

**Trafficking in Human Beings**  
**Seventh Report of the Dutch National Rapporteur**



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## Abbreviations

ACM	<i>Amsterdams Coördinatiepunt Mensenhandel</i> Amsterdam Coordination Centre for Human Trafficking
ACVZ	<i>Adviescommissie voor Vreemdelingenzaken</i> Advisory Committee on Migration Affairs
AECT	Alliance Expert Coordination Team
AIV	<i>Adviesrad Internationale Vraagstukken</i> Advisory Council on International Affairs
Ama	<i>Alleenstaande minderjargie asielzoeker</i> Unaccompanied underage asylum seeker
AMF-teams	<i>Arbeidsmarktfraude-teams</i> Labour market fraud teams
AMK	<i>Advies- en Meldpunt Kindermishandeling</i> Child Abuse Advisory and Reporting Centre
AMV	<i>Alleenstaande minderjarige vreemdeling</i> Unaccompanied underage foreign national
ANWB	<i>Algemeen Nederlands Wielrijders Bond</i> Dutch Automobile Association
APV	<i>Algemeen Plaatselijke Verordening</i> General Municipal Bye-laws
ARBO	<i>Arbeidsomstandigheden</i> Occupational Health and Safety
ASC	American Society of Criminology
ATAU	Anti-Trafficking Assistance Unit
Awb	<i>Algemene wet bestuursrecht</i> General Administrative Law Act
AWF	Analytical Workfiles
BBOOR Act	<i>Wet bestuurlijke boete overlast in de openbar ruimte</i> Public Nuisance (Administrative Fine) Act
BBOOR Decree	<i>Besluit bestuurlijke boete overlast in de openbare ruimte</i> Public Nuisance (Administrative Fine) Decree
BES islands	Bonaire, Sint Eustatius and Saba
BFO	<i>Bureau Financiële Ondersteuning</i> Financial Support Bureau
BFR	<i>Bureau Financiële Recherche</i> Financial Investigation Bureau
BIBOB Act	<i>Wet bevordering integriteitsbeoordeling door het openbaar bestuur</i> Public Administration (Probity Screening) Act

BIRS	<i>Bureau Internationale Rechtshulp in Strafzaken van het Ministerie van Justitie</i> Ministry of Justice’s Bureau for International Legal Assistance in Criminal Cases
BLinN	Bonded Labour in the Netherlands
BNRM	<i>Bureau Nationaal Rapporteur Mensenhandel</i> Office of the National Rapporteur on Trafficking in Human Beings
BOOM	<i>Bureau Ontnemingswetgeving Openbaar Ministerie</i> Public Prosecution Service’s Criminal Assets Confiscation Bureau
BW	<i>Burgerlijk Wetboek</i> Dutch Civil Code
CAHTEH	Committee on Action against Trafficking in Human Begins
CAO	<i>Collectieve Arbeidsovereenkomst</i> Collective labour agreement
CARIN	Camden Asset Recovery Inter-Agency Network
CBA	<i>Criminaliteitsbeeldanalyse</i> Crime Projection Analysis
CBP	<i>College Bescherming Persoonsgegevens</i> Dutch Data Protection Authority
CBS	<i>Centraal Bureau voor de Statistiek</i> Statistics Netherlands
CDA	Christen Democratisch Appel Dutch Christian Democrat political party
CDPC	European Committee on Crime Problems
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
Cepol	European Police College
CGKR	<i>Centrum voor Gelijkheid van Kansen en voor Racismebestrijding</i> Centre for Equal Opportunities and Opposition to Racism
CIE	<i>Criminele Inlichtingen Eenheid</i> Criminal Intelligence Unit
CIROC	Centre for Information and Research on Organised Crime
CJIB	<i>Centraal Justitieel Incasso Bureau</i> Central Fine Collection Agency
CNV	<i>Christelijk Nationaal Vakverbond</i> Christian National Trade Union
COA	<i>Centraal Orgaan opvang Asielzoekers</i> Central Agency for the Reception of Asylum Seekers
CoMensha	<i>Coördinatiecentrum Mensenhandel</i> Coordination Centre for Trafficking in Human Beings

CTOC	Convention against Transnational Organised Crime
DCI	Defence for Children International
DJI	<i>Dienst Justitieele Instellingen</i> Custodial Institutions Agency
IPOL	International Police Information Service
DINPOL	International Police Cooperation Service
DSO	<i>Dienst Stedelijke Ontwikkeling</i> Urban Development Department
DT&V	<i>Dienst Terugkeer en Vertrek</i> Repatriation and Departure Service
ECD	<i>Economische Controledienst</i> Economic Audit Service
ECNS	Eurojust National Coordination System
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes
ECHR	European Court of Human Rights
EMM	<i>Expertisecentrum Mensenhandel en Mensensmokkel</i> Centre of Expertise on Trafficking in Human Beings and People Smuggling
EU	European Union
Eurojust	European Union's judicial cooperation unit
Europol	European Police Office
ECHR	European Convention on Human Rights
FIET	Flexible Intelligence and Expertise Team
FIOD	<i>Fiscale Inlichtingen- en Opsporingsdienst</i> Fiscal Information and Investigation Service
FIOD/ECD	<i>Fiscale Inlichtingen- en Opsporingsdienst/Economische Controle Dienst</i> Fiscal Information and Investigation Service/ Economic Investiga- tion Service
FIU/NL	Financial Intelligence Unit
FNV	<i>Federatie van Nederlands Vakbewegingen</i> Dutch Trade Union Federation
GAATW	Global Alliance against Trafficking in Women
GAO	Government Accountability Office
GBA	<i>Gemeentelijke Basisadministratie persoonsgegevens</i> Municipal Basic Registration of Population Data
GGD	<i>Gemeentelijke Gezondheidsdienst</i> Municipal Health Service
GG&GD	<i>Gemeentelijke Geneeskundige- &amp; Gezondheidsdienst</i> Municipal Medical and Health Service

GRETA	Group of Experts on Action against Trafficking in Human Beings
ICMPD	International Centre for Migration Policy Development
IEM	<i>Informatie-Eenheid Mensenhandel</i> Information Unit for Trafficking in Human Beings
ILO	International Labour Organisation
IND	<i>Immigratie- en Naturalisatiedienst</i> Immigration and Naturalisation Service
IOOV	<i>Inspectie Openbare Orde en Veiligheid</i> Public Order and Safety Inspectorate
IOM	International Organisation for Migration
IOM/SIDA	International Organisation for Migration/Swedish International Development Cooperation Agency
Interpol	International Criminal Police Organisation
JDS	<i>Judicieel Documentatiesysteem</i> Judicial Documentation System
JIT	Joint Investigation Team
JJI	<i>Justitiele Jeugdinrichtingen</i> Judicial Juvenile Institutions
KLPD	<i>Korps Landelijke Politie Diensten</i> National Police Services Agency
LEM	<i>Landelijke Expertgroep Mensenhandel</i> National Expert Group on Trafficking in Human Beings
LJN	<i>Landelijk Jurisprudentie Nummer</i> National Case-Law Number
LOGO	<i>Landelijk Overleg Gemeentebesturen Opvang en Terugkeerbeleid</i> National Consultative Body for Municipal Administrations on reception and return policy
LOVS	<i>Landelijk Overleg Voorzitters Strafsectoren</i> National Consultative Body for Presidents of Criminal Sectors of Courts
LSI	La Strada International
M	<i>Stichting Meld Misdaad Anoniem</i> Report Crime Anonymously
MOT	<i>Meldpunt Ongebruikelijke Transacties</i> Centre for Reporting Unusual Transactions
MoU	Memorandum of Understanding
NAM	<i>Nationaal Actieplan Mensenhandel</i> National Human Trafficking Action Plan
NAPTIP	Nigerian Agency for the prohibition of trafficking in human beings
NCIPS	<i>Nederlands Centrum voor Internationale Politiesamenwerking</i> Dutch Centre for International Police Cooperation

NTA	National Threat Assessment
NGO	Non-Governmental Organisation
NIGZ	<i>Nationaal Instituut voor Gezondheidsbevordering en Ziektepreventie</i> National Institute for Health Promotion and Disease Prevention
NIZW	<i>Nederlands Instituut voor Zorg en Welzijn</i> Netherlands Institute for Care and Welfare
NJCM	<i>Nederlands Juristen Comité voor de Mensenrechten</i> Dutch section of the International Commission of Jurists
NeBeDeAgPol	<i>Nederland België Deutschland Arbeitsgesellschaft Polizei</i> Netherlands, Belgium and Germany Police Union
NPI	<i>Nederlands Politie Instituut</i> Netherlands Police Institute
NRM	<i>Nationaal Rapporteur Mensenhandel</i> National Rapporteur on Trafficking in Human Beings
NRM <sub>1</sub>	First Report of the National Rapporteur on Trafficking in Human Beings
NRM <sub>2</sub>	Second report of the National Rapporteur on Trafficking in Human Beings
NRM <sub>3</sub>	Third report of the National Rapporteur on Trafficking in Human Beings
NRM <sub>4</sub>	Fourth report of the National Rapporteur on Trafficking in Human Beings
NRM <sub>5</sub>	Fifth report of the National Rapporteur on Trafficking in Human Beings
NRM <sub>6</sub>	Sixth report of the National Rapporteur on Trafficking in Human Beings
NSCR	<i>Nederlands Studiecentrum Criminaliteit en Rechtshandhaving</i> Netherlands Institute for the Study of Crime and Law Enforcement
OBJD	<i>Onderzoeks- en Beleidsdatabase Justitiële Documentatie</i> Research and Policy Database for Judicial Documentation
FOCTA	Organised Crime Threat Assessment
OHCHR	Office of the High Commissioner for Human Rights
OJ	Official Journal of the European Communities
OKIA	<i>Ondersteuningskomitee Illegale Arbeiders</i> Illegal Workers Support Committee
OLAF	European Anti-Fraud Office
OM	<i>Openbaar Ministerie</i> Public Prosecution Service
OOM	<i>Operationeel Overleg Mensenhandel</i> Operational Consultation Group on Trafficking in Human Beings
OSCE	Organisation for Security and Cooperation in Europe

OSCE ODHIR	OSCE Office for Democratic Institutions and Human Rights
OSR	OSCE Special Representative
PA	Parliamentary Assembly
PC-ES	Committee of Experts on the Protection of Children against Sexual Exploitation and Abuse
PLEXA	Project beëindiging leefgeldten van ex-ama's Project on the termination of allowances for former unaccompanied underage asylum seekers
PPM/dNP	Project Prostitutie Mensenhandel/de Nederlandse Politie National Police Project on Prostitution and Trafficking in Human Beings
PvdA	Dutch Labour Party
RAT	Rapid Action Team
REAN	Return and Emigration of Aliens from the Netherlands
RIAGG	<i>Regionale Instellingen voor Ambulante Geestelijke Gezondheidszorg</i> Regional Institute for Community Mental Health Care
RIEC	Regional Information and Expertise Centres
RRI	Randstad Return Initiative
RvdK	<i>Raad voor de Kinderbescherming</i> Child Protection Council
RVZ	<i>Raad voor de Volksgezondheid en Zorg</i> Council for Public Health and Care
SAMAH	<i>Stichting Alleenstaande Minderjarige Asielzoekers Humanitas</i> Humanitas, Foundation for Unaccompanied Underage Asylum Seekers
SGM	<i>Schadefonds Geweldd misdrijven</i> Violent Offences Compensation Fund
SiBa	<i>Statistische informatievoorziening en Beleidsanalyse</i> Statistical Data and Policy Analysis Unit
SIOD	Sociale Inlichtingen- en Opsporingsdienst <i>Social Information and Investigation Service</i>
SP	<i>Socialistische Partij</i> Socialist Party
SR	Special Representative
SRTV	<i>Stichting Religieuzen tegen Vrouwenhandel</i> Dutch Foundation of Religious against Trafficking in Women
STV	<i>Stichting tegen Vrouwenhandel</i> Dutch Foundation against Trafficking in Women
SVB	<i>Sociale Verzekeringsbank</i> Social Insurance Bank
TIP report	Trafficking in Persons report

