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Anti-trafficking Legislation in the European Union and Selected Foreign Countries

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ANTI- TRAFFICKING LEGISLATION

BELGIUM

Executive Summary

Belgium amended its anti-trafficking legislation in August 2005 to bring it into line with international and European instruments. A specific offense of trafficking in human beings was created. Reception and assistance for trafficked victims is provided by three centers approved and funded by the government. Victims who leave their exploitive environments and cooperate with the authorities enjoy the status of trafficked victims. They receive a temporary residence permit and an open-ended residence permit when their complaint or cooperation leads to a conviction. The fight against trafficking in human beings is a priority of the Belgian government. It advocates strong cooperation with other Member States of the European Union. Police cooperation has been strengthened through many bilateral agreements.

I. Introduction

Belgium is a destination country for women trafficked for the purposes of sexual exploitation and forced labor. According to recent statistics, a majority of the victims of sexual exploitation were from Eastern Europe, notably Bulgaria, Romania, Russia, Albania, Ukraine, and Moldavia, while 17.8 percent came from Nigeria. These women were in their early twenties. A majority of the victims of forced labor came from Asia; twenty percent of them were from China. Most of the other victims were from Equator, Morocco, Romania, Nigeria, and Ghana. Approximately 42.6 percent were women in their late twenties.¹

Belgium is also a transit country. More than fifty percent (57.5%) of the trafficking victims were from Asia, particularly China (22.6%), Iran (13.4%) and Iraq (5.9%). One-fourth of the victims came from Europe, notably Albania. There were slightly more men than women, and the median age was twenty seven years old.²

Belgium amended its anti-trafficking legislation in August 2005³ to bring it into line with international and European instruments, including the UN Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking, Especially in Women and Children, known as the “Palermo Protocol,” which complement the United Nations Convention against Transnational Organized Crime and the 2002 European Union Council’s Framework Decision on Combating Trafficking in Human Beings.⁴

¹ Centre pour l'égalité des chances et la lutte contre le racisme [Center for Equal Opportunities and to Fight Racism], *Les victimes sous les projecteur* 94-96 (July 2007), available at http://www.diversiteit.be/CNTR/FR/about_the_center/publications/report_traffic/.

² *Id.*

³ Law of Aug. 10, 2005, amending Various Provisions with a View to Reinforce the Fight against Trafficking in Human Beings and against Practices by Slum Landlords, LE MONITEUR BELGE [Belgian Official Gazette], Sept. 2, 2005, at 38454.

⁴ Chambre des Représentants [House of Representatives], *Explanatory Memorandum of the Bill Amending Various Provisions in Order to Step Up Action against Trafficking in and Smuggling of Human Beings*, 2004-2005, 51-1560/001, at 1 to 8, available at <http://www.lachambre.be/FLWB/pdf/51/1560/51K1560001.pdf>.

II. Definition

The Law of August 10, 2005, added a new chapter to the Penal Code addressing trafficking in human beings and making it a specific offense.

Trafficking in human beings is defined as:⁵

The offense of trafficking in human beings is constituted by the act of recruiting, transporting, transferring, harboring, receiving a person or passing or transferring control over that person in order to:

1. allow the commission against that person of offenses set forth in article 379 [promoting corruption, debauchery, or prostitution of a minor], 380, §1 and §4, [promoting debauchery or prostitution of an adult and exploiting the debauchery or prostitution of another] and 383bis, §1 [child pornography];
2. allow the commission against that person of the offense set forth in article 433ter [exploitation of begging];
3. to employ that person in conditions incompatible with human dignity or to allow him/her to be thus employed;
4. to remove or allow the removal from that person of organs or tissues in violation of the Law of June 13, 1986, on the Removal and Transplantation of Organs; or
5. to force this person to commit a felony or misdemeanor;

Apart from the case referred to in 5, the consent of the person to the considered or effective exploitation is irrelevant.

As a result of this definition, the offense of trafficking in human beings is concerned with all victims, whether they are Belgian or foreign nationals. The elements of the offense are an act (recruitment, transporting, receiving) and a purpose, the exploitation of the victim (exploitation of prostitution, begging, employment under conditions contrary to human dignity, removal of organs, and coercion to commit a criminal offense). This exploitation need not have been actually carried out.⁶ It should be noted that the means to acquire the consent (threat, coercion, violence, etc.) featured in some of the international agreements such as the Palermo Protocol and the European framework decision are not an element of the offense in the Belgian Code, but rather aggravating circumstances as seen below in the section on penalties.

The 2005 Law also added articles to the Penal Code creating the specific offenses of exploitation of begging⁷ and being a slum landlord, defined as “abusing the vulnerability of a person due to her precarious or unlawful administrative situation by selling, renting, or providing property with the aim of making an abnormal profit and under conditions incompatible with human dignity, in such a way that the person has no other choice but to submit to the abuse.”⁸ It also amended the Law of December 15, 1980, on Access to the Territory, Residence, Establishment, and Removal of Foreign Nationals. It added article 77bis to that Law aimed at preventing smuggling of human beings for lucrative purposes:⁹

Constituted in the offense of trafficking in human beings, is the act of facilitating, in any way, directly or through an intermediary, the entry, transit or residence of a non-European Union national, on or through the territory of such a state or a state that is a party to an international

⁵ CODE PENAL, art. 433quinquies §3, II LES CODES LARCIERS, DROIT PÉNAL (Larcier 2006) (commercial source used extensively by attorneys and judges). Passages translated by the author of this report.

⁶ Explanatory Memorandum, *supra* note 4, at 20.

⁷ CODE PENAL, art. 433ter.

⁸ *Id.*, art. 433decies.

⁹ Law of Aug. 10, 2005, amending Various Provisions with a View to Reinforce the Fight against Trafficking in Human Beings and against Practices by Slum Landlords, art. 29. (Translation by author of this report).

agreement on the crossing of external borders obligating Belgium, in violation of the legislation of that state, to obtain directly or indirectly a patrimonial profit.

This offense is punished with the same penalties as the offense of trafficking in human beings defined above. The aggravating circumstances and penalties are also similar.¹⁰

III. Prosecution, Penalties, and Punishment

Prosecution

A circular issued by the Ministry of Justice sets forth the framework and uniform criteria to fight trafficking in human beings in the various judiciary districts of the country.¹¹ The circular clarifies the concept of human dignity in the case of exploitative labor. This concept is not well defined and has resulted in conflicting interpretation by the courts. The circular specifies that the perception of the victim on his/her work conditions is irrelevant and that those interpreting the concept should refer to the European Union's standard, values, and criteria, including no wage or too a low wage for the services undertaken, poor or hazardous working conditions, restrictions of movement, holding passports or other identity papers, and threats and/or use of physical or sexual violence.¹²

In each Prosecutor's office and labor court, a liaison magistrate for the fight against trafficking is appointed. The missions of these magistrates include: following all important cases related to trafficking, gathering all judicial decisions on trafficking, organizing at least once a year a meeting with all the associations that specialize in assisting trafficked victims, and preparing reports outlining improvements that could be put into effect.¹³

The circular also sets out the priorities of the prosecutor's offices throughout the country in their search and prosecution of traffickers in human beings. Priority is given to young victims, cases with a high degree of encroachment on human dignity, and cases with the use of violence and threats. The second level of priority includes cases with the involvement of a criminal organization and cases in which there is great social impact due to the trafficking.¹⁴

The police must use the same form to collect information when conducting verifications and controls throughout the country. This information is passed on to the Central Unit on Trafficking in Human Beings of the federal police (*Cellule traite des êtres humains*). This unit analyses the information and determines the extent of the phenomena and the sectors at risks. The information is then passed on to the liaison magistrates to help them define the priorities.¹⁵

Finally, the circular provides that even though trafficked victims generally entered the country unlawfully, they must be first viewed as victims and not illegal immigrants and must be sent to centers that specialize in reception and assistance for trafficked victims.¹⁶

Penalties

¹⁰ *Id.*, arts 30, 31 32.

¹¹ Centre pour l'égalité des chances et la lutte contre le racisme, *supra* note 1, at 25-27.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Trafficking in human beings is punishable by one to five years of imprisonment and a €500 to €50,000 fine (as of Mar. 17, 2008, about US\$770 to \$77,000). Attempting to commit trafficking is punishable by one to three years of imprisonment and a €100 to €10,000 fine.¹⁷

Penalties are increased to five to ten years of imprisonment and a €1,000 to €100,000 fine when committed by: (1) a person who has authority over the victim or a person who has abused the authority bestowed by his/her functions; or (2) by an officer or a public servant acting while on duty.¹⁸

They are further increased to ten to fifteen years of imprisonment and a €1,000 to €100,000 fine where:¹⁹

- committed in respect of a minor;
- committed by taking advantage of the vulnerability of a person, due to immigration status, precarious social situation, a state of pregnancy, illness, disability, or physical or psychological deficiency, in such a way that the person has no other choice but to submit to the abuse;
- committed using directly or indirectly fraudulent behavior, violence, threats, or any other form of coercion;
- endangering the victim's life, whether deliberately or by grave negligence;
- causing an incurable illness or a permanent physical or psychological incapacity, the complete loss of use of an organ, or a grave mutilation;
- the concerned activity is an usual activity;
- the activity constitutes an act of participation in the main or accessory activity of an association, whether or not the offender has the quality of director.

The penalties are increased to fifteen to twenty years of imprisonment and a €1,000 to €150,000 fine where (1) the offense resulted in the death of the victim without intent to cause such death; and (2) the offense constitute an act of participation to the activity of a criminal organization.²⁰

IV. Victim Protection, Assistance, and Cooperation

General Rights

Victims of crimes may obtain compensation for damages suffered either before a civil court or as a civil party to the criminal procedure.²¹ The Commission for the Protection of Witnesses may grant protection to witnesses under threat and to members of their families, if necessary. It may also grant financial support.²² Witnesses may also be granted full or partial anonymity.²³

Assistance Infrastructure

The *Centre pour l'égalité des chances et la lutte contre le racisme*, (Center for Equal Opportunities and to Fight Racism), an independent federal public service linked to the Prime Minister's office, coordinates and promotes cooperation among the various private services that specialize in

¹⁷ CODE PENAL, art. 433quinquies, § 2 & § 3.

¹⁸ *Id.*, art. 433sexies.

¹⁹ *Id.*, art. 433septies.

²⁰ *Id.*, art. 433octies.

²¹ CODE D'INSTRUCTION CRIMINELLE, art. 4, II Les Codes Larciens, Droit Pénal (Larcier 2006) (commercial source used extensively by attorneys and judges).

²² *Id.*, arts. 103 and subsequent.

²³ *Id.*, art. 75bis.

assisting trafficked victims. It sets performance standards for the three regional specialized reception centers for trafficked victims that are approved and funded by the government.²⁴ These shelters provide victims with legal, administrative, social, and medical services. They have a reception center at a secret location for victims needing special protection.²⁵

Trafficked Victim Status

In 2006, the Belgium Parliament amended the 1980 Law on Access to the Territory, Residence, Establishment, and Removal of Foreign Nationals.²⁶ In addition, a Royal Decree of April 27, 2007,²⁷ transposes into national law European Union Council Directive 2004/81/EC of April 29, 2004, on the residence permits issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.²⁸ The new legislation establishes a “trafficked victim status” for foreign nationals.

The procedure unfolds in several phases:

1. when police officers detect that a foreign national is a victim of trafficking, they inform the victim of the possibility of obtaining a provisional residence permit if he/she agrees to cooperate with the authorities, and they refer the victim to a specialized reception center;²⁹
2. the Interior Minister or his representative delivers an order to leave the territory at the end of a forty-five-day reflection period. This period is designed to enable the trafficked victim to decide whether to lodge a complaint or to cooperate with the authorities; the trafficked victim receives assistance from one of the specialized reception center during the period;³⁰
3. if the foreign national either lodges a complaint or cooperates with the authorities within forty-five days, the specialized reception center in charge of assisting him/her requests from the Office of Foreign Nationals a provisional residence permit valid for three months; it may be extended once for an additional three months.³¹
4. before the expiration of the three-month permit, the Office of Foreign Nationals asks the Public Prosecutor’s office or the labor auditor whether: (1) the victim is still regarded as a trafficked victim, (2) the inquiry is still underway, (3) the victim has cut all ties with the alleged offenders, and (4) the victim shows a clear will to cooperate. If the answer is yes

²⁴ Centre pour l’égalité des chances et la lutte contre le racisme, *Rôle du Centre*, http://www.diversiteit.be/CNTR/FR/human_trafficking/RoleCentre/ (last visited Mar. 11, 2008).

²⁵ Centre pour l’égalité des chances et la lutte contre le racisme, *Centres d’accueil spécialisés*, http://www.diversiteit.be/CNTR/FR/human_trafficking/centres+victims/ (last visited Mar. 11, 2008).

²⁶ Law of Sept. 15, 2006, amending the Law of Dec. 15, 1980, on Access to the Territory, Residence, Establishment and Removal of Foreign Nationals, LE MONITEUR BELGE, Oct. 10, 2006, at 53533.

²⁷ Royal Decree of Apr.27, 2007, amending Royal Decree of Oct. 8, 1981, on Access to the Territory, Residence, Establishment and Removal of Foreign Nationals, LE MONITEUR BELGE, May 21, 2007, at 27242.

²⁸ Council Directive 2004/81/EC of Apr.29, 2004, on the residence permit issued to third country-nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, O.J. L261, Aug. 6, 2004, at 19.

²⁹ Law of Sept. 15, 2006 amending the Law of Dec. 15, 1980, on Access to the Territory, Residence, Establishment, and Removal of Foreign Nationals, art. 65.

³⁰ *Id.*

³¹ *Id.*, art. 66.

to all questions, the victim is issued a six-month residency permit. It should be noted that the authorities may at any time rescind the permit if it is established that the victim has voluntarily resumed his/her ties with the alleged offender or if the victim is a threat to public order.³²

5. finally, when the complaint or cooperation leads to a conviction, the victim is issued an open-ended residence permit.³³

Protection of minors who are victims of trafficking is essentially the same, except that they are immediately issued a three-month permit without having to cooperate. In addition, the law provides that the best interests of the child must be taken into account throughout the procedure.³⁴

V. Cooperation with Other Governments

The fight against trafficking in human beings is a priority of the Belgian government, which, to the greatest extent possible, harmonizes its policy with international policy, primarily with European Union policy, instruments, and regulations.³⁵ Belgium was instrumental in promoting the Council of Europe Convention on Action against Trafficking of Human Beings.

The Central Unit on Trafficking in Persons of the federal police is the contact point for Europol and Interpol. Bilateral cooperation exists with a number of countries' law enforcement authorities and is also handled by the Central Unit. Agreements have been concluded with Albania, Bulgaria, France, Latvia, Lithuania, Romania, and Slovenia. In 2004, Belgium, Luxembourg, and the Netherlands entered into a treaty on trans-borders cooperation. The 2006 annual report of the federal police shows, for example, that the cooperation with Bulgaria was very successful. The exchange of information resulted in important arrests and in the detection of several networks.³⁶

The 2005 activity report of the Ministry of Foreign Affairs shows that Belgium also contributed to the fight against trafficking through financial help. Financial contributions were made to support OSCE projects or directly to fund other projects.³⁷

VI. Extraditable Offenses and Extraterritorial Jurisdiction

Extraditable Offenses

Except in the case of extradition within the European Union, extradition is either governed by Belgium's general provisions on extradition or by an extradition treaty. The general law on extradition defines extraditable offenses as acts punished by imprisonment for at least one year, and dual criminality is required.³⁸

³² *Id.*, arts. 66, 67.

³³ *Id.*, art. 68.

³⁴ *Id.*, art. 65.

³⁵ Royal Decree of May 16, 2004, on the fight against trafficking in human beings, Preamble, LE MONITEUR BELGE, May 28, 2004, at 41834.

³⁶ Police Fédérale, 2006 ANNUAL REPORT, http://www.polfed-fedpol.be/police/panels/files_fr/\Rapport_annuel_police_federale_2006.pdf (last visited Mar. 11, 2008).

³⁷ Service Public Federal, AFFAIRES ETRANGÈRES, 2005 ACTIVITY REPORT, <http://www.diplomatie.be/fr/pdf/Activity%20report/2005/rapportActivite.pdf> (last visited Mar. 11, 2008).

³⁸ Law of Mar. 15, 1874, on Extradition as amended, II Les Codes Larciers, Droit Pénal 521, (Larcier 2006) (commercial source used extensively by attorneys and judges).

In the European Union, the European Arrest Warrant has replaced extradition procedures between Member States. A Law of December 19, 2003, on the European Arrest Warrant, established the warrant in Belgium. The dual criminality requirement has been abolished for thirty-two categories of offenses, including trafficking in human beings.³⁹

The Extradition Treaty between the United States and the Kingdom of Belgium defines extraditable offenses as acts punished under the laws of both States by deprivation of liberty for a maximum of at least one year or by a more severe penalty.⁴⁰

Extraterritorial Jurisdiction

Belgian nationals or any person having his/her main residence in Belgium may be prosecuted in Belgium for *crimes* or *délits*⁴¹ committed abroad, if the offense committed is also punishable under the legislation of the country where the offense took place.⁴²

In addition, foreign nationals may be prosecuted in Belgium when they commit abroad a grave violation of humanitarian law, if the victim is a Belgian national or a person who has been living habitually and lawfully in Belgium for at least three years.⁴³ Violations of humanitarian law include, among others, slavery, sexual slavery, and forced prostitution.⁴⁴

Finally, any person who commits one of the following offenses abroad may be prosecuted in Belgium: promoting corruption, debauchery, or prostitution of a minor; promoting or exploiting debauchery or prostitution of an adult; child pornography; or aggravated trafficking in human beings. For these crimes, there is no requirement that the offense committed be punishable under the legislation of the country where it took place.⁴⁵

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³⁹ Law of December 19, 2003 on European Arrest Warrant, II Les Codes Larciers, Droit Pénal 534 (Larcier 2006).

⁴⁰ Extradition Treaty between the United States and the Kingdom of Belgium, signed Mar. 17, 1987, and in force from Sept. 1, 1997, 2093 UNTS 263.

⁴¹ In broad terms, Belgian law distinguishes three categories of offenses: *crimes* are a small category of very serious offenses (such as murder or rape), *délits* are less serious (theft, assault, fraud), and *contraventions* include a large range of regulatory offenses often of strict liability.

⁴² CODE D'INSTRUCTION CRIMINELLE, art. 7.

⁴³ *Id.*, art. 10.

⁴⁴ CODE PENAL, art. 136bis.

⁴⁵ CODE D'INSTRUCTION CRIMINELLE, art. 10ter.

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ANTI-TRAFFICKING LEGISLATION
DENMARK

Executive Summary

Human trafficking is a criminal offense under the Danish Criminal Code. With the adoption of criminal liability for human trafficking, Denmark implemented the Palermo Protocol in Danish law. The Danish government adopted an action plan in 2007 which proposes many initiatives to fight human trafficking and support its victims. Today most victims of human trafficking in Denmark are women who have been forced to come to Denmark for sexual exploitation. Many of the initiatives that the Government has taken or is proposing through its action plan aim to give these women the support and help they need to safely return to their countries of origin. Denmark does allow for extradition of persons, including both foreign and Danish citizens, who have committed certain crimes abroad.

I. Definition of Trafficking

Human trafficking was criminalized in Denmark through the adoption of section 262a in the Danish Criminal Code. Section 262a is based on the Palermo Protocol¹ and through its adoption the Palermo Protocol was implemented in Danish law.² The section is also based on the European Union Council Framework Decision 2002/629/JHA of July 19, 2002, on combating trafficking in human beings.³ The Danish criminalization of human trafficking in 2002 thereby comprises the definition of human trafficking as found in these two documents.

Article 3 of the Palermo Protocol states:

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;

¹ 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, available at <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf> (official Web site of the UN).

² Handlingsplan til bekæmpelse af handle med mennesker 2007-2010, Mar. 8, 2007, available at http://www.lige.dk/files/PDF/2007_Menneskehandel.pdf (official Web site of the Ministry of Gender Equality).

³ Official Journal L 203, Aug. 1, 2002, at 1.

(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 eighteen years of age.

Article 1 of the EU Council Framework decision states:

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.

II. Prosecution, Penalties, and Punishment

According to section 262a of the Danish Criminal Code, anyone who recruits, transports, transfer, harbors, or subsequently receives a person where the following has been used, or using

- unlawful coercion pursuant to section 260 of the Criminal Code;
- deprivation of liberty pursuant to section 261 of the Criminal Code;
- unlawful induction, corroboration, or exploitation of a delusion;
- other unseemly conduct with the purpose of using the victim for sexual immorality, forced labor, slavery or slavery-like conditions, or removal of organs

is guilty of human trafficking.

In the same manner any person who, for the purpose of exploiting someone for sexual immorality, forced labor, slavery, slavery-like conditions or removal of organs,

- recruits, transports, transfers, harbors, or subsequently receives a person under the age of eighteen; or
- renders payment or other favors to obtain consent to the exploitation from a person who has guardianship over the victim and any person who receives such payment or other favors

is guilty of human trafficking.⁴

Human trafficking is punishable by up to eight years in prison.

III. Victim Protection, Assistance, and Compensation

In 2007 the Danish Government adopted an action plan against human trafficking. The action plan is funded through state funds and will run until 2010.⁵ The action plan aims to find ways to help women, children and men who are victims of human trafficking. The victims of human trafficking in Denmark are still mostly women, who come mainly from Africa, Eastern Europe, and Thailand, and they are in Denmark as a result of human trafficking for sexual exploitation.⁶ The plan focuses on three areas: (1) human trafficking involving women for sexual exploitation, (2) human trafficking involving children, and (3) human trafficking involving forced labor. Certain initiatives that the Danish Government is focusing on to help victims of human trafficking and to stop its occurrence are offered to victims who fall in any of the three areas. The Danish Government has previously run an action plan, which expired in 2006, directed at women who were victims of human trafficking. As a result of that action plan a telephone hotline was established. The hotline now serves all victims of human trafficking and has a broader target group which will include experts and professionals who work with human trafficking. The hotline will offer advice and referrals to the appropriate authorities and organizations.⁷

According to the action plan professionals who come into contact with victims of human trafficking need to be educated about the crime, its background, the victims' rights and what support systems exist in Denmark, to better serve the victim.⁸

It is the Government's aim, through the action plan, to establish a new and efficient organization of the work against human trafficking, both centrally and locally. One important part of the work against human trafficking is to find the victims. All persons who are victims of human trafficking should receive the same support, wherever they are in Denmark. The local efforts must be adjusted to the local circumstances and be coordinated so that resources are used efficiently. In order to meet these goals, to make the work against human trafficking more efficient, and to offer victims of human trafficking an improved and coordinated treatment while in Denmark, a center for information and coordination for human trafficking will be established

⁴ Bekendtgørelse af straffeloven (LBK No1260, Oct. 23, 2007) (official source).

⁵ Handlingsplan til bekæmpelse af handle med mennesker 2007-2010, Mar. 8, 2007, *available at* http://www.lige.dk/files/PDF/2007_Menneskehandel.pdf (official Web site of the Ministry of Gender Equality).

⁶ Handel med kvinder, Velfærdsministeriet, http://www.social.dk/ministeriets_omraader/udsatte_grupper/prostituerede/handel_med_kvinder.html (last visited Mar. 20, 2008) (official Web site of the Ministry of Social Welfare).

⁷ *Id.*

⁸ *Id.*

(*Videns- og Koordinationscenter for Menneskehandel, VKM*). Local teams will be established that report back to the central VKM.⁹

All victims of human trafficking have been given thirty days (with a possibility of extension) to stay in Denmark, during which they can be offered help and support. A victim who cooperates with the police and Danish authorities will now be given the opportunity to stay in Denmark one hundred days. Victims who are citizens of the European Union can stay three months.¹⁰

There is also a preventive aspect to the work against human trafficking. The action plan proposes that those who may potentially visit women to buy sexual services (prostitution is legal in Denmark), as well as the general population, receive information on how the victims of trafficking are treated and what they have been through. The Government's goals are that by 2009

- ten percent of Danish citizens know about human trafficking and know how to act if they get knowledge about incidents of human trafficking; and
- all children and at least forty percent of the women who are registered as working with prostitution receive support and help in organizing their return home.¹¹

Prostitution and Human Trafficking

It has been shown to be hard to differentiate between foreign women who work in prostitution in Denmark and foreign women who are victims of human trafficking in Denmark. Activities will therefore be directed toward all women who work in prostitution. The Danish government wants professionals in the field to get more training so that stronger action can be taken to support victims of human trafficking and to decrease demand. Women react very differently when they are separated from their captors; some go through post-traumatic stress syndrome and some go through denial. It is important that all victims be given support from the social workers and psychologists as well as legal help. International networks should be expanded in the countries of origin so that the women can be offered support when they return home.¹²

Children

The goal of the Danish government is that there should be no children in Denmark who are victims of human trafficking. Children will be offered "safe-housing" in Denmark, and authorities will prepare their return home in the best possible way. Children will be given the psychological support they need while in Denmark, as well as medical attention. Children also have the right to education while in Denmark. It is important that information that social authorities and non-governmental organizations receive about human trafficking is forwarded to the police, so that the police may take appropriate action.

⁹ *Id.*

¹⁰ Handlingsplan til bekæmpelse af handle med mennesker 2007-2010, Mar. 8, 2007, available at http://www.lige.dk/files/PDF/2007_Menneskehandel.pdf (official Web site of the Ministry of Gender Equality).

¹¹ Handel med kvinder, Velfærdsministeriet, http://www.social.dk/ministeriets_omraader/udsatte_grupper/prostituerede/handel_med_kvinder.html (last visited Mar. 20, 2008) (official Web site of the Ministry of Social Welfare).

¹² Handlingsplan til bekæmpelse af handle med mennesker 2007-2010, Mar. 8, 2007, available at http://www.lige.dk/files/PDF/2007_Menneskehandel.pdf (official Web site of the Ministry of Gender Equality).

Children who are alone in Denmark and who are applying for asylum will be assigned a personal representative who will help them and look after their interests. Children who are not granted asylum can still apply for residence if it would be indefensible to send the child back home, for example in situations where the child does not have any family. Generally, the goal is to reunite the child with his parents.¹³

Forced Labor

As of January 2007, there was no indication that there were any victims of forced labor in Denmark.¹⁴

IV. Cooperation with Other Governments

As part of the Foreign Ministry's Neighborhood Program support has been given to work against human trafficking in Eastern Europe, with 29.4 million DKK (about US\$6,049,648) provided between 2006 and 2008. The program is mostly directed at initiatives in Belarus, Moldavia, and the Ukraine, but also includes Bulgaria and Romania. The program is proposed to continue until at least 2012. The purpose of the program is to support local authorities, international organizations, and non-governmental organizations working against human trafficking. The program includes preventative work as well as support for victims. There is also a regional component which aims to strengthen the cooperation between organizations in the countries of origin of victims of human trafficking.¹⁵

The Regions of Origin Initiative is a political venture which offers economic and social contributions to areas sending significant numbers of migrants to Europe, for example Asia, Africa, and the Middle East.¹⁶ The aim is to help support the local migration authorities to help find alternatives to migration. These programs become increasingly important as it is hard to separate those immigrants who migrate willingly from those who are forced.¹⁷

V. Extraditable Offences

A person in Denmark who is suspected, charged, or convicted of committing a crime in another country, can be extradited in accordance with Act No 833 of August 25, 2005.¹⁸ Generally, the Minister of Justice can agree, on the basis of an agreement with another country outside the European Union (EU), to extradite a Danish citizen for punishment in the other state:

- if the person in question during the two years before committing the crime has lived in the other state, and the action for which extradition is requested is punishable by up to at least one year in prison according to Danish law; or

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ More information about Regions of Origin Initiative is in Ministry of Foreign Affairs, *Regions of Origin Initiative*, Sept. 26, 2005, available at <http://www.publications.um.dk/english/PUBL.asp?page=publ&objno=250003717>.

¹⁷ *Id.*

¹⁸ Bekendtgørelse af lov om udlevering af lovovertrædere (LBK No 833, Aug.25, 2008) (official source).

- if the act is punishable by more than four years in prison.¹⁹

A foreigner can be extradited to a country outside the EU if the crime is punishable in Denmark by at least one year in prison.²⁰

Extradition for prosecution or execution of a sentence in a member state of the EU for an offense that, under the law of the member state that requested the extradition, is punishable by imprisonment or detention in another institution for at least three years, can be effected on the basis of a European Arrest Warrant, although a corresponding act is not punishable under Danish law. The law lists thirty-two acts which fall under the scope of this section and includes human trafficking, terrorism and human smuggling.²¹

Extradition of a person to another member state in the EU for actions that are not covered in the first paragraph relayed above can, on the basis of an EU Arrest Warrant, be accomplished if the criminal act is punishable by at least one year in prison and the act would be punishable in Denmark.²²

Extradition of a person to another member state for actions that are not covered by what is stated above can be allowed on the basis of an arrest order, if the person has been sentenced to prison or other institutional detention for at least four months and the act is criminalized in Danish law.²³

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¹⁹ *Id.*, at chap. 2, § 2.

²⁰ *Id.* at chap. 2, § 2 a.

²¹ *Id.* at chapt. 2a, § 10a., ¶ 1.

²² *Id.* at chapt. 2a, § 10a, ¶ 2.

²³ *Id.*

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ANTI-TRAFFICKING LEGISLATION
EUROPEAN UNION

Executive Summary

The EU has espoused a comprehensive approach to prevent and combat trafficking in humans. The EU has been particularly active in developing closer cooperation between police, customs, and judicial authorities of the Member States, as an effective tool to fight local and cross-border trafficking. It has also adopted several legislative measures that regulate various aspects of trafficking. The main measure is the 2002 Framework Decision on Combating Trafficking in Human Beings, which criminalizes the sexual or labor exploitation of persons, mainly women and children. Framework Decision 2001/220/JHA establishes minimum standards for the protection of victims of crimes in general and also includes measures to provide assistance to victims prior to and after the criminal proceedings. Directive 2004/81/EC regulates the issue of residence permits for victims of trafficking, and Directive 2004/80/EC contains the requirement that crime victims are entitled to compensation by the Member State where the crime was committed.

Two European bodies, European Police Office and Eurojust, have competence and specialized staff to deal with trafficking and assist national authorities. Moreover, the Expert's Group on Trafficking in Human Beings, which plays an advisory role to the European Commission, has advocated the need to integrate a human rights approach to the trafficking phenomenon in the development of policies and in evaluating the existing legal instruments. The European Commission in 2005 adopted a Communication on Preventing and Combating Trafficking in Human Beings which advocates best practices, standards, and mechanisms to prevent and combat trafficking.

