Article 273f CC and took into account aggravating or mitigating factors as reason to increase sentences. These factors included, for example, the length of the period during which the offences took place, facts of rape, involuntary breast enlargements, abortions, the role of the suspects and whether they were repeated offenders. With regard to Saban B., the prosecutors demanded twelve years imprisonment and fines of €5,000, €25,000 and €55,000 for three victims. The Court found Saban guilty on ten of the eleven charges and convicted him to 7.5 years imprisonment. His brother, Hasan B. was convicted to 2.5 years imprisonment instead of the seven years demanded by the PPS. The PPS had demanded 10 years against Bekir I but the Court convicted him to 3 years imprisonment and two €25,000 fines.

The PPS stated that in the case of 78 women it could be argued that they were possible victims. Many of the women did not press charges or dropped the charges, saying that the brothers and their co-offenders were protecting them from pimps in the prostitution world. The defence attorney for Saban B., Mr Spong, argued that many women were already prostitutes and were familiar with the reputation of the brothers and that they sought protection from the suspects, taking the violence and threats for granted. He also added that the breast enlargements were the women's own choice just as it was their own choice to work as a prostitute (Kammerman & Wittenberg, 2009, "Geslagen, getatoeëerd en geprostitueerd", para. 11).

4.1.2 Analysis

Public Prosecutor Ten Kate admits that the *Sneep* case demonstrated that the abolishment of the ban on brothels had a counter effect for prostitutes. The offenders in this case abused the legality of the prostitution sector. From the outside nothing seemed wrong and the women appeared to "enjoy" their work but the opposite was true; they had to pretend enjoying their work and make money in order to avoid physical and mental abuse by the perpetrators (Italianer, 2009, "Lachende meisjes", p. 1-2). Due to the poor presentation by the PPS, the suspects were given lower sentences than had been demanded. Had the Court considered the

Council Framework Decision, the sentences should have been at least eight years of imprisonment, but judges in the Netherlands have judicial discretion.

4.2 Case: Operation Koolvis

There is currently a very important human trafficking case on trial: the *Koolvis* case in which members of an international human trafficking ring are on trial in the Netherlands, Italy and Nigeria. Ten of the suspects are on trial in Zwolle (the Netherlands) which started on 16 March 2009. Six of them are originally from Nigeria, three others from other African countries and one from Surinam. One of the suspects is a woman who is the wife of main suspect and leader of the gang in the Netherlands, Solomon O. (44). The Public Prosecutor is very excited: "Police broke new ground and it is resulting into a historical trial. This is the first time that we can try the whole gang. The cooperation of so many European countries is unique". He emphasised that this is not a case of the police only but he also compliments the social workers in the Netherlands who played an important role. (Kamerman & Wittenberg, 2009, "Operatie Koolvis", para. 71).

When in 2005 and 2006 many girls disappeared from shelters, suspicion rose that these girls were taken to other places in Europe and were working as prostitutes. Dutch police started an investigation. One and a half year ago, the police had discovered the Nigerian human trafficking gang during an international operation. The traffickers knew the Dutch asylum procedures and abused it. They are allegedly guilty of the disappearance of numerous Nigerian under aged women from Dutch shelters. The girls were then forced to work as prostitutes in France, Italy and Spain. The Netherlands was used as a transit country. The traffickers recruited these girls in Nigeria, gave them false travel documents and instructions for asylum application... They mostly used voodoo practices when recruiting the girls and made them take a vow with a voodoo priest that they would pay back the 'loan' for travelling to Europe.

This case became quite controversial when a Nigerian priest was asked to help 'break' the voodoo vows the girls had taken just to have them cooperate and report the crime. Only ten filed charges while about 140 girls disappeared from the shelters between 2006 and 2007. It appeared that once the girls worked in the sex industry, a Nigerian 'madam' had control over them. This could possibly be the one female suspect? Defence lawyers are not happy with the involvement of the priest because they feel the girls were being persuaded into telling a story that would fit nicely with the charges made against the suspects while, in return, the girls would be able to make use of the B9-regulation. Moreover one of the defence lawyers also believes that several of the girls were already working as prostitutes in Nigeria which makes them less innocent than they are trying to appear (Zuidervaat, 2009, "Megaproces vrouwenhandel begint in Zwolle", para. 11). This trial is still going on.