TNV	<i>Tijdelijke Noodvoorzienig Vreemdelingen</i> Temporary Emergency Facilities for Aliens
UK	United Kingdom
UKHTC	United Kingdom Human Trafficking Centre
UN	United Nations
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNHCR	United Nations High Commissioner for Refugees
UNHCHR	United Nations High Commissioner on Human Rights
UNICEF	United Nations Children's Fund
UNDOC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention in Transnational Organised Crime
UNTS	United Nations Treaty Series
UPR	Universal Periodic Review
UWV	<i>Uitvoering Werknemersverzekeringen</i> Implementing agency for employees' social insurance
VER	<i>Vereniging voor Exploitanten Relaxbedrijven</i> Dutch Association of Brothel Owners
VNG	<i>Vereniging Nederlandse Gemeenten</i> Association of Netherlands Municipalities
WAADI	<i>Wet allocatie arbeidskrachten door intermediairs</i> Act on allocation of manpower by intermediaries
WBOM	<i>Wetenschappelijke Bureau van het Openbaar Ministerie</i> Research Department of the Public Prosecution Service
WED	<i>Wet Economische Delicten</i> Economic Offences Act
WMA	World Medical Association
WODC	<i>Wetenschappelijke Onderzoek- en Documentatiecentrum</i> Scientific Research and Documentation Centre
WOD	<i>Wet op de Orgaandonatie</i> Organ Donation Act
YCA	Youth Care Agency
YPT	Youth Prevention Team





## Foreword

Take an everyday session of the children's court. There are three cases: a request to remove young children from the custody of parents who are being held on suspicion of human trafficking, a petition for the placement in a closed shelter of a 14-year-old girl with 'indications of problems with a loverboy' and a request for placement in a closed shelter of a 16-year-old boy who had bought a weapon out of fear for his sister's loverboy. Sessions like these are not isolated incidents and illustrate that human trafficking is not solely a matter of criminal law and calls for wider expertise than has been accumulated in criminal law. The phenomenon has a far wider impact and consequently threatens to become uncontrollable. Anyone can be confronted with human trafficking in one of its various manifestations, even organisations and professionals that one would not normally think of in connection with the problem. This is what makes efforts to tackle human trafficking so complicated.

This seventh report is thicker than ever and covers a wide range of subjects. It also contains 47 recommendations for various actors. The recommendations differ in terms of their urgency and complexity. I would like to mention just a few of them.

In my view, providing adequate care for victims remains an area of concern. Concern about the lack of capacity and at the delay in starting the pilot project with category-oriented shelter. Besides creating sufficient capacity, the type of shelter and care provided for each distinct group of victims is very important. Regardless of where they come from, victims are entitled to shelter and care and should be treated as victims. In other words, they should not be held, even temporarily, at Schiphol, by the Central Agency for the Reception of Asylum Seekers (COA, in aliens detention centres, in tents or at police stations. Special facilities should also be created for Dutch victims who are minors, usually victims of loverboys, either as part of the pilot project or separately. After all, a national strategy for caring for this category of victim should have been formulated long ago embracing key aspects such as a pedagogical climate, safety, small groups and education. In my view, primary responsibility for this lies with the Minister for Youth and Family and there should have been no delay due to problems in securing agreement between ministries.

For the first time extensive research has been conducted into the case-law concerning exploitation in the sex industry. One thing that had clearly emerged from this research is that the subject is complex, and not merely the legal aspects. Hence the recommendation that judges should specialise in this area, as the public prosecution service and the police have already done. Success in tackling human trafficking does not stop at prosecution.

The judiciary should also engage in a dialogue on the appropriate sentences for this very serious offence. In the so-called Sneep judgment, one of the few judgments in which a specific benchmark has been mentioned, the judge adopted a sentence of eight to ten months

in prison for each victim and described a period of exploitation of nine months as relatively short. Do we find that short? It seems to me that it is at least debatable. Another question worth considering is whether the Dutch prostitution policy influences decisions on whether or not the victim entered prostitution of her own free will. That is the impression to emerge from the judgments that were studied and it is worrying.

The last two reports devoted special attention to the development of case-law concerning exploitation in sectors other than the sex industry. The trend is very import for the investigation and prosecution of this type of human-trafficking case. This report includes an analysis of the twelve judgments rendered in this type of case up to now. Although the jurisprudence is not yet fully fleshed out – the Supreme Court will probably issue its first ruling on other forms of exploitation at the end of November of this year – a number of trends are emerging. A striking feature is that more subtle forms of compulsion, such as abuse of a vulnerable position, seem to cause the most problems. This falls under the English term *coerced labour* by contrast with *forced labour*, which involve more serious forms of compulsion or violence. But even the more subtle forms of coercion are covered by article 273f of the Dutch Criminal Code. As already mentioned in the sixth report, decisions in these cases should be guided by international legislation.

Of the three Ps, prevention, prosecution and protection, prevention remains the most relevant, since every victim is one too many. But prevention is also the most difficult P. There are projects dedicated to prevention and schools are increasingly coming to the realisation that they also have a responsibility in this regard, but it remains difficult to put it into practice. It is important to focus heavily on developing projects geared to prevention, but unfortunately that has not proved adequate up to now. More needs to be done. In my view, particularly in loverboy cases the police and the public prosecution service should concentrate more on the ‘grooming’ period, the period when victims are recruited, by actively prosecuting attempted human trafficking and so preventing the exploitation from actually taking place.

This report also refers to a fourth P: the P for *partnership*. Partnership with private organisations, particularly in fighting and raising awareness of human trafficking outside the sex industry, with NGOs and, at EU level, with countries outside the European Union. The Koolvis case is a good example of a successful partnership between the Netherlands and Nigeria, the country of origin of both the defendants and the victims in the case. Nevertheless, a word of caution is appropriate here. With a human rights approach to tackling human trafficking, the possible effect measures could have on human rights must be considered before any steps are taken and collateral damage must be avoided as far as possible.

In April 2010, BNRM will celebrate its 10<sup>th</sup> anniversary. The occasion will be marked next October on the European Day against Human Trafficking. Unfortunately, ten years of work by the BNRM does not mean that the phenomenon is declining or disappearing. It is however becoming more visible. This report shows that tackling human trafficking is a priority in the Netherlands, that a lot is being done to prevent it and some success is being achieved.

But human trafficking remains extremely difficult to control, both in the sex industry and in other sectors and the 47 recommendations that are made indicate that there is still a lot that can and must be improved in the fight against human trafficking. I hope that my report and my recommendations will help to achieve that.

Various institutions and individuals contributed to this report. BNRM is grateful to the LOVS, the IND, CoMensha, and the CJIB for their cooperation and for providing data. The WODC (SiBa) once again provided the analysis of the public prosecution service's database and our thanks go to them.

Thanks also to Anje van Delden, the interns and thesis writers who explored some of the subjects covered in this report in consultation with BNRM and whose findings are referred to where appropriate in the report.

Special thanks go to all employees and former employees of my office, who all made valuable contributions to this report.

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## 1.1 General overview

Efforts to tackle human trafficking have continued to receive a lot of both media and political attention in the last two years. Unfortunately, however, human trafficking still remains a very serious problem. The professionalism of those engaged in fighting human trafficking and caring for victims has increased in recent years. A task force has been set up, the police and the public prosecution service have given the matter priority and there is more specialist help available. With a Reference Framework for Human Trafficking (2008), the police have formulated a uniform method for dealing with the offence. Steps are being taken to develop a programmatic approach to human trafficking, in which all of the agencies in any way concerned with the problem address it systematically. A survey has been conducted to identify areas in which obstacles can be placed in the way of human traffickers. The organisations that provide help for victims are also cooperating more closely with partners in the chain by sharing information and referring victims.

The perception of human trafficking as a serious problem has, if possible, become even greater. The sentences for human trafficking have been increased in recognition of the fact that it is a very serious offence that seriously impinges on human dignity and integrity, frequently involves serious organised crime and engenders intense and growing public anger. The tougher sentences more clearly reflect the seriousness of the offence.

By extension, the government proposes expanding its extra-territorial jurisdiction in line with the possibilities provided by the Council of Europe's Convention on Actions against Trafficking in Human Beings to encompass offences committed against Dutch people abroad and to expand the possibilities of confiscating illegally earned profits.

Attitudes towards the prostitution sector have also changed. Whereas several years ago the predominant view was that prostitution should be regarded as an ordinary profession and the ban on brothels was lifted, there is now a wider realisation that prostitutes are highly vulnerable to exploitation and that human trafficking occurs even in the licensed sector of the prostitution industry. The *Sneep* case was particularly important in exposing significant abuses. In that context, a new framework law to regulate the prostitution sector is being drafted, which is intended to provide more direction and uniformity for policy.

Article 273f of the Dutch Criminal Code, which makes human trafficking a punishable offence, is generally fairly familiar to professionals who are confronted with human trafficking in the sex industry. However, the scope of the article is not entirely clear with regard to exploitation in sectors outside the sex industry. When the application of the provision was expanded to these sectors, it was consciously decided to leave the detailed implementation

to the courts. The scope of the offence is relevant not only for the purposes of investigating and prosecuting human traffickers, but also for the victims. Victims of human trafficking are entitled to care and assistance and have certain rights, particularly under immigration law. Victims of human trafficking in sectors outside the sex industry are not universally recognised and in practice they are far less likely to be automatically granted the associated rights than in the case of sexual exploitation. The legal position of the victims is the same, but in practice the perception of some actors is that exploitation in other sectors is less serious than in prostitution. However, the seriousness of the exploitation does not necessarily have anything to do with the sector in which it occurs. In mid 2009 a possible case of exploitation on an asparagus farm in Someren came to light. The reactions of the various agencies and authorities involved illustrated the fact that other forms of exploitation are not automatically ‘seen’ as such. This case is discussed at length in Chapter 12 (Exploitation in sectors other than the sex industry).

Human trafficking takes place in secrecy. Many victims are also unwilling to report their exploitation. This is why efforts to tackle human trafficking depend so greatly on recognising and responding to the signs. What is needed is a process to raise awareness. It is crucial that signs of potential abuses are recognised. Police officers and employees of the various government inspectorates receive training to help in this. But numerous other professionals can also be confronted with situations involving exploitation. It is essential to find ways of informing these professional groups about the problem and how they can identify the signs.