Finally, in order to tackle the trafficking phenomenon more effectively, the EU makes funding available to programs endorsed by the Member States designed to improve cooperation and best practices among Member States and with third countries.

I. Introduction

Trafficking in human beings has dramatically increased in the European Union during the last five years, as more victims are trafficked in the territory of the Member States, particularly from the Russian Federation, Ukraine, and Central and South Europe.¹

Among the key objectives of the European Union is to provide its citizens with a high level of safety and security.² To achieve this objective, the Union is authorized to take action, including legislative measures to prevent and combat ordinary crime, organized crime, and “in particular terrorism,

¹ *Trafficking Human Beings in the European Union: A Europol Perspective*, EUROPOL, May 2007, available at http://www.europol.europa.eu/publications/Serious_Crime_Overviews/THB_FactSheet2007.pdf.

² Art. 29 (ex. Art. K.1), Title VI on Provisions on Police and Judicial Cooperation in Criminal Matters, Treaty of Amsterdam, Oct. 2, 1997, available at <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf> (official source).

trafficking in persons and offenses against children ...”³ Trafficking in human beings is also explicitly prohibited by article 5, paragraph 3 of the Charter of Fundamental Rights. This prohibition derives directly from the right to human dignity and takes under consideration recent developments in organized crime and sexual exploitation networks. The Charter, which currently is a mere political agreement, will acquire binding force upon the ratification and entry into force of the Lisbon Treaty.⁴

The European Union’s legal mandate empowers the Union to take a three-pronged approach in its efforts to effectively tackle the issue of trafficking. Thus, it has been active in: a) developing closer cooperation between police and customs authorities in the Member States, either directly or through the European Police Office (Europol); b) enhancing closer cooperation between judicial and other competent authorities of the Member States; and c) initiating legislation on criminal issues in order to harmonize the diverse legislation on trafficking in the Member States.

The Commission is assisted by the Experts Group on Trafficking in Human Beings, a consultative group that was established in 2003.⁵ The Group issues opinions and reports for the Commission.⁶ Its 2004 Report on Trafficking in Human Beings stresses that the policy of the EU institutions and the Member States must shift from measures in the field of crime control and migration policies to a human rights approach, by providing and facilitating assistance, protection, and compensation. In 2005, the European Commission adopted a Communication on Fighting Trafficking in Human Beings: An Integrated Approach and Proposals for an Action Plan.⁷ Among the practical recommendations to the Member States, the Commission suggests applying the Council Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities, and Property in cases involving trafficking.

The EU provides funds for programs to strengthen cooperation and best practices among EU Members. In particular, the Structural Funds provide financial support and assistance to victims and facilitate the economic and social integration in society of victims of human trafficking. The Community initiative EQUAL also is designed to support the social and vocational integration of its beneficiaries.

At the international level, in December 2000, the European Commission signed, on behalf of the Community, the United Nations Convention against Transnational Organized Crime and the two protocols, one against trafficking in persons (the Palermo Protocol) and the other against smuggling of migrants by land, air, and sea.⁸ It ratified the Palermo Protocol on July 24, 2006.⁹ It has also urged the Member States to follow suit, and it has been actively advocating and assisting other countries in ratification and implementation of the UN Protocols.

³ *Id.*

⁴ Art. 6 of the Lisbon Treaty provides the following: “1. The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.” 2007 (OJ C306) 13.

⁵ 2003/209/EC: Commission Decision of 25 March 2003 setting up a Consultative Group, to be Known as the “Experts Group on Trafficking in Human Beings,” 2003 (OJ L079) 25.

⁶ See *Report of the Experts Group on Trafficking in Human Beings*, Dec. 22, 2004, available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc/report_expert_group_1204_en.pdf. It has also drafted additional products, such as opinions; see for example *Opinion in Connection with the World Football Cup 2006 in Germany and the Related Assumption of Increased Trafficking Activities Around this Event*, http://www.ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc/opinion_expert_group_31_05_06_en.pdf (last visited Mar. 26, 2008).

⁷ COM(2005) 514 final.

⁸ 2001/87/EC: Council Decision of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention Against Transnational Organized Crime and its Protocols on Combating Trafficking in Persons, Especially Women and Children, and the Smuggling of Migrants by Land, Air and Sea. 2001 (OJ L30) 1.

⁹ Council Decision 2006/618/EC on the Conclusion on Behalf of the European Community of the UN Palermo Protocol in Line with Articles 179 and 181a of the Treaty Establishing the European Community, 2006 (OJ L262) 44.

II. Legislative Measures

The main comprehensive legal measure, introduced by the European Union in 2002, is the Council Framework Decision on Combating Trafficking in Human Beings¹⁰ (hereafter the FD on Trafficking). The FD on Trafficking aims to harmonize the legislation of the Member States in the field of police and judicial cooperation in criminal issues pertinent to the fight against human trafficking.

The second specific legal instrument in this field is Directive 2004/81/EC on residence permits issued to non-EU nationals who are victims of trafficking in human beings.¹¹ This Directive applies to those nationals who have reached the age of majority and are or have been victims of human trafficking, even if they entered the territory of a Member State illegally. EU Members may apply the provisions of this Directive to minors, in accordance with their national law provisions.

Additional legal instruments regulate other aspects of trafficking. The Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography, adopted in 2003, does not deal with trafficking *per se*, but aims to prevent and fight the sexual exploitation of children, who are the most vulnerable victims of trafficking.¹² Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings¹³ establishes the principle that victims of crime, including trafficked persons, must be treated as victims and be entitled to certain rights. Finally, Directive 2004/80/EC¹⁴ provides for compensation to crime victims by the designated national authority of the country where the crime was committed.

Definition

The FD on Trafficking follows as a model the definition provided in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention against Transnational Organized Crime.¹⁵

Thus, the definition in the FD on Trafficking includes the following acts:

The recruitment, transportation, transfer, harboring, subsequent reception of a person, including exchange or transfer of control over a 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

¹⁰ 2002 (O J L 203) 1.

¹¹ On the Residence Permit Issued to Third Country Nationals who are Victims of Trafficking in Human Beings or who have been the Subject of an Action to Facilitate Illegal Immigration, who Cooperate with the Competent Authorities, 2004 (O J L 261) 19.

¹² The legal nature of a Framework Decision, a legal instrument introduced by the Amsterdam Treaty, is akin to that of a Directive. Thus, it is legally binding upon the Member States as to the results to be achieved but leaves the option to the Member States to choose the method and forms of implementation. It should be noted that framework decisions have no direct effect, and consequently, the European Commission has no recourse to the European Court of Justice to bring action against a State for failing to transpose a Decision into domestic law or for insufficient implementation thereof. The Court of Justice has the authority to decide on disputes among EU Members regarding the interpretation or the application of a Decision.

¹³ 2001 (O J L 82) 1.

¹⁴ 2004 (O J L261) 15.

¹⁵ Convention against Organized Crime, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/index.htm (official source, last visited Mar. 26, 2008).

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 labor 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.¹⁶

The FD on Trafficking explicitly states that the consent of the victim of trafficking to exploitation, either intended or actual, "shall be irrelevant" in case any of the elements stated in paragraph 1 exists, such as coercion, force, threat, abduction, deceit, fraud, or abuse of authority.

Implementation

The European Commission, in its 2006 Report to the Council and the Parliament¹⁷ based on the measures taken by the EU Member to implement this Decision, observed that almost all Members that responded to the questionnaire have transposed the definition of human trafficking of the FD on Trafficking. It should be noted that the report is based on insufficient information, since some EU Members did not promptly forward their implementing legislation to the Commission. Several Member States, including Austria, Belgium, France, Germany, Italy, Latvia, Malta, the Netherlands, Slovakia, and Sweden, have included language to the effect that the consent of the victim is irrelevant in cases of coercion, deceit, or fraud.¹⁸ With regard to criminalizing instigating, aiding, abetting, and attempt, the Commission noted that only some Member States have specific provisions in their trafficking laws. Those that do not, apply the general criminal law provisions on instigation and aiding perpetrators. With regard to penalties, the Commission stated that the Member States meet the requirements of the FD on Trafficking on adopting effective, proportionate, and dissuasive penalties. In most cases, Member States have provided severe maximum penalties; and in cases involving aggravating circumstances, some of them impose life imprisonment.

As far as jurisdiction is concerned, the Commission observed that most Members establish jurisdiction for offenses committed outside their territories by their own nationals. Some Members have established jurisdiction when trafficking is committed for the benefit of a legal person, such as the United Kingdom; others have not and have notified the Commission accordingly.¹⁹

In a subsequent document adopted in May 2006, the Commission provides a detailed analysis of national measures taken to comply with the Framework Decision.²⁰

III. Prosecution, Penalties, and Punishment

The FD on Trafficking requires Member States to establish jurisdiction based on the territoriality and nationality principles. Thus, Member States must prosecute the offense of article 1 as well as instigation, aiding, and abetting in the following instances:

¹⁶ Art. 1, FD on Trafficking, 2002 (O J L 203) 1.

¹⁷ Report from the Commission to the Council and the European Parliament Based on Article 10 of the Council Framework Decision of July 19, 2002 on Combating Trafficking in Human Beings, COM(2006) 187 final 6.

¹⁸ *Id.*

¹⁹ *Id.*, at 7

²⁰ Commission Staff Working Document, Annex to the Report from the Commission to the Council and the European Parliament based on Article 10 of the Council Framework Decision of July 19, 2002 on Combating Trafficking in Human Beings, COM(2006) 187 final.

- a) When the offense is committed either wholly or partially within its territory; (territoriality principle);
- b) When the perpetrator is one of its nationals (active personality principle); or
- c) When the offense was committed to benefit a legal person which is established in a Member State.

The FD on Trafficking allows Member States to decide as to the specific cases in which they will apply or will not apply the nationality principle

It also requires that Member States adopt language to the effect that prosecution of offenses is not conditional on the accusation made by the person subjected to the offense. In cases where the offense is committed wholly or partially within the territory of a Member State, that State must prosecute. When the victim is a child, the FD on Trafficking obliges Members to view the victim as falling within the definition of a particularly vulnerable victim as provided in Council Framework Decision 2001/220/JHA of March 15, 2001, on the Standing of Victims in Criminal Proceedings.²¹

The FD on Trafficking contains specific language pertaining to the liability of legal persons. The FD defines a legal person to mean any entity that has such status under the applicable law. Public entities that exercise state authority and public international organizations are excluded. Member States are obliged to ensure that under their national legislation, legal entities can be held responsible for the offenses of articles 1 and 2 committed for their benefit by any person, acting either individually or on behalf of an organ of the legal entity. A person is acting on behalf of an organ when he either holds a power of representation of the legal person, has the authority to decide on behalf of the legal person, or has the authority to exercise control within the legal entity.

The FD on Trafficking also requires that legal entities are held liable in the case of a lack of supervision or control by the person who is acting on behalf of the legal entity, when the offenses of articles 1 and 2 were committed for the benefit of the legal entity. Pursuant to the FD, the liability of legal entities also includes criminal sanctions against natural persons who commit, instigate, or aid or abet in the commission of the offenses referred to in articles 1 and 2.

Penalties

Member States are required to ensure that the acts mentioned in article 1, as well as the instigation of, aiding, abetting, or attempt to commit an offense of article 1, are punishable. The criminal penalties imposed must be effective, proportionate, and dissuasive and may also include extradition.

The FD on Trafficking sets forth no maximum or minimum penalty. Member States have the discretion to establish their own penalties, as long as they meet the principles of effectiveness, proportionality, and dissuasion. The FD establishes a maximum term of imprisonment that is not less than eight years if the offense of article 1 was committed in any of the following circumstances:

- The offense endangered the life of the victim, irrespective of whether it was committed by gross negligence or deliberately;
- The offense was committed against a victim who was especially vulnerable. Pursuant to the FD, a victim meets this standard if, according to the national law, he or she is below the age of sexual majority and the offense was committed for the purpose of exploitation of prostitution or other forms of sexual exploitation, including pornography;
- The offense was committed through the use of serious violence or has caused serious harm to the victim;

²¹ 2001 (OJ L82) 1.

- The offense was committed within the framework of a criminal organization as defined in Joint Action 98/733/JHA.²²

When the offense is committed outside the territory of a Member State, that Member State has the discretion to decide whether it will extend its jurisdiction by applying the nationality basis or for a legal person, the basis of the place of establishment. In such instances, they are required to report the cases to the General Secretariat of the Council and the Commission.

If a Member State does not extradite its own nationals, it is still required to establish jurisdiction and to prosecute the offenses of article 1 and 2 that are committed outside its territory. Thus, the FD on Trafficking requires the Member States to apply the universality principle as well.

IV. Victim Protection, Assistance, and Compensation

Decision 2001/220/JHA²³ on Standing of Victims in Criminal Proceedings establishes minimum standards for the protection of the victims of crimes and also contains certain measures to assist the victim prior to and after the criminal proceedings. As paragraph 9 of this Decision clarifies, the Decision does not impose an obligation on a Member State to equate the position of a victim to that of a party in criminal proceedings.

The Decision defines “victim” to mean “a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.”

During the criminal proceedings, a Member State must ensure:

- that victims “have a real and appropriate role in its criminal legal system”;
- that victims are treated with due respect for their dignity during proceedings;
- that victims’ rights and legitimate interests are recognized;
- that victims be heard during proceedings and provide evidence; and
- that authorities question victims only insofar as necessary for the purpose of criminal proceedings.²⁴

The Decision contains lengthy and detailed provisions concerning the right of the victim to receive information, the right to protection, and the right to compensation.

Right to Information

Members are obliged to ensure that law enforcement authorities, when initially contacting a victim, provide information to the victim in a language understood by the victim. The information must include at least the following:

- type of services and organizations that provide support and the type of support;
- where and how they can report an offense;
- procedure following such a report and their role pertaining to such a procedure;
- how and the conditions under which victims can obtain protection;

²² Joint Action 98/733/JHA, 1998 (OJ L351) 1.

²³ Decision 2001/220/JHA, 2001 (OJ L82) 1.

²⁴ *Id.*, arts. 2 & 3.

- whether they have access to legal advice, legal aid, or any advice in general and whether they are eligible to receive such advice.

Right to Protection

Pursuant to the Decision, victims and their families must be offered “a suitable level of protection” as far as their safety and their privacy is concerned, especially if the authorities deem that there is a serious danger of reprisals or a serious risk of invasion of the privacy of the victims. Member States must adopt measures to ensure the privacy of the photographic images of victims during court proceedings. They must also ensure that victims do not come in contact with offenders on court premises and that courts are equipped with special waiting areas for victims.

The most vulnerable victims must be offered special protection from the impact of providing evidence in open court. Member States must ensure that they meet this requirement in the manner best suited to their own national system.

Right to Compensation

The general principle is that crime victims in the EU should be entitled to fair and appropriate compensation for the injuries they have suffered, irrespective of where the crime was committed.

Based on Framework Decision 2001/220/JHA, EU Members are required to inform the victims of entitlement to compensation and to ensure that they are also entitled to receive a decision within reasonable time on compensation provided by the offender in criminal proceedings, unless the national law provides for compensation to be given in another manner.²⁵ Moreover, Members must adopt appropriate measures to ensure that the offender provides adequate compensation to victims and to return without unnecessary delay any recoverable property that belongs to the victims and is seized during criminal proceedings.²⁶

Victims who have participated in criminal proceedings as parties or witnesses must be reimbursed for any expenses incurred because of their participation.²⁷

Due to the fact that in many instances the offender is not financially able to satisfy a judgment on damages or the offender cannot be identified and prosecuted, the EU adopted Directive 2004/80/EC Relating to Compensation to Crime Victims.²⁸ It is designed to assist victims to receive compensation and requires Member States to establish compensation mechanisms to ensure that if a violent intentional crime is committed in a Member State other than the Member State where the victim resides, then the victim has the right to apply to the national authority where the crime was committed and seek compensation.²⁹

The compensation is paid by the competent authority of the Member State where the crime was committed.³⁰ Member States are required to establish or designate special authorities to deal with such requests and to keep the administrative requirements to a minimum. Member States are also obliged to disseminate such information to potential applicants.

²⁵ *Id.*, art. 9

²⁶ *Id.*, art. 6.

²⁷ *Id.*, art. 7.

²⁸ 2004 (OJ L261) 15.

²⁹ *Id.*, art. 1

³⁰ *Id.*, art. 2.

Reflection Period

Pursuant to the Directive 2004/81/EC, Member States are required to ensure that non-EU nationals who are victims of trafficking are given a reflection period to contemplate whether they want to cooperate with competent authorities, without undue influence and fear from perpetrators.³¹ Members are free to decide on the duration of the reflection period.

During the reflection period, and before the issuance of a residence permit, victims of trafficking must be afforded the following:

- access to medical treatment, including psychological assistance if needed;
- access to an adequate standard of living;
- no possibility of being subject to expulsion;
- access to translation and interpreting services;
- basic safety and protection safeguards; and
- free legal aid, if such a benefit is established under national law.³²

Residence Permit for Victims of Trafficking

At the end of the reflection period, or even before if the trafficking victim has shown a clear intention to cooperate with the competent authorities and has discontinued any relations with the perpetrators of trafficking, Member States are required to grant the victim a residence permit. The permit, which can be renewed, will be valid for six months. It can also be withdrawn at any time, if:

- the holder has voluntarily and on his/her own initiative renewed relations with the perpetrators of trafficking;
- the victim's cooperation is fraudulent or the complaint is fraudulent;
- there are reasons of public safety or public security; or
- the victim stops cooperating.³³

Holders of residence permits who have insufficient means to support themselves must be given access to living accommodations, as well as medical or other assistance, as needed.

Holders of such permits also must be authorized to have access to the labor market, vocational training, and education, during the duration of the residence permit. Members are free to decide on the rules and conditions of access, in accordance to their domestic laws.³⁴

Members States must also ensure that trafficking victims who have residence permits have access to existing programs or plans, provided either by their governments or by non-governmental organizations, that are designed to assist such persons to reintegrate into society and improve their professional skills or to prepare them for their return to their country of origin.

If a Member State adopts such programs specifically for trafficking victims, it has the right to make the issuance or renewal of residence permits conditional upon the participation of the victim in such programs.³⁵

³¹ Art. 6, Directive 2004/81/EC, 2004 (OJ L 261) 19.

³² *Id.*, art. 7.

³³ *Id.*, art. 14.

³⁴ *Id.*, art. 11.

³⁵ *Id.*, art. 12.

V. Cooperation with Other Governments

Decision 2001/220/JHA requires Member States to develop and improve cooperation among them and provide effective protection of the victim's interests during criminal proceedings. This cooperation can be expressed either in the form of networks linked to the judicial system or links between organizations that provide support and assistance to victims.³⁶

When the victim is a resident of a State other than the one where the offense took place, the competent authorities of the Member State involved must take appropriate measures to reduce the difficulties faced by the victim.³⁷

Each Member State must ensure that the victim of an offense committed in a Member State other than the one in which he or she resides must be able to make a complaint before the national authorities of the State of residence, if it was not possible to file a complaint where the offense was committed. In such a case, the authorities that receive the complaint must forward it immediately to the authorities of the Member State where the offense was committed. The complaint will be handled pursuant to the national law of the State where the offense was committed.³⁸

National authorities of a Member State must ensure that victims have access to video and telephone conferencing, as established by the Convention on Mutual Assistance in Criminal Matters of May 29, 2000.³⁹

Europol and Eurojust

As stated in the introduction, the EU is legally authorized to take measures to improve cooperation among police and judicial authorities of the Member States. Two EU institutions, the European Police Office (Europol) and Eurojust, which are tasked to combat organized crime in general, have contributed considerably towards enhancing cooperation among law enforcement and judicial authorities during the last fifteen years. Moreover, the European Judicial Network (ECJ), which came into being in 1998, is a decentralized network that has facilitated communication and cooperation among judges and lawyers in handling criminal cases. ECJ has established national contact points to provide assistance in each Member State.

Europol⁴⁰ is the law enforcement organization that operates at the EU level, is staffed by police and customs authorities, and handles criminal intelligence. Its basic objective is to prevent and combat organized crime, including trade in human beings and sexual exploitation. The Annex to the Europol Convention defines trafficking for the purpose of sexual exploitation as follows:⁴¹

Traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children.

³⁶ *Id.*

³⁷ *Id.*, art. 11.

³⁸ *Id.*

³⁹ 2000 (OJ C 197) 1.

⁴⁰ The Europol Convention was ratified by all Member States in 1998, <http://www.europol.europa.eu/index.asp?page=legal> (last visited Mar. 19, 2008).

⁴¹ *Id.*

Eurojust,⁴² which was established in 2002, is an independent legal entity, with its own budget and composed of senior officials, magistrates, judges, and legal experts seconded from every EU country. Its task is to fight transnational crime, including trafficking in human beings.⁴³ It provides legal and practical advice within the context of investigations and prosecutions of trafficking cases when two or more Member States are involved. It has no mandate or authority to initiate investigations on its own.

Cooperation with Countries Outside the EU

Regulation No 491/2004 establishes the AENEAS program, which provides financial and technical assistance to countries outside the EU in the fields of migration and asylum. It explicitly permits the co-financing of projects that deal with prevention and the fight against human trafficking. The program established by this Regulation began in January 1, 2004, and will end December 31, 2008.⁴⁴

VI. Extraditable Offenses

Formal extradition procedures no longer exist in the European Union. They have been replaced by the European Arrest Warrant (EAW), adopted in 2002 with the objective of facilitating and simplifying extradition procedures among the Members. The EAW is valid throughout the entire EU territory. Relations with outside countries are still covered by extradition rules based on bilateral agreements. The EAW is a judicial decision that is issued by a Member State and is addressed to another Member State's authorities, asking them to arrest and surrender a requested person for the purpose of conducting a criminal prosecution or executing a custodial sentence or detention order. Member States are required to execute any EAW based on the principle of mutual recognition.⁴⁵

Trafficking in human beings and sexual exploitation of children are among the offenses specified by the EAW for which a suspect should be surrendered, as long as the offense is punishable by a maximum period of at least three years, as provided by the issuing State, and without verification of the double criminality of the act.

Under the EAW procedure, arrest and surrender of persons accused of trafficking is simplified and expedited for the following reasons:

- the double criminality standard is abolished for thirty-two offenses, including trafficking;
- no political decision is needed at the final stage as to whether to surrender the person or not, as it is all handled at the judicial level;
- the principle of the prohibition on extradition of own nationals no longer applies in EAW cases. Consequently, EU countries can no longer refuse to surrender their own nationals who have committed crimes in another Member State. They do have the right to seek the return of the convicted to serve their sentence in their home State; and
- expedited response. The requested State needs to respond within ninety days.

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⁴² The Web site of Eurojust can be found at <http://eurojust.europa.eu/ejn.htm> (last visited Mar. 26, 2008).

⁴³ *Eurojust Coordinating Cross-Border Prosecutions at EU Level*, Web site of the European Commission, Feb. 2005, available at http://ec.europa.eu/justice_home/fsj/criminal/eurojust/fsj_criminal_eurojust_en.htm.

⁴⁴ Regulation No 491, 2004 (OJ L80) 1.

⁴⁵ Decision 2002/564/JHA, 2002 (OJ L190) 1.

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ANTI-TRAFFICKING LEGISLATION

Executive Summary

Human trafficking is regulated in the Finnish Penal Code. The article that establishes human trafficking as a criminal offense is based on article 3 of the Palermo Protocol. In 2005, the Finnish government adopted an action plan against human trafficking which reviews the measures Finland has taken to fight human trafficking and support its victims, as well as proposing measures to strengthen the support to the victims of human trafficking and to stop its occurrence. In 2006, the Finnish government made it possible for victims of human trafficking to stay in Finland legally to recover and to consider cooperation with Finnish authorities to apprehend the traffickers. The victims now also have the opportunity to apply for temporary residence permits in Finland. Finland offers support to victims of human trafficking, through medical and psychological help, housing, legal aid, and victim compensation, for example. A person in Finland who has committed a crime abroad may generally be extradited. Finnish citizens, however, may not be extradited.

I. Definition of Trafficking

Finland has based its provision in the Penal Code establishing human trafficking as a criminal offense on the Palermo Protocol's article 3.¹

¹ ¹ 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, available at <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>. Article 3 states:

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 eighteen years of age.

The Finnish government adopted a national action plan against human trafficking on August 25, 2005. The action plan is a comprehensive review of Finland's work against human trafficking, support to its victims, and proposals on how to improve such work.²

II. Prosecution, Penalties, and Punishment

Criminal liability for human trafficking is regulated in chapter 25 of the Finnish Penal Code.³ Section 3 of chapter 25 states:

- (1) A person who
 - (1) by abusing the dependent status or insecure state of another person,
 - (2) by deceiving another person or by abusing a mistake made by that person,
 - (3) by paying remuneration to a person who has control over another person or
 - (4) by accepting such remuneration

takes control over another person, recruits, transfers, transports, receives, or harbours another person for purposes of the sexual abuse referred to in chapter 20(9)(1)(1) or comparable sexual abuse, forced labour, or other demeaning circumstances or removal of bodily organs or tissues for financial gain shall be sentenced for *trafficking in human beings* to imprisonment for a minimum of four months and a maximum of six years.

(2) A person who takes control over another person under 18 years of age or recruits, transfers, transports, receives, or harbours that person for the purposes mentioned in subsection 1 shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1(1 – 4) have been used.

(3) An attempt shall be punished.

Aggravated human trafficking is regulated in chapter 25 section 3a, which states:

- (1) If, in trafficking in human beings,
 - (1) violence, threats or deceitfulness is used instead of or in addition to the means referred to in section 3,
 - (2) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is deliberately or through gross negligence inflicted on another person,
 - (3) the offence has been committed against a child younger than 18 years of age or against a person whose capacity to defend himself/herself has been substantially diminished or
 - (4) the offence has been committed within the framework of a criminal organization referred to in chapter 17(1a)(4) and the offence is aggravated also when considered as whole,

the offender shall be sentenced for *aggravated trafficking in human beings* to imprisonment for a minimum of two years and a maximum of ten years.

(2) A person who enslaves or keeps another person in servitude or transports or trades in slaves shall also be sentenced for aggravated trafficking in human beings if the act is aggravated when assessed as whole.

(3) An attempt shall be punished.

² National Action Plan against Trafficking in Human Beings 2005, available at <http://formin.finland.fi/public/default.aspx?nodeid=38595&contentlan=2&culture=en-US> (official Web site of the Ministry of Foreign Affairs).

³ Penal Code, FINLANDS FÖRFATTNINGSSAMLING, Act No. 39, of Dec. 19, 1889. Unofficial version available from Finlex, <http://www.finlex.fi/sv/laki/ajantasa/1889/18890039001> (last visited Mar. 14, 2008). Finlex is owned by the Finnish Ministry of Justice and is designed to make Finnish legal materials available for free online.

According to the Police Administration Act, it is the duty of the local police to uphold public order and safety, as well as work to prevent and investigate crime and other conduct that may jeopardize public order and safety.⁴ The National Bureau of Investigation's responsibility is to fight international, organized, professional, economic, and other serious criminality, as well as to investigate such crimes. It shall also develop crime prevention and criminal investigation methods.⁵

In 2004, a Surveillance Unit for Illegal Foreign Labor was established under the National Bureau of Investigation. The Surveillance Unit was established to cooperate with police units and other authorities to detect and investigate the use of illegal foreign labor in cases that have "international dimensions or national or social effects."⁶

To combat human trafficking, the police and the Customs and Border Guard have joined in a cross-border cooperation. The purpose of this cooperation is to increase the awareness of human trafficking and provide training. The network also conducts on-site searches against suspected traffickers.⁷

The Finnish Code of Judicial Procedure contains articles designed to protect witnesses in criminal hearings. According to the Code of Judicial Procedure, a witness, the injured party, or another person who is being heard for the purpose of obtaining evidence may be heard without the presence of other persons if the Court finds that it is necessary:

- to protect the person who is to be heard or a person that he or she has a close relationship with, as referred to in chapter 15, section 10, subsection 2 of the Penal Code, i.e. a spouse or a close relative;
- to ensure that the person who is going to be heard tells the Court what he or she knows in the matter; or
- because someone may disturb or try to mislead the person during his or her testimony.⁸

In 2007, the Code of Judicial Procedure was amended so that witnesses and others who are going to be heard during a Court proceeding can be heard without the presence of the public.⁹

Witnesses can also, under certain circumstances such as the protection of their life and health, be heard by means of audio conference or other appropriate means of communication.¹⁰

III. Victim Protection, Assistance, and Compensation

⁴ § 7, Police Administration Act Police Administration Act, FINLANDS FÖRFATTNINGSSAMLING, Act No. 110, of Feb. 14, 1992. Unofficial version available from Finlex <http://www.finlex.fi/sv/laki/ajantasa/1992/19920110> (last visited Mar. 14, 2008).

⁵ *Id.*, at § 9

⁶ National Action Plan against Trafficking in Human Beings 2005, *supra* note 2, at 51.

⁷ *Id.*, at 52.

⁸ Chap. 17, § 34, Code of Judicial Procedure, FINLANDS FÖRFATTNINGSSAMLING, Act No. 4 of Jan. 1, 1734. Unofficial version available from Finlex, <http://www.finlex.fi/sv/laki/ajantasa/1734/17340004000> (last visited Mar. 14, 2008).

⁹ *Id.*

¹⁰ Chap. 17, § 34a, Code of Judicial Procedure, FINLANDS FÖRFATTNINGSSAMLING, Act No. 4 of Jan. 1, 1734. Unofficial version available from Finlex, <http://www.finlex.fi/sv/laki/ajantasa/1734/17340004000> (last visited Mar. 14, 2008).

If a victim of human trafficking is a resident of Finland, the local authorities are responsible for offering support in accordance with Social Welfare Act,¹¹ the Primary Health Care Act,¹² the Act on Specialized Medical Care,¹³ and the Mental Health Act.¹⁴ The local authorities are entitled to state subsidies to fund these support programs. If a victim is not a legal resident of Finland, he or she may only get emergency care from the local authorities. The government in its action plan suggests that during the period between the identification of a victim and when the victim receives a residence permit, the financing of services for support of the victim should be the responsibility of the Finnish state. The proposal for state-funded support for victims of human trafficking without legal residence in Finland should be based on several principles discussed in the action plan. They are:¹⁵

- “Ready-made financing.” This means that support should be offered to the victim without delay. There is a risk that the victim may be drawn back into the abuse if he or she does not get help immediately.¹⁶
- “Individual services.” The victims of human trafficking are victims of different situations, such as sexual exploitation or forced labor, and can be women, men, or children. It is therefore important that the help offered take into account the individual needs of the victim.
- “Foreseeability.” Those who offer support to victims of human trafficking must be able to trust that the support will keep receiving funding.
- “Regional coverage.” Support to the victims must be offered in all parts of Finland.
- “Flexibility.” Services must be offered to the victims as long as they need it. The government emphasizes that some victims may wish to return home as soon as possible, whereas others may be parties or witnesses in court proceedings and need support through the proceedings that may last for years.
- “Prevention of abuse of the system.” The service provider and the financier must take action to minimize abuse of the system.