Conclusion

Abolishing the ban on brothels did not result in a crime-free prostitution sector. Monitoring the prostitution sector does not guarantee that there are no prostitutes working involuntarily. The two criminal cases

mentioned above demonstrate the threats and violence used and the fear and isolation of the women as well as how dependent they were. It is an illusion to think that the prostitution sector has been 'cleaned up' because it has become clear that human traffickers and pimps were able to "work their way" into the Dutch Red Light Districts. The judges in the case *Sneep* spoke about the abuse as 'degrading and severe'. This should have been enough for a minimum sentence of at least six years, especially when taken the Council Framework Decision into account. Article 273f CC does not (yet) seem to be a direct reflection of the EU Decision but parliament did approve the amendment of the minimum sentence. Unfortunately, the information on whom and where the victims are and how they are doing has not been disclosed and can therefore not be linked to the policy and law.

Conclusion

Human trafficking is an extremely oppressing type of international organised crime which destroys the lives of millions of people who are used as 'disposable objects'. Annually, hundreds of thousands of people are being trafficked across borders. It is morally suppressive, illegal, it robs people of their lives, it violates their human rights and it is a highly lucrative 'business'. Mainly women and girls become victims of the most common form of human trafficking: sex trafficking. The crime is a highly debated topic all over the world and at all levels. The United Nations plays a special role in trying to combat this crime by providing a general definition for 'human trafficking' which was internationally accepted. Countries dealing with human trafficking use this definition as a guideline and moreover as a legal definition which is included in criminal law. Europe is very much affected by sex trafficking and thus it is only obvious that the European Union has adopted several conventions and decision to ensure that Member States will take measures to combat the human trafficking at national level, but also to ensure that Member States protect (possible) victims and provide victims with assistance and care.

When it comes to sex trafficking, the Netherlands is a source, transit and destination country. Victims as well as offenders often have Dutch nationality. The number of victims, who report to NGOs, is rising each year. Human trafficking ranks high on the priority list of politicians and it is clear that it has to be tackled at several levels. Article 273f of the Dutch Criminal Code criminalises human trafficking. It is based on the UN definition but the Council Framework Decision was not taken into account in this Article; however, that is about to change. The amendment of Article 273f CC, raising the minimum (and maximum) sentence of the human trafficking offence is a positive development. Not only will the Article then be in line with the Council Framework Decision, but it will also make a statement to the public, the victims and the offenders. Justice Minister Hirsch Ballin and Deputy Justice Minister Albayrak have both acknowledged the fact that the Netherlands plays an important role in combating trafficking. They think that the Netherlands, as a source, transit and destination country, should take the lead in Europe and that Europe should cooperate with the Netherlands in order to successfully tackle this problem. In addition to the criminal law, the Netherlands also has several governmental and non-governmental organisations dealing with human trafficking. They all work together in different areas, such as investigation, criminal proceedings, protection of victims, or prevention of human trafficking. Unfortunately, it is not enough. Fact is that nine years after abolishing the ban on brothels, police are still discovering women who had been trafficked and are forced to work as prostitutes. One can say that the measures that were taken to prevent this, have not been sufficient. Research has shown how difficult it is to pick up the signs of human trafficking or having possible victims talk and report the crime. The requirements which victims must meet in order to receive assistance and protection as regulated by the B9-regulation are arguably too harsh on the victim. The B9 regulation is a temporary residence permit given to a victim *if* the victim cooperates with the investigation and act as a witness in the criminal proceedings against the offender. However, reality shows that it is still difficult for authorities to pick up the signs and/or to communicate with possible victims to find out more on their situation. Often the victim is taken for an illegal alien and is therefore taken into illegal alien custody. This is a rather traumatic

experience for victims, since they have already suffered lengthy physical and mental abuse. Moreover, it violates the human rights of the victim once more.