The general public is no longer unaware of human trafficking, partly thanks to the aforementioned media coverage of the subject. The *Sneep* and *Koolvis* cases have attracted a lot of publicity. However, this does not mean that members of the public are also on the lookout for situations that may involve exploitation. The same applies for some local authorities. The larger municipalities have a human trafficking policy, but many small municipalities still believe they are immune to the problem, a belief that is in practice a misconception. Human trafficking occurs everywhere, despite the widely held view that as a form of modern slavery it is a thing of the past. There is therefore a lot to be gained with an awareness-raising campaign.

The police and public prosecution services have given priority to investigating and prosecuting human trafficking in recent years. The policy has been adopted that in principle every serious indication of human trafficking will be followed up. Expertise is being accumulated in various ways. But how the courts deal with the offence is another element in successfully addressing human trafficking. The legal aspects and the context make human trafficking a complex offence. At the same time, there are not so many cases that judges hear them every day. The judiciary will also have to gain expertise in the coming years. This is equally important for cases involving other forms of exploitation, since this is a relatively new area of law in which the case-law has still not had time to evolve, although the professionals in the field rely heavily on the direction provided by the case-law. Chapters 11 and 12 contain information about the body of case-law in recent years.

Although the need to set priorities is recognised at national level, a practical problem facing the police and public prosecution service and the large cities is that they lack sufficient ca-

capacity. This is a problem that has been referred to in all of the previous reports. Even in this period when public expenditure is under pressure at every level, it is important to continue reviewing whether the policy objectives in this important area can be achieved with the available resources. Naturally, capacity is not the only determining factor. Awareness, attitude and training are also very important.

## **1.2 Human Trafficking Task Force**

The Dutch government's policy on human trafficking is laid down in the National Human Trafficking Action Plan (NAM) of December 2004, which was supplemented by an addendum in February 2006 specifically addressing the protection of underage victims. The practical significance of the NAM, as a coherent programme to combat human trafficking, seems to have faded somewhat into the background however.

This is connected with the activities of the aforementioned Human Trafficking Task Force, the aim of which is to identify and remedy shortcomings in efforts to tackle human trafficking by removing practical obstacles. To this end, in July 2009 the task force presented an Action Plan to carry out its mandate in which it formulated ten specific measures to address problems it had identified. Practical targets will be formulated for these measures, which will be implemented by the representatives of the organisations participating in the task force. For example, pilot projects will be organised to explore possibilities of developing a programmatic approach. In this way, the task force is making an essential contribution to tackling human trafficking.

Regardless of the practical effects of the action plan, the policy principles laid down in the NAM still apply. The action plan does not encompass all of the elements of the NAM. Particularly striking is that although special attention is required for the plight of underage victims, the action plan fails to provide it.

Given the task force's role in ensuring that policy is implemented as effectively as possible through interventions by the relevant key figures, the NGOs that help to implement the policy should obviously be members of it, as the National Rapporteur on Trafficking in Human Beings (NRM) has repeatedly stated. It is a sign of progress in this regard that CoMensha has been invited to attend the meetings of the task force.

The task force updated the action plan in its progress report in September 2009. In that report the task force presented a list of 'quick wins', an overview of what had already been accomplished in relation to the ten measures it had formulated up to the middle of 2009. These quick wins are reviewed in the discussions of the various topics in the following sections.

## **1.3 Reports of offences**

The report of an offence made by the victim often plays an important role as the starting point for a possible prosecution for human trafficking and as the factual basis for the investigation. However, for various reasons victims often have to surmount a substantial barrier

before they actually report an offence. This is generally connected with fear of the perpetrator, or even a sense of solidarity with the perpetrator, or an apparent sense of hopelessness at finding alternatives to the situation of exploitation. It is very important to conduct further research into the willingness of victims to report offences and to identify the factors that could make it easier to report them. Human trafficking was one of the offences included in a study by the public prosecution service into the possibilities of allowing offences to be reported anonymously. On the basis of their investigation, ROOD, the youth section of the SP party in Utrecht, Pretty Woman and a former victim of exploitation by a ‘loverboy’ (see the section ‘The loverboy method’ below) provide a vivid description of the problems confronting victims of loverboys if they report an offence.<sup>1</sup>

Reports and incriminating statements are regularly withdrawn. However, this does not necessarily have any consequences for the defendant’s liability for punishment. Human trafficking is not an offence that depends on a complaint: a defendant can be convicted without a complaint or a notification by the victim. Another factor that always has to be considered is that the victim may have withdrawn the complaint or the statement because of a threat. Since human trafficking cases can be investigated without a complaint, telephone taps and surveillance can also be used to gather evidence and victims could be interviewed after the suspects have been arrested. The *Sneep* case is a good example of this.

The National Rapporteur on Trafficking in Human Beings regularly receives comments and complaints from aid agencies and representative organisations about cases where victims of human trafficking that were not dealt with properly by the police and public prosecution service. Among others, these cases involved foreign victims who were, for example, being held in aliens detention, who were not given an opportunity to report an offence, were not offered a period for reflection or an opportunity to apply for the B9 regulation or who felt that in their cases the charges were wrongly dropped or not properly investigated.

At the same time, the police and public prosecution service say they waste a lot of time dealing with ‘hopeless B9 applications’. This is a reference to foreigners who are required to leave the Netherlands or have no prospect of being granted residence status and who then, sometimes at the very last moment, claim that they were victims of human trafficking or are recognised as such, for example by lawyers or aid workers. A complaint of human trafficking is then made and the Immigration and Naturalisation Service (IND) grants the applicant a B9 residence permit, but the complaint provides few if any leads for an investigation and/or contain old facts that are difficult to investigate or verify. Consequently, these cases can seldom be prosecuted successfully but they do take up resources, sometimes considerable resources, because, according to the Instructions on Human Trafficking, they must be investigated. The Office of the National Rapporteur on Trafficking in Human Beings (BNRM) acknowledges this problem. However, there is no immediate solution for it.

<sup>1</sup> ROOD Utrecht, June 2009. Slachtoffers of Loverboys, Een onderzoek naar ervaringen met politie and justitie of het proces van aangifte tot de veroordeling, [Victims of Lover Boys, an investigation of experiences with police and the public prosecution service from the process of reporting to the sentencing], see also §4.2.3.



Even cases where the complaints do provide sufficient leads for an investigation are not always dealt with. BNRM has conducted research into these ‘shelved cases’. The reason they are shelved is a discrepancy between the priority given to the investigation of human trafficking cases on the one hand and the capacity actually available to investigate on the other, and the dispersal of some of the available capacity to cases in which there are not many leads, as in some of the B9 cases. The results of the BNRM’s study are presented in Chapter 8 (Investigation).

BNRM has also conducted research into the procedure for filing objections with the appeals court against decisions not to prosecute human trafficking cases on the grounds of article 12 of the Dutch Code of Criminal Procedure. In 43 of the 44 cases that were examined, the appeals court declared the objection unfounded, usually because no leads were found despite a lengthy investigation by the police. The results of this study are presented in Chapter 5 on the B9 regulation and continued residence (B16/7).

#### 1.4 Compensation

The possibilities that are in principle open to victims to recover damages they have sustained were described in the Fifth Report of the Dutch National Rapporteur. This report addresses the issue of whether the instrument of an order to pay compensation that the judge can award with the sentence, either on request or *ex officio*, is effective in practice. It also reviews the practical significance of making a claim to the Violent Offences Compensation Fund. The BNRM’s review of the case-law shows that judges often declare claims for compensation by victims inadmissible, especially claims for material damage, because they are – as being too complex – not submitted. Where all or part of the claim is awarded and an order to pay compensation is made, the amount awarded to the victim is collected by the Central Fine Collection Agency (CJIB). Section 4.3 of Chapter 4 (Victims and help for victims) shows that this procedure provides no guarantee that the matter will be dealt with quickly or even that the compensation will ultimately be paid. A claim to the compensation fund still offers the best chance of success. However, this fund does not make any payments for loss of earnings.

The situation could be otherwise, as is apparent from Van Delden’s description of the situation in the United States:

##### *Restitution in the United States*<sup>2</sup>

In the US there are various ways in which restitution, or the instrument of compensation, should be adopted in sentencing in federal cases. For some offences, restitution is discretionary. In most others – the so-called Title 18 offences, including various human trafficking provisions<sup>3</sup> – restitution is in fact mandatory. With this latter type of restitution, the legislature was thinking of complete indemnification of the victim to be imposed *ex officio* by the court. All medical expenses – including psychological and psychiatric damage and physiotherapy –,

<sup>2</sup> Van Delden, 2009.

<sup>3</sup> See §12.6.3.

loss of income, legal costs, temporary accommodation costs, child care and any other costs that can be regarded as a direct (*proximate*) consequence of a criminal offence must be paid by the perpetrator(s).<sup>4</sup> All damage that can be regarded as a direct consequence of the offence is therefore eligible for compensation in full. An additional advantage of mandatory restitution is that it is automatically included as an independent sanction with the special conditions attached to provisional release, so that it can be used to apply pressure in the supervision of a perpetrator.<sup>5</sup>

The American approach differs remarkably from the Dutch situation with respect to the discretion concerning the awarding of damages to the victim. Whereas the Instructions on Human Trafficking<sup>6</sup> for the public prosecution service in the Netherlands contain no obligations or sequences for ways of providing financial redress, the reparation of damage sustained by the victim is legally mandatory in the US. The prosecutor in America is also remarkably proactive in enforcing the reparation of the damage caused to the victim. Although this study of restitution in America focussed on cases in involving other forms of exploitation, in various cases houses and offices were seized with a view to their forfeiture.<sup>7</sup> The legislature in the Netherlands has also made this possible on the grounds of an order of garnishment (article 94a of the Dutch Code of Criminal Procedure), but in practice this provision is rarely used in human trafficking cases.<sup>NRM5</sup>

The position of the victim is receiving attention in the Netherlands and in other countries. For example, the Netherlands has transposed some of the obligations in the EU's Framework Decision on the Standing of Victims in Criminal Proceedings (2001)<sup>8</sup> in the bill entitled 'Act to strengthen the position of victims in criminal proceedings'.<sup>NRM5</sup> It covers, among other things, the rights of victims to compensation and includes a scheme for providing an advance on compensation.<sup>9</sup> The scheme will obviously also apply to human trafficking, which after all usually involves a (serious) violation of a person's physical integrity.<sup>10</sup>

The report of the Organisation for Security and Cooperation in Europe (OSCE) entitled *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008) shows that vic-

4 USC Title 18, par. 2237, 2248, 2259(b)(3), 2264.

5 See USC Title 18, par. §3563(a).

6 *Bulletin of Acts, Order and Decrees* 2008, 253.

7 *USA v. A.D. Kaufman and L.J. Kaufman*, no. 04-40141-01,02, US District Court for the District of Kansas, U.S. Dist. Lexis 39107. In this case, four buildings owned by the defendants were seized; *USA v. Jefferson N. Calimlin, Elnora Calimlin, Jefferson M. Calimlin, USDS Wisconsin*, no. 04-CR-248; *USA v. Varsha Mahender Sabhnani and Mahender Murlidhar Sabhnani, USDC for the Eastern District of New York*, no. 07-cr-429 (ADS) (WDW), Lexis 55108.