The Finnish government realizes that the trafficking in human beings changes form constantly and that victims find themselves in many different situations. To offer the best possible support, the government has defined seven principles on which assistance to victims of human trafficking should be based: “a victim based approach,” “empowerment of victims as an objective,” “cultural diversity and cultural sensitivity as objectives,” “cooperation among authorities and between authorities and third-sector actors,” “integration of victims by providing services and informing them of the services available,” “services provided must not be labeling or re-victimizing,” and “ensuring the safety of victims and workers.”¹⁷

¹¹ Social Welfare Act, FINLANDS FÖRFATTNINGSSAMLING, Act No. 719 of Sept. 17, 1982. Unofficial version available from Finlex, <http://www.finlex.fi/sv/laki/ajantasa/1982/19820710> (last visited Mar. 14, 2008).

¹² Primary Health Act FINLANDS FÖRFATTNINGSSAMLING, Act No. 66 of Jan. 28, 1972. Unofficial version available from Finlex, <http://www.finlex.fi/sv/laki/ajantasa/1972/19720066> (last visited Mar. 14, 2008).

¹³ Act on Specialized Medical Care, FINLANDS FÖRFATTNINGSSAMLING, ACT No. 1062 of Dec. 1, 1989. Unofficial version available from Finlex, <http://www.finlex.fi/sv/laki/ajantasa/1989/19891062>. (last visited Mar. 14, 2008).

¹⁴ Mental Health Act, FINLANDS FÖRFATTNINGSSAMLING, Act No. 1116 of Dec. 14, 1990. Unofficial version available from Finlex, <http://www.finlex.fi/sv/laki/ajantasa/1990/19901116> (last visited Mar. 14, 2008).

¹⁵ National Action Plan against Trafficking in Human Beings 2005, *supra* note 2, at 40.

¹⁶ *Id.*, at 40.

¹⁷ *Id.* at 41.

As mentioned above, victims of human trafficking have the right to emergency assistance even if they are not legal residents of Finland. Emergency assistance consists of, among other things, the following services: physical safety, housing, and food, as well as the assessment of physical health and of the need for immediate care for physical traumas, malnutrition, infections, pregnancy, sexual transmitted diseases, etc. Furthermore, the victims have the right to have an assessment of their mental state and to be provided with immediate care for mental traumas. The victims have the right to be assisted by a support person, such as a counselor or a cultural interpreter who is trained to help persons in these situations. The support person should be available to assist the victim for the duration of his or her stay in Finland.¹⁸

The need for non-emergency services also differs from victim to victim, depending on, for example, the duration of his or her stay in Finland. Services that are available should include: housing, means of living, education, employment, social assistance (such as support for integration, contacts with family, etc.), mental support, health care, and administrative assistance (help with permits, documentation, assistance in using relevant services, etc.).¹⁹

Victims of human trafficking may be eligible for legal aid. Even if they are not granted legal aid because of their financial situation or problems with the application, the court may appoint a counsel in accordance with chapter 2, section 1a of the Criminal Procedure Act.²⁰ A support person may also be appointed for the victim, according to chapter 2, section 3 of the Criminal Procedure Act, if it is deemed that he or she needs assistance in the criminal investigation or the trial.²¹

Victims of crime may apply for compensation from the State Treasury in accordance with the Act on Compensation for Crime Damage.²²

Since July 31, 2006, victims of human trafficking can be granted special residence permits to stay in Finland. Before the residence permit is granted, the victim will be given time for consideration of cooperation. The victim will also be given information and assistance, in order to decide whether he or she wants to cooperate with the Finnish authorities. The period of consideration is from thirty days to six months, and during this time the victim resides in Finland legally.²³ A victim of human trafficking is usually granted a temporary residence permit if:

- it is justified with regard to the preliminary investigation or the Court proceedings that the victim stay in Finland;
- the victim is prepared to cooperate with authorities to arrest those responsible for the trafficking; and

¹⁸ *Id.* at 42-43.

¹⁹ *Id.* at 43.

²⁰ Criminal Procedure Act FINLANDS FÖRFATTNINGSSAMLING, Act No. 689 of 1997. Unofficial version available from Finelex, <http://www.finlex.fi/sv/laki/ajantasa/1997/19970689> (last visited Mar. 14, 2008).

²¹ National Action Plan Against Trafficking in Human Beings 2005, *supra* note 2, at 44.

²² Act on Compensation for Crime Damage, FINLANDS FÖRFATTNINGSSAMLING, Act No. 935 of 1973. Unofficial translation of the act at Finlex, <http://www.finlex.fi/en/laki/kaannokset/1973/en19730935.pdf> (last visited Mar. 14, 2008). For information on victim compensation, please see the National Action Plan Against Trafficking in Human Beings 2005, *id.* at 45.

²³ Finnish Immigration Service, *Fact Sheet: Residence Permit for Victims of Trafficking in Human Beings*, <http://www.migri.fi/netcomm/content.asp?path=2484&language=EN> (last visited Mar. 14, 2008) (official Web site of the Finnish Immigration Service).

- the victim no longer has any connections with the persons who are suspected of trafficking in humans.

If the victim of human trafficking is in a particularly vulnerable situation, a continuous residence permit may be granted.²⁴

IV. Cooperation with Other Governments

Finland is involved in many international and bilateral projects to help fight human trafficking. Some of these programs are:

- Strategy for Cooperation in its Neighboring Areas. The aim of this program is to “combat organized crime and to support the social and economic process of change, which strengthens the partner countries’ own capacities to address their problems.”²⁵ Within the framework of the neighboring area cooperation, several projects have been introduced, with one of their purposes being to fight human trafficking and prostitution.²⁶
- Council of Baltic Sea States. Finland was a member of the Nordic Baltic Task Force, which worked to help victims of human trafficking return safely to their home countries. The mandate of the Task Force now falls within the Council of Baltic Sea States, to which Finland belongs.²⁷
- Working Group on Cooperation on Children at Risk. As part of the Council of Baltic Sea States, Finland participates in the Working Group on Cooperation on Children at Risk. The aim of the working group is to improve the situation of children living in vulnerable situations.²⁸
- Support has also been given through non-governmental organizations to projects such as “End Child Prostitution, Child Pornography, and Trafficking in Children for Sexual Purposes” (ECPAT). Support has also been given to the International Helsinki Federation (IHF) which works to prevent trafficking in women in Moldavia and Central Asia.²⁹

V. Extraditable Offences

According to the Finnish Extradition Act,³⁰ Finnish citizens may not be extradited from Finland.³¹ Generally, a person may be extradited for a crime committed in Finland, on a Finnish ship, or on a Finnish aircraft only if the punishment in the state that is requesting extradition is suitable and does not essentially differ from what the punishment would be in Finland. If

²⁴ *Id.*

²⁵ National Action Plan against Trafficking in Human Beings 2005, *supra* note 2, at 29.

²⁶ *Id.*

²⁷ *Id.*, at 30

²⁸ *Id.*

²⁹ *Id.*

³⁰ Extradition Act, FINLANDS FÖRFATTNINGSSAMLING, Act No. 456 of 1970. Unofficial version available from Finlex <http://www.finlex.fi/sv/laki/ajantasa/1970/19700456> (last visited Mar. 14, 2008).

³¹ *Id.* at § 2.

extradition has been requested for the execution of a sentence, the request can only be approved if the sentence does not essentially differ from the sentence that could have been ordered in Finland.³² For execution to be approved, the punishment for the crime, had it been committed in Finland, would have to be at least one year in prison.³³ A person who has been charged with a crime in a foreign state can be extradited only if the punishment in the state requesting the extradition is at least four months in prison.³⁴

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³² *Id.* at §3

³³ *Id.* at § 4.

³⁴ *Id.*

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ANTI-TRAFFICKING LEGISLATION

FRANCE

Executive Summary

French anti-trafficking legislation is in compliance with international obligations, of the United Nations as well as of the European Union. A specific offense of trafficking in human beings was introduced in 2003 with stringent penalties. Trafficked victims may ask for compensation before the criminal court or the civil court or, independently, before the Commission for the Compensation of Victims of Crimes if they meet the requirements. Protection and assistance is provided by a network of national and local associations throughout France. Additional measures encourage victims to cooperate with the police. They may receive a temporary residency card followed by a permanent residency card upon conviction of the offenders. France has reinforced its cooperation with other Members States of the European Union and its cooperation with the victims' countries of origin.

I. Introduction

France is a destination country for women trafficked for the purpose of sexual exploitation and forced labor, often from Eastern Europe and the former Soviet Union. The French police estimate that probably 90 percent of the 15,000 to 18,000 prostitutes working in France are trafficking victims and 3,000 to 8,000 children are coerced into prostitution or begging.¹ In 2005 and 2006, 80 percent of the persons arrested by the police for soliciting were foreign nationals. Of them, one-third were from Eastern Europe or the Balkans, one-third from Africa, and one-sixth from South America and the Caribbean.² In 2006, 72.5 percent of the victims of pimping also were foreign nationals. Among them, 43 percent were from Eastern Europe or the Balkans, 28 percent from Africa, and 15 percent from the Maghreb countries.³

To a lesser extent, France is also a transit country for the trafficking of women from Africa, Central America, and Central and Southern Europe.⁴ Nigerian networks are expanding their activity in France, and several government studies report trafficking of Chinese and Colombian men for the purpose of forced labor.⁵

To combat such trafficking, France enacted comprehensive legislation in 2003, when it adopted Law 2003-239 on Internal Security (hereinafter the 2003 Law).⁶ It also ratified the UN Protocol against

¹ Assemblée Nationale, Rapport du 17 Juillet 2007 fait au non de la Commission des affaires étrangères sur le projet de loi adopté par le Sénat, autorisant la ratification de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains [Report of July 17, 2007, prepared in the name of the Foreign Affairs Commission on the draft bill authorizing the ratification of the Council of Europe Convention on Action against Trafficking of Human Beings], at 5, <http://www.assemblee-nationale.fr/13/rapports/r0076.asp> (last visited Feb. 27, 2008).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Law 2003-239 of Mar. 18, 2003, on Internal Security, JOURNAL OFFICIEL [France's Official Gazette, J.O.], Mar. 19, 2003, at 4761. The provisions on trafficking human beings were incorporated into the Penal Code, as 225-4-1 to 225-4-9.

the Smuggling of Migrants by Land, Sea and Air⁷ and the Protocol to Prevent, Suppress and Punish Trafficking, Especially in Women and Children,⁸ known as the “Palermo Protocol,” which complement the United Nations Convention against Transnational Organized Crime. Finally, it recently ratified the Council of Europe Convention on Action against Trafficking of Human Beings.⁹ The Convention will enter into force on May 1, 2008.

II. Definition of Trafficking

Trafficking in human beings is defined as:¹⁰

The act, in exchange of remuneration or any other benefit, or a promise of remuneration or benefit, of recruiting, transporting, transferring, harboring or reception of a person, to put him/her at the disposal of a third person, whether identified or not, so as to permit the commission against that person of offenses of pimping, sexual indecency and assaults, exploitation of begging, or the imposition of living or working conditions contrary with human dignity, or to force this person to commit any felony or misdemeanor.

It should be noted that under the French definition there is no obligation to prove coercion of the trafficked person to establish the offense of trafficking in human beings, which makes it easier to secure a conviction. The means used by the alleged traffickers to achieve consent are considered as aggravating circumstances, not elements of the offenses; the consent of the victim is not a defense for the offender. Several of the international instruments, for example the Palermo Protocol, require the use of threat or force or other forms of coercion in their definition of trafficking in human beings.¹¹

A Ministry of Justice Circular providing how the 2003 Law, which created the offense of trafficking, should be enforced also specifies that the offense requires a specific intent, that the trafficker is handing over the trafficked person for possible exploitation or to force him/her to commit a felony or misdemeanor. It further states that it is not necessary, however, that these offenses be attempted or occur. If they do, the trafficker may be prosecuted under the offense of trafficking in human beings and as an accomplice to the exploitation.¹²

The definition lists a series of criminal offenses that can be classified into two categories: sexual exploitation and forced labor. Sexual exploitation encompasses pimping and sexual indecency and assaults. Pimping is very broadly defined in French law; both constraint pimping¹³ and support

⁷ Decree 2004-446 of May 19, 2004, J.O., May 27, 2004, at 9345.

⁸ Decree 2004-447 of May 19, 2004, J.O., May 27, 2004, at 9349.

⁹ Law 2007-1162 of Aug. 1, 2007, authorizing the ratification of Council of Europe Convention on Action against Trafficking of Human Beings, J.O., Aug. 2, 2007, at 12988.

¹⁰ CODE PENAL, art. 225-4-1 (Dalloz 2008) (commercial source used extensively by attorneys and judges). Translated by the author of this report.

¹¹ The Palermo Protocol provides that “trafficking in persons shall mean the recruitment, transportation, transfer, harboring 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 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 means at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or removal of organs.” Web site of the United Nations, available at <http://untreaty.un.org/English/notpubl/18-12-a.E.htm> (official source, last visited Feb. 29, 2008).

¹² Circular 2003-08 E8/10-06-2003 on the Presentation of the Provisions of Law 2003-239 of Mar. 18, 2003, on Internal Security, BULLETIN OFFICIEL DU MINISTÈRE DE LA JUSTICE, N° 90, <http://www.textes.justice.gouv.fr/index.php?rubrique=10085&article=11057> (official source, last visited Feb.29, 2008).

¹³ CODE PENAL, art. 225-5 (Dalloz 2008) (commercial source used extensively by attorneys and judges). The Code provides that “pimping is, by whomever and in whatever manner: 1. aiding, assisting or protecting the prostitution of another; 2. making a profit from the prostitution of another or sharing the proceeds or receiving subsidies from a person; 3. hiring, training, or seducing a person with a view to prostitution or exercising pressure upon that person to become a prostitute or to remain one.”

pimping¹⁴ are punished. Sexual assaults include rape;¹⁵ any sexual infringements committed with violence, constraint, threat, or surprise;¹⁶ and performing without violence, constraint, threat, or surprise a sexual assault on the person of a minor less than fifteen years old.¹⁷

Under the trafficking in persons definition, forced labor includes the exploitation of begging, an offense also created by the 2003 Law, and subjecting a person to working or living conditions inconsistent with human dignity. Two separate articles cover the second category in the Penal Code. The first states that:

Obtaining, from a person whose vulnerability or state of dependence is obvious or known to the offender, unpaid services or services against which a payment is made which clearly bears no relationship to the importance of the work performed, is punishable by a prison sentence of up to five years and a fine of up to €150,000 fine.¹⁸

The second article provides that “subjecting a person whose vulnerability or state of dependence is obvious or known to the offender to working or living conditions incompatible with human dignity is punishable by a prison sentence of up to five years and a fine of up to €150,000 [about US\$230,000].”¹⁹

III. Prosecution, Penalties and Punishment

Prosecution

The Ministry of Justice Circular mentioned in the preceding section reminds public prosecutors of the seriousness of the acts covered by the provisions on trafficking in human beings. It instructs them to open formal judicial investigations where there is a possibility that such an offense is being committed, in order to investigate the matter in depth. A formal judicial investigation follows a preliminary police investigation in serious criminal cases. It is generally initiated at the request of the Public Prosecutor’s Office, although the victim or the victim’s representatives may also do so. The inquiry is headed by an independent investigating judge whose task is to discover the truth and determine whether the case should be either referred to trial or dismissed for lack of evidence. To perform his mission, the investigating judge is given extensive powers.

Penalties

Trafficking in human beings is punishable by a prison sentence of up to seven years and a fine of up to €150,000. This penalty is increased to ten years of imprisonment and a €1,500,000 fine where committed:²⁰

1. in respect of a minor; of a particularly vulnerable person, due to age, illness, disability, physical or psychological deficiency, or to a state of pregnancy, which must be apparent

¹⁴ *Id.*, art. 225-6. It states that the following conduct is equivalent to pimping: 1. serving as an intermediary between two persons, one of whom indulges in prostitution and the other exploits or remunerates the prostitution; 2. facilitating for a pimp the proof of fictitious resources; 3. being unable to account for an income corresponding to one’s lifestyle while living with a person who habitually indulges in prostitution or when having regular relations with one or more prostituted persons; 4. hindering the action of prevention, control, assistance, or reeducation undertaken by qualified bodies with respect to persons in danger of prostitution or indulging in prostitution.

¹⁵ *Id.*, arts. 222-23 & 222-24.

¹⁶ *Id.*, art. 222-22.

¹⁷ *Id.*, arts. 227-25, 227-26, & 222-27.

¹⁸ *Id.*, art. 225-13. Translated by the author of this report.

¹⁹ *Id.*, art. 225-14. Translated by the author of this report.

²⁰ *Id.*, art. 224-4-2.

- or known to the offender; several persons; or a person who resides outside the French territory or upon arrival of the person in the French territory;
2. in respect of a person who was put in contact with the offender through the use, for the diffusion of messages to an undetermined public, of a telecommunication network;
 3. under circumstances that directly expose the person against whom the offense is committed to an immediate risk of death or injuries that could result in mutilation or permanent incapacity;
 4. with the use of constraint, violence, or fraudulent behavior aimed at the trafficked person, a member of his/her family, or any other person habitually in contact with the trafficked person; by a legitimate, natural or adoptive ascendant of the trafficked person or a person who has authority over him/her victim or who misuses the authority conferred by his functions; and
 5. by a person who is required by his/her occupation to participate in the combat against trafficking in human beings or to maintain public order.

The penalties are further increased to twenty years and a €3,000,000 fine where committed by an organized gang²¹ and to life imprisonment and a €4,500,000 fine where torture or acts of barbarity are used.²²

Attempting to commit the offense of trafficking in human beings is punishable by the same penalties.²³ Legal entities may also be found criminally liable of the above offenses. In such cases, the maximum penalty is a fine equal to five times the amount specified for a person.²⁴ In addition, legal entities may also incur one or more of the following penalties: dissolution, prohibition for a certain period of time against pursuing certain activities, placement under judicial supervision, closure of the establishment used to commit the criminal conduct, exclusion from award of government contracts for a determined period of time, prohibition against making a public appeal for money for a period not exceeding five years, prohibition against issuing checks or against using credit cards, confiscation of a thing which served for the commission of the offense, and public posting of the court decision.²⁵

When the offense that was committed or was about to be committed against the person who is the victim of trafficking is punishable by a term of imprisonment higher than the terms specified in articles 225-4-1 to 225-4-3, the perpetrator of the offense of trafficking is punishable by the penalties attached to this offense, if he had knowledge of it.²⁶

Informing the Authorities

To encourage denunciations, a 2004 Law added an article to the Penal Code providing that any person who attempted to commit the offense of trafficking in human beings will be exempt from prosecution if he/she informed the authorities, and that act of informing resulted in the attempt being foiled and, eventually, in the identification of the other perpetrator(s) or accomplice(s).²⁷

²¹ *Id.*, art. 225-4-3.

²² *Id.*, art. 225-4-4.

²³ *Id.*, art 225-4-7.

²⁴ *Id.*, art. 225-4-6.

²⁵ *Id.*

²⁶ *Id.*, art. 225-4-6.

²⁷ *Id.*, art. 225-4-9.

The terms of imprisonment will be reduced by half if the perpetrator or accomplice informs the authorities, and as a result, the offense ceases or the information permits the victim to avoid death or permanent disability and leads to the identification of the other perpetrator(s) or accomplice(s).²⁸

IV. Victim Protection, Assistance and Compensation

General Rights

The Code of Criminal Procedure provides that the police must inform victims of their rights by any means. They are the rights:²⁹

1. to obtain compensation for the damages suffered before a civil court;
2. to be a civil party to criminal proceedings; a victim may add his/her civil claim for damages before the criminal court. It is simpler, quicker, and cheaper than bringing a civil action before a civil court;
3. to initiate a formal judicial investigation;
4. to be helped by victims' associations or by public services; and
5. to seek compensation before the Commission for the Compensation of the Victims of Crimes.

Compensation from the Commission is limited to certain acts and individuals.³⁰ It is limited to acts resulting in death, permanent incapacity, or total incapacity for work for a month or more or acts qualified as sexual assaults and trafficking in persons. The victim must be a French national. If not, compensation will be granted if the acts were committed on French territory and the victim is a national of one of the European Union Member States or is lawfully in France at the time of the acts or the request for compensation.³¹

In addition, the 2003 Law provides that, "All victims of exploitation by prostitution must benefit from a protection and assistance system organized and coordinated by the administration in active collaboration with the various social services."³² It also adds a paragraph to an article of the Social and Family Action Code stating that "places in shelters are open to receive trafficked victims under reassuring conditions."³³ This protection and assistance is provided by a network of national and local associations throughout France receiving public grants. They provide comprehensive care, in particular, lodging, food, clothes, medical care, professional training, and legal and administrative assistance.³⁴

Protection Measures Encouraging Victims to Cooperate

There are several measures aimed at encouraging foreign victims to cooperate with the police or the judicial authority, offering them administrative, physical, and social protection. A trafficked victim who files a complaint or testifies against a trafficker or a pimp may be issued a temporary residence

²⁸ *Id.*

²⁹ CODE DE PROCEDURE CRIMINELLE, art. 53-1 (Dalloz, 2008) (commercial source used extensively by attorneys and judges).

³⁰ *Id.*, art. 706-3.

³¹ *Id.*

³² Law 2003-239 of Mar. 18, 2003, on Internal Security, art. 42, J.O., Mar. 19, 2003, at 476.

³³ *Id.*, art. 43.

³⁴ Ministère du travail, des relations sociales et de la solidarité, La traite et l'exploitation sexuelle des êtres humains, Aug. 28, 2007, http://www.travail-solidarite.gouv.fr/espaces/femmes-egalite/traite-exploitation-sexuelle-etres-humains-6179.html?var_recherche=traite+etres+humains (last visited Mar. 5, 2008).

permit, unless such a person presents a threat to public order.³⁵ The victim must have cut all ties with the offender(s). Once the offender has been convicted, a permanent resident card may be issued.³⁶ It must be noted that these residence cards are not granted systematically; issuance remains a discretionary power of the authorities. The temporary residence card gives access to social protection, including health benefits, lodging, and help in finding employment. In case of danger, the trafficked victim will receive police protection during the length of the judicial procedure. A victim who wishes to return to his/her country of origin or to go to a third country may qualify for financial aid from the National Agency in Charge of Foreign Nationals and Migrations, to cover the cost of the return.³⁷

In addition the police, when establishing that a foreigner who is a victim of trafficking or pimping may be willing to file a complaint against the offenders or to testify against a person charged with such offenses, must inform the victim of the possibility of being issued a temporary residency card and a work permit; of all the measures of protection, harboring, or reception available; and of his/her legal rights, including rights to legal aid.³⁸ The above information must be provided in a language the victim understands and in a manner permitting the assurance of his/her protection. The foreign national is entitled to a thirty-day reflection period, during which he or she cannot be deported, in addition to receiving some social benefits. Non-profit organizations specialized in assisting trafficked victims may provide further information.³⁹

V. Cooperation with Other Governments

In the fight against human trafficking, France's policy stresses the importance of reinforcing the cooperation at the level of the European Union and the need to cooperate with the victims' countries of origin. This entails:⁴⁰

1. assisting those countries in developing national anti-trafficking legislation and the structures required for efficient internal and transnational cooperation;
2. assisting in the drafting of national plans of action to combat human trafficking;
3. providing training for concerned personnel;
4. providing assistance to NGOs and participating in the creation of NGO networks working in the countries of origin, transit, and destination;
5. raising awareness of the extent and complexity of the problem at all levels, including local, governmental, and the media; and
6. expanding police cooperation.

France has entered into numerous security and police cooperation agreements to fight organized crime, including human trafficking. It has, for example, reinforced its cooperation with Albania, Bulgaria, and Romania.⁴¹ The 2006 statistics of the Central Office to Combat Trafficking in Human Beings, which centralizes and coordinate operations to counter trafficking, show that thirty international criminal networks, in addition to one national network, were dismantled that year; fourteen originated from Eastern Europe and the Balkans (of them six were from Bulgaria and three from Romania), eleven

³⁵ CODE DE L'ENTRÉE ET DU SEJOUR DES ÉTRANGERS [Code of Entry and Stay of Foreigners], arts L. 316-1 <http://www.legifrance.gouv.fr> (les Codes) (last visited Mar. 5, 2008).

³⁶ *Id.*, art R. 316-5.

³⁷ *Id.*, art. R.316-9.

³⁸ *Id.*, art. R.316-1

³⁹ *Id.*

⁴⁰ Ministère des Affaires Étrangères et Européennes, *Lutter contre la traite des êtres humains*, http://www.diplomatie.gouv.fr/fr/article-imprim.php?id_article=56737 (last visited Mar. 5, 2008).

⁴¹ Foundation Scelles, *La traite des être humains en Europe: formes et état des lieux*, http://www.fondationscelles.org/index.php?option=com_content&task=view&id=200&Itemid=2 (last visited. Mar. 5, 2008).

from Africa (Nigeria being the country posing the greatest problem), three from South America, one from Thailand, and finally one from the Maghreb.⁴²

VI. Extraditable Offense

In the European Union, the European Arrest Warrant has replaced extradition procedures between Member States. It results in faster and simpler surrender procedures. It entered into force January 1, 2004, in France. The dual criminality requirement has been abolished for thirty-two categories of offenses, including trafficking in human beings.⁴³

As for other countries, extradition is either governed by France's general provisions on extradition or by an extradition treaty. The general law on extradition defines extraditable offenses as acts punished by imprisonment for at least two years, and dual criminality is required.⁴⁴ In addition, it explicitly provides that extradition shall not be granted when the person sought was a French citizen at the time the offense was committed.⁴⁵

The Extradition Treaty between the United States and France defines extraditable offenses as acts punished under the laws of both States by deprivation of liberty for a maximum of at least one year or by a more severe penalty.⁴⁶

In addition, French criminal law applies to *crimes*⁴⁷ committed abroad by a French citizen. It is applicable to *délits* committed outside French territory, if the offense is punishable under the legislation of the country where the offense took place.⁴⁸

French criminal law is also applicable to a French or a foreign national who committed a *crime* or a *délit* abroad, when the victim is French.⁴⁹

Finally in order to combat sex tourism against minors, a French national or a person habitually residing in France who while abroad commits one of the following offenses may be prosecuted in France: sexual assault, indecent assault, child pornography, corruption of a minor, or sex with a minor for remuneration. French law applies even if the offense committed is not punishable under the legislation of the country where the offense took place, and prosecution is not conditioned on a complaint from the victim, next of kin, or official report from the authorities of the country where the offense was committed. The offense need only be brought to the attention of the French judicial authorities.⁵⁰

⁴² *Id.*

⁴³ CODE DE PROCEDURE PÉNALE, art. 695-23 (Daloz, 2008) (commercial source used extensively by attorneys and judges). Dual criminality is the requirement that the conduct constituting the offense be criminalized in both the requesting state and the requested state.

⁴⁴ *Id.*, art 696-3.

⁴⁵ CODE DE PROCEDURE PENALE, art. 696-4 (Daloz 2008) (commercial source used extensively by attorneys and judges).

⁴⁶ Extradition Treaty between the United States of America and France, art. 2, Apr. 23, 1996, 2179 U.N.T.S. 341.

⁴⁷ In broad terms French law distinguishes three categories of offenses: *crimes* are a small category of very serious offenses (such as murder or rape), *délits* are less serious (theft, assault, fraud), and *contraventions* include a large range of regulatory offenses often of strict liability.

⁴⁸ Code Penal, art. 113-6 (Daloz 2008) (commercial source used extensively by attorneys and judges).

⁴⁹ *Id.*, art. 113-7.

⁵⁰ *Id.*, arts. 222-22 and 227.27-1.

All the above provisions apply even if the defendant acquired French nationality subsequent to the conduct imputed to him or her.

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ANTI-TRAFFICKING LEGISLATION

GERMANY

Executive Summary

The German criminal provisions on trafficking in persons comply with international obligations. German law penalizes sexual exploitation and exploitation of a victim's labor and imposes penalties that range to up to ten years of imprisonment.

I. Introduction

Germany reformed its criminal provisions on human trafficking in 2005,¹ in order to effect compliance with international obligations,² in particular the Anti-Trafficking Protocol to the United Nations Convention Against Transnational Organized Crime [hereafter Protocol],³ and the European Union Framework Decision on Combating Trafficking in Human Beings [hereafter Framework Decision].⁴ In addition, the new criminal provisions are in conformity with Convention Number 182 of the International Labor Organization on the prevention of child labor.⁵

II. Definition of Trafficking in Persons

The newly enacted provisions of the German Criminal Code⁶ differentiate between trafficking for the purpose of sexual exploitation (section 232) and trafficking to exploit the victim's labor (section 233). Both offenses are now contained under the rubric "Offenses against Personal Liberty," whereas the former anti-trafficking provisions were part of the Chapter "Crimes against Sexual Self-Determination." For both offenses, the attempt has been made punishable. In addition, the support of human trafficking through recruiting, transporting, or housing of the victim has also been made punishable (section 233 a). Moreover, in order to comply with international obligations, Germany has made the definition of section 232 more detailed and circumstantial than is customary in Germany and other civil law countries.⁷

The definitional portions of section 232 and 233 can be translated as follows:

Sec. 232. Trafficking in Human Beings for the Purpose of Sexual Exploitation.

¹ Siebenunddreissigstes Strafänderungsgesetz, Feb. 11, 2005, BUNDESGESETZBLATT [BGBl, official law gazette of Germany] I at 239.

² Entwurf, DEUTSCHER BUNDESTAG DRUCKSACHE 15/3045, at the official Web site <http://suche.bundestag.de/searchExtended.do> (last visited Mar. 11, 2008).

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Organized Crime, Nov. 15, 2000, G.A. Res. 25 Annex II U.N. GAOR, 55 SessionA/RES/55/25, available at the official United Nations Web site <http://www.un.org/Depts/dhl/resguide/resins.htm>, ratified by Germany Sept. 9, 2005, BGBl II at 954.

⁴ Council Framework Decision on Combating Trafficking in Human Beings, July 19, 2002, OFFICIAL JOURNAL OF THE EUROPEAN UNION (L203) 1.