There have not been many human trafficking cases come to trial in the Netherlands. This is mostly because of the lack of evidence. The crime remains one of the more obscure ones which are very well controlled by the offenders. Additionally, victims rarely report the crime but their testimonies are an important aspect of the conviction. There are two major cases taken to the court: The *Sneep* case, in which the Court ruled in July 2008, and the *Koolvis* case which is still on trial at the time of writing. Jurisprudence shows that, so far, no offender has been given the maximum prison sentence of fifteen years. It often happens that the Prosecutor cannot present sufficient evidence or is unable to present the case properly in order to get the sentence it demanded. This results in very low prison sentences for the offenders who get free after a couple of years while the victims' lives are destroyed forever.

Recommendations

Great efforts have been made and are still being made to fight human trafficking. As the previous chapters show, there are still a number of shortcomings. This chapter contains recommendations which could improve these matters. (They are not listed in order of priority).

- The Netherlands should ratify the Council of Europe Convention on Action against Trafficking in Human Beings as soon as possible. The Convention includes that assistance to a victim may not depend on whether the victim is willing to act as a witness in the criminal proceedings. At this point, the Netherlands only applies the B9-regulation to victims who cooperate with the criminal proceedings. This means that the other victims are left out of this strict regulation and they are very likely to end up having an illegal status in the Netherlands. In addition, more victims could be willing to report the crime if guaranteed a safe place to stay. It is also important to ratify the Convention soon, because GRETA will be monitoring the status of the Convention in different countries.
- The B9-regulation should always be offered to possible victims. This is currently not always the case as reports show.
- Victims of human trafficking should not be held in illegal aliens' custody. This is too traumatic for them.
- Special training could help authorities to identify possible victims. This is important for once the possible victim is out of sight she will most likely never be found again and she will most likely have fallen into the hand of a trafficker or pimp. The damage done could already be too significant.
- The National Rapporteur should cooperate with the appropriate authorities to get more exact numbers of victims. Having that information would improve policy, prevention, protection,

investigation etc.

- The police should more intensely focus on the prostitution sector in order to fight illegal prostitution and involuntarily prostitution. This would also help tracing victims of human trafficking and possibly also offenders.
- Sex businesses operators, employing victims of human trafficking should be prosecuted for human trafficking.
- More efforts should be made to study the impact of prevention campaigns, especially the impact on possible victims of lover boys. Since the number of victims of lover boys is raising this has become a significant problem. There is a need for more prevention campaigns at schools.
- There should be more public awareness of sex trafficking in the Netherlands in general. It would not be surprising if a survey were to show that the majority of the Dutch think that sex trafficking does not exist in the Netherlands.
- The PPS should present cases of human trafficking properly in order to get the sentences they demand.
- Judges should punish offenders more severely.
- The Netherlands should continue international cooperation with countries of origin of the victims to set up prevention plans.

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- Appendix IV: Article 273f CC (non-official translation)