8 EU Framework Decision on the Standing of Victims in Criminal Proceedings, Framework Decision of 15 March 2001, OJ 2001, L 082, pp. 1-4.

9 The bill contains the right to information about the criminal proceedings (including the outcome) against the defendant, a right to correct treatment, a right to information about the possibilities of claiming compensation as part of the criminal proceedings, a right to see trial documents and the right to add documents to the case file, the right to representation by a lawyer and the right to an interpreter, the right to speak during the trial, the right of next of kin, and a scheme for payment of an advance on compensation: Amendment of the Code of Criminal Procedure, the Criminal Code and the Violent Offences Compensation Fund to strengthen the position of the victims in criminal proceedings, amended bill, Parliamentary Documents II 2007/08, 30 143, A, p. 7.

10 See also §2.6.

tims also face problems in securing compensation in other countries.<sup>11</sup> There are criminal law, civil law and labour law procedures and, in some countries, also compensation funds (as in the Netherlands) but nevertheless it is difficult for victims to recover damages, either from the offender or from the State.

In this context the OSCE, the United Nations High Commissioner for Refugees (UNHCHR) and the Council of Europe recommend using ‘criminal assets’ to compensate victims or establishing funds to help and rehabilitate victims.<sup>12</sup>

## 1.5 The lover-boy method

There are many underage victims in the Netherlands who are exploited by human traffickers known as ‘loverboys’. This term is usually used to refer to the methods employed by a generally young human trafficker who seduces vulnerable young girls and persuades them to work as prostitutes for him. The Minister of Justice has introduced the term ‘pimp boy’ in this context to eliminate any misunderstanding about the nature of this form of human trafficking. However, simply replacing the term does not resolve the problem that the absence of a clear definition of what the offence involves can still easily lead to misunderstandings. This is connected with the fact the methods employed by human traffickers are constantly changing. The loverboy method is one example of this. For example, it no longer involves just young men, or exclusively vulnerable young Dutch girls, or only seduction techniques, or not just exploitation in the sex industry. Consequently, the term loverboy (or pimp boy) is no longer distinctive in every case. In practice, however, the term is commonly used and is not misunderstood. In that respect, the term ‘pimp boy’ is actually less clear.

## 1.6 Data collection

The accurate registration of data is essential for the implementation of the policy to combat human trafficking. The national registration of (suspected) victims of human trafficking is delegated to CoMensha. The public prosecution service also records data about criminal cases and the IND keeps records relating to immigration law. All of the registers kept by these different organisations suffer from constraints that are further discussed in Chapters 4, 5 and 10.

The development of an effective Dutch standard for the registration of data about human trafficking, including a uniform definition of who is a victim, is also important in an international perspective. Considerable efforts are being made at international level to generate

<sup>11</sup> OSCE-ODIHR, May 2008.

<sup>12</sup> *Compensation for Trafficked and Exploited Persons in the OSCE Region*, OSCE-ODIHR, May 2008, p. 42. The UN Convention against Transnational Organised Crime in fact provides that State Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of crimes, see art. 14, paragraph 2 of the Convention.

statistics about human trafficking. There have been several recent initiatives to improve the collection of data about human trafficking, including a joint project by the Austrian government, the International Organisation for Migration (IOM) and various partners and financed by the European Commission, which produced guidelines on the collection of data about human trafficking. The International Centre for Migration Policy Development (ICMPD), one of the partners in that project, has also been engaged for years in building human trafficking databases in various European countries. The utility and usefulness of the database for the countries in question is an important guiding principle of the ICMPD's work. These initiatives are described in more detail in Chapter 3 (International developments). The question that arises here is how important a role statistics can play. Statistical overviews may indicate where efforts need to be concentrated and give an indication of the capacity that is needed, but qualitative information is also required to formulate solutions in terms of prevention and repression. Nor can the aim of harmonising international data collection be expected to provide a complete solution, because although human trafficking is often organised on an international scale, it occurs in a specific local context, so information about the specific situation in different countries is equally important. The efforts to establish a comprehensive system of data collection should therefore be in proportion to the anticipated results. One way or another, it is important to closely monitor international developments in the field of registration of human trafficking and its victims.

## 1.7 Systematic review

Methodological restrictions, missing data,<sup>13</sup> differences of opinion about definitions, a lack of agreement on whether there is a difference between forced and voluntary prostitution<sup>14</sup> and conflicting results of research are characteristic of and complicate research into human trafficking.<sup>15</sup>

Although there have been various initiatives to prevent human trafficking and to help its victims it and although a lot has been written about these initiatives, there is still very little known about the implications of those initiatives. We don't actually know 'what works'. The reason for this is that most publications are primarily descriptive, based on qualitative research. Key figures are the source of information in most research<sup>16</sup> and very rarely is research conducted to evaluate interventions. Certainly independent research, in other words research not conducted by those who designed or executed the intervention, is scarce<sup>17</sup> and random sampling seldom occurs.<sup>18</sup> The research that is done often involves very small research groups and there is no question of so-called triangulation.

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13 Chawla et al., 2009.

14 GAO, 2007.

15 See also Cwikel & Hoban, 2005; GAO, 2006; Tyldum & Brunovskis, 2005; World Congress against CSEC, 2001.

16 Gozdziaik & Bump, 2008.

17 Chase & Statham, 2005; Laczko, 2005.

18 Gozdziaik & Bump, 2008.

However, good evaluations of anti-human trafficking interventions are scarce<sup>19</sup> even though the seriousness of the offence and its impact on the victims make it very important to learn more about the mechanics and effects of anti-human trafficking strategies and interventions, if only because we know that they can cause ‘collateral damage’,<sup>20</sup> for example by restricting the possibilities for young women to migrate or even to travel.

To make some progress in this regard, the BNRM, in association with the University of Amsterdam and the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR) carried out a systematic review of the literature concerned with research into strategies and interventions in the field of human trafficking.<sup>21</sup> For various reasons, the review, for which a detailed research plan (protocol) was being evaluated by the Campbell Collaboration<sup>22</sup> at the time this report was written, is limited to transnational human trafficking with a view to exploitation in the sex industry.<sup>23</sup> The aim of the review is to generate information on two fronts:

- the effects of anti-human trafficking interventions, and
- the strengths and weaknesses of research in this area.

## 1.8 The Netherlands Antilles and Aruba

The tasks and powers of the NRM are limited to the Netherlands. The Netherlands Antilles and Aruba, which are part of the Kingdom of the Netherlands, fall outside the scope of the NRM’s research. Consequently, previous reports of the NRM did not cover the situation with regard to human trafficking in the Kingdom’s island states. In light of the pending constitutional reforms, the human trafficking situation in these island states is also briefly reviewed here.

Steps are already being taken to tackle human trafficking in the Netherlands Antilles and Aruba. For example, in June 2008 a mini-conference was held in Aruba on human trafficking, human smuggling and illegal immigration in Aruba, the Netherlands Antilles and the Netherlands. During this conference the ministers of justice of the three countries described the efforts to tackle human trafficking, human smuggling and illegal immigration as a priority for all of the countries in the kingdom. The final conclusions of the conference also stressed the importance of cooperation, of building expertise, of training people who deal with victims and of information throughout the chain of legal enforcement. On 28 January 2009, the ministers of justice of the three countries signed a Memorandum of Understand-

19 (GAO, 2007)

20 Boermans, 2009; Dottridge, 2007b; Limanowska, 2003.

21 The Dutch Ministry of Justice’s Research and Documentation Centre (WODC) is now also involved in the review.

22 An international research network that produces and disseminates systematic reviews of social interventions and helps ensure that decisions are made on a well-informed basis (see [www.campbellcollaboration.org](http://www.campbellcollaboration.org)).

23 For further information about and an explanation of the study, see the protocol which is published on the above-mentioned site.

ing on human trafficking, human smuggling and illegal immigration in the Netherlands, the Netherlands Antilles and Aruba. The Memorandum of Understanding states, among other things, that cooperation between the three countries will be intensified<sup>24</sup> and that priority will be given to tackling human trafficking. It was also agreed that the provisions of the UN's Palermo Protocol and the Council of Europe's Convention on Action against Trafficking in Human Beings will be implemented in the countries' legislation as soon as possible. The Memorandum of Understanding also contained agreements on control, investigation and prosecution and measures to prevent and protect victims.

Criminal law relating to human trafficking has already been prepared in Aruba; the legislation largely corresponds with the Dutch legislation. As far as BNRM is aware, no defendants have yet been prosecuted for human trafficking in Aruba. Four preliminary investigations have been carried out into human trafficking<sup>25</sup> but they did not lead to prosecutions.<sup>26</sup> There is still no criminal law on human trafficking in the Netherlands Antilles, although there is a bill before the Advisory Council. In practice, cases of human trafficking are prosecuted under other provisions of criminal law, such as the use of false documents and human smuggling.

The American Trafficking in Persons (TIP) Report 2009 assigns a Tier 2 (Watch List) rating to the Netherlands Antilles. The main criticism in the TIP report relates to the absence of legislation on human trafficking in the Netherlands Antilles. According to the report, the absence of legislation on this point prevents successful prosecution of human traffickers. Another criticism in the report concerns what the report describes as the mainly ad hoc nature of the protection of victims. Although several measures have been taken in the area of prevention, no action has been taken to reduce demand for prostitution, according to the TIP report. Among other things, the TIP report recommends the implementation of human trafficking legislation, the formalisation of procedures relating to the proactive identification of victims and the provision of information to prostitutes and beneficiaries of economic exploitation. Although the TIP report is critical of the Netherlands Antilles, it also states that the country is striving to comply fully with minimum standards for tackling human trafficking.

As the above survey shows, various steps have been taken to prevent and combat human trafficking in Aruba and the Netherlands Antilles. It is also clear that legislation and policy are still evolving and that efforts to counter human trafficking are still not optimal. This is partly due to insufficient capacity and resources. Although, as already mentioned, the National Rapporteur on Trafficking in Human Beings has had no involvement with Aruba and the Netherlands Antilles up to now, that will change when Bonaire, Sint Eustatius and Saba,

24 One of the provisions states that the Netherlands will provide assistance in the form of expertise.

25 Three studies related to exploitation in the area of work, one study concerned sexual exploitation. Source: Conversation between the National Rapporteur for Trafficking in Human Beings with the national coordinators of Aruba and the Netherlands Antilles, 8 July 2009.

26 Conversation between the National Rapporteur for Trafficking in Human Beings and the national coordinators for Aruba and the Netherlands Antilles, 8 July 2009.

three of the islands making up the Netherlands Antilles, become special municipalities of the Netherlands and will therefore fall within the remit of the National Rapporteur on Trafficking in Human Beings. Although Curacao and Sint Maarten will be countries within the Kingdom and Aruba will retain its separate status, there is cooperation between those countries and the Netherlands, as is reflected in the Memorandum of Understanding.

## 1.9 Rapporteurs in the EU member states

The Hague Declaration in 1997 called on all countries in the EU to appoint a national rapporteur on trafficking in human beings. Up to now, several other countries, in addition to the Netherlands, have established an institution that is somewhat similar to that of the national rapporteur on trafficking in human beings as recommended in The Hague Declaration. The NRM's independent position is almost unique in international terms. In other countries the national rapporteur, or a similar mechanism, is usually incorporated in a government organisation, such as a ministry or the police. Various other countries, even outside the EU,<sup>27</sup> have said that they are interested in appointing such an official or are considering appointing a national rapporteur.