⁵ Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, available at the official ILO Web site <http://www.ilo.org/public/english/standards/re/m/ilc/ilc87/com-chic.htm>, ratified by Germany Dec. 11, 2001, BGBl II at 1290.

⁶ Strafgesetzbuch [StGB] repromulgated Nov. 13, 1998, BGBl I at 3322.

⁷ J. Renzikowski, *Die Reform der Strafbestände gegen den Menschenhandel*, 60 JURISTENZEITUNG 879 (2005).

(1) Whoever causes another person, under the exploitation of a coercive situation or of his or her helplessness that results from being in a foreign country, to take up or continue to engage in prostitution, or to engage in exploitative sexual acts on or in front of the perpetrator or a third party or to tolerate such acts that are carried out by the perpetrator or a third person, shall be punished with imprisonment of six months to ten years. The same sanction applies to anyone who causes a person below the age of twenty-one to take up or continue to engage in prostitution or to engage in the other sexual acts that are described in the first sentence.

- (4) Also punished according to paragraph 3 will be whoever
1. causes another person through force, threats of significant harm, or through cunning, to take up or continue to engage in prostitution or in the other sexual acts described in paragraph 1 section 1; or
 2. seizes another person through force, threats of significant harm, or cunning, for the purpose of inducing him or her through force, threats of significant harm, or through cunning, to take up or continue to engage in prostitution or in the other sexual acts described in paragraph 1 section.

Sec. 233. Trafficking in Human Beings for the Purpose of Exploiting their Labor.

(1) Whoever, subjects a person, under the exploitation of a coercive situation or of his or her helplessness that results from being in a foreign country, to slavery, indentured servitude, or debt bondage, or causes him or her to take up or continue an employment with the perpetrator or a third person under working conditions that vary markedly from the working conditions of other employees who engage in the same or an equivalent activity, shall be punished with imprisonment of six months to ten years. The same sanction applies to anyone who subjects a person below the age of twenty one to slavery, indentured servitude, or debt bondage, or causes him or her to take up or continue an employment of the type described in sentence 1.⁸

The definitions of section 232 are very broad and the term used for “causing” (*dazu bringen*) the victim to engage in the victimizing conduct is vague; this has raised the question of how to differentiate between lawful hiring practices of brothel managers and exploitative conduct.⁹ In Germany, prostitution, while being regulated to protect public health, is permitted and so is the operation of brothels.¹⁰ The wording of section 232 also begs the question whether the customer of a prostitute commits the crime if he knew of the exploitative circumstances.¹¹ However, the definition is deemed applicable to the taking of pornographic images under exploitative circumstances.¹²

III. Prosecution, Penalties, and Punishment

The German police must investigate all suspicions of crimes that come to their knowledge,¹³ and the German prosecutor must prosecute all crimes if there are enough indications that the crime has been committed; there is no plea-bargaining in German law.¹⁴ These principles apply fully to human trafficking offenses, and, as indicated by the Human Trafficking Report of the Federal Criminal Police Office for 2006,¹⁵ the German police forces investigated some 353 human trafficking schemes during that

⁸ Translated by the author, Edith Palmer.

⁹ T. Jung, H. Steen, *Einschränkungen der neuen Strafnormen gegen den Menschenhandel*, 27 STRAFVERTEIDIGER 665 (2007).

¹⁰ Prostituiertengesetz, Dec. 20, 2001, BGBl I at 3983.

¹¹ Renzikowskim, *supra* note 7.

¹² *Id.*

¹³ Strafprozessordnung [StPO], Apr. 17, 1987, BGBl I at 1074, as amended, § 163.

¹⁴ StPO, § 152.

¹⁵ Bundeskriminalamt, Bundeslagebild Menschenhandel 2006, at the official Web site <http://www.bka.de/lageberichte/mh.html> (last visited Mar. 11, 2008).

year. Experts claim, however, that many incidents may remain undetected because of financial constraints on the state police forces. More than fifty percent of human trafficking offenses are uncovered by police in the course of their observation of the red light districts in German cities.¹⁶

The penalties provided in the new provision on trafficking in human beings live up to international obligations. The basic punishment range for offenses according to sections 232 and 233 of the Criminal Code is six months to ten years. However, the punishment for aggravated forms of trafficking for sexual exploitation is one year to ten years,¹⁷ and by virtue of this punishment, the offense becomes a felony.¹⁸ Such aggravating circumstances are the sexual exploitation of a child below the age of fourteen, serious physical abuse of the victim by the perpetrator or endangerment of the victim's life, and commission of the deed on a commercial scale or as a member of a criminal organization. Under extenuating circumstances, however, the punishment is reduced to three months to five years of imprisonment for the unqualified deed and to between six months and five years of imprisonment for the aggravated form of the crime.¹⁹

An additional important penalty is the confiscation of assets. The court may impose, in addition to the prison sentence, the forfeiture of the pecuniary assets that the perpetrator obtained through the crime.²⁰ In 2006, assets were confiscated in five percent of the proceedings, and these amounted to €2.2 million (then valued at about US\$2,896,740).²¹

IV. Victim Protection, Assistance, and Compensation

Victims of human trafficking who testify in court are entitled to various protective measures during the trial.²² In addition, a witness protection program can be arranged to protect a witness who is willing to give information even though it could endanger his or her life. The witness protection programs are based on federal law,²³ yet they are carried out by the administrations of justice of the states.

Many victims of labor exploitation or sexual exploitation are illegal aliens²⁴ and this may at times keep them from informing the police. These victims, however, can be granted a temporary residence permit for the expected duration of the proceeding,²⁵ yet this would not as a rule be turned into a permanent permit. Instead, victims can often expect to be sent back to their country of origin when their residence permit expires.²⁶

¹⁶ Renzikowski, *supra* note 7.

¹⁷ StGB, § 232 ¶ 3.

¹⁸ StGB, § 12 defines a felony as an offense that is punishable with a minimum prison penalty of one year or more.

¹⁹ StPO, § 232 ¶ 5.

²⁰ StGB, § 73.

²¹ Bundeskriminalamt, Bundeslagebild Menschenhandel 2006, at the official Web site <http://www.bka.de/lageberichte/mh.html> (last visited Mar. 11, 2008).

²² Among them, StPO, §§ 45, 68, 200, 168 c, 247, and 247.

²³ Gesetz zur Harmonisierung des Schutzes gefährdeter Zeugen, Dec. 11, 2001, BGBl I at 3510.

²⁴ In 2006, some seventy percent of the human trafficking for sexual exploitation cases that were investigated by the police involved victims who were aliens. See Bundeskriminalamt, Bundeslagebild Menschenhandel 2006, at the official Web site <http://www.bka.de/lageberichte/mh.html> (last visited Mar. 11, 2008).

²⁵ The Act on the Residency of Aliens grants the authorities the power to grant temporary residence permits in justifiable situations that do not fit a particular statutorily expressed propose. Aufenthaltsgesetz, July 30, 2004, BGBl I at 1950, § 7 ¶ 1.

²⁶ Interview of Joerg Alt, conducted by Rüssman. *Weg mit der Meldepflicht*, FRANKFURTER RUNDSCHAU 29 (May 12, 2004), LEXIS/NEXIS, News Library, Zeitng File.

Victims who were physically injured through the offense are entitled to governmental victim's compensation. According to the Victims Compensation Act,²⁷ they are granted health care benefits and pecuniary benefits that are similar to veterans' benefits. The victim also has a strong procedural position in the criminal proceeding that allows him or her to obtain information during the trial²⁸ and that also encourages the victim's compensation by the perpetrator during the trial.²⁹

V. Cooperation with Other Governments

Cooperation with the law enforcement authorities of other countries to investigate human trafficking is required within the European Union on the basis of the Framework Decision³⁰ and worldwide on the basis of the Protocol.³¹ In addition, between 2002 and 2004, Germany executed bilateral treaties with several Eastern European countries that call for increased transnational cooperation in combating organized crime, including that relating to trafficking in human beings.³² Of significance among these treaties is the one with the Russian Federation.³³ Relations with the other Eastern European countries that have agreements with Germany may in the meantime have become influenced by the European Framework Decision.³⁴

Within the German law enforcement community, the Federal Criminal Police Office [BKA, Bundeskriminalamt]³⁵ is the most important authority for cooperating with foreign agencies. The BKA has functions that are somewhat comparable to those of the Federal Bureau of Investigation in the United States.³⁶ It assists the police forces of the German states through the maintenance of data bases and through investigative assistance. It also investigates border-crossing crimes in its own cognizance.³⁷ It is the German Central Bureau for Interpol³⁸ and the liaison office for working with foreign police agencies.³⁹ It also prepares annual reports on trafficking in human beings.⁴⁰

²⁷ Opferentschädigungsgesetz, repromulgated Jan. 7, 1085, BGBI I at 1.

²⁸ Opferrechtsreformgesetz, Jun. 24, 2004, BGBI I at 1354.

²⁹ StPO, §§ 1553 a -155 b.

³⁰ Council Framework Decision on Combating Trafficking in Human Beings, July 19, 2002, OFFICIAL JOURNAL OF THE EUROPEAN UNION (L203) 1.

³¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Organized Crime, Nov. 15, 2000, G.A. Res. 25 Annex II U.N. GAOR, 55^t SessionA/RES/55/25, available at the official United Nations Web site <http://www.un.org/Depts/dhl/resguide/resins.htm>, ratified by Germany Sept. 9, 2005, II at 954, art. 10.

³² For agreements with Estonia, Latvia, Lithuania, Poland, and Slovenia, see Gesetz, Nov. 28, 2002, BGBI II at 2810.

³³ Abkommen zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Russischen Föderation über Zusammenarbeit bei der Bekämpfung von Straftaten von erheblicher Bedeutung, May 3, 1999, BGBI II at 860;

³⁴ Council Framework Decision on Combating Trafficking in Human Beings, July 19, 2002, OFFICIAL JOURNAL OF THE EUROPEAN UNION (L203) 1.

³⁵ The functions of the Bundeskriminalamt [BKA] are described in its enabling statute. Gesetz über des Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten, Jul. 7, 1997, BGBI I at 1650, as amended, German text available at the official Web site <http://www.gesetze-im-internet.de>. Information on the BKA in English is provided on the agency's official Web site <http://www.bka.de/> (last visited Mar. 11, 2008).

³⁶ K. Scheppele, *Other People's Patriot Act*, 50 LOYOLA LAW REVIEW (2004).

³⁷ *Id.*

³⁸ International Criminal Police Organization, see its official Web site at <http://www.interpol.int/> (last visited Mar. 11, 2008).

³⁹ BKAG § 3.

⁴⁰ Short versions of the reports for 2002 through 2006 are available at the BKA official Web site at <http://www.bka.de/> (last visited Mar. 11, 2008).

VI. Extraditable Offenses

Trafficking in persons is an extraditable offense in Germany if the requesting country penalizes such conduct with a maximum prison sentence of at least one year. Germany extradites either on the basis of extradition treaties, or, in the absence thereof, on the basis of the German Act on Mutual Assistance in Criminal Matters.⁴¹ The latter allows extradition if the offense is punishable by a maximum prison sentence of at least one year in Germany and in the requesting country.⁴² The same rule on dual criminality is contained in the European Convention on Extradition⁴³ that applies between Germany and twenty-six other European countries. According to the Extradition Treaty between the United States and Germany, dual criminality exists if the deed is punishable with a maximum penalty of more than one year.⁴⁴

VII. Conclusion.

German experts view the reformed German penal provisions on trafficking in human beings as an improvement because they protect a larger circle of victims through clearly worded criminal provisions. The reform, however, has been viewed as failing to confront some remaining issues, among them the question of the criminal liability of the customers of a coerced prostitute. From a practical point of view, it has been pointed out that effective enforcement of the new criminal provisions depends on labor-intensive police work, for which there may be a shortage of funds in the German states.⁴⁵

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⁴¹ Gesetz über die internationale Rechtshilfe in Strafsachen [IRG], Dec. 23, 1982, BGBl I at 2071, as amended.

⁴² IRG, § 3.

⁴³ European Convention on Extradition, Dec. 13, 1957, EUROPEAN TREATY SERIES [E.T.S.] no. 24; 359 U.N.T.S 273, art. 2. A copy of this Council of Europe Convention is provided at the official Web site <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=024&CM=2&DF=3/3/2008&CL=ENG> (last visited Mar. 11, 2008).

⁴⁴ Extradition treaty with protocol, June 20, 1978, 32 U.S.T. 1485, ratified by Germany May 16, 1980, BGBl II at 646, as amended by Supplemental Treaty to the Treaty Concerning Extradition, Oct. 21, 1986, TIAS, 1909 U.N.T.S. 441, ratified by Germany Dec. 5, 1988, BGBl II at 1086, art. 2.

⁴⁵ Renzikowski *supra* note 7.

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ANTI-TRAFFICKING LEGISLATION

ITALY

Executive Summary

Italy amended its Penal Code in 2003 to extend aspects of existing offenses to cover a fuller range of activities connected with human trafficking. It now distinguishes assisting in illegal migration from trafficking for the purpose of exploitation. The Italian government also extends assistance to the victims of trafficking, including renewable residence permits, board and lodging, counselling, training, and legal aid.

I. Introduction

The international fight against human trafficking can be dated to the Universal Declaration of Human Rights, signed in Paris in 1948, which has an explicit prohibition of slavery and slave trade in article 4 and a prohibition of torture and degrading treatment in article 5.¹ During the decades following the signature of the Declaration, the rejection of slavery and inhuman treatment found thorough acceptance and recognition in national constitutional texts, such as the Italian, the German and the Spanish constitutions.² Human trafficking is nowadays linked to migratory flows from the poorest regions of the earth to the richest ones and also to organized crime. A compelling characteristic of the latter is the economic dimension of exploitation of the human being. The action of national states and international organizations is at present focused on combating both human trafficking and smuggling of migrants. At the international level,³ the condemnation of trafficking in human beings receives due acknowledgement in the European Charter of Fundamental Rights.⁴

II. Definition of Trafficking

The primary reference for a normative definition of human trafficking is found in the Palermo

¹ *Universal Declaration of Human Rights*, "Art.4 : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Art.5 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The complete text is available at <http://www.un.org/Overview/rights.html> (last visited Mar. 19, 2008).

² Italian Constitution, 1946, art. 3s (principle of equality), 13 (personal liberty), 22 (inalienability of juridical subjectivity). The text is available at <http://www.quirinale.it/costituzione/costituzione.htm> (unofficial source, last visited Mar. 26, 2008). The German Constitution was enacted in 1949 and amended in 1990, after reunification of the country. The rejection of slavery and inhuman treatment is contained in arts.1 (protection of human dignity), 2 (rights of liberty), 3 (equality before the law); text at http://www.bundestag.de/htdocs_e/parliament/function/legal/germanbasiclaw.pdf (unofficial source, last visited Mar. 26, 2008). The Spanish constitution, enacted in 1978, belongs to a second wave of codification in Europe. In comparison with the Italian and the German constitutions, it has a longer catalogue of rights (arts.10-55) and the rejection of torture and inhuman treatment is formalized in art. 15. The Spanish Constitution can be read at <http://www.senado.es/constitu/index.html> (unofficial source, last visited Mar. 26, 2008).

³ UNESCO Bangkok Trafficking Statistics Project, <http://www.unescobkk.org/index.php?id=1022> (last visited Mar. 19, 2008) & United Nations Office on Drugs and Crime, *Trafficking in Persons. Global Patterns* (UNODC, 2006). In the Italian literature, a critical analysis of the phenomenon is provided by L. GALLINO, *Globalizzazione e disuguaglianze*, LATERZA (2nd ed., 2003).

⁴ European Charter of Fundamental Rights, art. 5(3): "Trafficking in human beings is prohibited." The complete text is available at http://www.europarl.europa.eu/charter/default_en.htm (last visited Mar. 19, 2008).

Convention⁵ and in its supplementing protocol, which states:

“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.⁶

The definition comprises a vast range of illicit activities. Two elements contribute to qualify human trafficking in a more precise fashion: the use of violent means to displace the victim (force, threat, coercion, abduction, fraud, or abuse of a position of vulnerability) and the final purpose of exploitation. The reference to exploitation allows the definition to be applied to situations other than just those involving sexual exploitation; any form of exploitation of the human being for economic purposes is included. The framework in which the illicit activities take place is that of transnational organized crime, but this element does not form part of the legal definition of the crime as such.⁷ The Palermo Convention protocol acknowledged in article 5 the criminal nature of the illicit activities, configuring them as criminal offenses. The Convention thus applies to the offenses so qualified (the activities can receive the qualification of a criminal offense only in national criminal laws; the convention may and does qualify an offense as a criminal offense only for the purpose of determining its own applicability) when those are "transnational in essence" and the illicit activities involve an organized criminal group, pursuant to article 4. Finally, the Palermo Convention and its protocols, considered as a whole, give normative weight to a distinction between trafficking in human beings and smuggling of migrants, stating, ““Smuggling of migrants’ shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”⁸

The distinction between the two types of offenses, though clear-cut in black letter law, tends generally to be blurred.⁹ In the Italian legal system, the two types of offenses have a different legal basis.

The smuggling of migrants consists of facilitating and supporting the entrance and stay of an illegal immigrant in the territory of the State, pursuant to article 12 of the Consolidated Act on Immigration.¹⁰ A recent decision implies that the mere entry and the activities of supporting the entrance of an illegal immigrant are *per se* criminal offenses.¹¹

⁵ United Nations, Convention against Transnational Organized Crime, and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (last visited Mar. 19, 2008).

⁶ *Id.*, art. 3, lett. a.

⁷ Among European scholars, the question of whether the relationship between human trafficking and exploitation with organized crime calls for a 'horizontal' or 'vertical' type of response is much debated. . See F. Jasinski, *National Coordination of the Fight against Trafficking in Human Beings: Recommendations for Poland as a New EU Member State*, EUI-RSCAS Working Paper 2006/16, at 1 & 4.

⁸ The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing UN Convention against Transnational Organized Crime, art. 3, lett. a., <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (last visited Mar. 19, 2008).

⁹ H. Askola, *Violence against Women, Trafficking and Migration in the European Union*, 13 EUROPEAN LAW JOURNAL, 204-217, 206-207 (2007). The author also discusses the definitions provided by the Convention and its protocols.

¹⁰ Consolidated Act on Immigration, D. lgs., July 25, 1998, No. 286, in GAZZETTA UFFICIALE NO. 191, Aug. 18, 1998 & subsequent amendments (official source).

¹¹ Corte di cassazione, 1 sez. pen., Judgement, Jan. 31, 2008, No.124. *Contra see* Corte di Cassazione, 1 sez. pen., Judgement, June 15, 2007, No. 29728, & Corte di cassazione, 1 sez. pen., Judgement, Mar. 17, 2003, No. 12963.

The smuggling of migrants can be considered to be a generic offense, while the trafficking in persons represents a particular offense.

Trafficking in persons (*tratta di esseri umani*) has been introduced into Italian law by the amendment of an already existing provision of the Penal Code, which was enacted in 1930. Legislative action in 2003 reformed the Penal Code to create provisions directly concerning trafficking. Previously, the same conduct was sanctioned through the application of different provisions, such as abduction, violence, or sexual abuse.¹²

Article 600 of the Penal Code¹³ now punishes the treatment of another human being as a chattel, the use of coercion to limit his or her liberty, and the maintenance of a permanent state of vulnerability, forcing the victim to provide labor or any other kind of benefit. The conduct must be carried out by means of violence, force, coercion, or abduction. The influence of the international conventions on the wording of the provision is evident, as is that of the provisions set forth in the Geneva Conventions of 1926 and 1965.¹⁴ As a consequence, the legislative definition of the offenses still mirrors the concept of slavery, and it has been criticised for missing the opportunity to further develop the indications provided by the United Nations. On the other hand, the Palermo Convention did play a role in the wording of the provision. Particular importance is thus vested in the reference to the state of vulnerability of the victim, in that it allows the punishment of conduct in which the victim is given an apparent degree of autonomy in order to be fully "productive" in economic terms. As is the case in the Protocol's definition, the Penal Code does not make reference to any consent possibly given by the victim to the inhuman treatment.

In addition, as a result of the 2003 amendment of the Penal Code, article 601 was revised. It concerns trafficking in human beings as such (*tratta di persone*), because it punishes those who, taking advantage of the state of vulnerability of the victims, induce them by means of force, coercion, abduction, or promises of monetary rewards to illegally enter, remain in, or exit the country.¹⁵ Finally, article 602 of the Code provides for sanctions for those who buy and sell human beings.

The first application of the revised law gave rise to some difficulties, especially when the judge had to ascertain the state of vulnerability; on this point, the case law shows a preference for using a normative standard set in the Civil Code, at article 1448, rather than requiring the proof of the more restrictive fact pattern of the state of necessity pursuant to article 54 of the Penal Code.¹⁶ The state of necessity provided for in article 54 states that criminal sanctions can be avoided in some cases in which the criminal conduct was necessary for the defendant to save him or herself or another from physical danger. On the other hand, article 1448 of the Civil Code and the case law thereof refer to the discipline of *lesio enormis* in contract law, which takes place when a party unduly takes advantage of a situation of weakness or material or moral poverty that may have an impact on the free will of a person. It is evident that by applying the contractual provision, the scope of application of the norm would be widened so as to provide effective protection to victims of trafficking, taking only loosely into account the material means of coercion used to keep the victim in the state of inferiority.

Related Crimes against Children

¹² M. Virgilio, *Prostituzione e traffico di esseri umani tra legge e diritto giurisprudenziale*, in ASSOCIAZIONE ON THE ROAD, PROSTITUZIONE E TRATTA. MANUALE DI INTERVENTO SOCIALE 38ss (Milan, 2002).

¹³ Art. 600, Penal Code, as amended by Law, No. 228, Aug. 11, 2003, GAZZETTA UFFICIALE No. 195, Aug. 23, 2003 (official source).

¹⁴ Ratified by Royal Decree No. 1723, Apr. 26, 1928; A & letters a) and b), art. 1 of the supplementing Geneva Convention, Sept. 7, 1965, ratified by the Law No. 1304, Dec. 20, 1967

¹⁵ Art. 601, para. 1, Penal Code as amended by Law No. 228, Aug. 11, 2003, GAZZETTA UFFICIALE No. 195, Aug. 23, 2003 (official source).

¹⁶ Corte di Cassazione, 3 sez. pen. Judgement, Feb. 2, 2005, No. 3368.

Children are particularly vulnerable to trafficking, as it is easier for traffickers to target them through coercion, deception, or manipulation and because they are more dependent on adults and have fewer possibilities for escape from an exploitative relationship. Therefore, even when a child agrees to be trafficked and/or exploited, consent cannot be assumed. This is recognised in the Palermo Protocol, where the definition stipulates that, in the case of children, the use of force, coercion, or deception is not required for the relevant provision to apply. As a general rule, Italian law protects all foreign minors within Italian territory, victim or not, and guarantees the principle of “non-expulsion.” In 1998, Italy amended the criminal code by introducing new offenses: Article 600-bis “Child prostitution,” Article 600-ter “Child pornography,” Article 600-quater “Possession of pornographic material,” and Article 600-quinquies “Tourist initiatives aimed at the exploitation of child prostitution.”¹⁷

At the beginning of 2006, a new law was enacted to ensure more effective and severe punishment for this category of crimes.¹⁸ A detailed explanation of the system is outside the scope of this survey, but it is worth highlighting some general aspects. Sexual exploitation of children is strictly punished. Any sexual intercourse with a minor under eighteen years of age in exchange for money or other material benefits is considered a crime and punished with two to five years of imprisonment; the overall rationale of the statute is to put in place a network of provisions in order to discourage demand, which is in tune with the latest development of international actions aimed at protecting children's rights.¹⁹

III. Prosecution, Penalties, and Punishment

Prosecution

The prosecution of crimes is carried by the police pursuant to article 55 of the Code of Criminal Procedure, which entrusts them with investigative powers regardless of any notice of crime. The police respond to the Public Prosecutor (Pubblico Ministero), who exerts the power to prosecute those responsible for offenses *ex officio* or after receiving a formal complaint by the victim, pursuant to article 50 of the Code of Criminal Procedure.²⁰

The revised Penal Code of 2003 made an effort to equip the police and the public prosecutors

¹⁷ Law No. 269, Aug. 3, 1998, GAZZETTA UFFICIALE, No. 185, Aug. 10, 1998 (official source).

¹⁸ Law No. 38, Feb. 6, 2006, “provisions for the fight against sexual exploitation of children and child pornography via the Internet.” GAZZETTA UFFICIALE No. 38, Feb. 15, 2006 (official source), available at <http://www.camera.it/parlam/leggi/060381.htm>.

¹⁹ See for instance the latest Communication issued by the Commission of European Communities “Towards an EU Strategy on the Rights of the Child,” Brussels, July 4, 2006, COM (2006)367 final. The Communication, though acknowledging the lack of legal basis and competence in the field, gives relevance to art. 6 (2) of the treaty on European Union and to art. 51 of the European Charter of Fundamental Rights, available at http://www.europarl.europa.eu/charter/default_en.htm at 3. The Communication, beside establishing a list of priorities, sets limited but important short term objectives at page 7, among which are: *To establish a single six-digit telephone number (116xyz) within the EU as a child helpline and one as a hotline dedicated to missing and sexually exploited children (by the end of 2006). To support the banking sector and credit card companies to combat the use of credit cards when purchasing sexual images of children on the Internet (by the end of 2006). To launch an Action Plan on Children in Development Cooperation to address children’s priority needs in developing countries (by the end of 2007). To promote a clustering of actions on child poverty in the EU (by the end of 2007).*

²⁰ Code of Criminal Procedure, Presidential Decree, D.P. R. No. 447, Sept. 22, 1988, GAZZETTA UFFICIALE No. 250, Sppl. Ord., Oct. 24, 1988, and subsequent amendments (official source).

with the widest and most penetrating powers of investigation and prosecution with regard to human trafficking. It extended to trafficking the scope of applicability of many provisions already existing in the system that had been designed for the fight against organized crime, crimes of subversion, and terrorist groups.

A paragraph was added to article 416-bis on criminal organizations, enabling judges to apply the same procedural rules to criminal organizations that pursue human trafficking. Other powerful measures borrowed from the legislation aimed at combating organized crime are available to prosecutors. These measures are punitive, but also have an important function of general deterrence. Article 6 of the 2003 law modifies articles 5, 51, and 407 of the Code of Criminal Procedure regarding jurisdictional competence, attributing competences for the offenses covered by article 600 of the Penal Code to local offices in each Tribunal and the "*Direzione Antimafia*," a unified organ that administers, conducts, and coordinates all the investigations concerning organized crime at the national level. Moreover, the same Law enacted in 2003 grants the investigators and the prosecutors the possibility of extending the duration of the preliminary phases of criminal proceedings to two years; the double function of general deterrence and sanction is evident in article 7, extending the scope of application of two different pre-existing statutes.²¹ The first statute regulates the economic measures that may be used to prevent the commission of illicit activities when a person is incriminated for offenses related to criminal organizations. The second statute grants public prosecutors the power to put individuals under arrest and eventually confiscate their assets, if there is a reasonable certainty about the illicit origins of the goods. Other provisions allow the police special powers to undertake particular types of investigative activities, such as telephone tapping and interceptions of communications; delaying seizure, provisional, or definitive arrests or detentions; and making use of false identities for investigative purposes.²²

Altogether, the extension of the scope of application of the provisions already set by the law specifically for the fight against organized crime created a more coherent and effective framework of legal tools to combat human trafficking, because they rely on the investigative organization, intelligence, databases, and expertise developed by *Direzione Investigativa Antimafia*. Analogous extension of powers has been granted for the cases of smuggling of migrants, as set in article 12 of the Consolidated Act on Immigration.

Penalties

The criminal sanctions established by the law are respectively:

Crime	Sanction	Fine
smuggling of migrants	imprisonment for from one to five years	up to €15,000 per migrant
smuggling of migrants for an economic purpose	imprisonment for four to fifteen years	up to €15,000 per migrant
smuggling of migrants performed in association with other persons	imprisonment for four to fifteen years	up to €15,000 per migrant
unjust benefit from the situation of illegality of the migrant	imprisonment for one to four years	up to €15,000

²¹ Art. 7, Law No. 228, Aug. 11, 2003, GAZZETTA UFFICIALE No. 195, Aug. 23, 2003. The pieces of legislation amended are respectively Law No. 55, Mar. 19, 1990, GAZZETTA UFFICIALE No. 69, Mar. 23, 1990 & in an annotated version also in GAZZETTA UFFICIALE No. 120, May 25, 1990; & Legislative Decree No. 306, 1992, as amended by Law 356, Aug. 7, 1992, GAZZETTA UFFICIALE No. 185, Aug. 7, 1992. (official sources).

²² Law No. 228, 2003, *id.*, arts. 8-10, make measures for combatting organized crime applicable to human trafficking and establish a solidarity fund for victims.

trafficking in human beings, art. 600, ¶ 3 Penal Code (victim is a minor under 18 years or the crime is aimed at favouring prostitution or at trafficking of human organs or other body parts)	imprisonment for eight to twenty years, plus the sanction can be augmented by one-third to one-half	
trafficking in human beings, art. 601, Penal Code imprisonment for eight to twenty years		
trafficking in human beings, art. 601, ¶ 3 Penal Code (victim is a minor under 18 years or the crime is aimed at favouring prostitution or at trafficking of human organs or other body parts)	imprisonment for eight to twenty. 20 years, plus the sanction can be augmented by one-third to one-half	
sale of human beings, art. 602, Penal Code.	imprisonment for eight to twenty years	
sale of human beings, art. 602, ¶ 3, Penal Code (victim is a minor under 18 years or the crime is aimed at favouring prostitution or at trafficking of human organs or other body parts)	imprisonment for eight to twenty years, plus the sanction can be augmented by one-third to one-half	

Finally, the legislators also took into account corporate liability. If the conduct under scrutiny is perpetrated by a juridical person, association, or company, pursuant to article 5 of Law No. 228 of 2003, the sanction is transformed into a pecuniary sanction corresponding to a predetermined quota, based on the assets of the company.²³

IV. Victim Protection, Assistance, and Compensation

The actions of the Italian government in this field are not devoted solely to suppression of the crime, but also include positive measures of support for the victims of crime. The measures introduced for the purpose of supporting victims of smuggling of migrants and victims of human trafficking are different and deserve separate attention. In both cases, however, the legislators built on pre-existing clusters of provisions related respectively to immigration and organized crime.