Appendix I: Nationality of the registered possible victims at Comensha, per year

Nationaliteit	2002		2003		2004		2005		2006	
	N	%	N	%	N	%	N	%	N	%
Afghaanse	-	-	-	-	1	0%	-	-	-	-
Albanese	8	2%	2	1%	8	2%	2	0%	1	0%
Algerijnse	1	0%	-	-	-	-	-	-	-	-
Angolese	3	1%	2	1%	2	0%	8	2%	2	0%
Antiguaanse/Barbudaanse	-	-	-	-	-	-	1	0%	-	-
Armeense	-	-	3	1%	3	1%	-	-	4	1%
Azerbeidzjaanse	-	-	-	-	-	-	-	-	1	0%
Bengalese	-	-	-	-	1	0%	-	-	3	1%
Belarussische	8	2%	-	-	12	3%	3	1%	-	-
Belgische	1	0%	-	-	-	-	2	0%	1	0%
Beninse	-	-	1	0%	1	0%	2	0%	-	-
Bosnische	1	0%	1	0%	-	-	1	0%	-	-
Braziliaanse	-	-	12	5%	5	1%	8	2%	17	3%
Britse	-	-	-	-	2	0%	-	-	-	-
Bulgaarse	59	17%	48	19%	55	14%	52	12%	39	7%
Burundische	1	0%	-	-	-	-	2	0%	1	0%
Canadese	-	-	-	-	1	0%	-	-	-	-
Chileense	-	-	-	-	-	-	-	-	2	0%
Chinese	8	2%	8	3%	9	2%	5	1%	29	5%
Colombiaanse	2	1%	1	0%	4	1%	1	0%	-	-
Comorese	-	-	-	-	-	-	-	-	1	0%
Congolese	3	1%	1	0%	-	-	3	1%	5	1%
Cubaanse	3	1%	-	-	2	0%	-	-	-	-
Dominicaanse	3	1%	-	-	2	0%	1	0%	-	-
Duitse	1	0%	1	0%	1	0%	2	0%	-	-
Ecuadoriaanse	1	0%	-	-	1	0%	-	-	-	-
Egyptische	-	-	-	-	-	-	-	-	-	-
Eritrese	-	-	-	-	1	0%	-	-	-	-

Nationaliteit	2002		2003		2004		2005		2006	
	N	%	N	%	N	%	N	%	N	%
Marokkaanse	4	1%	2	1%	11	4%	11	3%	9	2%
Mauritaanse	-	-	-	-	-	-	-	-	1	0%
Mexicaanse	-	-	-	-	1	0%	-	-	-	-
Moldavische	14	4%	1	0%	6	1%	2	0%	3	1%
Mongolische	2	1%	-	-	-	-	2	0%	1	0%
Namibische	-	-	-	-	-	-	1	0%	-	-
Nederlandse	18	5%	11	4%	59	15%	98	23%	146	25%
Nigeriaanse	45	13%	21	8%	39	10%	28	7%	86	15%
Noord-Koreaanse	-	-	-	-	-	-	1	0%	1	0%
Noorse	-	-	-	-	-	-	1	0%	-	-
Oekraïense	5	1%	14	5%	8	2%	10	2%	10	2%
Oezbekistaanse	-	-	-	-	2	0%	1	0%	-	-
Pakistaanse	-	-	-	-	1	0%	-	-	-	-
Poolse	9	3%	3	1%	8	2%	13	3%	27	5%
Portugese	-	-	-	-	-	-	1	0%	-	-
Roemeense	22	6%	31	12%	45	11%	23	5%	34	6%
Russische	16	5%	11	4%	14	3%	13	3%	12	2%
Rwandese	1	0%	-	-	1	0%	-	-	-	-
Senegalese	-	-	-	-	2	0%	1	0%	-	-
Sierra Leone	12	3%	11	4%	6	1%	14	3%	20	3%
Slowaakse	2	1%	2	1%	3	1%	10	2%	2	0%
Soedanese	1	0%	-	-	2	0%	1	0%	2	0%
Somalische	1	0%	1	0%	-	-	-	-	2	0%
Surinaamse	1	0%	1	0%	3	1%	1	0%	2	0%
Taiwanese	1	0%	1	0%	-	-	-	-	-	-
Tanzaniaanse	-	-	-	-	-	-	-	-	1	0%
Thaise	3	1%	5	2%	2	0%	2	0%	3	1%
Togoese	6	2%	2	1%	2	0%	2	0%	2	0%
Tsjechische	6	2%	3	1%	2	0%	18	4%	3	1%
Tunesische	-	-	-	-	-	-	-	-	1	0%
Turkse	5	1%	1	0%	2	0%	2	0%	5	1%
Ugandese	1	0	3	1	-	-	4	1%	-	-