The Council of Europe's Convention on Action against Trafficking in Human Beings (2005) also calls on states to consider appointing a national rapporteur – or another mechanism – to monitor efforts to combat human trafficking and the implementation of national statutory requirements.<sup>28</sup> The independent NRM in the Netherlands is mentioned as an example in the explanatory memorandum to the convention.

Since it was founded in April 2000 the NRM has encouraged the appointment of rapporteurs on human trafficking in other EU member states and elsewhere.<sup>NRM1</sup> One of the reasons it did so was to make it easier to place the information collected in the Netherlands in a wider context and analyse it, to make comparisons and to identify more easily any movements across borders as a result of the policy. It is therefore nice to report that in June 2009 the Council of the European Union adopted conclusions on the establishment of an informal EU network of national rapporteurs on human trafficking or similar mechanisms. In this document all the member states are invited to participate in an informal and flexible network designed to increase understanding of the phenomenon of human trafficking and with the aim of providing the EU and the member states with objective, reliable and comparable

27 According to the OSCE annual report for 2008, 38.8% of the OSCE member states and partner countries said when asked that they have a national rapporteur or similar mechanism – a total of 26 – 23.9% of the states reported that their country did not, *Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms, 2008 Annual Report of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings presented at the Permanent Council Meeting*, 13 November 2008. For more on this subject, see chapter 3, §3.6.1.

28 Art. 29, paragraph 4 of the Convention of the Council of Europe on Action against Trafficking in Human Beings (2005), *Trb.* 2006, 99.



– up-to-date – strategic information on human trafficking.<sup>29</sup> An important aspect of these conclusions is that every member state is (again) invited to appoint a national rapporteur or establish a similar mechanism. The EU states that it would be useful for every state to have a specific coordination and reporting mechanism and endorses the recommendations of the OSCE report that national rapporteurs or similar mechanisms should help states to collect, analyse and report on quantitative and qualitative data in order to improve measures against human trafficking.<sup>30</sup> A start was made in developing a network of national rapporteurs and similar mechanisms with meetings in Stockholm<sup>31</sup> and Vienna.<sup>32</sup> It is not yet clear how the network will evolve in future.

## 1.10 The content of this report

This report presents statistics for the period up to and including 2008. The emphasis is on the statistics for 2007 and 2008, to supplement the figures up to and including 2006 in the sixth report. However, some data for 2008 are not available. For practical reasons, the data from the public prosecution service do not cover 2008, although from this year statistics can also be provided about compensation (from the CJIB) and appeals (from the Research and Policy Database for Judicial Documentation (OBJD)).

The report supplements the information provided in earlier reports. The topics covered are victims, help for victims, the administrative approach, investigation and prosecution of human traffickers, the relevant legislation and international developments. The report also addresses a number of more specific subjects, with separate chapters devoted to ‘other forms of exploitation’, the non-punishment principle, human trafficking with a view to organ removal and the B9 regulation and continued residence on the grounds of B16/7 of the Aliens Act implementation Guidelines. The results of the BNRM’s study into the case-law on human trafficking in recent years are also presented.

Each chapter concludes with a section containing the main conclusions to be drawn from the information in that chapter. As in the earlier reports, the final chapter contains a number of recommendations.

Chapter 2, Legislation discusses developments in legislation in the Netherlands that are relevant for tackling human trafficking. In addition to article 273f of the Dutch Criminal Code, the previously mentioned proposal for a new law to regulate prostitution (working title: Act regulating prostitution and tackling abuses in the sex industry) and the Police Information

29 Council conclusions on establishing an informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings, 2946th meeting, Luxembourg, 4 June 2009.

30 Statement by the European Union at the 739<sup>th</sup> Meeting of the OSCE Permanent Council – In response to the report by the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, PC.DEL/972/08, 13 November 2008. Turkey, Croatia and the former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Montenegro and Serbia, Iceland, Lichtenstein, Ukraine, Moldavia and Armenia support this statement.

31 28 May 2009.

32 10 September 2009.



Act, which entered into force on 1 January 2008, are discussed. The chapter also explains changes in other laws that are relevant for dealing with human trafficking, such as the Housing Act. There is also discussion of pending legislation, including the (draft) bill on the liability of companies for temporary employees that they hire and the bill to expand the possibilities for confiscating criminal assets.

Chapter 3, International developments discusses relevant developments in the UN, the EU, the Council of Europe and the OSCE. These include findings of international (UN) mechanisms that monitor compliance with human rights, the implementation of the EU Action Plan against human trafficking, the appeal to countries to appoint a national rapporteur or a similar mechanism and the EU Directive providing for sanctions against employers of illegally staying third-country nationals, which entered into force on 20 July 2009. The chapter also draws attention to the risk that provisions of the European Commission's proposal for a new framework decision on human trafficking relating to help for and protection of victims will curtail what has been achieved in that regard by the Council of Europe's Convention (2005).

The position of victims of human trafficking and the shelter and help that can be provided for them are discussed in Chapter 4, Victims and help for victims. The chapter presents Co-Mensha's statistics on victims and describes several specific groups of victims. It also draws attention to the urgent need to provide shelter and help that is more specifically tailored to the needs and circumstances of victims of human trafficking, and particularly underage victims. Finally, important new initiatives in the area of care and shelter are discussed.

Chapter 5, B9 and continued residence (B16/7) contains information about the changes to the rules in chapters B9 and B16/7 of the Aliens Act Implementation Guidelines. The topics discussed include the problems experienced in practice in applying the B9 scheme. BNRM organised a meeting of experts to discuss the problem of complaints that provide too few leads for an investigation and which, in view of the policy that every complaint must be registered and reported, takes up a lot of the police and public prosecution services' capacity. This issue is also known as 'abuse of B9(?)'. The results of this meeting are presented in this chapter. BNRM also conducted a study into the use by victims of human trafficking of the possibility of objecting to a decision not to prosecute under article 12 of the Dutch Code of Criminal Procedure. The study reviewed 44 objections that were considered by the appeals court. Research was also conducted into the problems surrounding continued residence (B16/7 of the Aliens Act Implementation Guidelines). The findings from both studies are presented in Chapter 5.

The non-punishment principle is discussed in Chapter 6, Victims as offenders and the *non-punishment* principle. The non-punishment principle can establish grounds for not prosecuting. In this chapter the NRM draws attention to the fact that it can be very difficult to identify victims of human trafficking who are initially suspected of committing a criminal offence while in a human trafficking situation. Awareness of this problem is crucial. The chapter also

zooms in on the potential consequences under immigration law for foreign victims who are also offenders and reviews how these problems are dealt with in other countries.

Chapter 7, Administrative and integrated approach to human trafficking starts by giving an impression of various new forms of prostitution and sex-related business activity that have emerged. It warns of the ‘waterbed effect’, the phenomenon that when measures are taken against exploitation in a certain sector or in a certain location the trade often quickly moves to another location. That effect is reinforced by the fact that municipalities can formulate their own policy, which leads to substantial local differences which the trade can take advantage of. Furthermore, in many municipalities there is no clear allocation of tasks between the municipality and the police with regard to supervision and enforcement. The powers of supervision can differ from one municipality to another, and sometimes no powers have been allocated at all. This also encourages a calculating approach by human traffickers.

Chapter 8, Investigation once again highlights how difficult it can be to identify victims of human trafficking and why for that reason alone it is essential to be able to spot all of the signs. This chapter also discusses the Reference Framework on Human Trafficking (2008) produced by the police’s National Group of Experts on Trafficking in Human Beings (LEM). The framework contains useful practical guidelines on how the police should handle human trafficking cases. However, there is a need to ensure that police forces are required to follow those guidelines. The chapter points out that in practice the police do not always choose to deploy capacity to investigate human trafficking, that the creation of specialist teams is bearing fruit and that it is worthwhile removing obstacles to the sharing of information. In this context, it is good to report that the task force is addressing the concerns about the functioning of the Centre of Expertise in Trafficking in Humans and Human Smuggling (EMM).

Chapter 9, Suspects and offenders presents statistics about these groups. There is also a discussion of various methods employed by human traffickers and international human-trafficking organisations. One of these is the loverboy method, which was mentioned above. The chapter shows that various individuals and institutions, referred to as ‘facilitators’, consciously or unconsciously help human traffickers in their activities, either directly or indirectly. The chapter also describes the so-called barrier model, which represents an attempt to make human trafficking more difficult by exploring ways of removing the basic conditions for it; the conscious and unconscious facilitators reappear in this context. The chapter also draws attention to the need to develop methods to combat enforced Internet prostitution. Finally, there is a description of the *Koolvis* case, in which the entire criminal organisation was identified through cooperation with the country of origin of the perpetrators and the victims (Nigeria).

One of the points made in Chapter 10, OM and prosecution is that the public prosecution service has been very ambitious in its use of criminal law to tackle human trafficking in recent years but that, like the police, the service sometimes has difficulty putting that priority into practice. In that context, attention is drawn to the need to make sufficient capacity avail-

able. An important step in that regard is the appointment of regional public prosecutors, who will also have an important role in acquiring cases. The public prosecution service is also called on to handle cases involving exploitation in sectors other than the sex industry, partly with a view to establishing case-law that will help clarify what precisely is meant by human trafficking in these sectors. The Instructions on Human Trafficking were amended and clarified on certain points on 1 January 2009.

Chapter 11, Case-law concerning exploitation in the sex industry presents the results of a study by BNRM into this subject. The picture to emerge from the survey of judgments rendered since 2007 was of a complex legal field. The chapter includes statistics on the case-law studied as well as a discussion of the method of formulating indictments and the interpretation by the courts of the various elements of article 273f of the Dutch Criminal Code.

Chapter 12, Exploitation in sectors other than the sex industry zooms in on the implications of the fact that human trafficking outside the sex industry is still a relative new concept. The scope of the offence is still unclear, as emerges from the findings of a study by BNRM into the case-law on other forms of exploitation. It is in practice difficult for officers of investigative agencies and government inspectorates to identify and recognise victims. Other forms of exploitation are often regarded as less serious than sexual exploitation. However, the seriousness of the exploitation does not in principle depend on the sector in which it occurs. This chapter reviews the scarce case-law on this topic and examines a number of groups that are particularly at risk of exploitation.

Finally, Chapter 13, Human trafficking with a view to organ removal presents the results of a further exploration of the subject by BNRM. Although there is attention to the subject in the Netherlands (and in other countries), scarcely any information is available about actual measures to prevent it. At best, there are indications that certain activities are being undertaken. One way or another, it is essential to remain alert to this phenomenon.

The recommendations are to be found in Chapter 14 of this report.

They are followed by a summary and a list of the literature consulted.

The annexes include the text of article 273f of the Dutch Criminal Code (in the versions valid up to and after 1 July 2009), the explanation of the research methods used, additional tables and the explanatory notes to them and a list of the BNRM's activities.



## Legislation and regulation in the Netherlands

### 2.1 Introduction

This chapter describes a number of changes in legislation and regulation in the Netherlands that are relevant to trafficking in human beings.

Article 273f of the Dutch Criminal Code is briefly discussed in §2.2.