Smuggled Migrants

Law No. 40 of 1998²⁴ was the first law on immigration in Italy, and it contains the first major legislative tools in Europe to combat trafficking and to guarantee the victim's protection. At the time of its approval – prior to the Palermo Protocol, the European Union decision, and the Council of Europe Convention – an agreed definition of the trafficking in persons did not exist. However, Italy favoured a proactive, victim-centred approach. Article 18 of the Law introduced a renewable (six months to one year) residence permit for the purpose of “social protection.” A foreigner who has

²³ Law No. 228, 2003, *id.*, art. 5.

²⁴ Law No. 40, Mar. 6, 1998, GAZZETTA UFFICIALE No. 59, Mar. 12 1998, Suppl. Ord. No. 40 (official source).

been a victim of trafficking can obtain such a permit in order to “escape violence and coercion by a criminal organisation and take part in an assistance and re-socialisation program.” This renewable permit does not oblige the person to go back home once the program is over. In fact, if the person has a regular job at the end of the program, he or she can remain in Italy, according to the conditions in the work contract, and, eventually, can also apply for permanent residency. Two separate ways of obtaining the residence permit actually exist. The first one is a judicial procedure in which the Public Prosecutor has an important role to play, and the second one is a social procedure, involving the local authorities, associations, and NGOs as main reference points. The judicial path implies that the victim will cooperate with the police and the prosecutor and will be instrumental in bringing charges against the perpetrator by filing a complaint. The social path does not require a formal report to the police, but rather the submission of a statement (containing provable key information) by an agency accredited under Article 18 (an NGO) or by the public social services of a City Council on the behalf of the victim. The dual paths have been designed in order to meet the needs of those victims that do not have relevant information about the criminal organisation or that are too frightened for their own or their relatives’ safety to press charges. In the Italian experience, many victims who begin the social path, after having been reassured and having gained new trust in institutions, come to the decision to file a complaint against their traffickers and/or exploiters.

Direct Assistance to Victims of Smuggling

In Italy, an inter-ministerial Committee coordinates, monitors, and plans all national resources allocated to social assistance and integration program for victims of trafficking. In the last six years, the Committee has funded 490 projects throughout the country. A call for the submission of project proposals is launched yearly by the Department for Rights and Equal Opportunities, which runs the programs and provides seventy percent of the funding. The remainder is financed by local authorities. In addition to that, in 2006, twenty-six projects sponsored by a different special fund granted temporary adequate first accommodation, board, and longer term lodging for the victims of trafficking. NGOs, associations, and local authorities (municipalities, provinces, and regions) yearly submit their project proposals to the Department for Rights and Equal Opportunities. The NGOs applying for funding must involve a local authority as a project partner. In order to be eligible for the funding, the NGO or the association must be enrolled in the register of NGOs and bodies carrying out assistance to migrants. Within each individual program various activities and services are provided to the victim:

- Board and lodging;
- Social counselling;
- Psychological counselling;
- Social and health care services accompaniment;
- Free legal consultancy and assistance;
- Social activities; and
- Educational and training activities, including Italian language classes, vocational guidance, and job placement.

It is also worth mentioning that a toll-free ant-trafficking number has been created. This is a national hotline directed to victims of trafficking, clients, social and law enforcement agencies, and the population at large. Financed by the Interministerial Commission, the free number is composed of a single central headquarters that functions as a filter for the calls and fourteen territorial branches located in different regional or interregional areas throughout Italy. In most cases, the territorial branches of the service are managed by the same NGOs and public institutions responsible for the implementation of projects funded within the Article 18 Program.²⁵

²⁵ See the recent report A. Barber, *Art. 18, D.lgs 286/98. dati e riflessioni sui progetti di protezione sociale ex art.18*, edited by the Technical Secretary of the Interministerial Committee for the support of the victims of human trafficking, violence, and exploitation, Jan. 2008, available at <http://www.pariopportunita.gov.it/DefaultDesktop.aspx?doc=1731>.

Public Funds and Assistance

The same law, No. 228 of 2003, provided for the institution of a public fund which administers and distributes money, including sums allotted under in article 18 of the Consolidated Act on Immigration and confiscated in the framework of article 12 of that Act.²⁶ The victims of criminal conduct punished under the Penal Code article 600 and subsequent articles can rely on specifically designed provisions, such as article 11 of the 2003 Law which extends the applicability of specific measures of personal protection for the victims of abduction and for the protection of witnesses to the victims of human trafficking. These measures have proven highly effective, because providing practical assistance in the immediate aftermath of the discovery and prosecution of the criminal conduct may guarantee physical integrity of the victims and their relatives. There is in addition an incentive effect, in which the assistance provided to victims promotes cooperation between victims and the police and prosecutors. A specific fund also has been set up to provide assistance to the victims of human trafficking, pursuant to article 13 of 2003 Law. This fund provides "first aid" to the victims of trafficking, facilitating their lodging, primary assistance, or health care, as needed.

Furthermore, victims can take advantage of the protection and support measures built into the framework of the legislation concerning immigration, which are aimed at social inclusion and integration.

V. Cooperation with Other Governments

In the fight against trafficking in human beings, cooperation with other governments follows a double track logic. The first is cooperation with European Union Member States, which have a common strategy under the Freedom, Security, and Justice Pillar and under the European Neighbourhood Policy. The second is purely inter-governmental, international cooperation.

Within the EU there are complex and intertwined actions brought about by the Commission and other European institutions.²⁷ Policies and programs against human trafficking must incorporate the norms, standards, and principles of the international human rights system; in particular, the framework for the EU policy on combating trafficking in human beings is provided by the Commission Communication on "Fighting Trafficking in Human Beings – An Integrated Approach and Proposals for an Action Plan,"²⁸ and the subsequent EU Action Plan on best practices, standards, and procedures for combating and preventing trafficking in human beings, adopted by the Council in accordance with the Hague Program on Strengthening Freedom, Security, and Justice in the EU.²⁹ Both documents advocate a multidisciplinary approach to trafficking which is not limited to law enforcement strategies, but includes a broad array of prevention and victim support measures. The human rights-based approach includes a commitment to maximise the effectiveness of existing policies and to develop additional ones. The recently established European Forum for the Rights of the Child also contributes to strengthening EU action in the field of child trafficking.³⁰

Italy also signed the Council of Europe Convention on Action against Trafficking in Human

²⁶ Law No. 228, 2003, Aug. 11, 2003, GAZZETTA UFFICIALE No. 195, Aug. 23, 2003. art. 12.

²⁷ For further references see Jasinski, *supra* note 7, at 5-17.

²⁸ Commission of the European Communities, *Fighting Trafficking in Human Beings – an Integrated Approach and Proposals for an Action Plan*, COM (2005) 514 final.

²⁹ *EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Persons*, OFFICIAL JOURNAL 311, Sept. 12, 2005, at 1.

³⁰ Information and documents on the actions undertaken by the Directorate General in the field of protection of the rights of the child can be seen at http://ec.europa.eu/justice_home/fsj/children/forum/fsj_children_forum_en.htm (last visited Mar. 26, 2008).

Beings soon after it was issued. Other bilateral conventions are at present in force; the latest was signed by Italy and Brazil at the end of January 2008, and it promises to be pivotal in the prevention of human trafficking and sexual exploitation of women and children.

VI. Extraditable Offenses

The fifth Chapter, articles 27-31 of the Council of Europe Convention establishes that signatory parties should implement judicial cooperation in order to make the prosecution of the criminal conduct regulated by the convention effective. The weak instruments provided for by the Council of Europe Convention are in reality well supplemented by inter-governmental cooperation between member states.

Additional provisions relevant to counter-trafficking work are the Framework Decision of March 15, 2001, on the standing of victims in criminal proceedings, and the Framework Decision of June 13, 2002, on the European Arrest Warrant and the surrender procedures between Member States. These are relevant pieces of legislation which allow cooperation between administrations and justice departments and demonstrate the attention that is to be paid to trafficking in human beings in the context of extradition or surrender procedures.

Finally, Italy is party to the European Convention on Extradition, which opened for signature in Paris on December 13, 1957, and was further supplemented by an added protocol in 1975.³¹

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³¹ The European Convention on Extradition is online at <http://conventions.coe.int/treaty/en/Treaties/Html/024.htm> (last visited Mar. 26, 2008). Italy ratified the Convention by Law No. 300, Jan. 30, 1963, but did not sign the added protocol. The Convention entered in force in 1964 as per a government communication published in GAZZETTA UFFICIALE No. 31, Feb. 6, 1964.

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ANTI-TRAFFICKING LEGISLATION

LITHUANIA

Executive Summary

Lithuanian domestic legislation implements all major international obligations and complies with the minimum standards for elimination of trafficking. The definition of trafficking was recently amended to include internationally recognized components of this crime. Stiff penalties for trafficking are provided by Criminal Code and these provisions are enforced by the courts. Domestic legislation allows victims of trafficking to stay in Lithuania temporarily in case of cooperation with the authorities. Victims of trafficking are not penalized for unlawful acts committed as a direct result of being trafficked. A national trafficking awareness program is funded by the government and taught in public schools.

I. Definition of Trafficking

The original definition of trafficking in human beings was included in the Lithuanian Criminal Code in 1999. At that time, the definition addressed transporting of a Lithuanian citizen abroad illegally or legally for illegal purposes. In May 2003, the new Criminal Code entered into force. It defined trafficking in human beings as selling, acquiring, or in any other way alienating a person for the purpose of receiving any material or personal gain. In December 2006, this Criminal Code's provision was amended to include any act related to prostitution and illegal migration. The new version prohibits all known forms of trafficking.¹

Trafficking committed in regard to a minor, for the purpose of procuring an individual into prostitution, and with falsification of official documents is recognized as separate crimes and is prosecuted according to the relevant provisions of the Criminal Code.²

II. Prosecution, Penalties, and Punishment

The amended article 147 of the Criminal Code prescribes penalties ranging from probation to fifteen years of imprisonment. This penalty was increased in 2006, from eight years of imprisonment provided by the previous version of the Code. As a rule, the courts sentence those who are accused of trafficking to imprisonment for a term between three and six years, depending on the circumstances of the crime. According to the 2007 Report of the U.S. Department of State on Human Trafficking, about half of those accused are sentenced to punishment, which do not require serving time in prison.³

¹ ZINOTAJŠ [official gazette] 2006, No. 297-12.

² CRIMINAL CODE OF THE REPUBLIC OF LITHUANIA, Art. 207, 239(3), 239(4).

³ *Trafficking in Persons 2007 Report*, Washington, DC: U.S. Department of State, available at <http://www.state.gov/g/tip/rls/tiprpt/2007/82807.htm>

Additionally, the new Criminal Code provides for a four-year imprisonment for profiting materially from prostitution or pimping of a minor, and a six-year imprisonment for organizing or heading a prostitution ring or transportation of a person for the purpose of prostitution. Forcing an individual into prostitution by coercion or fraud is a separate crime punishable by imprisonment for up to ten years.

For investigating trafficking related crimes, a special anti-trafficking police unit has been created within the national police force. All members of the unit were trained by foreign instructors referred by the EU institutions and Europol. Many were trained abroad in Western Europe or in the neighboring Nordic countries with the purpose to strengthen regional cooperation.⁴

III. Victim Protection, Assistance, and Compensation

Protection of and assistance to the victims of trafficking is conducted in compliance with the Government approved national Trafficking in Human Beings and Prostitution Control and Prevention Program, approved in January 2002.⁵ The program provides for legal and social measures to prevent trafficking and rehabilitating its victims. It lists particular projects, and specifies activities of individual government agencies. The programs range from border and migration control to job training, crisis hotline, and awareness raising.

Through thirteen NGOs, designated by the Government, budget funds are distributed to shelters and rehabilitation centers of trafficking victims. As a trafficking prevention measure, in 2006, the Ministry of Education of Lithuania distributed thousands of anti-trafficking brochures and videos in schools.

The identified victims of trafficking are usually deported to their home countries. The Ministry of Foreign Affairs assists them in repatriation. While in Lithuania, police refer the identified victims to the NGOs for assistance, but this process is rather informal. The Government of Lithuania encourages victims to assist in investigating and prosecuting cases of trafficking. The Law on the Protection from Criminal Influence of the Participants of the Criminal Proceedings and Clandestine Activities⁶ is the basis for the legal extension of the victims' stay in the country. They are eligible for temporary residence permits and are not penalized for unlawful acts committed as a direct result of their being trafficked.

IV. Cooperation with Other Governments

Lithuania is a signatory to the U.N. Convention Against Transnational Organized Crime, the corresponding Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea, and Air. The 2005 Council of Europe Convention on Action against Trafficking in Human Beings was signed by Lithuania on February 12, 2008.⁷

Most of the international cooperative activities are conducted within the EU and the Organization for Security and Cooperation in Europe (OSCE) frameworks and are aimed at implementing of regional initiatives. Since 2002, Lithuanian and Finnish border patrols exchange information in order to combat trafficking and smuggling in people and other crossborder crimes.⁸ Since 2002, Lithuania participates in

⁴ *Scotland Yard Targets Human Traffickers*, GUARDIAN, Mar. 7, 2007, at <http://www.guardian.co.uk/uk/2007/mar/07/humanrights.ukcrime>.

⁵ ZINOTAJIS [official gazette] 2002, No. 8-23.

⁶ ZINOTAJIS [official gazette] 1996, No. 1-1202.

⁷ *Lithuania Took an Important Step in Fight against Human Trafficking*, ELTA-Lithuanian News Agency, Feb. 12, 2008, available at www.site.securities.com.

⁸ *Lithuanian, Finnish Border Guards to Exchange Information on Border Violations*, BALTIC NEWS SERVICE, Nov. 29, 2002, available at www.site.securites.com.

the Nordic Ministry Council-initiated the Nordic-Baltic Campaign against Trafficking in Women and Children.

V. Extraditable Offenses

According to the existing criminal procedure, persons accused by Lithuanian authorities of committing human trafficking will be prosecuted and tried in the Republic of Slovenia. Article 221-227 of the Criminal Procedural Code of Lithuania state that a Lithuanian national or a foreigner suspected or charged with committing a crime can be extradited to a foreign country only if the international agreement of the Republic of Lithuania provides for such an obligation.

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ANTI-TRAFFICKING LEGISLATION
THE NETHERLANDS

Executive Summary

Trafficking in human beings is regarded both in the Netherlands and internationally as a serious crime and a violation of the victim's human rights. With the introduction of article 273f into the Criminal Code, Dutch law was brought into line with the Palermo Protocol to prevent, suppress, and punish trafficking in persons. Article 273f of the Dutch Criminal Code, criminalizing trafficking in human beings, is a broad and complex provision.

The position of the victim remains a matter of continuing concern. It remains perpetually difficult for victims to obtain redress and compensation for tangible and intangible losses. In addition, many roadblocks are identified in relation to the access of victims to the B9-procedure which is applicable to aliens.

I. Introduction

The topic of human trafficking is high on the agenda in the Netherlands, and although people are working hard to put policy into practice, their efforts have not yet been sufficient. During a recent major police investigation, many victims of human trafficking were identified in the licensed prostitution industry. More than six years after lifting the general ban on brothels, it appears that not enough measures have as yet been adopted, or at any rate adequately enforced, to free the sex industry from forced prostitution.¹

Developments within the United Nations and the European Union are responsible for the Dutch legislative provision criminalizing trafficking in human beings. In particular, article 273f of the Dutch Criminal Code has implemented the following instruments of the United Nations and the European Union respectively:

- The Protocol to prevent, suppress, and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational organized crime, concluded at New York on November 15, 2000²; and
- The European Council Framework Decision 2002/629/JHA of 19 July 2002, on combating trafficking in human beings³.

Both instruments define trafficking in human beings broadly, and these new instruments have resulted in the widening of the Dutch Criminal Code, which had been limited to punishing only sexual exploitation until the entry into force of its new article 273f, on human trafficking.⁴ This amendment

¹ TRAFFICKING IN HUMAN BEINGS - FIFTH REPORT OF THE DUTCH NATIONAL RAPPOORTEUR, 2007, xix (The Hague: Bureau NRM), http://english.bnrm.nl/Images/NRM%20Fifth%20Report%20Rapporteur%20def_tcm64-102040.pdf (last visited Feb. 27, 2008).

² The Netherlands did ratify this so-called "Palermo Protocol," which has been published in the following official source of the Kingdom of the Netherlands: TRACTATENBLAD VAN HET KONINKRIJK DER NEDERLANDEN 2001, no. 69.

³ OFFICIAL JOURNAL L 203, Jan. 8, 2002.

⁴ The provision was introduced as article 273a (entering into force on Jan. 1, 2005), but was renumbered as article 273f of the Criminal Code as of Sept. 1, 2006 (Dutch abbreviation "Sr").

brought new activities within the scope of the criminal provision on trafficking in human beings, including exploitation in employment or services in sectors other than the sex industry and certain activities aimed at organ removal. Article 273f of the Criminal Code became a very extensive and complex provision, because it incorporated so many courses of conduct of disparate natures. The result is the longest article in the Criminal Code.

II. Definition of Trafficking

Article 273f⁵, paragraph 1, of the Dutch Criminal Code is the main provision dealing with trafficking in human beings. It criminalizes the following conduct:

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 labor 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) willfully profits from the exploitation of another person;

(g) willfully 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) willfully 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 [i.e. €74,000 maximum, about US\$112,000], or either of these penalties.

At its core, article 273f of the Criminal Code contemplates the criminalization of *excessive* abuse of individuals in an employment or service provision relationship, along with all conduct amounting to putting anyone into such a position. The offence also encompasses profiting from such circumstances and forcing someone to surrender income from sex work and from the removal of organs. When assessing whether or not there has been excessive abuse, the determining factors are the circumstances in which the victim is placed and under which he or she is put to work. The nature of the forced work is also relevant.

⁵ Non-official translation available at the website of the Dutch National Rapporteur on Trafficking in Human Beings, http://english.bnrm.nl/Images/Article%20273f%20Dutch%20Criminal%20Code_tcm64-83548.pdf (last visited Feb. 27, 2008).

In light of international legislation, it is important whether the fundamental human rights of the victim have been violated (or are under threat of violation) by the conduct in question. If that is the case, then there is excessive abuse⁶.

Under this article, certain activities (recruiting, transporting, accommodating someone) using specific means (force, violence, deception, misuse of a vulnerable position) with the intention to exploit that person (in the sex industry, forced labour, or slavery like practices), profiting (economically) from sexual acts of minors, and certain activities aimed at removal of organs are punishable. Analyzing the Dutch definition of trafficking further, it should be noted that paragraph 1 (a) sums up different means of coercion. Paragraph 1 (b), 1 (e) and 1 (h) aim to protect children by omitting the acts of violence mentioned in paragraph 1 (a). Paragraph 1 (c) criminalizes sexual exploitation crossing national borders; in this respect, article 273f of the Criminal Code has an extra-territorial dimension. Paragraph 1 (d) fights forced labor and the removal of organs. Finally, paragraphs 1 (f), 1 (g), 1 (h) and 1 (i) widen the scope of the definition of trafficking by penalizing different forms of exploitation and profiting from trafficking.

Since exploitation is the central element in the crime of trafficking in human beings, the meaning of that term has been defined in article 273f, paragraph 2 of the Dutch Criminal Code, by the following non-exhaustive listing of practices: “2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labor or services, slavery, slavery like practices or servitude.”

Exploitation thus involves serious abuses, with the victim's fundamental human rights being violated and where his or her freedom is restricted – or he or she reasonably feels this to be the case – to such an extent that there is no escape from the situation⁷. The definition contained in article 273f, paragraph 2 of the Dutch Criminal Code is not restricted to sexual exploitation.

II. Prosecution, Penalties, and Punishment

In the Dutch penal system, judges are limited in their imposition of punishment by maximum penalties. According to article 273f, paragraph 1 of the Dutch Criminal Code, the perpetrator of trafficking in human beings is liable to a term of imprisonment not exceeding six years and a fifth category fine (i.e. € 74,000 maximum⁸), or either of these penalties. In addition to this, the same article provides for the possibility of more severe penalties, up to fifteen years of imprisonment, under the following aggravating circumstances:

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 Dutch National Rapporteur, *supra* note 1, at 12.

⁷ *Id.*, at 14.

⁸ According to art. 23, para. 4, of the Dutch Criminal Code (Sr).

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.

Article 273f of the Criminal Code also specifies that Article 251 of the Code is to apply *mutatis mutandis*. Article 251 allows the courts to deprive individuals of certain rights and to stop them from exercising certain professions, in case of conviction for specific offences, including the right to hold certain offices or to serve in the armed forces.⁹

The Ministry of Justice, more specifically the Board of Procurators General, have provided instructions on article 273f of the Dutch Criminal Code, dated March 6, 2006¹⁰. According to these instructions, the human rights of the victims should prevail, not the prevention and prosecution of trafficking in human beings. Consequently, it is the task of the state to protect the integrity of individuals.

III. Victim Protection, Assistance, and Compensation

Chapter B9 of the Dutch Aliens Circular, the so-called B9-regulation,¹¹ is based on Dutch immigration law. The B9-regulation is applicable to aliens and seeks to provide shelter, health care, and financial assistance to victims of trafficking in human beings. Under the B9-regulation, the removal of an alien from the Netherlands is postponed for a three-month reflection period, during which the victim should decide whether or not to file a complaint against the traffickers. If the alien decides to cooperate with the law-enforcement agencies, a temporary residence permit is issued. The temporary residence permit is granted to victims at the maximum for the duration of the criminal proceedings. After the temporary residence permit expires, the victim can apply for a permanent residence permit on humanitarian grounds.

Recently, some roadblocks have been identified in relation to the access of (possible) victims to the B9-procedure¹²:

- The reflection period is not offered universally and little use is made of it. Only a quarter (98) of the approximately 400 victims who were reported to the Foundation Against Trafficking in Women (STV) and who had no legal residence status or who had applied for asylum, made use of the reflection period.
- Undocumented migrants who have not yet been admitted to the Netherlands and who might be the victims of trafficking, e.g. unaccompanied Nigerian minors who enter through Schiphol, are not entitled to the reflection period. The experts consider this to be a roadblock. Fear of the consequences of pressing charges is also an issue for this group.
- Cases are regularly dismissed very quickly or the interview with the victim is incorrectly used as though it were an official complaint. Based on the interview, the victim may be, for example, advised not to make an official complaint, because the case will be dismissed immediately. Consequently, the victim is excluded from the rights attached to pressing charges and the B9-procedure. If the case is dismissed immediately or within a day, the Immigration and Naturalization Service (IND) will reject the application for a B9-residence permit. This is not in compliance with the official policy; also, in this case the victim

⁹ *Id.*, at 14-15.

¹⁰ STAATSCOURANT (Dutch State Bulletin of Acts and Decrees), Mar. 22, 2006, no. 58, at 15.

¹¹ STAATSCOURANT Supplement 2006, No. 201.

¹² R.T. VAN VIANEN ET AL., *Summary*, POSITIE VAN SLACHTOFFERS VAN MENSENHANDEL; 1^E TRENDRAPPORTAGE 2006 [Monitor Trafficking in Human Beings 2006], at 7, http://www.wodc.nl/images/1388_summary_tcm44-89687.pdf (last visited Feb. 20, 2008).

should be granted a B9-residence permit, even if only for one day. Rejection of the B9-application causes problems for the victim when trying to find shelter and when filing a complaint against the decision to dismiss the case. It also deprives the victim of the possibility of applying for permanent residency on humanitarian and compassionate grounds. If the residence permit is granted and subsequently withdrawn, the consequences are less far-reaching insofar as the victim then has all the legal remedies attached to a rejection.

- More than 80% of the decisions on an application for a B9-residence permit do not comply with the B9- norm of “a decision within one working day.”
- There are a relatively high number of witness-informers registered with the Central Authority for Reception of Asylum Seekers (COA). These numbers are not reflected in the records of the Immigration and Naturalization Service (IND). This might be due to shortcomings in the COA registration, but may also indicate that victims are incorrectly labeled as witness-informers, i.e. third parties who are not victims themselves, but who were witnesses to the crime. The legal position of the latter is weaker than that of victims, as their residence permits are dependent on the judgment of the prosecutor. A more general roadblock mentioned by the (field) experts is the lack of clarity as to whether a victim who does not want to or who dares not press charges, but who does make a statement to the police (i.e. who cooperates with the authorities) falls under the rules for victims or for witness-informers.

The criteria for continued residence after expiration of a residence permit on the basis of the B-9 regulation were amended (with effect from August 14, 2006), because a person may be considered a victim even though the criminal proceedings did not result in the conviction of the person suspected of trafficking. Therefore, the Minister of Justice has liberalized her policy to the effect that victims who have pressed charges can apply for a permanent residence permit on humanitarian grounds if the final acquittal of the suspect has taken three years or more since their temporary residence permit based on the B9-regulation.¹³ Very recently, a new, less narrow ground for granting permanent residence has been introduced to remedy a situation in which, after three years, the criminal proceeding has not concluded.¹⁴ Consequently, more victims could be protected on a longer-term basis, not only for the purposes of the trial.

There are various ways in which victims of trafficking in human beings can obtain compensation.¹⁵ This may involve tangible losses – for example property, medical costs, or loss of income – and intangible losses, such as damages for pain and suffering.

1. Victims can join a claim for civil damages, as adversely affected parties, in the criminal procedure:

The victim’s civil claim is then dealt with at the same time as the criminal case. The benefit of this, as opposed to proceedings before the civil court, is that it is easier to submit the claim. If the suspect is acquitted, then the claim is rejected. The claim will also be rejected if it is clearly

¹³ Letter dated Aug. 14, 2006 (Parliamentary Papers II 2005/06, 28 638, no. 26), resulting in an Amendment to the Aliens Act Implementation Guidelines [*Vreemdelingencirculaire*] (2006/36A), dated Nov. 8, 2006 (State Bulletin of Acts and Decrees. 2006, 225).

¹⁴ Letter dated Oct. 18, 2007 (Parliamentary Papers II 2007/08, 19 637, no. 1174), resulting in an Amendment to the Aliens Act Implementation Guidelines [*Vreemdelingencirculaire*] (2008/09) dated Feb. 12, 2008 (State Bulletin of Acts and Decrees. 2008, 37).

¹⁵ Dutch National Rapporteur, *supra* note 1, at 258-60.

unfounded. The execution of the judgment requires no personal contact between the victim and perpetrator.

2. The compensation order:

In addition to awarding the civil claim, the court can (also) impose an order for compensation. The victim can ask for such a sanction, but it can also be imposed *sua sponte*. The most important distinction between this and a claim as a disadvantaged party is that collecting the claim is taken out of the victim's hands and passed to the Central Judicial Collection Agency.

3. Victims can obtain a benefit payment from the Violent Offences Compensation Fund:

The Fund can pay out benefits to anyone who has sustained serious physical or mental injury as a result of an intentional, violent offence committed in the Netherlands. This fund cannot reimburse for losses resulting from lost income. It makes no difference to the Compensation Fund whether or not the victim is a Dutch national. The offence must have been committed on Dutch territory, however. Very few foreign victims actually find their way to the Fund each year.

4. Victims can resort to the civil courts:

A conviction in a criminal case provides important evidence at the civil court: the victim can exhibit the criminal conviction. If the conviction has not yet become irrevocable, or if it ended in acquittal or dismissal, there still may be a claim for compensation lodged with the civil court. The court may, nevertheless, decide to await the criminal verdict. One disadvantage is that this civil law route is complicated and can take longer.

Legislation appears to offer sufficient opportunities here for victim compensation, but they are little used by victims. The possible reasons include:

- a lack of information on the possibilities for obtaining compensation;
- a lack of legal support for and assistance to victims;
- fear of the adverse consequences of a claim for compensation. Victims occasionally say as much to the police. A compensation claim can result in revenge or in the money being claimed back by the perpetrators (once they are out of prison);
- some victims have told the police that they were happy to be rid of the suspect and wanted no more to do with him, even in the context of a compensation claim;
- victims can still be so infatuated with the suspect that they do not want to lodge a compensation claim, to avoid losing his "love" or because they feel that they are not victims and have handed over their money willingly. Victims who gave money to the suspects but were also allowed to keep some themselves do not always regard themselves as victims. Lodging a claim for compensation then requires a reversal of their thinking;
- some victims may know that there is nothing to recover from the suspect (or assume this is the case).¹⁶

IV. Cooperation with Other Governments

On May 27, 2005, seven member states of the EU, including the Netherlands, concluded a Convention to intensify cross-border cooperation in the fight against crime. This Convention of Prüm (which entered into force on Nov. 1, 2006) specifically deals with the battle against terrorism, cross-border crime, and illegal migration, which includes trafficking in human beings. The most important element of the Convention is the improvement of the information exchanged among the states party to

¹⁶ *Id.*, at_129.

this Convention. This involves, for instance, setting up and mutually opening up national DNA registers, making facilities available for computerized fingerprint identification, the provision of non-personal data, and also personal data in certain circumstances. Provision has also been made for the placement of document advisors in the member countries, who can advise and provide training on passport and visa related matters. Subject to strict conditions, the Convention also forms the basis for joint patrols and other joint actions in the territories of the states party to the Convention. There is also the option for mutual assistance, on request, in matters such as inquiring as to the residential address of an individual or – significant in the context of the battle against trafficking in human beings – establishing whether an individual is prepared to make a statement. The Convention contains extensive provisions on data protection.¹⁷

The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No 197) was adopted by the Committee of Ministers on May 3, 2005, and opened for signature in Warsaw on May 16, 2005, on the occasion of the 3rd Summit of Heads of State and Government of the Council of Europe. The Convention is a comprehensive treaty mainly focused on the protection of victims of trafficking and the safeguarding of their rights. It also aims to prevent trafficking, as well as prosecute traffickers. The Convention applies to all forms of trafficking; whether national or transnational, and whether or not it is related to organized crime. It applies regardless of whether the victim is a woman, a man or a child and whatever the form of exploitation, whether sexual exploitation, forced labor, or services, etc. The Convention provides for the setting up of an independent monitoring mechanism guaranteeing parties' compliance with its provisions.¹⁸

The Convention, which entered into force on February 1, 2008, contains obligations which go further than other international instruments in this area. However, entry into force in the Netherlands is not foreseen in the near future, as the Netherlands has yet to implement the Convention. According to the Information Center of the Ministry of Justice, Dutch legislation does not comply with the Convention and has to be adapted; this process will take about one year.

According to the Secretary of the Dutch National Rapporteur on Trafficking in Human Beings, the United States and the Netherlands do not cooperate in combating trafficking by means of special treaties. Extradition is the traditional example of international cooperation by which a person is transferred from one state to another in order to stand trial or for the enforcement of sanctions in the latter.