Nationaliteit	2002		2003		2004		2005		2006	
	N	%	N	%	N	%	N	%	N	%
Vietnamese	-	-	-	-	3	1%	1	0%	-	-
Zimbabweaanse	-	-	-	-	-	-	2	0%	-	-
Zuid-Afrikaanse	-	-	-	-	-	-	-	-	2	0%
Onbekend	21	6%	19	7%	16	4%	27	6%	38	7%
Totaal	343	100%	257	100%	403	100%	424	100%	579	100%

Appendix II: United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, and the Protocol against the Smuggling of Migrants by Land, Sea and Air

**PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS,
ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS
CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

UNITED NATIONS

**2000 PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS,
ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS
CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3 Use of terms

For the purposes of this Protocol:

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

Article 4 Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5 Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6 Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

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

Article 7

Status of victims of trafficking in persons in receiving States

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

Article 8

Repatriation of victims of trafficking in persons

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

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from becoming victims again.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States 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.

5. States 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, which leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this

Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one Member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instruments of ratification, acceptance or approval if at least one of the member States has done likewise. In the instruments of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one Member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs

and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19 Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20 Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Appedix III: Council Framework Decision 2002/629

On Combating Trafficking in Human Beings

Council Framework Decision

Of 19 July 2002

On combating trafficking in human beings

(2002/629/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal of the Commission(1),

Having regard to the opinion of the European Parliament(2),

Whereas:

(1) The Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice(3), the Tampere European Council on 15 and 16 October 1999, the Santa Maria da Feira European Council on 19 and 20 June 2000, as listed in the Scoreboard, and the European Parliament in its Resolution of 19 May 2000 on the communication from the Commission "for further actions in the fight against trafficking in women" indicate or call for legislative action against trafficking in human beings, including common definitions, incriminations and sanctions.

(2) Council Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children(4) needs to be followed by further legislative action addressing the divergence of legal approaches in the Member States and contributing to the development of an efficient judicial and law enforcement cooperation against trafficking in human beings.

(3) Trafficking in human beings comprises serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.

(4) The UN protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organised crimes, represents a decisive step towards international cooperation in this field.

(5) Children are more vulnerable and are therefore at greater risk of falling victim to trafficking.

(6) The important work performed by international organisations, in particular the UN, must be complemented by that of the European Union.

(7) It is necessary that the serious criminal offence of trafficking in human beings be addressed not only through individual action by each Member State but through a comprehensive approach in which the definition of constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, forms an integral part. In accordance with the principles of subsidiarity and proportionality, this Framework Decision confines itself to the minimum required in order to achieve those objectives at European level and does not go beyond what is necessary for that purpose.

(8) It is necessary to introduce sanctions on perpetrators sufficiently severe to allow for trafficking in human beings to be included within the scope of instruments already adopted for the purpose of combating organised crime such as Council Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime(5) and Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union(6).

(9) This Framework Decision should contribute to the fight against and prevention of trafficking in human beings by complementing the instruments adopted in this area such as Council Joint Action 96/700/JHA of 29 November 1996 establishing an incentive and exchange programme for persons responsible for

combating trade in human beings and sexual exploitation of children (STOP)(7), Council Joint Action 96/748/JHA of 16 December 1996 extending the mandate given to the Europol Drugs Unit(8), Decision No 293/2000/EC of the European Parliament and of the Council of 24 January 2000 adopting a programme of Community action (the Daphne programme) (2000 to 2003) on preventive measures to fight violence against children, young persons and women(9), Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network(10), Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union(11) and Council Joint Action 98/427/JHA of 29 June 1998 on good practice in mutual legal assistance in criminal matters(12).

(10) Council Joint Action 97/154/JHA should accordingly cease to apply in so far as it concerns trafficking in human beings,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

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

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

(a) use is made of coercion, force or threat, including abduction, or

(b) use is made of deceit or fraud, or

(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or

(d) payments or benefits are given or received to achieve the consent of a person having control over another person

for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or

for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

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

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

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

Article 2

Instigation, aiding, abetting and attempt

Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable.