In §2.3, there is a review of recent changes in the rules under immigration law pertaining to victims of human trafficking and witnesses in human trafficking cases. The existing B9 regulation and the rules for continued residence for victims and witnesses in human trafficking cases are discussed in detail in Chapter 5.

The draft bill to regulate prostitution – one of the aims of which is to prevent abuses such as human trafficking – is discussed in §2.4.

This English edition of the report omits the coverage of some new Dutch regulations that are of incidental relevance to human trafficking (§2.5 and §2.6 of the original report).

### 2.2 Article 273f of the Dutch Criminal Code

Article 273f of the Dutch Criminal Code has been amended since the NRM's last report. The fines under that provision were increased, with effect from 1 January 2008. The maximum fifth-category fine, the maximum that can be imposed for human trafficking, is now € 74,000 rather than € 67,000.

The maximum unsuspended prison sentences were also increased, effective as of 1 July 2009.<sup>1</sup>

NRM5 contained a description of the background to the drafting of Article 273f of the Dutch Criminal Code and of its contents. Chapter 11 of this report presents quantitative and qualitative information about relevant criminal case law on human trafficking in the sex industry in the Netherlands. In Chapter 12 there is an overview of the current jurisprudence in the Netherlands on human trafficking in other economic sectors ('other forms of exploitation'), as well as a comparative survey of the situation in other countries.

#### *Increased sentences*

During the plenary debate on prostitution policy and human trafficking in the Lower House of Parliament on 19 June 2008, the Minister of Justice promised to consult the public prosecution service on the desirability of raising the sentences for human trafficking. In Novem-

<sup>1</sup> The bill was passed by the Lower House of Parliament on 3 February 2009. The Upper House passed the bill without a vote on 9 June 2009, *Bulletin of Acts, Orders and Decrees* 2009, 245.

ber 2008, he did propose increasing the sentences for human trafficking,<sup>2</sup> although only the maximum unsuspended prison sentences and not the fines.<sup>3</sup>

In the explanatory memorandum to the bill, the Minister argued that human trafficking is a very serious offence and constitutes a very serious violation of a person's dignity and integrity. It is not uncommon for human trafficking to involve serious organised crime. There is great public indignation at this form of modern slavery, and it is growing. The punishment of human trafficking must therefore be effective and powerful and act as a deterrent. In light of the public re-evaluation of the seriousness of human trafficking, the Minister also felt that the sentences should be increased to reflect more accurately the seriousness of the offence.

The following specific amendments were made:

- in the first paragraph (unqualified forms of human trafficking), the maximum term of imprisonment was increased from six to eight years;
- in the third paragraph (human trafficking committed by two or more persons acting in concert or human trafficking committed in respect of a person under the age of 16), the maximum term of imprisonment was increased from eight to 12 years;
- in the fifth paragraph (human trafficking with the aggravating circumstance that it results in serious physical injury or a threat to the life of a person), the maximum term of imprisonment was increased from 12 to 15 years;
- in the sixth paragraph (human trafficking resulting in the death of a person), the maximum term of imprisonment was increased from 15 to 18 years.

The fourth paragraph of the article lapsed, because the sentence was increased for offences involving both the aggravating circumstances in the third paragraph. Until 1 July 2009, that paragraph provided that the maximum term of imprisonment for human trafficking committed by two or more persons acting in concert and against a victim under the age of 16 was 10 years.

From 1 July 2009, the maximum term of imprisonment for all aggravated forms of human trafficking is therefore at least 12 years. It is therefore possible to hold suspects in pre-trial detention on the basis of the so-called 12-year ground, which represents a significant expansion of the possibilities for pre-trial detention<sup>NRM5</sup>.<sup>4</sup> Since the maximum term of imprisonment for unqualified forms of human trafficking is eight years, it is now also possible to prosecute for the preparation of a criminal offence in relation to it (Article 46, Dutch Criminal Code).

2 Amendment of the Criminal Code, Code of Criminal Procedure and a number of related laws in connection with the criminalisation of participation and assistance in training for terrorism, expansion of the possibilities for the expulsion from a profession as an additional sanction and other amendments; memorandum of amendment, 27 November 2008, *Parliamentary Documents II* 2008/09, 31386 no. 9, p. 2.

3 The increase in the amount of the fines from 1 January 2008 applies for all offences.

4 Article 67a (2) (1) Dutch Criminal Code.

### 2.3 Changes in the B9 regulation

The B9 regulation (Chapter B9, Aliens Act Implementation Guidelines 2000) allows aliens who are (possible) victims or witnesses of human trafficking to remain legally in the Netherlands during the investigation and prosecution of the offence so that they remain available to the police and public prosecution service. Chapter B16/7 of the Guidelines contains the rules for granting continued residence – possibly after B9 – on humanitarian grounds, for victims and witnesses who report human trafficking.

The B9 scheme has been amended in several respects since the publication of the last report<sup>NRM6</sup>. In principle, a residence permit granted on the grounds of the B9 scheme will be revoked when the prosecution ends. The affect of the amendment of May 2008 is that the individual concerned can stay until the appeal to the Supreme Court is heard, since the Supreme Court could refer the case back to the court of appeal.<sup>5</sup>

The National Rapporteur on Trafficking in Human Beings argued that the categories of aliens that could rely on the B9 regulation needed to be clarified. In April 2009, a new formulation of the target groups was published, which more clearly reflected that the B9 regulation applies identically to (possible) victims of human trafficking who are working (or have worked) in the sex industry and to (possible) victims of human trafficking as a result of other forms of exploitation (Article 273f Dutch Criminal Code).<sup>6</sup> The reflection period is also now open to (possible) victims who enter the country through Schiphol.<sup>7</sup> These amendments of the B9 regulation apply with retroactive force from 1 January 2009.

Chapter 5, *B9 and continued residence (B16/7)*, contains a summary of the content of these regulations as well as the results of various studies carried out by the BNRM into their implementation: ‘abuse’ of B9 scheme? (§5.3), an analysis of the decisions by appeals courts on objections (§5.4) and an analysis of the IND’s files on applications for continued residence after the application of the B9 regulation (§5.5).

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- 5 *Government Gazette*, 29 May 2008, 102 (30 May 2008): B9/8.1, which entered into force on 2 June 2008. The text that applied until 2 June 2008 said that the appeal to the Supreme Court could *not* be awaited in the Netherlands, since the Supreme Court does not rule on the facts but only on whether the law was correctly applied. In fact, an appeal in the interests of the law can *not* be awaited in the Netherlands, since the decision cannot affect the rights and positions of the parties and therefore has no legal consequences for the parties concerned.
- 6 The NRM made a similar suggestion to the public prosecution service in relation to the amendment of the Instruction on Human Trafficking, see chapter 10, Public Prosecution Service and prosecution.
- 7 This amendment also contained an additional change in the consequences of the different forms of cassation for the right of the victim of human trafficking to residence, *Government Gazette*. 24 April 2009, 78.

## 2.4 Draft bill to regulate prostitution and tackle abuses in the sex industry

At the end of 2008, a draft bill containing rules to regulate prostitution and some other forms of sex-related business (*Regulation of Prostitution Act*) was circulated to various agencies for comment. The bill arises from – among other things – the current government’s coalition agreement,<sup>8</sup> its policy programme and the letter to parliament on the subject of prostitution entitled *Safety Begins with Prevention*.<sup>9</sup> The law is intended to regulate the prostitution industry and, according to the government, tackle abuses such as coercion, abuse and human trafficking.

The law will require all sex companies to be licensed. At the same time, it proposes a more comprehensive system of regulation for prostitution than for other forms of sex-related business. The obligations imposed on the operator and/or manager of a prostitution company will go further than the obligations imposed on the operators and/or managers of other sex businesses.

Prostitutes who work independently will have to register and clients of prostitutes who are working illegally will be subject to punishment. The draft bill also creates the possibility for municipalities to ban all prostitution (the zero option), but they will have to present arguments for doing so relating to public order, safety or health. Prostitutes will be punishable if they work without being registered or work in a company that is not licensed. The licences for prostitution businesses will include conditions on health, safety and the right to self-determination of the prostitutes. Sex businesses will be required to have a permanent address and a fixed telephone line in order to receive a licence. For escort companies, the licences will be entered in a national register.<sup>10</sup> Comments were invited on two specific issues: the first was the possibility of raising the age for working as a prostitute, and the second was the possibility of recording the names of alleged victims of human trafficking in the register of prostitutes.

At the time of writing, this proposal was before the Council of State for its advice. It was not yet known when the bill would be sent to the Lower House of Parliament.

The NRM also made a number of comments on the original draft bill, which was submitted for consultation at the end of 2008, from the perspective of effectively combating human

8 In this document, the government had announced legislation to deal with problems in the prostitution sector.

9 *Safety Begins with Prevention* project, *Parliamentary Documents II* 2007/08, 28 684, no. 119. See also the Coalition Agreement between the parliamentary parties of the CDA, PvdA and ChristenUnie, 7 February 2007, *Parliamentary Documents II* 2006/07, 30 891, no. 4. A number of (original) principles in the (draft) bill are included in the letter of 16 May from the ministers of Justice, the Interior and Kingdom Relations, and Social Affairs and Employment to the Lower House of Parliament. *Parliamentary Documents II* 2007/08, 25 437, no. 56.

10 Press release from the Ministry of the Interior and Kingdom Relations, *Cabinet requests advice on the Act regulating prostitution*, 9 December 2008.



trafficking.<sup>11</sup> The letter with the NRM's comments on the draft bill is included in Appendix 5. The main points made in that letter are briefly presented below.

A positive aspect of the bill is that the proposal would create a national framework within which every municipality must adopt rules governing sex businesses and independent prostitutes. That will reduce the differences in municipal policy on prostitution – and hence the discrepancies in the possibilities for supervision and enforcement from which human traffickers can profit. However, uniform rules and consistent policy are also crucial in tackling human trafficking and from that perspective municipalities are still given too many options, with all the risks that entails. The proposal to link licences to the activities rather than to the establishment will greatly help in the fight against human trafficking. The proposal corresponds, to a large extent, with the recommendation in the fifth report of the NRM (2007) calling for the formulation of a national legislative framework for prostitution policy based on the principle that every municipality *must* set rules for *all* establishments where commercial sexual transactions are undertaken or where commercial facilities are provided for such transactions to be undertaken with or for a third party.

The scope of application of the draft bill is not yet entirely clear. The import of the term 'sex businesses' in Article 1 under c is, partly in light of the explanatory memorandum, very broad, while at the same time the title of the act seems to imply restrictions.

Among other things, registration creates the possibility of identifying human trafficking and should therefore cover all sex workers, not just prostitutes working independently. Registration should be seen as a means to an end, rather than an end in itself. It is therefore very important that those who are given responsibility for maintaining the register possess the necessary expertise. It is unlikely that this will be possible in every municipality, particularly in smaller ones. Clustering of registers therefore seems a logical course of action.