An instance of cooperation with other governments can be illustrated by the following news article on an Irish High Court decision to extradite an alleged trafficker to the Netherlands:

The High Court yesterday ordered the extradition of a West African man wanted in the Netherlands for allegedly trafficking children from Africa to Europe for use as prostitutes. The Dutch authorities had sought the extradition of Jackson Smith, aka Peter Kwame Sarfo (38). They allege he is involved in the trafficking of children from Nigeria into both Spain and Italy. Sarfo had opposed the making of any such order. Yesterday at the High Court, Mr Justice Michael Peart said that he was satisfied to make an order that Sarfo be extradited. ... Yesterday, Counsel for the State, Patrick McGrath, said ... that last September Sarfo was detained in Ireland in relation to a forged Ghanaian passport. It was also claimed that information from Sarfo's mobile phone linked him to a number of others detained as part of the investigation carried out by Dutch police into trafficking of children for prostitution.¹⁹

V. Extraditable Offenses

¹⁷ *Id.*, at 29-30.

¹⁸ CETS No. 19, Action against Trafficking, Web site of the Council of Europe, http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/default_en.asp (last visited Feb. 27, 2008).

¹⁹ *Court Orders Extradition of Child Trafficking Suspect*, IRISH INDEPENDENT, Jan. 18, 2008, at 4.

Article 51a of the Dutch Extradition Act governs extradition by the Netherlands in the absence of extradition treaties to which the Netherlands is a party. Trafficking in human beings constitutes an extraditable offense as paragraph 2 of Article 51a of the Dutch Extradition Act incorporates article 273f of the Dutch Criminal Code (Sr):

Article 51a²⁰

1. As regards the offenses referred to in the second paragraph, which are punishable pursuant to the treaties referred to in that paragraph, extradition may be granted to states party to the relevant treaty.

2. The first paragraph relates to: ...

- the crimes referred to in article 273f of the Dutch Criminal Code (Sr), insofar as the offense comes within the definitions of article 5 in conjunction with article 3 of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational organized crime, concluded at New York on November 15, 2000 ...²¹

Article 51a of the Dutch Extradition Act considers the Protocol to prevent, suppress, and punish trafficking in persons, especially women and children to be a treaty permitting extradition to the requesting state. However, paragraph 1 allows the government to refuse extradition if the other state does not apply appropriate standards of criminal justice.

Finally, in the context of extradition, the European Arrest Warrant should be mentioned. The European Arrest Warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a person being sought for a criminal prosecution or a custodial sentence. It is a tool designed to strengthen cooperation between the judicial authorities of the Member States by eliminating the use of extradition. It is based on the principle of mutual recognition of decisions in criminal matters. The European Arrest Warrant is based on a Framework Decision adopted by the Council on June 13, 2002. This decision has been applied since January 1, 2004.²²

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²⁰ Unofficial translation by Andries Huibert Klip & Albertus Henricus Joannes Swart, INTERNATIONAL CRIMINAL LAW IN THE NETHERLANDS 283 (EDITION IUSCRIM 1997).

²¹ Para. 2 has been translated by the author.

²² Text partially available at EUROPA GLOSSARY, http://europa.eu/scadplus/glossary/arrest_warrant_en.htm (last visited Feb. 27, 2008).

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ANTI-TRAFFICKING LEGISLATION

NORWAY

Executive Summary

Norway adheres to the definition of human trafficking that is found in the Palermo Protocol. Human trafficking is criminalized through article 224 of the Norwegian Penal Code. According to this article, those found guilty of human trafficking can be sentenced to five years in prison and ten years if the offense is considered aggravated. As human trafficking carries a penalty of five years in prison, the Norwegian police may use investigative methods such as wire-tapping and surveillance while investigating cases of suspected human trafficking. Victims of human trafficking in Norway are offered support such as safe housing alternatives, medical attention, and psychological support. The victims are offered temporary residence permits for a forty-five day period of reflection, during which they receive support and help in reporting the traffickers. The Norwegian government has proposed that this period be extended to six months to a year. Norway cooperates with other countries to combat human trafficking through, for example, the Council of the Baltic Sea States. Generally persons who are charged with, accused of, or sentenced for a crime which carries a penalty of at least one year in prison can be extradited from Norway, except for Norwegian citizens.

I. Definition of Trafficking

Norway has an international obligation to prevent and work against human trafficking through the ratification of the Palermo Protocol, which includes a definition of human trafficking in article 3.¹

¹ 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 <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>. Article 3 states:

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 eighteen years of age.

The Norwegian government has adopted an action plan that lays out the government's initiatives to prevent and fight against human trafficking; it also includes proposals to improve the government's work against the crime.²

II. Prosecution, Penalties, and Punishment

Human trafficking is criminalized in the Norwegian Penal Code in article 224,³ which is based on the Palermo Protocol. Article 224 states:

Any person who by force, threats, misuse of another person's vulnerability, or other improper conduct exploits another person for the purpose of

- a) prostitution or other sexual purposes,
 - b) forced labor, forced services, hereunder begging
 - c) war service in a foreign country, or
 - d) removal of any of the said person's organs,
- or who induces another person to allow himself or herself to be used for such purposes, shall be guilty of human trafficking and shall be liable to imprisonment for a term not exceeding five years.

Any person who

- a) makes arrangements for such exploitation or inducement as is mentioned in the first paragraph by procuring, transporting, or receiving the person concerned,
 - b) in any other way aids and abets such exploitation or inducement, or
 - c) provides payment or any other advantage in order to obtain consent to such exploitation from any person who has authority over the aggrieved person, or who receives such payment or other advantage
- shall be liable to the same penalty.

Any person who commits an act referred to in the first or second paragraph against a person who is under the age of eighteen shall be liable to a penalty independently of any use of force, threats, misuse of a person's vulnerability, or other improper conduct. Not having knowledge of a person's age does not relieve a person of liability. A person is only relieved of liability if there is no negligence with regard to the victim's age.

Gross human trafficking is punishable by imprisonment for a term not exceeding ten years. In deciding whether the offense is gross, particular importance shall be attached to whether the person exposed to the act was under the age of eighteen, whether gross violence or coercion was used, or whether the act led to considerable gain. Not having knowledge of a person's age does not relieve a person of liability. A person is only relieved of liability if there is no negligence with regards to the victim's age.⁴

In Norway the form of human trafficking that exists is human trafficking involving women and children for sexual exploitation. There is no documentation that shows that human trafficking exists for

² Ministry of Police and Justice, Stopp menneskehandelen, Regjeringens handlingsplan mot menneskehandel [2006-2009], http://www.regjeringen.no/upload/JD/Vedlegg/Stopp_menneskehandelen.pdf (official Web site of the Ministry of Police and Justice, last visited Mar. 12, 2008).

³ Almindelig borgerlig straffelov (Straffeloven) (Law No. 10 of May 22, 1902) (official source).

⁴ For the preparation of this report, an English translation of the Penal Code by the Ministry of Justice and Police has been used to ensure proper translation of the legal terms. The translation contains amendments only through Dec. 21, 2005, and is available at <http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf> (unofficial translation). For an up to date version of text, which is available only in Norwegian, please see <http://www.lovdatab.no/all/nl-19020522-010.html> (unofficial source, last visited Mar. 12, 2008).

forced labor, and no cases have been documented where human trafficking has occurred for organ removal in Norway.⁵

Prostitution is legal in Norway, but buying sexual services from persons under the age of eighteen is a criminal act. It can be difficult to separate victims of human trafficking from other women who work in prostitution and to separate the traffickers from persons who profit from prostitution through pandering. Human trafficking and human smuggling can also be closely related, but the purpose of smuggling is to illegally bring someone over a border, whereas the purpose of human trafficking is to exploit the victims for profit. Human trafficking can also happen within national borders, but it often occurs in connection with illegal immigration.⁶

The Norwegian Parliament has adopted several legislative measures, besides the criminalization of human trafficking in article 224 of the Penal Code, that give the police and prosecutors tools to fight organized crime and human trafficking.⁷ These measures include:

- Article 60a of the Penal Code, which targets organized crime and carries a penalty of up to five years in prison;
- Article 61, according to which the maximum penalty laid down in the penal provision can be doubled, unless it is otherwise provided in the penal provision itself, if a previously convicted person commits another act of the same nature (as the one for which he was convicted);
- Article 202, which targets pandering by making it a crime to promote the engagement of other persons in prostitution or to rent out premises with the understanding that those premises will be used for prostitution; and
- Article 203, which criminalizes the buying of sexual services from persons under the age of eighteen.

An important step in uncovering human trafficking is for the authorities to actually come into contact with the victims of human trafficking. This can be difficult, as many victims do not speak Norwegian or English and may have a difficult time contacting civil authorities, police, and others who can help. Victims of human trafficking are often unclear about their rights in Norway and do not trust civil authorities. As a result, the victims seldom seek help themselves. For the police, this means that they must actively find the places where the victims may be kept and get to know the neighborhoods where they may be forced to work.⁸

Cases of human trafficking will seldom be reported to the police, and witnesses seldom step forward. Article 224 of the Penal Code states that human trafficking is punishable by up to five years in prison. This means that the police can use investigative methods such as wire-tapping and covert surveillance of public places when investigating suspects of human trafficking. The police may carry out “control of communication apparatus,” which includes discontinuation or interruption of transmissions of conversations or other communications from specific telephones or computers, in accordance with article 216b of the Criminal Procedure Act.⁹ The police may also use “technological tracking” by placing a

⁵ Ministry of Police and Justice, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Lov om rettergangsmåten i straffesaker (Straffeprosessloven) (Act No 25 of May 22, 1981) (official source). An unofficial translation of the Act can be found at <http://www.ub.uio.no/ujur/ulovdata/lov-19810522-025-eng.pdf> (last visited Mar. 12, 2008).

“technological direction-finder” on a vehicle, property, or other objects in order to detect the whereabouts of suspects, according to article 202b Criminal Procedure Act.¹⁰

If there is just cause to suspect aggravated human trafficking or where it is occurring as part of organized crime, more invasive investigating methods can be used, such as placement of “technological direction finders” in clothes, objects, or bags that the suspect may carry or the carrying out of forced entry to place such finders.¹¹ The police may also use “communications surveillance,” which includes audio surveillance.¹²

In the action plan against human trafficking, the government proposes to increase resources to support victims of human trafficking and make it less of a burden for victims to step forward. Furthermore, the government suggests that the right to legal aid should be increased. The police must make sure witnesses are safe, so that they do not refuse to testify or give false statements because of a fear of act of reprisals. The Penal Code, article 132a, aims to penalize those who through the use of violence and threats try to influence participants in criminal and civil cases, including witnesses.¹³

III. Victim Protection, Assistance, and Compensation

As mentioned, most victims of human trafficking in Norway are found working in prostitution. To uncover cases of human trafficking there has to be a trust established between the victims and those who offer help. It can be hard to find the victims of human trafficking, and the victims seldom step forward. Therefore those who work against human trafficking must have the necessary knowledge about the crime, the situation in which these victims are living, and how the victims can be identified. A list of indicators of victims of human trafficking is currently being prepared by the government.¹⁴

Many of those who come to Norway through human trafficking have entered the country illegally. Currently victims have the right to stay in Norway for forty-five days during a so-called “reflection period.” During this period, the victim is to be offered help and support to report the traffickers. Not many victims use this period of reflection, according to the government’s action plan, and the government therefore wishes to develop this tool and make sure the victims are offered help such as health and social support during the reflection period. The government proposes to make the reflection period longer, to from six months to a year if the victim has broken off contact with the traffickers and a criminal investigation has been initiated against the traffickers.¹⁵

Children who are victims of human trafficking are given residence permits in Norway if they are not guaranteed adequate support in their home countries.¹⁶

It is important to offer victims of human trafficking safe living arrangements and individual follow-ups, which should include medical attention and social support. The Ministry of Justice has financed the “Women’s Shelters” project ROSA, which offers housing, follow-up with the victims, and

¹⁰ *Id.*

¹¹ *Id.*, art. 202c.

¹² *Id.*, art. 216a.

¹³ Ministry of Police and Justice, *supra* note 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

information to women who are victims of human trafficking. So far the project has placed twenty-four women in safe living situations.¹⁷

IV. Cooperation with Other Governments

To help in the safe return of victims of human trafficking who come from a Baltic state, the Norwegian government is part of the “regional return project,” which is led by the European Women’s Lobby. The project offers help with reintegration in the victims’ countries of origin.

The Ministry of Children and Equality is a participant in the network “Children and Risk,” which is run by the Council of the Baltic Sea States (CBSS). Fourteen countries are part of the network, including Belarus, Moldavia, and the Ukraine, as well as the member states of the CBSS. The network assists with information and contact between authorities when children are the victims of human trafficking.¹⁸

Norway has a political dialogue with China, Indonesia, and Vietnam regarding human rights issues. The Norwegian government has made human trafficking a specific point of discussion with Vietnam.¹⁹

V. Extraditable Offences

Extradition is regulated in the Act Relating to Extradition of Offenders.²⁰ According to the Act, a person who is charged with, accused of, or sentenced for a criminal act and who is in the country can be extradited.²¹ Norwegian citizens may not be extradited, according to the Act.²² Extradition can only be approved when the act for which extradition is requested is punishable by up to at least one year in prison under Norwegian law.²³ Generally, when a person who is the subject of an extradition request has been sentenced for the act, the extradition can only take place when the sentence is at least four months in prison.

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¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Lov om utlevering av lovbrytere m.v (Act No 39 of June 13, 1975) (official source) An unofficial translation of the Act with amendments through 1988 is available at <http://www.ub.uio.no/ujur/ulovdata/lov-19750613-039-eng.pdf>. For an up to date version of the text online, available only in Norwegian, please see <http://www.lovdato.no/all/nl-19750613-039.html> (unofficial source, last visited Mar. 12, 2008).

²¹ Chap. 1, § 1, Lov om utlevering av lovbrytere m.v (Act No 39 of June 13, 1975.)

²² *Id.*, chap. 1, § 2.

²³ *Id.*, chap. 1, § 3.

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ANTI-TRAFFICKING LEGISLATION

SLOVENIA

Executive Summary

Slovenian domestic legislation implements all major international obligations and complies with the minimum standards for elimination of trafficking. Trafficking is defined according to international standards and the nation's Criminal Code has been amended to penalize all aspects of this crime. Domestic legislation provides for the protection of and assistance to victims of trafficking. A national program on fight against trafficking has been adopted.

I. Definition of Trafficking

On March 30, 2004, the National Assembly (legislature) of the Republic of Slovenia adopted amendments to the Criminal Code of Slovenia. An additional article dealing with trafficking in persons (article 387a) was included in the Code. Trafficking in human organs, child prostitution, and slavery are recognized as individual forms of trafficking. Following the internationally accepted definition of trafficking, the new article defines human trafficking as the recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of exploitation in prostitution or other forms of sexual exploitation, forced labor, bonded labor, slavery, servitude, or the removal of organs.¹ This provision entered into force on May 5, 2004.

Simultaneously, other provisions of the Criminal Code were updated in order to criminalize trafficking-related activities and include norms punishing actions described in article 387a. For this purpose, amendments were included in articles 185 (exploitation through prostitution), 187 (presentation, manufacture, and distribution of pornographic materials), 311 (unlawful crossing of the state border), and 387 (enslavement).

II. Prosecution, Penalties, and Punishment

Article 387a of the Slovenian Criminal Code states that trafficking in humans, regardless of the purpose, shall be punished by imprisonment for a term of one to ten years, depending on the severity of the crime and presence of aggravating circumstances. In cases when a victim is a minor, force was applied, or a crime was committed by an organized criminal group, the term of imprisonment shall be no less than three years. According to the U.S. Department of State Report on Human Trafficking, the Slovenian government has strengthened law enforcement measures. Between three and seven trafficking-related crimes are prosecuted in Slovenia annually. As a rule, criminals are sentenced to different terms of imprisonment ranging from eighteen months to five years; in some cases, however, fines and punishment without restriction of freedom have been applied.² For prosecution of trafficking, 800 police officers were selected and trained. A non-governmental organization funded by Government has been appointed to conduct police training.

¹ URADNY LIST [official gazette of the Republic of Slovenia] No. 72/04.

² Trafficking in Persons 2007 Report, Washington, DC: U.S. Department of State, available at <http://www.state.gov/g/tip/rls/tiprpt/2007/82807.htm>.

Among other measures aimed at fighting trafficking, Slovenia increased its border and migration control after expansion of the “Schengen” zone³ in December 2007, and amended its legislation regarding the employment of foreigners in September 2007.⁴ According to this legislation, employers who use illegal migrants, not workers, will be held responsible for violation of law.

As another measure aimed at preventing child prostitution and trafficking of children, on November 30, 2007, the Slovenian government concluded an agreement with neighboring Macedonia on the adoption of children. The agreement implements a system of measures to control the transfer of children within both countries and across the border.

III. Victim Protection, Assistance, and Compensation

Protection of and assistance to the victims of trafficking is conducted in compliance with the Government approved National Action Plan for 2004-2007 period, which is the basis for coordinated government and NGO efforts in fighting trafficking.⁵ The plan sets priorities, lists particular projects, and specifies the activities of individual government agencies.

Through the designated NGOs, the Government funds shelters and rehabilitation of trafficking victims. In 2004, the Minister of Interior (the nation’s police chief) and the State Prosecutor General signed on behalf of the government a special memorandum with an umbrella NGO on cooperation in preventing human trafficking. Based on the agreement, victims of human trafficking, especially non-Slovenian victims, receive assistance and the guarantee that they will be treated humanely and according to legal standards. The document establishes the legal framework for the victim’s stay in Slovenia, giving him or her internationally comparable protection and the chance to exert his or her rights. According to the memorandum, trafficking victims are entitled to immunity from prosecution; the extension of temporary residence permits and work permits for up to a one year period; and access to social services, if they cooperate with authorities in the prosecution of traffickers and the identity of those traffickers is irrefutably verified. The State Prosecution, however, must first provide a statement that the victim is willing to testify in a criminal trial and that victim’s testimony would be crucial for the procedure. NGO representatives are allowed to participate in police raids and investigations because they may potentially involve trafficking victims. A special procedure is foreseen for handling cases related to organized crime.

In terms of the refugee status determination procedure in Slovenia, domestic legislation does not provide for granting asylum on the basis of being trafficked into Slovenia. The Partnership Against Trafficking, however, a project conducted jointly by the U.N. High Commissioner on Refugees and the Asylum Section of the Slovenian Ministry of Interior allows victims of trafficking to be granted asylum on humanitarian grounds.⁶

As a trafficking prevention measure, in 2006, the government included trafficking awareness classes for students in the the curriculum of elementary and secondary schools.

³ “Schengen” zone or area refers to the zone without internal borders created by a 1985 agreement or *acquis*, now concluded by thirty-one European countries, to abolish systematic border controls between the participating states, and the 1990 Convention implementing the agreement. See Schengen Agreement on the Gradual Abolition of Checks at Their Common Borders and the Convention Applying the Agreement, Jan. 19, 1991, Belg.-Fr.-F.R.G.-Lux.-Neth, *reprinted in* 30 I.L.M. 68, 69, 73, 84 [in four parts] (unofficial source).

⁴ URADNY LIST, No.158/07.

⁵ Government regulation No. 240-05/2003-1, URADNY LIST, No.152/03.

⁶ U.S. Department of State, Embassy in Moscow, Ambassador Burns’ Remarks regarding 2005 International Best Practices in Anti-Trafficking, *available at* http://moscow.usembassy.gov/bilateral/bilateral.php?record_id=report_trafficking_2005_best (last visited Mar. 11, 2008).

IV. Cooperation with Other Governments

On April 2, 2004, the U.N. Convention Against Transnational Organized Crime was ratified by the National Assembly of the Republic of Slovenia, and on April 15, 2004, the corresponding Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children and Protocol Against the Smuggling of Migrants by Land, Sea, and Air also were ratified.⁷

Most of the international cooperative activities are conducted within the EU and Organization for Security and Cooperation in Europe (OSCE) frameworks and are aimed at implementing regional initiatives. Special programs on monitoring and prevention of human trafficking were initiated together with the governments of Croatia and Bosnia and Herzegovina. The Council of Europe's Convention on Actions against Trafficking in Human Beings, which entered into force on February 1, 2008, has been signed by Slovenia, but has not yet been ratified.

V. Extraditable Offenses

According to the existing criminal procedure, persons accused by Slovenian authorities of committing human trafficking will be prosecuted and tried in the Republic of Slovenia. Upon a request from the criminal's home country, a sentenced individual may be transferred to his home country for serving punishment if the authorities of that country will guarantee that the sentence will be served. In case of an ongoing international investigation and under some other circumstances, an accused criminal may be extradited to the country of his or her citizenship.⁸

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⁷ URADNY LIST, No. 14/04, 16/04.

⁸ URADNY LIST No. 72/04.

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HUMAN TRAFFICKING

SPAIN

Executive Summary

Spain has become one of the main destinations for human trafficking for sexual exploitation and forced labor. Although Spain has addressed the crime of human trafficking at a domestic level, by implementing some European Union instruments, it still has not ratified the EU Convention on Action against Human Trafficking.

I. Introduction

Spain is a country of transit and destination for human trafficking for sexual exploitation and forced labor.¹ While women are trafficked for sexual exploitation, men are trafficked for forced labor in agriculture and construction. Victims of forced labor in Europe come mainly from Asia, the former Soviet republics, Eastern Europe, Africa, and Latin America.²

The main provision on human trafficking in Spain is found under article 318 bis of the Criminal Code, as amended by law 11/2003.³ This provision was amended in 2003 to fully comply with the Framework Decision of the Council of the European Union intended to strengthen the penal framework for the repression of the trafficking of human beings.⁴ The 2003 amendment extended the punishable offenses to not only the promotion, encouragement, or facilitation of illegal trafficking, but also to the smuggling of people, which under the amended version may be carried out directly or indirectly.

II. Definition and Legal Framework

The Spanish Criminal Code⁵ creates the crime of trafficking, under the heading “Offenses against the Rights of Foreigners,” in article 318 bis:⁶

- 1- Those who, directly or indirectly, promote, encourage, or facilitate the illegal trafficking of individuals from, in transit, or to Spain will be punished with four to eight years of imprisonment;
- 2- If the purpose of the illegal trafficking or smuggling of individuals is sexual exploitation, punishment will be between five and ten years of imprisonment;
- 3- Those who carry out the activities mentioned in paragraphs 1 and 2 above for profit; through violence, intimidation, deceit, or by abusing a superiority status or a special vulnerability of the victim; on a victim who is a minor or disabled; or by putting lives, health, or physical integrity at

¹ US State Department, TRAFFICKING IN PERSONS REPORT, June 2007, available at <http://gvnet.com/humantrafficking/Spain-2.htm>.

² A.I. Perez Cepeda, *Globalizacion, Trafico Internacional ilicito de personas y derecho Penal*, ESTUDIOS DE DERECHO PENAL 21 (Editorial Comares, Granada, 2004).

³ Law 11/2003 of Sept. 29, 2003, BOLETIN OFICIAL DEL ESTADO (B.O.E), Sept. 30, 2003 (official source).

⁴ C. Villacampa Estiarte, *Inmigracion y Sistema Penal, Retos y Desafios para el Siglo XXI*, 70 (Tirant Monografias, Valencia, 2006).

⁵ CODIGO PENAL, LA LEY, Madrid, 2005 (unofficial source).

⁶ *Id.*, art. 318 bis.

risk will be punished with the upper half of the sanctions;

- 4- Those who carry out the actions described in the above paragraphs by taking advantage of their authority; the agents or public officers will be subject to the above penalties in addition to full disqualification to hold any public office for from six to twelve months.
- 5- In addition to the greatest penalties provided for in the above four paragraphs, special disqualification to exercise a profession, trade, industry, or commerce equal to the time set for the conviction is applied if the convicted belongs to an organization or association involved in the illegal activities, even if these are temporary; if the administrators, heads or leaders of these organizations are involved, the upper half of the penalty will be imposed to them.
- 6- The courts may impose the lower penalty when considering the seriousness of the actions and its circumstances, the conditions of the convicted, and the purpose of the actions.

It is clear that the Spanish legislators intend to punish not only trafficking, which is always linked to a subsequent exploitation of the victim, for sex or work, but also those who facilitate illegal entry into the country, even without any further goal.⁷

III. Prosecution, Penalties and Punishment

Spanish courts have interpreted article 318 bis of the Criminal Code as the instrument for:

protection of the right which all legal emigrants have to achieve full social integration, preventing any abuse of the situation of need, by attracting them to abandon their countries through the offer of money, believing that the country of destination offers them more opportunities of well-being, when, in fact, their condition as illegal immigrants subjects them mainly to exclusion, relocation, or the forced acceptance of working conditions more disadvantageous than those they have in their own countries. Thus, the fundamental offense described under art. 318 bis resides in the violation of the right to enjoy such freedoms by the alien who is the victim of illegal trafficking, through the criminalization of the conduct which consists of promoting, encouraging, or facilitating this illegal trafficking of people. The crime does not require the accreditation of the existence of damage to the victim, regardless of whether he or she gave consent not, as this is a right that cannot be resigned by the victim.⁸

The basic crime of human trafficking involves three types of actions: promoting, encouraging, or facilitating the illegal trafficking in or the smuggling of people from, through, or to Spain. It does not require the existence of an organization involved in the illegal activity. All the offenses which are objectively considered as aiding the illegal entry to, exit from, or transit of aliens through Spain constitute the offense, under article 318 bis. The victim of this crime must be an alien, not a national of any European Union member country.⁹

The Spanish police have made numerous arrests as a result of investigations of human-smuggling networks, most of which were accused of forcing women into prostitution.¹⁰

In order to discourage the illegal entry of clandestine immigrants into Spain and their subsequent

⁷ M. Garcia Aran, *Trata de Personas y Explotacion Sexual*, ESTUDIOS DE DERECHO PENAL Y CRIMINOLOGIA 157 (Granada, 2006).

⁸ Sentence of the Provincial Court of Las Palmas, Sec. 2, Jan, 19, 2004, in C. Gortazar Rotaeché, *Main Issues in Spanish Criminal Law and Practice Related to Trafficking and Smuggling of Human Beings*, IMMIGRATION AND CRIMINAL LAW IN THE EU 309 (Martinus Nijhoff, the Netherlands, 2006).

⁹ Sentence of the Provincial Court of Las Palmas, sec. 1, Feb. 19, 2003, *id.*

¹⁰ *Spanish Police Arrest 66 Persons for Human-trafficking and Smuggling*, LEGISLATIONLINE, Dec. 29, 2006, available at <http://www.legislationline.org/news.php?tid=178&jid=47>.

work or sexual exploitation, Law 4/2000 on Foreigners as amended by Law 8/2000,¹¹ has provided for the expulsion and immediate return to the country of origin of illegal entrants.¹²

Other penalties for trafficking include imprisonment, fines, and prohibitions on re-entry into the country.¹³

IV. Victim Protection, Assistance, and Compensation

The Spanish government has been providing care for trafficking victims in recent years. Spanish police systematically refer rescued victims to NGOs that provide assistance and rehabilitation services to those rescued. In 2006, Spain increased the funding for these anti-trafficking NGOs by approximately five percent. Victims receive medical care, including emergency services, through the national health care system. The police identified 1,832 sex trafficking victims and 456 labor trafficking victims in 2006. The government encourages victims to help in trafficking investigations and the judicial process by providing work and residence permits to victims that cooperate and by giving them the possibility of obtaining permanent residence or funding for the return to their own countries after the prosecution. Victims have not been imprisoned, fined, or penalized for unlawful actions performed as a direct result of being trafficked.¹⁴

Law 19/1994¹⁵ on the Protection of Witnesses permits the court, when there is serious danger to the person, freedom, or assets of the victim, to take protection measures in order to prevent the identification of the witness in any public record.¹⁶

Victims of human trafficking should be informed by the judicial and administrative authorities about the availability of assistance to victims of violent crimes and crimes against sexual freedom and about the procedure to seek that assistance, afforded by Law 35/95.¹⁷ At the same time, the victim should be notified of all of his or her rights by the competent court, including the right to free legal counsel.¹⁸

Illegal immigrant victims of human trafficking who cooperate as witnesses with the competent authorities will be exempt from administrative liability and will have the right to choose to return to their country or to acquire temporary residence and a work permit.¹⁹ During the process and while cooperating with the authorities, the victim will be granted legal and social protection.²⁰

V. International Cooperation

Due to the transnational character of the crime of human trafficking, procedural mechanisms

¹¹ Law 4/2000 of Jan 11, 2000, on Foreigners, as amended by Law 8/2000 of Dec. 22, 2000, B.O.E. Dec. 23, 2000, art. 23.

¹² *Id.*, art. 60.

¹³ CODIGO PENAL, LA LEY, Madrid, 2005, art. 318 bis.

¹⁴ U.S. State Department, *supra* note 1.

¹⁵ Law 19/1994 of Dec. 23, 1994, on the Protection of Witnesses, B.O.E., Dec. 24, 1994.

¹⁶ A.I. Perez Cepeda, *supra* note 2, at 236.

¹⁷ Law 35/95 of Dec. 11, 1995, on Assistance to the Victims of Violent Crimes and Crimes against Sex Freedom, B.O.E., Dec. 12, 1995, art. 15.

¹⁸ Law 4/2000, as amended, art. 63

¹⁹ *Id.*, art. 55.

²⁰ Royal Decree 864/2000 of July 20, 2001, B.O.E., July 21, 2001, regulating Law 4/2000, art. 94.

other than those used for ordinary crimes have to be implemented to effectively combat it.²¹

Within the Counsel of Europe, the main instrument of international cooperation on international crimes is the European Convention on Judicial Assistance in Criminal Matters.²² In 1991, Spain ratified the additional Protocol of 1978,²³ which extended its application to tax crimes.

Within the framework of the EU, the Schengen Agreement²⁴ on judicial assistance in criminal matters among the EU member countries, together with the EU Order on European Detention, has proved to be a very valuable tool for international cooperation.²⁵

Spain ratified the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, specially Women and Children.²⁶ However, Spain has not ratified the European Convention on Action against Human Trafficking,²⁷ which is designed to secure protection for the victims of human trafficking.²⁸

Spain cooperates with other governments, especially source countries, in the investigation and prosecution of trafficking cases, mostly through Interpol and Europol.²⁹ The government targets trafficking as part of its broader plan to control illegal immigration. The Spanish police have actively pursued and prosecuted gangs who use false identity documents for immigrant smuggling and trafficking.³⁰

VI. Extradition

Within the EU legal framework, extradition for human trafficking, is governed by the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States,³¹ which require each national judicial authority (the executing judicial authority) to recognize, *ipso facto* and with a minimum of formalities, requests for the surrender of persons made by the judicial authority of another Member State (the issuing judicial authority).³² The Member States remain at liberty to apply and conclude bilateral or multilateral agreements insofar as such agreements help to simplify or further

²¹ M. Garcia Aran, *supra* note 7, at 264.