Article 3

Penalties

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

2. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty that is not less than eight years where it has been committed in any of the following circumstances:

(a) the offence has deliberately or by gross negligence endangered the life of the victim;

(b) the offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under national law and the offence has been committed for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography;

(c) the offence has been committed by use of serious violence or has caused particularly serious harm to the victim;

(d) the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA, apart from the penalty level referred to therein.

Article 4

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Articles 1 and 2, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person, or

(b) an authority to take decisions on behalf of the legal person, or

(c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 have rendered possible the commission of an offence referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in an offence referred to in Articles 1 and 2.

4. For the purpose of this Framework Decision, legal person shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Article 5

Sanctions on legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 4 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

(a) exclusion from entitlement to public benefits or aid, or

(b) temporary or permanent disqualification from the practice of commercial activities, or

(c) placing under judicial supervision, or

(d) a judicial winding-up order, or

(e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 6

Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1 and 2 where:

(a) the offence is committed in whole or in part within its territory, or

(b) the offender is one of its nationals, or

(c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) as far as the offence is committed outside its territory.

3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 1 and 2 when it is committed by its own nationals outside its territory.

4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 7

Protection of and assistance to victims

1. Member States shall establish that investigations into or prosecution of offences covered by this Framework Decision shall not be dependent on the report or accusation made by a person subjected to the offence, at least in cases where Article 6(1)(a) applies.

2. Children who are victims of an offence referred to in Article 1 should be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings(13).

3. Where the victim is a child, each Member State shall take the measures possible to ensure appropriate assistance for his or her family. In particular, each Member State shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family referred to.

Article 8

Territorial scope

This Framework Decision shall apply to Gibraltar.

Article 9

Application of Joint Action 97/154/JHA

Joint Action 97/154/JHA shall cease to apply in so far as it concerns trafficking in human beings.

Article 10

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision before 1 August 2004.

2. By the date referred to in paragraph 1, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Council will, by 1 August 2005 at the latest, on the basis of a report established on the basis of this information and a written report transmitted by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

Article 11

Entry into force

This Framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at Brussels, 19 July 2002.

For the Council

The President

T. Pedersen

(1) OJ C 62 E, 27.2.2001, p. 324.

(2) OJ C 35 E, 28.2.2002, p. 114.

(3) OJ C 19, 23.1.1999, p. 1.

(4) OJ L 63, 4.3.1997, p. 2.

- (5) OJ L 333, 9.12.1998, p. 1. Joint Action as last amended by Framework Decision 2001/500/JHA (OJ L 182, 5.7.2001, p. 1).
- (6) OJ L 351, 29.12.1998, p. 1.
- (7) OJ L 322, 12.12.1996, p. 7.
- (8) OJ L 342, 31.12.1996, p. 4.
- (9) OJ L 34, 9.2.2000, p. 1.
- (10) OJ L 191, 7.7.1998, p. 4.
- (11) OJ L 105, 27.4.1996, p. 1.
- (12) OJ L 191, 7.7.1998, p. 1.
- (13) OJ L 82, 22.3.2001, p. 1.

Appendix IV: Article 273f CC (non-official translation)

1. Any person who:

- (a) by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;
 - (b) recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
 - (c) recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
 - (d) forces or induces another person by the means referred to under (a) to make himself/herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
 - (e) induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
 - (f) wilfully profits from the exploitation of another person;
 - (g) wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (a);
 - (h) wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration, when this other person has not yet reached the age of eighteen years;
 - (i) forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;
- shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years and a fifth category fine*, or either of these penalties:

2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.

3. The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine*, or either of these penalties:

- (a) offences as described in the first paragraph if they are committed by two or more persons acting in concert;
- (b) offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.

4. The offences as described in the first paragraph, committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 under (b), shall be punishable with a term of imprisonment not exceeding ten years and a fifth category fine*, or either of these penalties.

5. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine*, or either of these penalties.

6. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine*, or either of these penalties.

7. Article 251 is applicable *mutatis mutandis*.

*A fifth category fine is a fine of maximum € 67.000.