Even with a framework as is now proposed, in order to tackle human trafficking it will remain crucial for all parties involved in the supervision of and enforcement in the sex industry to accept their responsibility, especially in view of the risk that activities might shift from the legal to the illegal domain. The proposal says nothing about a duty to make best efforts nor about the division of tasks between municipalities and the police. The text of the draft bill and the explanatory memorandum provide few guidelines on these matters, other than a proposal for an evaluation. Controlling licences is a task of the municipality. It is the task of the police to investigate suspicions of human trafficking. Even if a municipality delegates some or all of its administrative tasks relating to the supervision of the sector to the police, it must be made clear which tasks are being delegated and which are not and are therefore being retained by the municipality. It is likely that controlling licenses will also continue to be primarily a task for the police. There is no further elaboration of the division of tasks be-

11 The draft bill was also circulated for their advice to municipalities, the police and the public prosecution service, the tax authorities, lawyers and judges, lobbyists for prostitutes and sex businesses, the centre of expertise SOA Aids Nederland, the Data Protection Authority and the Human Trafficking Coordination Centre (CoMensha).

tween the local authority and the police.<sup>12</sup> Agreements made between the local authority and the police will also have to include arrangements for the sharing of information. The current text of the bill and the explanatory memorandum do not answer the question of how the local authority and the police will divide their tasks. It is, in any case, totally unclear who will be responsible for the administrative enforcement (the local authority or the police). This vacuum increases the risk that the (administrative) supervision and enforcement of the rules laid down in the act will be inadequate.

On a positive note, the explanatory memorandum to the draft bill addresses supervision of the internet. A national team of detectives specialising in cyber crime is needed to tackle the supply of illegal forms of sex-related business on internet in order to prevent human trafficking. According to the explanatory memorandum, a further study will be carried out to investigate whether the creation of a national team of detectives to investigate online crime can help to tackle the supply of unlicensed prostitution and other forms of sex-related business via internet. However, in the NRM's opinion no further research is needed to establish the need for such a team.

The NRM noted that the proposed criminalisation of prostitutes<sup>13</sup> is in itself a logical cornerstone of the legislation, but shares the opinion of the Council of Procurators General<sup>14</sup> that for persons working in an unlicensed sex business an administrative fine would be a more logical sanction.

The letter requesting comment raised two specific questions.

The first concerned the possibility of raising the minimum age for working in prostitution. It is impossible to clearly foresee the effects of raising the age limit, partly because not enough is known about illegal prostitution. To prevent – as far as possible – the raising of the age limit from leading to more illegal youth prostitution, it is first necessary to learn more about illegal prostitution and tackle it more effectively. The NRM therefore recommends that there should first be an investigation of what improvements the changes in the rules for sex-related business yield in this regard before possibly raising the age limit. The first evaluation of the act should therefore include a survey of the ages of sex workers working illegally or under coercion.

The purpose of registration is to be able to identify human trafficking and to erect barriers to it. It is therefore important to keep records of where sex workers are working after they are registered. Immediate action should be taken if there is a suspicion that they are victims at the time of registration. Indications of human trafficking should, for example, be reported immediately to the police and the EMM, and victims should be offered help if necessary. In view of this aim, the NRM feels that the suspicion that a person is a victim should not be included as grounds for refusing to register them.

12 In this context, see measure 1 in the progress report of the Human Trafficking Task Force, Action Plan, September 2009.

13 Who work without being registered and who advertise without a registration number.

14 Advisory report of the Council of Procurators General, 23 January 2009.

## 2.5 Conclusion

This section discusses the problems that still exist in relation to the subjects covered in this chapter and the issues that deserve special attention.

### *Sentencing*

The sentences for human trafficking were increased as of 1 July 2009. From that date, the maximum term of imprisonment for all unqualified forms of human trafficking is eight years. The maximum sentence for all aggravated forms of human trafficking is at least 12 years imprisonment.

The B9 regulation has also been amended in a number of respects. For example, in April 2009 a new formulation of the target groups of the regulation was published, which reflects more clearly that the B9 regulation applies identically to (possible) victims of human trafficking working in the sex industry and to (possible) victims of human trafficking as a result of other forms of exploitation (Article 273f Dutch Criminal Code). The reflection period is now also available to (possible) victims who enter the country through Schiphol. These amendments to the B9 regulation apply with retroactive effect from 1 January 2009. Chapter 5 presents a summary of the current content of the B9 regulation and continued residence (Chapter B16/7, Aliens Act Implementation Guidelines).

### *Bill to regulate prostitution and tackle abuses in the sex industry*

An important development in the field of legislation was the appearance of the (draft) bill to regulate prostitution and tackle abuses in the sex industry. This bill provides that all sex businesses are required to be licensed. At the time of writing, it was not yet known when the bill would be sent to the Lower House of Parliament. Although the NRM's recommendations on the bill are included in Appendix 5 and still apply in full, this section also presents some of the problems and issue demanding attention that were mentioned in its advice on the bill.

A positive aspect is the fact that the proposal provides a national framework within which every municipality must lay down rules governing sex businesses and independent prostitutes. That will reduce the differences in municipal policy towards prostitution – and hence the discrepancies in the possibilities for supervision and enforcement from which human traffickers can profit. Uniform rules and consistent policy are also crucial for tackling human trafficking. In that context, there are still too many options for municipalities, with all the ensuing risks. The proposal to link licences to activities rather than to an establishment increases the possibilities for combating human trafficking. The proposal corresponds to a large extent with the recommendation made in the NRM's Fifth Report for the establishment of a national legal framework for prostitution policy, based on the principle that every municipality *must* draw up rules for *all* establishments where commercial sexual activities are performed for payment or commercial opportunities are provided to perform those activities with or for a third party for payment.

The scope of application of the bill is still not entirely clear. The import of the term ‘sex businesses’ is, partly in view of the draft explanatory memorandum, very broad; at the same time, the current title of the draft bill implies restrictions (‘regulation of prostitution and *some* other forms of sex-related business’). The title of the bill should also reflect the fact that the rules encompass new and future forms of sexual activity, in any case including webcam sex, where sexual activities are performed on the internet for a third party for payment.

Furthermore, an ‘independent prostitute’ is defined as a prostitute who does not work exclusively for a prostitution business. This definition, and the explanatory note to it, raises a number of questions relating, for example, to the definition of ‘prostitution business’. For example, how can it be determined that individuals are working only for a prostitution business and not at least partially for themselves. This distinction is particularly important in light of the proposed mandatory registration, which is currently confined to prostitutes who work independently. The distinction would be less relevant if all sex workers had to register.

According to the proposal, the register of sex workers will include their names and addresses, a telephone number and a copy of their passport. The question is whether this is enough. A comprehensive system should also include a passport photograph, a record of the type of sex work performed (for example, at home or as an escort) and the workplace if the sex work is performed at a specific location. Given the sensitivity of these details, access to and use of this information must be accompanied by adequate guarantees to protect the privacy of the individuals concerned.

The bill does not provide for an intake interview during the registration process, even though besides generating information this would provide an opportunity to identify possible signs of human trafficking. Holding such an interview would meet the duty of government bodies to investigate the relevant facts before taking action.

With the introduction of a national licensing register, supervision of the escort service industry can be strengthened. It should also make it easier to regulate companies that advertise on the internet. The register should include a record if a licence, or an extension of a licence, is refused, together with an explanation of the reasons for the refusal. Other licensing authorities and regulatory authorities (municipalities) should also have access to this information and supervisory authorities should have 24-hour access to the register.

According to the bill, a prostitute who works for a prostitution business that does not have a licence or who works independently as a prostitute without being registered or who advertises without a registration number is committing an offence. Making it a punishable offence for sex workers to work without being registered or to advertise without a registration number is in itself correct as the logical cornerstone of the duty to register. However, it is not self-evident to make it a criminal offence for a prostitute to work in an establishment that has no licence. It seems more logical that the municipality should deal with this offence with an administrative fine, which is more in line with the policy principle that criminal law will not be used unnecessarily against victims.

One problem that remains is that the bill says nothing about obligations to make best efforts or about the division of tasks between the administration and the police. This vacuum increases the risk that the (administrative) supervision and enforcement of the rules laid down in this law will be inadequate. However, it should be noted here that the Human Trafficking Task Force is preparing a vision document on this point.

#### *Other legislation*

This chapter also discusses the Police Data Act and Police Data Decree, the Aliens Employment Act, an amendment to the Housing Act, the Public Nuisance (Administrative Fine) Act and the Closed Youth Care Act.

Pending legislation includes bills to implement relevant international law, such as the Council of Europe's Convention on Action against Trafficking in Human Beings (2005) and the Council of Europe's Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention, 2007). Other relevant pieces of legislation are bills to enhance the standing of victims in criminal proceedings, a draft bill to expand the possibilities for confiscating criminal assets and a bill on the liability of companies for temporary employees that they hire.



## 3 International Developments

### 3.1 Introduction

This chapter reviews the major international developments in efforts to combat trafficking in human beings: developments in relation to legislation, but also in terms of policy measures to address human trafficking at an international level.

The collection of reliable information is crucial to the development of effective legislation and policies. In § 3.2, initiatives to promote the collection of international data are discussed.

Action against human trafficking is also an important priority for international governmental organisations. The most important developments in this regard are discussed in this chapter. § 3.3 outlines several developments in the United Nations, including debates in the General Assembly devoted to the subject of human trafficking. Human trafficking is also an issue addressed by various bodies responsible for supervising the enforcement of human rights.

The implementation of the EU Action Plan to Combat Trafficking in Human Beings, the creation of a new Group of Experts on Trafficking in Human Beings and moves to establish a network of national rapporteurs are discussed in § 3.4. This section also reviews the European Commission's proposal for a new framework decision on combating trafficking in human beings and the new directive providing for sanctions against employers of illegally staying third-country nationals.

Developments in the Council of Europe are covered in § 3.5. In addition to the Convention on Action against Trafficking in Human Beings (2005), in 2007 in Lanzarote, the Council of Europe also adopted the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

An evaluation of the progress countries are making with national action plans and reporting mechanisms, carried out by the Organisation for Security and Cooperation in Europe (OSCE), is discussed in § 3.6.

The chapter concludes with a few remarks about the Netherlands' international human rights policy (§ 3.7).

### 3.2 Data collection

In the last ten years, there has been enormous growth in the attention devoted to the subject of human trafficking at international level, with various interventions being devised to prevent and combat it. As a result, the number of studies and publications devoted to human

trafficking practices has increased greatly.<sup>1</sup> Despite all the research, however, there is still no consensus on such aspects as the true scale of the problem.<sup>2</sup> The number of registered cases varies, depending in part on the prevailing policy towards recognised victims, and there are no reliable estimates.<sup>NRM5</sup> A complicating factor is that individuals involved in human trafficking – both perpetrators and victims – fall into the category of hidden populations.<sup>3</sup>

Because human trafficking often occurs across borders, effort to combat it effectively must also be transnational. If international policies against human trafficking are to be effective, national governments have to share information and that information must be comparable. Several international documents therefore call for the development of coordinated and standardised national data-collection systems to produce internationally comparable data. Many initiatives have been taken in response to this need in recent years.

While acknowledging the importance of consistent, comparable statistics about human trafficking, it has to be stressed that qualitative research often produces the most valuable information and that the main purpose of quantitative data is to supplement qualitative information. It also has to be stressed that in the interests of acquiring complete, comparable data, the data collection should be confined to a minimum number of indicators covering information that can be acquired relatively easily.

#### *Recent initiatives*

There have been a number of recent international initiatives designed to produce internationally comparable data on human trafficking. Three of them are discussed here.