²² Convenio Europeo sobre Asistencia Judicial en Material Penal, Apr. 20, 1959, B.O.E., Sept. 17, 1982.

²³ PRIMER PROTOCOLO ADICIONAL, Mar. 17, 1978, ratified by Spain May 27, 1991, B.O.E., Aug. 2, 1991.

²⁴ ACUERDO DE SCHENGEN June 14, 1985, on judicial assistance among the EU country members, <http://europa.eu/scadplus/leg/en/lvb/l33020.htm> (official source) (last visited Mar. 18, 2008).

²⁵ M. Garcia Aran, *supra* note 7, at 265.

²⁶ UN Protocol, Mar. 1, 2002, B.O.E., Nov. 25, 2003.

²⁷ European Convention on Action against Human Trafficking, http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/default_en.asp (Council of Europe Web site, an official source) (last visited Mar. 14, 200)

²⁸ *Entra en vigor el Convenio Europeo Contra la Trata de personas sin que Espana lo firme*, DIARIO EL MUNDO, Jan. 31, 2008, available at <http://www.elmundo.es/elmundo/2008/01/31/solidaridad/1201797560.html>.

²⁹ International Organization for Migration (OIM), PROTECTION SCHEMES FOR VICTIMS OF TRAFFICKING IN SELECTED EU MEMBER COUNTRIES, CANDIDATE AND THIRD COUNTRIES 80 (Geneva, 2003).

³⁰ *Id.*, at 81.

³¹ Council Framework Decision 2002/584/JHA of June 13, 2002, on the European Arrest Warrant and the Surrender Procedures between Member States, <http://europa.eu/scadplus/leg/en/lvb/l33167.htm> (official source) (last visited Mar. 18, 2008).

³² *Id.*, Summary.

facilitate surrender procedures. The application of such agreements may in no case affect relations with Member States that are not parties to them.³³

Regarding active extradition with non EU countries, it may only be requested by Spanish courts in cases specifically stipulated under article 826 of the Code of Criminal Procedure,³⁴ that is: when the perpetrator is a Spanish national who has committed a crime in Spain and is in a foreign country; when the perpetrator is a Spanish national who committed a crime abroad against the national security of Spain and is hiding in a country different from that in which the crime was perpetrated; and when the crime was carried out by foreigners who while subject to the Spanish courts' jurisdiction, have sought refuge in a country other than their own.³⁵

VII. Conclusion

Spain has experienced an unprecedented growth in immigration in the last eight years, which has led to some uneasiness in Spanish society and among the political leaders. The government has implemented many measures aimed at controlling the advance of illegal immigration, coupled with legislative instruments that will fight trafficking and smuggling in Spain. However, criminal networks have proved to be more efficient over time, and the government now seeks to intensify cooperation with other countries, especially those of Northern Africa, to improve the policies of regional cooperation. Technical assistance for border control has been reinforced in the last year with some promising success. Ratification of the EU Convention on Action against Human Trafficking remains a promise yet to be fulfilled by the Spanish government.³⁶

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³³ *Id.*

³⁴ Ley de Enjuiciamiento Criminal, art. 826 (Las Rozas, Madrid, 2006) (unofficial source).

³⁵ *Id.* & M. Garcia Aran, *supra* note 21.

³⁶ Consejo de Ministros, Presidencia del Gobierno, *El Gobierno Analiza Nuevas Medidas para Luchar contra la Inmigración Ilegal y el Tráfico de Personas*, May 18, 2007, available at <http://www.la-moncloa.es/actualidadhome/180507-consejo.htm>.

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ANTI-TRAFFICKING LEGISLATION

SWEDEN

Executive Summary

Sweden adheres to the definition of human trafficking that can be found in the Palermo Protocol. Human trafficking is criminalized in the Swedish Penal Code and carries a penalty of two to ten years in prison. Sweden cooperates with the other Baltic States through the Council of the Baltic Sea States to stop human trafficking and to support its victims. In general, a person who has been found guilty of a crime that carries a minimum penalty of one year in prison in Sweden or four months in prison in the country that requests extradition can be extradited.

I. Definition of Trafficking

Sweden follows the Palermo Protocol's definition of human trafficking, which can be found in article 3 of the protocol.¹

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 eighteen years of age.

II. Prosecution, Penalties and Punishment

On July 1, 2002, Sweden adopted legislation that imposes criminal liability for the trafficking of humans for sexual purposes.² Since 2004, criminal liability has been extended to all forms of trafficking in persons, including trafficking for other purposes than sexual exploitation, such as forced labor and organ removal.³ The criminal provisions concerning human trafficking can be found in the Swedish

¹ 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, available at <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>.

² Ministry of Industry, Employment and Communications, *Prostitution and Trafficking in Women*, Jan. 2004, available at <http://www.sweden.gov.se/sb/d/574/a/18774>.

³ *Id.*

Penal Code, chapter 4 section 1 a.⁴ Anyone who by unlawful coercion or deception uses someone's vulnerable situation or by other such improper means recruits, transports, harbors, and receives a person or takes other similar measures with a person and thereby takes control of this person for the purpose:

1. of exposing the person to sexual offences, be used for temporary sexual relations, or in other ways be used for sexual purposes;
2. of using the person in active service, forced labor, or other such forced situations;
3. of using the person for organ removal; or
4. of in any other way using the person in a situation that causes distress to the victim

will be sentenced to two to ten years in prison for human trafficking.

A person who gives up control of a person to a third party or takes control of a person from a third party for the purpose of what is stated above may also be sentenced to human trafficking.

Anyone who commits such an act against a person under the age of eighteen will be sentenced for human trafficking, even if none of the improper means mentioned above has been used.

If the crime is considered less aggravated, the responsible party can be sentenced to a maximum of four years in prison.

In May 2007, the Swedish Parliament accepted the Government's proposal to amend the Alien Act so that victims, including victims of human trafficking, can receive temporary residence permits of up to six months if they cooperate with the investigation and act as witnesses in the proceedings against the traffickers.⁵ The Alien Act states that a temporary residence permit may be granted to an alien who is staying in Sweden upon application by the person in charge of the preliminary investigation, if:

1. it is needed to complete a preliminary investigation or a main hearing in a criminal case;
2. the alien has shown his willingness to cooperate with the authorities conducting the investigation;
3. the alien has ceased to have any contact with the persons being investigated for the crime; and
4. public order and safety does not suggest otherwise.⁶

If the alien needs time to recover and consider whether he wants to cooperate with the authorities, a thirty-day temporary residence permit can be granted.⁷

III. Victim Protection and Assistance, Compensation

An inter-agency working group was established in 2006 to review the Swedish legislation and present a report on human trafficking for forced labor, organ removal, and other purposes in a Ministry publication series (*Departementsserie*). The report was presented on January 31, 2008.⁸ According to

⁴ Brottsbalk (Svensk författningssamling [SFS] 1962:700) (official source).

⁵ EU kräver tydligare regler om offer för människohandel (SfU 7), May 9, 2007, available at <http://www.riksdagen.se/Webbnav/index.aspx?nid=7175&nr=7&utsk=SfU&rm=2006/07>.

⁶ Chap. 5, § 15, Utlänningslag (Svensk författningssamling [SFS] 2005:716) (official source).

⁷ *Id.*

⁸ *Människohandel för arbetskraftsexploatering m.m. – kartläggning, analys och förslag till handlingsplan* (Departementsserie [Ds] 2008:7), Jan. 31, 2008, available at <http://www.regeringen.se/sb/d/108/a/96965>.

the report, it is difficult to get a general view of what is the need for protection for victims of human trafficking and how “safe housing” is offered in Sweden. The reason is that the responsibility for the protection of victims of crimes largely lies with the different municipalities.⁹ Very often different volunteer organizations, churches, and women’s organizations do the practical work to assist victims.¹⁰ There is no safe housing offered to men who are victims of human trafficking.¹¹

In Stockholm, many authorities, including the police, the Immigration Board, and the Prosecutors Office, have worked together to produce a cooperation plan. The plan is a practical guide to what each authority must do in cases where there is suspicion of human trafficking. The purpose of the plan is to ensure that victims of human trafficking are offered safety and support and that the officials feel secure in their work. The aim is also to make the work with victims of human trafficking and the work against human trafficking more efficient and make it more clear what responsibilities are given to each of the different authorities.¹²

The Crime Victim Compensation and Support Authority¹³ works to promote the rights, interests, and needs of victims of crime in Sweden. The authority has three main areas of responsibility.¹⁴

1. **State compensation to victims of crime.** If a person who commits a crime does not have the means to pay damages and there is no insurance to cover the costs, the victim may be eligible for compensation from state funds. The victim may receive compensation from state funds also when the perpetrator of the crime is unknown. State compensation mostly covers personal injuries and violations.¹⁵
2. **The Crime Victim Fund.** Money from the Crime Victim Fund is given to research and other projects run by non-profit, public, or private organizations aimed at helping victims of crimes. The Fund’s money mainly comes from a special fee imposed on those who are convicted of crimes that are punishable by prison. The fee is 500 SEK (about US\$80). Approximately thirty million SEK is given out yearly (about US\$4,889,000).
3. **Center for Competence and Information.** The Crime Victim Compensation and Support Authority gathers and spreads information and research results to promote improved treatment of victims of crime.

The inter-agency report mentions several areas where Sweden could improve its assistance to victims of human trafficking. An action plan from the Organization for Security and Cooperation in

⁹ Sweden is divided into 290 municipalities; for more information on Sweden’s municipalities, please visit the Swedish Association of Local Authorities and Regions at <http://www.skl.se> (last visited Mar. 10, 2008).

¹⁰ Ds 2008:7, *supra* note 8, at 127.

¹¹ *Id.*, at 128.

¹² *Id.*

¹³ Brottsoffermyndigheten has a website with information available in English at <http://www.brottsoffermyndigheten.se/default.asp?id=1345> (last visited Mar. 10, 2008).

¹⁴ Ds 2008:7, *supra* note 8, at 129.

¹⁵ The term “violation” (*kränkning*) refers to a special sort of injury for which one can receive compensation in Sweden. It must be a serious violation of one’s person, freedom, or peace of mind. Sexual assault almost always falls within the category of “violation,” but it may also include other forms of assault and unlawful threats. This is a category of compensation that exists on top of the damages that one can ask for medical treatments, physical and mental suffering such as “pain and suffering,” and permanent injuries. Crime Victim Compensation and Support Authority, *Information for Victims of Crimes against Their Person*, 2007, available at <http://www.brottsoffermyndigheten.se/Sidor/EPT/Bestallningar/PDF/Till%20dig%20som%20utsatts%20f%C3%B6r%20brott%20mot%20din%20person%2C%20engelska.pdf>.

Europe¹⁶ recommends cooperation between national authorities and non-profit organizations, called National Referral Mechanisms (NRM). The purpose of the NRM is to ensure that victims of human trafficking get the necessary support and protection they need. The support can be economic or legal, for example.¹⁷

There is also a proposal in the report to create a national telephone help line for victims of human trafficking, which would make it easy for the victims to seek help. How such a help line should be set up could be determined through the NRM cooperation discussed above.¹⁸

The report concludes that there is no information available on what opportunities there are in Sweden to offer living arrangements for victims of human trafficking. For some trafficked women and children, women's organizations often take responsibility, as mentioned above. There is no information available on what sort of living arrangements are offered to men and women who are victims of human trafficking for forced labor. Generally, it is the Swedish municipalities that are responsible for giving the support needed to those who live in the municipality. The National Board of Health and Welfare should, according to the report, be given the task of completing an inventory of the situation with regard to offering safe housing for victims of human trafficking in the different municipalities around Sweden.¹⁹ In addition, a special investigation into how children are cared for should be conducted, according to the report.²⁰

IV. Cooperation with Other Governments

In 2002, the Swedish foreign minister took the initiative for a Nordic-Baltic action group against human trafficking at the meeting of foreign ministers in Tallinn. The mandate of the action group expired in 2006, but at the Council of the Baltic Sea States (CBSS) summit in Reykjavik in June 2006, the heads of state decided to transfer the action group's mandate to the CBSS. A great advantage of having the action group's work under the CBSS is that Russia, Germany, Poland, and the European Union Commission also become members of the action group as members of the CBSS. The action group focuses on social and preventative aspects of trafficking of persons over the age of eighteen.²¹ One part of the work is to educate diplomatic and consular personnel to identify victims of human trafficking, in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings.²²

Sweden also initiated a three-year project led by the European Women's Lobby. The project's aim is to offer support and security for the safe return and rehabilitation of women who are victims of human trafficking. The project will run until the fall of 2008, and all members of the CBSS will be able to take part of the results of the project.²³

Within the framework of the CBSS, the working group for cooperation for children at risk (WGCC) runs a program against trafficking in children, which also offers support to children who arrive

¹⁶ The Organization for Security and Cooperation in Europe, Decision No. 2/03, *Combating Trafficking in Human Beings*, Dec. 2, 2003, available at <http://www.regeringen.se/content/1/c6/01/38/47/496edde9.pdf> (external link from the official Web site of the Government of Sweden).

¹⁷ Ds 2008:7, *supra* note 8, at 207.

¹⁸ *Id.*, at 208.

¹⁹ *Id.*, at 209.

²⁰ *Id.*, at 212-213.

²¹ Ds 2008:7, *supra* note 8, at 130.

²² Council of Europe Convention on Action against Trafficking in Human Beings, CETS no. 197, http://www.coe.int/t/dg2/trafficking/campaign/Source/PDF_Conv_197_Trafficking_E.pdf (last visited Mar. 10, 2008).

²³ Ds 2008:7, *supra* note 8.

alone as victims of human trafficking in the region. A network of National Contact Points has been established with contact persons who work for the government in each member state of the CBSS, as well as Moldavia, Belarus, and the Ukraine. The purpose of the network is to promote informal contacts between the countries on issues concerning children.²⁴

International Agreements

Sweden has signed and ratified the United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography as well as the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). Sweden has also implemented European Union Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.²⁵ The Council of Europe Convention on Action against Trafficking in Human Beings is currently under consideration.²⁶

V. Extraditable Offences

Extradition from Sweden is regulated in the Extradition for Criminal Offences Act.²⁷ The Act is not applicable if the Act on Extradition for Criminal Offences to Denmark, Finland, Iceland, and Norway,²⁸ or the Act on the Surrender from Sweden according to a European Arrest Warrant²⁹ are applicable. Sweden has by tradition not made extradition conditional upon the existence of an agreement with the other state.

The Extradition for Criminal Offences Act (the Act) prohibits the extradition of Swedish citizens. Extradition is allowed if the act for which extradition is requested is equivalent to a crime that would be punishable with at least one year in prison in Sweden. If a sentence has already been passed in the country requesting the extradition, the sentence must be at least four months in prison or in another institution of detention.³⁰ There are several instances where a person may not be extradited according to the Act. For example, a person may not be extradited if because of his origin, belonging to a particular social group, his religious views, or otherwise on account of political circumstances he would run the risk of being subjected in the foreign state to persecution which is directed against his life or liberty or is otherwise of a harsh nature or if he does not enjoy protection against being sent to a state in which he would run such a risk.³¹ Also, a person may not be extradited if it would be contrary to fundamental humanitarian principles, such as a risk due to the person's youth or health.³²

²⁴ *Id.*, at 131.

²⁵ Official Journal L 203, Aug. 1, 2002, at 1.

²⁶ Ds 2008:7, *supra* note 8, at 25-26.

²⁷ Lag om utlämning av brott (Svensk författningssamling [SFS] 1957:668) (official source). English translation of the Act available on the Swedish Government's Web site, <http://www.sweden.gov.se/content/1/c6/01/54/35/77809ec6.pdf> (last visited Mar. 10, 2008).

²⁸ Lag om utlämning för brott till Danmark, Finland, Island och Norge (Svensk författningssamling [SFS] 1959:254) (official source).

²⁹ Lag om överlämnande från Sverige enligt en europeisk arresteringsorder (Svensk författningssamling [SFS] 2003:1156) (official source).

³⁰ Ministry of Justice, *Extradition for Criminal Offenses*, Oct. 6, 2006, available at <http://www.sweden.gov.se/sb/d/2710/a/15435>.

³¹ Lag om utlämning för brott, § 7 (Svensk författningssamling [SFS] 1957:668) (official source). English translation of the Act available on the Swedish Government's Web site, <http://www.sweden.gov.se/content/1/c6/01/54/35/77809ec6.pdf> (last visited Mar. 10, 2008).

³² *Supra* note 29.

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ANTI-TRAFFICKING LEGISLATION
UNITED KINGDOM

Executive Summary

Human trafficking is an acknowledged issue in the UK. There are specific laws applying to those who traffic in human beings and a variety of penalties that range from imprisonment to the confiscation of the proceeds of the crime. The UK claims it has taken a victim-centered approach to human trafficking, but this currently is not within a legislative framework and, despite an Action Plan being issued in 2007, there currently is disparity in the care that victims of trafficking receive across the country.

I. Introduction

The UK has been confronted with the issue of human trafficking for a number of years. It is considered to be a destination country, with the majority of trafficking victims originating from Eastern Europe, the Baltic States, the Balkans, and the Far East.¹ The Home Office has acknowledged that there is no reliable total available of the number of adults and children brought into the UK for the purposes of exploitation. Estimates have been provided that over 4,000 women were trafficked into the country in 2003 for the purposes of sexual exploitation,² although it has been “accepted to be far too low an assessment.”³ The government has updated a number of laws to attempt to offer a legislative solution to the problem. The prohibition of trafficking in human beings is addressed through a number of Acts of Parliament, notably the Asylum and Immigration (Treatment of Claimants) Act 2004,⁴ (which introduced a new criminal offense of trafficking people into, within, or out of the UK for the purposes of exploitation); the Sexual Offences Act 2003;⁵ and the Immigration Act 1971 (the facilitation of illegal immigration).⁶

II. Definition of Trafficking

Trafficking in order to exploit a person is covered under the Asylum and Immigration (Treatment

¹ UK Human Trafficking Centre, *Human Trafficking in the UK*, <http://www.ukhtc.org/uk.htm> (last visited Mar. 18, 2008).

² Home Office, *UK Action Plan on Tackling Human Trafficking* (2007) 14, available at <http://www.homeoffice.gov.uk/documents/human-traffick-action-plan?view=Binary>.

³ 460 PAR. DEB., H.C. (6th ser.) (2007) 503WH.

⁴ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, c. 19, available at http://www.opsi.gov.uk/acts/acts2004/pdf/ukpga_20040019_en.pdf (official source). This legislation appears on the Web site ‘as published’ and does not incorporate any amendments or repeals that may have occurred. To see this legislation in its revised form, including changes up to 2001, see <http://www.statutelaw.gov.uk> (last visited Mar. 10, 2008).

⁵ Sexual Offences Act 2003, c. 42, available at http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030042_en.pdf (official source). This legislation appears on the Web site ‘as published’ and does not incorporate any amendments or repeals that may have occurred. To see this legislation in its revised form, including changes up to 2001, see <http://www.statutelaw.gov.uk> (last visited Mar. 10, 2008). Equivalent legislation in Scotland is provided in section 22 of the Criminal Justice (Scotland) Act 2003, asp. 7, available at http://www.opsi.gov.uk/legislation/scotland/acts2003/pdf/asp_20030007_en.pdf (official source).

⁶ Immigration Act 1971, c. 77, <http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=immigration+act+&Year=1971&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=1578007&PageNumber=1&SortAlpha=0> (unofficial source). The legislation from the Web site is produced by the UK’s Ministry of Justice and is revised to takes into account changes in the legislation up to 2001.

of Claimants, etc.) Act 2004. This Act provides it is an offense for a person to arrange travel for someone into, within, or out of the United Kingdom with the intention that they will exploit that person or a belief that another person is likely to exploit them.⁷ A person is exploited if they are forced into labor or slavery; encouraged, required, or expected to perform acts regarding the unlawful removal of human organs; have been subjected to force, threats, or deception designed to induce them to provide services of any kind, or to provide or enable another person to acquire benefits of any kind; have been requested or induced to undertake any activity; or have been chosen as the subject of the request or inducement on the grounds that they are young and an older person would be likely to refuse the request or resist the inducement.⁸ These sections have extra-territorial effect and apply to acts done outside the UK by all individuals, regardless of their nationality.⁹

The Sexual Offences Act 2003 is currently the substantive piece of legislation regarding sexual offenses and introduced the specific offense of trafficking individuals into, within, or out of the UK for the purposes of sexual exploitation. The wording of the trafficking offense does not mirror that in the UN Protocol to Prevent, Suppress, and Punish Trafficking.¹⁰ During debates on the offense, Parliament noted that it was specifically not worded in this manner as the legislators “did not wish to limit the offences to those carried out by the use of threats, force, coercion, abduction, fraud, deception or abuse of power or vulnerability ... Its view was that where these abusive elements were present they could be charged in their own right.”¹¹

A person commits the offense of trafficking an individual for sexual exploitation under the Sexual Offences Act 2003 if they intentionally arrange or facilitate a person’s arrival in, movement within, or exit from the UK and intend to do an act, or believe that another person is likely to do an act, in respect of the person that they have trafficked in or out of England and Wales that, if performed, involves the commission of a “relevant offence.”¹² “Relevant offence” covers acts done outside of England and Wales if they are offenses in these countries, regardless of whether they are offenses in the actual jurisdiction where committed.¹³ The offense of trafficking also covers situations where a person is brought through England and Wales as an interim destination and situations where a person would be guilty of the offense, for example through arranging travel documents, even if the person being trafficked is ultimately not sexually exploited. The trafficking offenses all have extra-territorial effect, making it possible to prosecute anyone, regardless of nationality, who conducts the trafficking activity specified in the Act in

⁷ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, c. 19, § 4, available at http://www.opsi.gov.uk/acts/acts2004/pdf/ukpga_20040019_en.pdf (official source). This legislation appears on the Web site ‘as published’ and does not incorporate any amendments or repeals that may have occurred. To see this legislation in its revised form, including changes up to 2001, see <http://www.statutelaw.gov.uk> (last visited Mar. 10, 2008).

⁸ *Id.*

⁹ *Id.*, at 19, § 5.

¹⁰ 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, available at <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf> (official source).

¹¹ House of Commons Research Paper, *The Sexual Offences Bill, Bill 128, 2002-2003*, 03/62, 2003, available at <http://www.parliament.uk/commons/lib/research/rp2003/rp03-062.pdf>, referring to 648 PARL. DEB. H.L. (5th ser.) (2003) 202-5.

¹² Sexual Offences Act 2003 c. 42, § 57(1)(b), http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030042_en.pdf (official source). The ‘relevant offences’ are defined in section 60 of the Sexual Offences Act 2003. They are wide ranging and cover all forms of sexual offences under the Sexual Offences Act 2003, from rape to causing or inciting prostitution, and also extend to taking or making indecent photographs of children that are offences under the Protection of Children Act 1978, c. 37. The purpose of having such a wide ranging definition is to: “offer greater protection against all forms of sexual trafficking, for example, for those who are trafficked in order to be sexually assaulted by others where there is no financial payment for the sexual services.” Home Office Circular, *Guidance on Part 1 of the Sexual Offences Act 2003*, [http://www.knowledgenetwork.gov.uk/HO/circular.nsf/1cc4f3413a62d1de80256c5b005101e4/F42DF595CC5A54DB80256E5F0057517C/\\$file/final%20text.doc](http://www.knowledgenetwork.gov.uk/HO/circular.nsf/1cc4f3413a62d1de80256c5b005101e4/F42DF595CC5A54DB80256E5F0057517C/$file/final%20text.doc) (last visited Mar. 10, 2008).

¹³ Sexual Offences Act 2003 c. 42, §§ 57-59, as amended by the UK Borders Act 2007, c. 30, § 31, available at http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070030_en.pdf (official source); see also Home Office Circular, *id.*, at ¶ 258.

any country, without the need for an equivalent offense in that country.¹⁴

III. Prosecution, Penalties, and Punishment

Trafficking

The penalty for trafficking individuals into the UK for the purposes of exploitation, including sexual exploitation, is a maximum of fourteen years of imprisonment.¹⁵ In a high profile case, a human trafficker convicted of “fifteen counts of assisting unlawful immigration, living on prostitution, kidnapping, procuring a girl to have unlawful sexual intercourse and incitement to rape” had his sentence increased from ten years to twenty-three years by the Court of Appeal, after the Attorney General referred the case to them as he believed the original sentence was too lenient.¹⁶

Immigration Offenses Related to Trafficking

Human traffickers may also be charged with additional immigration offenses, such as assisting unlawful immigration.¹⁷ This offense is committed if a person facilitates or knows, or has reasonable cause to believe, an act will facilitate the breach of immigration law for an individual he knows, or has reasonable cause to believe, is not a citizen of the European Union.¹⁸ The penalty for this act is up to fourteen years of imprisonment and/or a fine.¹⁹

The number of people being charged with trafficking for sexual exploitation is increasing rapidly. In 2004-2005, sixteen individuals were charged; in 2005-2006, sixty-five people were charged, and in 2006-2007, 116 people were charged.²⁰ However, out of these charges, in 2006 there had been only thirty convictions for trafficking for sexual exploitation.²¹ The Solicitor General states that this is because traffickers are often prosecuted for other offenses, such as rape or immigration offenses.²²

The UK has undertaken a number of operations to disrupt human trafficking groups and individuals. In the first proactive police operation to involve every police force (fifty-five) across the United Kingdom, known as Pentameter, 515 premises were visited; this is estimated to be only ten percent of the sex establishments across the country.²³ One hundred and eighty-eight women were

¹⁴ Sexual Offences Act 2003 c. 42, §§ 57-59, as amended by the UK Borders Act 2007, c. 30, § 31, *id.*; see also Home Office Circular, *id.*

¹⁵ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, c. 19, § 4(5), available at http://www.opsi.gov.uk/acts/acts2004/pdf/ukpga_20040019_en.pdf (official source), and Sexual Offences Act 2003 c. 42, available at http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030042_en.pdf (official source).

¹⁶ R v Plakici [2005] 1 Cr.App.R.(S.) 19, 83, and see also Crown Prosecution Service, *Groundbreaking Sentence Increase for Human Trafficker*, 2004, available at http://www.cps.gov.uk/news/pressreleases/archive/2004/118_04.html.

¹⁷ Child Exploitation and Online Protection Agency, *A Scoping Project on Child Trafficking in the UK*, 2007, at 55, available at http://www.ceop.gov.uk/downloads/documents/child_trafficking_report0607.pdf [produced on behalf of the Home Office].

¹⁸ Immigration Act 1971, c. 77, § 25, available at <http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=immigration+act+&Year=1971&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmenment=0&TYPE=QS&NavFrom=0&activeTextDocId=1578007&PageNumber=1&SortAlpha=0> (unofficial source), as amended by the Nationality, Immigration and Asylum Act 2002, c. 41, § 143, available at http://www.opsi.gov.uk/acts/acts2002/pdf/ukpga_20020041_en.pdf (official source).

¹⁹ Immigration Act 1971, c. 77, § 25(6), *id.*, as amended by the Nationality, Immigration and Asylum Act 2002, c. 41, § 143, *id.*

²⁰ 459 PARL. DEB., H.C. (6th ser.) (2007) 1030.

²¹ 459 PARL. DEB., H.C. (6th ser.) (2007) 535W.

²² 455 PARL. DEB., *supra* note 20.

²³ UK Human Trafficking Centre, *supra* note 1.

rescued, with eighty-four of these women being confirmed as victims of trafficking. As a result of this operation, 232 people were arrested, 134 people were charged, and over £250,000 (about US\$500,000) in cash was seized.²⁴ A new operation, known as Pentameter 2, is currently underway that is designed to rescue and protect trafficking victims and also “collect further information and intelligence about trafficking for labour exploitation and child trafficking.”²⁵

Forfeiture of Transportation Used in Trafficking for Sexual Exploitation

The government has kept the law under review and recently introduced an additional penalty that allows the courts to order the forfeiture of a vehicle, ship, or aircraft belonging to people convicted on indictment of an offense of trafficking for sexual exploitation. To issue an order, the court must believe that the vehicle, ship, or aircraft was used, or was intended to be used, in connection with the offense.²⁶ The police and certain immigration officers also have the power to detain a vehicle, ship, or aircraft if they have reasonable grounds to believe that the object could, upon the conviction of the person they arrested, be the subject of a forfeiture order by the courts.²⁷ The vehicle, ship, or aircraft can be detained until after a decision has been made on whether to charge the person; if the person is charged, until proceedings against him are concluded or discontinued; or after the person has been convicted, until the courts decide whether to issue a forfeiture order.²⁸

Proceeds of Crime

The Proceeds of Crime Act 2002 provides an extensive and complex legislative regime that enables both the civil and Crown courts to freeze or order the recovery, restraint, or forfeiture of property or cash that either represents or has been obtained as part of unlawful conduct.

The Proceeds of Crime Act allows a restraint order to be issued against the assets belonging to a person subject to a criminal investigation who is believed to benefit from the proceeds of their crime, to prohibit them from dealing in any of their realizable property. A Crown court can issue a restraint or freezing order upon an application from the prosecutor, the Director of the Assets Recovery Agency, or an accredited financial investigator.²⁹ The restraint order prevents the use or disposal of property that will potentially be subject to a confiscation order. The court can grant such an order in a number of circumstances, notably if it is satisfied that either a prosecution has been commenced but not concluded or that a criminal investigation has been started in England and Wales and there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.³⁰ To ensure that restraint orders are effective, the courts can order the surrender of items needed to access or transfer the applicable property and can require individuals subject to an order to provide statements of their finances.³¹

Confiscation of Criminal Property

Criminal laws relating to the confiscation of the criminal proceeds were enacted shortly after

²⁴ Pentameter, *Operational Overview*, 2006, available at <http://www.pentameter.police.uk/docs/pentameter.pdf>.

²⁵ Pentameter, *Pentameter 2*, <http://www.pentameter.police.uk/> (last visited Mar. 14, 2008).

²⁶ Sexual Offences Act 2003, c. 42, § 60A, http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030042_en.pdf (official source), as amended by the Violent Crime Reduction Act 2006, c. 38, sch. 4, http://www.opsi.gov.uk/Acts/acts2006/pdf/ukpga_20060038_en.pdf (official source).

²⁷ Sexual Offences Act 2003, c. 42, § 60B, *id.*, as amended by the Violent Crime Reduction Act 2006, c. 38, sch. 4. *id.*

²⁸ *Id.*

²⁹ Proceeds of Crime Act 2002, c. 29, § 41, available at http://www.opsi.gov.uk/acts/acts2002/pdf/ukpga_20020029_en.pdf (official source).

³⁰ *Id.*, at c. 29, §§ 40-41.

³¹ BLACKSTONE'S CRIMINAL PRACTICE ¶ D7.13 (Peter Murphy et al eds., 2006).

September 11, 2001.³² These laws enable Crown courts in England or Wales to order the confiscation of assets that represent the criminal lifestyle or that are benefits from the conduct of a person convicted of a crime.³³ Criminal property that represents the proceeds of the defendant's benefits from criminal offenses can be subject to a confiscation order from the Crown court if the person has been convicted of an offense before the Crown Court; has been committed to the Crown Court for sentencing; or is committed to the Crown Court to be considered for a confiscation order.³⁴ The court must consider a confiscation order if the prosecutor or Director of the Assets Recovery Agency so requests or where the court considers an order is appropriate, even without a submitted request.³⁵ When considering a confiscation order, the court must decide, on the balance of probabilities, whether the defendant has a criminal lifestyle and, if so, whether or he has benefited from particular criminal conduct.³⁶ If the court decides that the defendant has benefited from his criminal lifestyle or conduct, it then may determine a recoverable amount and issue a confiscation order to the defendant. When determining the recoverable amount, the court takes into consideration the total value of the defendant's property, less any obligations, and the total value of all tainted gifts.

Civil Recovery of Criminal Property

The previous system of asset forfeiture was "conviction led," permitting the confiscation of property only upon conviction of the accused.³⁷ In response to government concern that very few forfeiture orders were being made following criminal convictions, the Proceeds of Crime Act introduced broad powers to tackle organized crime through a system of civil recovery, also referred to as asset recovery, civil forfeiture, and confiscation without conviction.³⁸ The Proceeds of Crime Act's provisions enable the Director of the Assets Recovery Agency to apply to the High Court for the civil recovery of property that is, or represents, assets from unlawful conduct, regardless of whether the property holder has been convicted of or arrested for a crime.³⁹ The Magistrates courts, or the Sheriffs in Scotland, may order the forfeiture of cash if they believe that, on the balance of probabilities, the cash is either recoverable

³² Proceeds of Crime Act 2002, c. 29, available at http://www.opsi.gov.uk/acts/acts2002/pdf/ukpga_20020029_en.pdf (official source)..

³³ *Id.*, at § 6.

³⁴ *Id.*

³⁵ *Id.*

³⁶ The term criminal lifestyle is statutorily defined in § 70 of the Proceeds of Crime Act 2002 as where the offense the defendant has committed consists of drug trafficking, money laundering, directing terrorism, people trafficking, arms trafficking, counterfeiting, intellectual property offenses, prostitution and child sex, blackmail or attempting, conspiring, inciting, aiding, abetting, or counseling or procuring any of these offenses. The offense must have formed part of "a course of criminal activity ... defined to mean that there must be three or more other offences from which the defendant gained a benefit in the same proceedings, or at least two previous convictions within the previous six years for such offences ... where the offence in question is a continuing offence committed over at least six months [if the offence] is not included in the list of specified offences it will only count where the defendant obtained a relevant benefit of £5,000 [about US\$10,000] or more." PETER ALLRIDGE, MONEY LAUNDERING LAW 128 (2003).

³⁷ Criminal Justice Act 1988, c. 33, available at http://www.opsi.gov.uk/ACTS/acts1988/ukpga_19880033_en_1 (official source); Criminal Justice (Scotland) Act 1987, c. 41, available at http://www.legislation.gov.uk/acts/acts1987/pdf/ukpga_19870041_en.pdf (official source); Drug Trafficking Act 1994, c. 37, available at http://www.opsi.gov.uk/acts/acts1994/ukpga_19940037_en_1 (official source); Proceeds of Crime Act 1995, c. 11, available at https://www.opsi.gov.uk/acts/acts1995/ukpga_19950011_en_1 (official source); Proceeds of Crime (Scotland) Act 1995, c. 43, available at http://www.opsi.gov.uk/acts/acts1995/ukpga_19950043_en_1 (official source); and the Proceeds of Crime (NI) Order 1996, SI 1996/1299, available at http://www.legislation.gov.uk/si/si1996/uksi_19961299_en_1 (official source).

³⁸ Home Office Working Group on Confiscation, *Third Report*, Nov. 1998; CURRENT LAW, PROCEEDS OF CRIME ACT 2002, 29-225.

³⁹ Proceeds of Crime Act 2002, c. 29, part 5, available at http://www.opsi.gov.uk/acts/acts2002/pdf/ukpga_20020029_en.pdf (official source).

property or intended to be used in unlawful conduct.⁴⁰ Customs officers and constables that are lawfully present on premises⁴¹ may search for recoverable property or property intended to be used by anyone in unlawful conduct that has a minimum value of £5,000 (about US\$10,000),⁴² if they have reasonable grounds for suspecting that such property is present.⁴³ These searches must be approved by a Magistrate or a police inspector, unless this is not practical. If the recoverable property has been intermingled with legitimate property and it is not practical to divide it, the whole amount can be seized.

The term cash in this context has a broad definition and includes not only cash that is, or represents, property obtained through unlawful conduct, but also extends to cash that is *intended* to be used in unlawful conduct.⁴⁴ Constables may seize such cash during any lawful search if they believe it is from or is intended for unlawful conduct. Cash can be held for up to forty-eight hours, which can be extended by an order from a Magistrate for renewable three-month periods that cannot exceed a total period of two years.⁴⁵ The government reasoned that the introduction of such powers would:

open up a new route to tackling the assets of those currently beyond the reach of the law, by targeting the activities of organized crime heads who are remote from crimes committed to their order, yet who enjoy the benefits [and] ... to allow the recovery of unlawful assets held in the UK, but derived from crime committed overseas.⁴⁶

Recovery of Criminal Property

The provisions in the Proceeds of Crime Act allow the civil and criminal courts to recover property that has been obtained through conduct that is unlawful under UK criminal law, regardless of the location where the unlawful conduct occurred, and to order the forfeiture of cash that is, or represents, property obtained through unlawful conduct or is intended to be used in unlawful conduct.⁴⁷ The court can make a recovery order for property obtained through unlawful conduct against the person that was first in possession of the unlawful property, as well as against those that handled stolen goods. The court also can order the recovery of any property representing the original property obtained through unlawful conduct.⁴⁸

IV. Victim Protection, Assistance, and Compensation

The British government has taken a victim-centered approach to combating trafficking.⁴⁹ In Parliamentary debates, the chair of the Joint Committee on Human Rights stated that “the care of the victim was an even higher priority than enforcement”;⁵⁰ however, this approach is currently not within

⁴⁰ *Id.*, at § 298.

⁴¹ Lawfully present includes if the constable or customs officer is on the premises by invitation or exercising an existing official power of entry under either the Police and Criminal Evidence Act 1984, c. 60 or the Customs and Excise Management Act 1979, c. 3.

⁴² Proceeds of Crime Act 2002 (Recovery of Cash In Summary Proceedings: Minimum Amount) Order 2004, SI 2004/420, available at <http://www.opsi.gov.uk/si/si2004/20040420.htm> (official source).

⁴³ Proceeds of Crime Act 2002, c. 29, § 289, available at http://www.opsi.gov.uk/acts/acts2002/pdf/ukpga_20020029_en.pdf (official source).

⁴⁴ *Id.*, at § 240.

⁴⁵ *Id.*, at § 295.

⁴⁶ Cabinet Office, Performance and Innovation Unit, *Recovering the Proceeds of Crime*, June 2000, ¶ 5.2, cited in CURRENT LAW, PROCEEDS OF CRIME ACT 2002, 29-225.

⁴⁷ Proceeds of Crime Act 2002, c. 29, § 241, available at http://www.opsi.gov.uk/acts/acts2002/pdf/ukpga_20020029_en.pdf (official source).

⁴⁸ *Id.* at § 305.

⁴⁹ Home Office, *supra* note 2 at 47.

⁵⁰ 460 PARL. DEB., H.C. (6th ser.) (2007) 502WH.

any legislative framework.

POPPY Project

The Home Office has provided funding of £2.4 million (about US\$4.8 million) from 2006-2008 to a project, known as the POPPY Project, which assisted 162 women between March 2003 and January 2007.⁵¹ This project provides thirty-five bed spaces for safe accommodation “for women [over 18 years of age]⁵² trafficked into the UK for sexual exploitation.”⁵³ The project also provides unconditional support for four weeks to assist victims, in the form of “counseling, emergency medical treatment; access to independent immigration legal advice; advocacy; living expenses; access to English language classes; and if required assistance with returning to country of origin.”⁵⁴ Additionally, any immigration removals proceedings victims may be subject to are halted for this period of four weeks.⁵⁵ The government has stated that “longer term support is offered in return for co-operation with the authorities.”⁵⁶

UK Human Trafficking Center

The government has established the UK Human Trafficking Centre, a police-led multi-agency center, which is intended to be “the central point of development of law enforcement expertise and operational coordination.”⁵⁷ The Centre was established after police operation Pentameter to promote the “development of a victim centered human rights based approach to trafficking of human beings.” It works with the police, the Serious Organised Crime Agency,⁵⁸ the Crown Prosecution Service, the Immigration Service, and non-governmental organizations to “improve the standard of victim care and protection and raise understanding of the complexities that attach to dealing with victim welfare in human trafficking cases in both the criminal justice and wider protection environment.”⁵⁹ It does not handle cases directly, but coordinates and directs the law enforcement response and provides expertise and advice on best practices to those on the frontlines dealing with victims of human trafficking, to raise awareness.

Protection of Child Victims of Trafficking

The statutory framework for the basic protection of children once they are in England and Wales is the Children Act 1989 and the Children Act 2004. The Children Act 1989 places a duty on local

⁵¹ Home Office, *supra* note 2, at 47. The power of the Attorney General to refer unduly lenient sentences to the Court of Appeal is contained in the Criminal Justice Act 1988, c. 33, § 36, available at http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880033_en_1.htm (official source). This legislation appears on the Web site ‘as published’ and does not incorporate any amendments or repeals that may have occurred. To see this legislation in its revised form, including changes up to 2001, see <http://www.statutelaw.gov.uk> (last visited Mar. 10, 2008).

⁵² The POPPY Project cannot take in victims under eighteen years of age as it is the responsibility of the local authority where those victims are to provide housing and support. Children Act 1989, c. 41, § 20, available at http://www.opsi.gov.uk/Acts/acts1989/Ukpga_19890041_en_1.htm (official source).

⁵³ Home Office, *supra* note 2, at 47. See also POPPY Project, *POPPY Project*, http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php (last visited Mar. 13, 2008).

⁵⁴ POPPY Project, *id*

⁵⁵ 455 PARL. DEB., H.C. (6th ser.) (2007) 645W.

⁵⁶ *Id.*

⁵⁷ Home Office, *supra* note 2, at 57.

⁵⁸ The Serious Organised Crime Agency is an “intelligence-led agency with law enforcement powers and harm reduction responsibilities.” It is the result of the amalgamation of the National Crime Squad, the National Criminal Intelligence Service, part of HM Revenue and Customs that dealt with drug trafficking and associated criminal finance, and part of the Immigration Service that dealt with organized immigration crime. Serious Organised Crime Agency, *About Us*, <http://www.soca.gov.uk/aboutUs/index.html> (last visited Mar. 17, 2008).

⁵⁹ UK Human Trafficking Centre, *History*, <http://www.ukhtc.org/history.htm> (last visited Mar. 17, 2008).

authorities to prevent children in their area from suffering ill treatment or neglect by ensuring services are provided for them⁶⁰ and to investigate any situation where a child in their area is subject to an emergency protection order, is in police protection, or if there is reasonable cause to suspect that the child is suffering or likely to suffer from significant harm.⁶¹

This Act places a duty on local authorities to provide accommodation for children under sixteen in need, if they have been abandoned, left without a person that can provide parental responsibility, or if the person caring for the child has been prevented from providing accommodation and support.⁶² Local authorities also have a duty to provide children aged sixteen to twenty-one with accommodation in a community home, if it is necessary to safeguard or promote their welfare.⁶³

The accommodation provided by local authorities ranges, according to the ages and needs of the children, from foster homes to supported lodging with unsupervised care, typically in the form of hostels, or where these are unavailable, hotel rooms.⁶⁴ The government has been accused of failing to meet this duty in a report by the Child Exploitation and Online Protection Agency. The report claims that large numbers of separated minors that enter the UK and claim asylum at the port of entry disappear once in accommodation provided by local authorities. The statistics provided by a data sample revealed that 183 children were found to be missing – fifty-five percent of children from the sample data.⁶⁵ The majority of these were from semi-supervised or unsupervised accommodations. It has also been reported in Parliamentary debates that forty-eight children have been reported missing from the care of three local authorities.⁶⁶

The recognition of child victims of trafficking by local authorities and other agencies has been criticized, mainly due to the lack of a centralized system and of uniform procedures to recognize and treat victims of trafficking, combined with the continuing issue of the immigration status of the child reportedly playing a role in their treatment.⁶⁷ One of the aims of the government's Action Plan on human trafficking is to raise awareness and further develop a series of best practice guides to enable the provision of consistent services across all agencies that may interact with child victims of trafficking.⁶⁸

Immigration Issues with Victims of Trafficking

One area to which the Joint Committee on Human Rights has called attention has been that victims of trafficking cannot:

be considered in isolation from the Government's overall immigration legislation and policy, which present a key obstacle to the promotion of a human rights approach taking into account the rights of victims. Victims may often find themselves treated as immigration offenders and face enforcement actions such as detention and removals.⁶⁹

⁶⁰ Children Act 1989 c. 41, sch. 2, ¶ 4, http://www.opsi.gov.uk/Acts/acts1989/Ukpga_19890041_en_1.htm (official source).

⁶¹ *Id.*, at c. 41, § 47.

⁶² *Id.*, at c. 41, § 20.

⁶³ *Id.*, at c. 41, § 20(5).

⁶⁴ Child Exploitation and Online Protection Agency, *supra* note 17, at 50.

⁶⁵ *Id.*, at 48-49.

⁶⁶ 460 PARL. DEB., H.C. (6th ser.) (2007) 511.

⁶⁷ Child Exploitation and Online Protection Agency, *supra* note 17, at 50-1.

⁶⁸ Home Office, *supra* note 2; *see also* Child Exploitation and Online Protection Agency, *id.*

⁶⁹ JOINT COMMITTEE ON HUMAN RIGHTS, TWENTY SIXTH REPORT, 2005-6, HC 1127-I, ¶ 117, *available at* <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/245/245.pdf>.

Victims have often been charged with immigration offenses and subsequently deported, or simply deported as they were often not in the UK legally. Child and adult victims of trafficking must apply for asylum, for which there is no fast track process available to them, and they are frequently rejected.⁷⁰

The UK Action Plan on Human Trafficking notes that victims of trafficking are not normally subject to charges under immigration laws and that each individual is dealt with on a case-by-case basis.⁷¹ Despite this, some victims have been charged under British immigration laws; however, the government states that these have been due to a lack of awareness and identification of the victim and that they have taken measures to increase awareness and training, as well as to produce guidance that they state “will hopefully lead to a decrease in these incidents.”⁷² If a victim of trafficking is charged with an immigration offense, the Crown Prosecution Service has discretion to discontinue the case on the grounds that it is contrary to the public interest.⁷³

The government has no centrally held information on how many women trafficked into the UK have been removed from the country as a result of their immigration status. It has stated that the majority of victims wish to return to their home countries and “are provided with information and assistance to help them voluntarily return to their country of origin and removal action is only ever taken as a last resort.”⁷⁴ The UK’s Border and Immigration Agency has established a program known as Assisted Voluntary Return of Irregular Migrants (AVRIM). AVRIM is run in partnership with the International Organisation for Migration and provides victims of trafficking that have arrived in the UK illegally with tickets to return to their home country, assistance with travel arrangements, and travel documents.⁷⁵ However, even use of this program and the POPPY project does not guarantee that victims will be safe in their home country. The chair of the parliamentary Human Rights Committee states that twenty percent of clients of the POPPY project have been re-trafficked.⁷⁶

Compensation

Victims of trafficking can obtain compensation through a number of routes. Prosecutors can request a compensation order upon conviction of the trafficker, or the victim can use the civil courts to sue the trafficker. In certain cases, victims may be eligible for an award through the British Criminal Injuries Compensation Scheme, which provides compensation awards ranging from £1,000 to £500,000 (about US\$2,000 to 1 million).⁷⁷ Victims that are considered vulnerable and that utilize the UK’s

⁷⁰ 460 PARL. DEB., H.C. (6th ser.) (2007) 511.

⁷¹ Home Office, *supra* note 2.

⁷² *Id.*, at 57.

⁷³ *Id.*

⁷⁴ 455 PARL. DEB., H.C. (6th ser.) (2007) 1538W.

⁷⁵ Victims of trafficking may be excluded from this program if: “[they are involved in] ongoing matters pertaining to the criminal justice system; a deportation order has been made against the person; arrangements for the person’s return are already in place; prior to IOM receiving an application the applicant has received custodial sentences, in the United Kingdom, totaling [sic] in excess of 12 months ... [or who] have been granted indefinite leave to remain; have sought asylum or humanitarian protection in the United Kingdom and have not left the United Kingdom since that application; have permission to enter or remain in the United Kingdom for non - asylum/humanitarian reasons e.g. students, spouses, visitors etc and have not breached any conditions of that leave; are short term immigration detainees and have removal directions set; are convicted prisoners subject to deportation orders; have been convicted of a serious immigration offence; are British citizens or European Economic Area nationals; [or] whose purpose in leaving is to nullify their adverse immigration status in order to re-enter the United Kingdom.” Border and Immigration Agency, *Assisted Voluntary Return of Irregular Migrants*, <http://www.bia.homeoffice.gov.uk/aboutus/workingwithus/workingwithasylum/assistedvoluntaryreturn/avrim/> (last visited Mar. 14, 2008).

⁷⁶ 460 PARL. DEB., H.C. (6th ser.) (2007) 507WH.

⁷⁷ Home Office, *supra* note 2, at 58. For further information on the Criminal Injuries Compensation Scheme see Criminal Injuries Compensation Authority, <https://www.cica.gov.uk/> (last visited Mar. 17, 2008).

AVRIM to return to their country of origin may be entitled to up to £1,000 of “in-kind” reintegration assistance. This can be used for setting up a small business, education, employment, vocational training, medical care, counseling, or accommodation.”⁷⁸

V. Cooperation with Other Governments

The UK has recognized that “trafficking cannot be effectively addressed unless the effort is cross border, and the courts, and the enforcement authorities co-operate in exchanging information, evidence, and a common approach to this problem.”⁷⁹ It is actively cooperating with other governments to halt the problem of human trafficking.

In 2000, a multi-agency task force known as Reflex was established, which involves the Serious and Organised Crime Agency, the Home Office, the Immigration Service, the Security and Intelligence Agencies, the Foreign & Commonwealth Office, the Crown Prosecution Service, and UK and Scottish police forces.⁸⁰ Among its remit is action against human trafficking, and it receives £20 million (about US\$40 million) annually in funding from the Home Office. Reflex has formed a:

network of overseas immigration liaison officers, which allows [them] to build an intelligence picture [to] act on in partnership with other countries, using mechanisms for international police co-operation such as Europol and Eurojust ... [and has invested] in projects in source and transit countries to build the capacity to tackle trafficking, as well as to raise awareness of trafficking with potential victims. In Romania, Reflex funding has been used to assist with the establishment of a central intelligence unit based in Bucharest. More recently, a helpline was set up to assist in the detection and prevention of trafficking. [The UK has] also funded projects in South Asia, West Africa and the Balkans aimed at raising awareness of trafficking and addressing some of the root causes of trafficking (such as gender inequality) as part of wider development programmes.⁸¹

In June 2007, the UK and U.S. governments signed a Memorandum of Understanding to improve international cooperation to combat human trafficking.⁸² This Memorandum “expands the ability of U.S. and UK law enforcement agencies to share information, intelligence and leads about criminal organizations involved in human trafficking.”⁸³

The government has also taken a number of initiatives in various countries from which women and children are trafficked. The Foreign and Commonwealth Office reports that it has worked with foreign governments “in source and transit countries for ... people trafficking [and uses its] political influence to encourage appropriate national authorities to adopt new legislation, strengthen law enforcement, reinforce the judiciary and remove corrupt officials.”⁸⁴ An example of this cooperation is

⁷⁸ Home Office, *id.*, at 59.

⁷⁹ Department for Constitutional Affairs, World Congress of the International Association of Youth and Family Judges and Magistrates, Speech by Constitutional Affairs Secretary and Lord Chancellor Lord Falconer of Thoroton, Aug. 28, 2006, available at <http://www.dca.gov.uk/speeches/2006/sp060828.htm>.

⁸⁰ JOINT COMMITTEE ON HUMAN RIGHTS, TWENTY SIXTH REPORT, 2005-6, HC 1127-I, ¶ 120, available at <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/245/245.pdf>.

⁸¹ UK Presidency of the EU, Speech by Paul Goggins, UK Parliamentary Under Secretary of State for Policing, Security and Community Safety, at 'Tackling Human Trafficking: Policy and Best Practice in Europe' Conference, 19 - 20 October 2005 (19/10/05), available at <http://www.eu2005.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1115146994906&a=KArticle&aid=1145892132473&date=2005-10-19>.

⁸² Embassy of the United States, London, UK, Press Release, U.S. and UK Agencies to Join Forces in Combating Human Trafficking (June 6, 2007), available at <http://www.ukhtc.org/includes/Press%20Release%20June%2006.pdf>.

⁸³ *Id.*

⁸⁴ Foreign and Commonwealth Office, FCO ANNUAL REPORT 2006-7, available at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1176454604813>.

the British Embassy in Cambodia, which assisted in the organization of a Conference on Human Trafficking, “to amplify [the countries] cooperation in combating all forms of human trafficking.”⁸⁵

The UK actively participated during negotiations on the Convention on Against Trafficking in Human Beings and became a signatory on March 22, 2007. The government is currently working on implementation plans for ratifying the Convention.⁸⁶

VI. Extraditable Offenses

The UK has extradition relations with over one hundred countries through agreements, conventions and treaties.⁸⁷ The Extradition Act 2003 contains the current law governing extradition in England and Wales.⁸⁸ The Extradition Act 2003 repealed all prior extradition laws,⁸⁹ with the intent of implementing the European Arrest Warrant, and creating an efficient and effective extradition system through a streamlined single appeals process, a simplified process to authenticate foreign documents, and modifications to prevent duplications in processes.

Under the Extradition Act 2003, the UK’s extradition partners are placed in one of two categories by an Order in Council made by the Secretary of State and approved by both the House of Commons and the House of Lords.⁹⁰ The Extradition Act 2003 provides that extradition can occur for countries that are not designated in either category but are party to an international convention to which the UK is a signatory and for which extradition obligations arise in relation to specific conduct.⁹¹ Extradition procedures under each category vary, with category one primarily serving to implement the European Arrest Warrant and create a “fast track” extradition procedure for Member States of the Council of

⁸⁵ Royal Government of Cambodia, *Address at the Conference on Human Trafficking*, Nov. 16, 2004, available at http://www.car.gov.kh/hunsen/humantraffickingnov162004_en.asp.

⁸⁶ Council of Europe, *Action to Combat Trafficking in Human Beings, Council of Europe Convention*, http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/IntroConv_en.asp (last visited Mar. 18, 2008).

⁸⁷ Home Office, *Extradition Procedures in the UK*, <http://police.homeoffice.gov.uk/operational-policing/extradition-intro1/> (last visited Mar. 17, 2008).

⁸⁸ Extradition Act 2003, c. 41, available at http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030041_en.pdf (official source). This Act was passed following an extensive consultation. See HOME OFFICE, THE LAW ON EXTRADITION: A REVIEW (Mar. 2001). The UK currently has bi-lateral extradition treaties with the following countries: Albania, Argentina, Austria; Belgium, Bolivia; Brazil, Chile, China (Hong Kong Special Administrative Region only), Columbia, Cuba, Czechoslovakia (applies to both the Czech and Slovak Republics), Denmark, Ecuador, El Salvador, Finland, France, Germany, Greece, Guatemala, Haiti, Hungary, Iceland, India, Iraq, Israel, Italy, Liberia, Luxembourg, Mexico, Monaco, Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Thailand (Siam), Spain, South Africa (Orange Free State only), Sweden, Switzerland, United States of America, Uruguay, and Yugoslavia (applies to Yugoslavia FR, Bosnia & Herzegovina, and Croatia).

⁸⁹ The Extradition Act 1989, c. 33. The Extradition Act 1989 had consolidated provisions relating to extradition from three earlier pieces of legislation – namely, the Criminal Justice Act 1988, c. 33; the Fugitive Offenders Act 1967, c. 68; and the Extradition Act 1870, 33 & 34 Vict c. 10.

⁹⁰ The Extradition Act 2003, c. 41, § 223, available at http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030041_en.pdf (official source), requires that any orders made to designate a country must be laid before Parliament and approved by a resolution from both the House of Lords and House of Commons. See, e.g., Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, SI 2003/3334 and Extradition Act 2003 (Amendment to Designations) Order 2004, SI 2004/1898.

⁹¹ Extradition Act 2003, c. 41 § 193, *id.* The Extradition Act 2003 (Parties to International Conventions) Order 2005, SI 2005/46 extends the provisions of the Extradition Act 2003 in specific circumstances provided for by treaty to the following countries: Afghanistan, Algeria, Angola, Bahrain, Belarus, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, China, Comoros, Congo, Costa Rica, Cote D’Ivoire, Democratic People’s Republic of Korea, Djibouti, Dominica, Dominican Republic, Egypt, Equatorial Guinea, Ethiopia, Gabon, Guinea, Guinea-Bissau, Honduras, Indonesia, Islamic Republic of Iran, Japan, Jordan, Kazakhstan, Republic of Korea, Kuwait, Kyrgyzstan, Lao People’s Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Madagascar, Mali, Marshall Islands, Mauritania, Micronesia (Federated States of), Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Oman, Pakistan, Palau, Philippines, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Togo, Tunisia, Turkmenistan, United Arab Emirates, Uzbekistan, Venezuela, Vietnam, and Yemen.

Europe.⁹² Categorization is based on the country's relationship with the UK, any extradition procedures negotiated between the UK and its partners, and a number of other criteria.⁹³ One of the most controversial provisions contained in the Extradition Act was, for the implementation of the European Arrest Warrant, the removal of the dual criminality requirement⁹⁴ for certain offenses.⁹⁵

Basic extraditable offenses for category one countries are those in which the conduct occurred in the category one country requesting extradition and:

- is an offense on the European Framework List;⁹⁶ and
- is punishable with imprisonment or another form of detention for three years or more in that country, or the person has been sentenced to twelve months or more of imprisonment or detention in that country.⁹⁷

Or:

- the conduct is an offense punishable with twelve months or more of imprisonment in the country requesting extradition; or the fugitive has been sentenced to another form of detention for at least four months or a greater punishment has been imposed in the category one country; and
- the offense is also an offense in the UK.⁹⁸

If the category one country is seeking extradition for an offense that occurred outside its territory, it must show that it is an offense in its jurisdiction punishable with twelve months or more imprisonment, or the fugitive has been sentenced to four months or more detention or a greater punishment, and “in corresponding circumstances equivalent conduct would constitute an extra-territorial offense under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of twelve months or a greater punishment.”⁹⁹

Category one countries may also seek extradition for offenses that occur outside their territory if either the fugitive has been convicted of an offense in its territory and punished with at least four months of detention or greater punishment; or the conduct is an offense in its territory and an offense in the UK punishable with at least twelve months imprisonment.¹⁰⁰

Basic extraditable offenses for category two countries are those in which the conduct of the

⁹² For an overview of extradition procedures *see also* Crown Prosecution Service, *Extradition*, http://www.cps.gov.uk/legal/section2/chapter_c.html#04 (last visited Mar. 18 2008).

⁹³ Extradition Act 2003, c. 41, *available at* http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030041_en.pdf (official source). The Home Office has stated that category one countries would most likely be EU Member States. The Extradition Act 2003 specifically prohibits countries that maintain the death penalty for general criminal offences from being in category one.

⁹⁴ Also known as double criminality, dual criminality is the requirement that the crime must be an offense in both the state requesting extradition and the requested state.

⁹⁵ The offenses are listed in the Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States, art. 2.2, O.J. (L 190), 18/07/2002, 0001-0020.

⁹⁶ The European Framework List is contained in Schedule 2 of the Extradition Act 2003, c. 41, *available at* http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030041_en.pdf (official source) and contains a broad variety of criminal offences, from terrorism to rape to swindling.

⁹⁷ Extradition Act 2003, c. 41, §§ 64(2) & 65(2), *id.*

⁹⁸ *Id.*, at c. 41, §§ 64(3) & 65(3).

⁹⁹ *Id.*, at c. 41, § 64(4) & 65(4).

¹⁰⁰ *Id.*, at c. 41, §§ 64(5) & 65(5).

offense occurred in the country requesting extradition, the conduct is a punishable offense in that country, as well as in the UK, and it would be punishable with twelve months or more imprisonment if it were to have occurred in the UK.¹⁰¹ For individuals unlawfully at large after being found guilty and sentenced for their crime in the country seeking extradition, the fugitives' actual sentences must be greater than four months of imprisonment, and the conduct must be an offense in the UK punishable with imprisonment for at least twelve months.¹⁰²

Category two countries may seek extradition for offenses if the conduct of the offense occurred outside its territory where:

- the offense is punishable under the category two country's law with detention for twelve or more months or a greater punishment or if a fugitive has been sentenced to detention for a term of four months or more; and
- "in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of twelve months or a greater punishment."¹⁰³

A category one country may also seek extradition for offenses that occur outside its territory if either the fugitive has been convicted of an offense in its territory and punished with at least four months of detention or a greater punishment; or the conduct is a punishable offense in its territory, as well as being an offense in the UK punishable with at least twelve months of imprisonment.¹⁰⁴

The Extradition Act 2003 clearly provides that extradition will not be permitted to category two countries if the person has been, or could be, sentenced to death, unless a written notice is received that provides adequate assurance that the death penalty will not be imposed or carried out if it has already been imposed.¹⁰⁵ The Extradition Act states that this requirement has no effect if the person has consented to the extradition.

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¹⁰¹ *Id.*, at c. 41, § 137(2).

¹⁰² *Id.*, at c. 41, § 138(2).

¹⁰³ *Id.*, at c. 41, §§ 137(3) & 138(3).

¹⁰⁴ *Id.*, at c. 41, §§ 64(5) & 65(5).

¹⁰⁵ *Id.*, at c. 41, § 94.