The purpose of the first initiative, *Development of Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators*, is to generate internationally comparable data in the EU member states. Guidelines have been drawn up for creating national systems for data collection and monitoring, as well as a list of essential indicators about which data should be collected.

The second initiative, *Programme for the Enhancement of Anti-Trafficking Responses in South Eastern Europe – Data Collection and Information Management*, is similar to the first in the sense that it also includes a list of indicators of human trafficking to ensure that the data collected is internationally comparable. However, this programme only covers ten countries in South-East Europe.

The purpose of the third initiative, *European Delphi Survey – A Practical Exercise in Developing Indicators of Trafficking in Human Beings*, is different; its aim is to harmonise the definition of human trafficking employed by different countries. A list of indicators has also been drawn up for that purpose. However, these are not indicators for the collection of data: instead, they are indicators designed to help in identifying victims of human trafficking in

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1 Kelly, 2005; Laczko, 2005.

2 Kelly, 2005.

3 Laczko, 2005; Tyldum & Brunovskis, 2005.



practice. In that respect they are similar to the indicators in one of the annexes to the Dutch public prosecution service's Instructions on Human Trafficking.<sup>4</sup>

The three initiatives are described in more detail below.

*1) Development of Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators*<sup>5</sup>

This is a joint project of the Austrian Ministry of Home Affairs and the International Organisation for Migration (IOM) and is financed by the European Commission. The project is being carried out by a multidisciplinary team of experts, with representatives from various EU member states who are concerned with human trafficking in different capacities (enforcement, research, etc.).

In February 2009, these joint efforts led to the publication of Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators, consisting of 17 guidelines for establishing national systems for data collection and monitoring in EU member states. The document also discusses the minimum amount of data, comparable at EU and international levels and compatible with national data systems, that should be collected. It is felt that this form of coordinated and harmonised data collection will improve the protection of victims and the effectiveness of the prosecution of perpetrators and ultimately have a preventive effect on human trafficking in general at national and European level.

The aim of the 17 guidelines is to establish effective national data-collection systems and a single EU data-collection and data-exchange system. The principal aspects covered by the guidelines are the recognition of victims; the protection of victims; the collection, analysis and reporting of data; and guarantees for the protection of personal and sensitive data.

For example, the document recommends the creation of an independent body (in the form of a national rapporteur or equivalent mechanism) in each member state to collect data on human trafficking at the national level. The data to be collected, analysed and reported by this body would come from various parties, including government agencies, social services, NGOs, international organisations, the police, the public prosecution service, customs, the labour inspectorate and trade unions, all of whom should cooperate and share data with each other on the basis of an established protocol.

The guidelines also contain a number of specific indicators for which, as a minimum, each member state should collect information relating to victims, perpetrators, the criminal process and prosecution. The document also contains questionnaires with open and closed questions.

*2) Programme for the Enhancement of Anti-Trafficking Responses in South-Eastern Europe – Data Collection and Information Management (DCIM)*<sup>6</sup>

The International Centre for Migration Policy Development (ICMPD) launched this project in 2006 to improve and standardise data on human trafficking in ten south-east European countries (Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Macedonia, Moldavia, Montenegro, Romania, Serbia and Kosovo). The organisation has collaborated with the governments of the ten countries, international experts and representatives of international and non-governmental organisations, such as the *Migration, Asylum Refugees Regional Initiative* (MARRI Centre), the *Anti-Corruption and Anti-Trafficking network of NGOs* (ACTA) and Europol. The project is financed by the Swiss Agency for Development Cooperation and Norway's Ministry of Foreign Affairs.

<sup>4</sup> Government Gazette 2008, 345.

<sup>5</sup> Aronowitz, 2009.

<sup>6</sup> Surtees, 2008.

In 2008, the project resulted in the publication of a *Handbook on Anti-Trafficking Data Collection in South-Eastern Europe: Developing Regional Criteria*, consisting of a list of indicators broken down between a victim-centred database and a perpetrator-centred database. Each indicator is explained in detail and there are two questionnaires with open and closed questions that should be used to provide the information about victims and perpetrators. After all, it is not only the indicators but also the method used to collect the information that affects the consistency and comparability of data. Having said that, there is scope for divergence in the actual data collection in the south-east European countries with a view to differences in usefulness and practicality.

The victim-centred database consists of 56 indicators broken down into six dimensions: personal details, how victims were recruited, how they were transported to the country of destination, the situation in which they were exploited, the recognition of victims, the protection of victims and other data. The perpetrator-centred database contains 46 indicators covering six dimensions: personal details, the police investigation, the trial in first instance, the appeal, the sentencing and other data. These two database systems are currently operational in the ten south-east European countries.<sup>7</sup>

At the time of writing, this project is being followed up with another one entitled *Trafficking in Human Beings: Data Collection and Harmonised Information Management System (DCIM-EU)*. The main purpose of this project is to establish a transnational information-management system and to formulate generally accepted and comparable indicators. At the same time, innovative software is being developed which the participating states can use to collect data about human trafficking. The results of this study are expected in October 2009.<sup>8</sup>

### 3) *European Delphi Survey – A Practical Exercise in Developing Indicators of Trafficking in Human Beings*<sup>9</sup>

The UN's Palermo Protocol employs various key terms (such as coercion, deception, etc.) that require further elaboration to prevent the risk of differences in interpretation between and within countries. There is also a risk that victims of human trafficking will not be recognised as such by researchers and law enforcement agencies or that an incident will be incorrectly defined as human trafficking. The development of operational indicators that can be used to identify human trafficking situations and victims of human trafficking could resolve this problem. As part of the *EU Action Plan 2006-2010*, the European Commission (EC) established a group of experts. In 2007, this group established a subgroup to formulate uniform definitions of the key terms in the UN Palermo Protocol on trafficking in human beings and the associated indicators. The subgroup recommended that the EC and the *International Labour Organisation (ILO)* should launch a joint project employing the Delphi method<sup>10</sup>. The steering group for this EC-ILO project was made up of experts from the EC, the ILO, the *United Nations Office on Drugs and Crime (UNODC)* and the *European Union Agency for Fundamental Rights (FRA)*.

This Delphi study produced four lists of operational indicators of human trafficking designed to identify the sexual exploitation of adults (66 indicators), the sexual exploitation of children (66 indicators), other forms of exploitation of adults (67 indicators) and other forms of exploitation

7 Surtees, 2008.

8 Aronowitz, 2009, pp. 95-96; [www.icmpd.org](http://www.icmpd.org).

9 ILO, 2009.

10 The Delphi methodology was developed in the 1950s and has since been used in the social, medical and political sciences. The aim of this methodology is to produce results based on consensus among a large group of experts from various disciplines. In this case, the experts were selected from 27 EU member states and worked for the police, government, universities, research institutes, NGOs, international organisations, labour inspectorates, unions and the judiciary.

of children (65 indicators). Each list consists of six dimensions encompassing various indicators: deceptive recruitment (10 indicators), coercive recruitment (10 indicators), recruitment by abuse of vulnerability (16 indicators), exploitative conditions at work (9 indicators), forms of coercion at destination (15 indicators) and abuse of vulnerability at destination (7 indicators).<sup>11</sup> Each indicator is classified as ‘weak’, ‘medium’ or ‘strong’. By analysing a situation on the basis of the number of ‘weak’, ‘medium’ or ‘strong’ indicators in that situation, it is possible to assess whether the relevant dimension exists. Finally, the combination of the presence or absence of the six dimensions leads to a conclusion on whether a human-trafficking situation exists.<sup>12</sup>

The results of the first two initiatives discussed have included the drafting of a list of internationally comparable data indicators that should be collected. A comparison of the two lists of indicators shows that there is only a small degree of overlap. At the moment, the Netherlands can only provide data for a few of the indicators. Data for many of the indicators requested are currently not collected at the national level. With the increase in the number of indicators on which data has to be collected, there is a danger that the data supplied will be incomplete. Experience shows that in practice the quantity of data to be collected reduces the quality of the data acquired. The impression is that there are currently a number of international organisations developing international data-collection systems but that there is no cooperation and, consequently different standards are being developed. It is important – for example in the EU – to adopt and use a single standard.

### 3.3 United Nations

#### 3.3.1 UN Palermo Protocol

The Palermo Protocol is part of the UN Convention against Transnational Organised Crime (UNTOC).<sup>13</sup> Every two years the states parties to the Convention hold a conference to discuss ways of increasing their capacity to combat transnational organised crime and to improve and evaluate the implementation of the Convention. The states parties had met three times since these instruments entered into force<sup>NRM5</sup>. The fourth conference was organised in October 2008.<sup>14</sup> During this session, states were urged to accede to the UN Protocol since one-third of the UN member states (192 in all) have not yet ratified it.<sup>15</sup> For example, China and India are not yet parties to the Protocol or to the underlying treaty, which could facilitate international cooperation with these countries in criminal investigations.

According to the United Nations Office on Drugs and Crime (UNODC), in half of the UN member states no one has in fact ever been convicted of human trafficking.<sup>16</sup>

11 See [www.ilo.org/forcedlabour](http://www.ilo.org/forcedlabour).

12 ILO, 2009.

13 *Bulletin of Treaties*, 2001, 68.

14 Vienna, 8-17 October 2008.

15 There are currently 132 states party to the UN Protocol (as of 11 September 2009).

16 Press conference on human trafficking by Executive Director of United Nations Office on Drugs and Crime (UNODC), New York, 13 May 2009. There had been at least one conviction in 73 countries and 91 countries had instituted at least one prosecution (*Global Report on Trafficking in Persons*, UNODC, February 2009).

During the most recent session, the Conference of States Parties decided to establish a *Working Group on Trafficking in Persons* with the task of making recommendations on how the parties could improve implementation of the provisions in the Protocol.<sup>17</sup> The working group was also asked to make recommendations on how the Conference could improve co-ordination in this area with various international bodies.<sup>18</sup>

In addition to discussing the root causes of human trafficking and the demand side of the problem, many speakers at the conference stressed the importance of access to facilities for victims. A victim-centred approach fosters rehabilitation and reintegration as well as the co-operation of victims with the investigation and prosecution of perpetrators. Many speakers also emphasised the importance and the difficulty of effectively identifying victims. They expressed the need to formulate a list of indicators, while stating that more expertise is needed (to be able to distinguish between situations of illegal work and human trafficking, for example). During a side event at the fourth session of the Conference of States Parties, a number of NGOs highlighted the need for an independent and objective evaluation mechanism. Such a mechanism could help states to monitor and analyse the effects of their legislation and anti-human trafficking measures. It could also help in identifying obstacles to effective implementation of the UN Protocol; states should at the same time monitor the impact of measures against human trafficking on human rights.<sup>19</sup> A group of experts will meet in 2009 to flesh out the various possibilities for such a mechanism<sup>20</sup> and recommendations will be presented to the next Conference of States Parties in 2012.

### 3.3.2 Resolutions of the General Assembly of the United Nations

The United Nations' General Assembly has recently adopted a number of relevant resolutions. Besides resolutions on human trafficking as such, they include resolutions on other subjects, such as the rights of children,<sup>21</sup> girls<sup>22</sup> and female migrants<sup>23</sup> in which the subject was mentioned.

Resolution 63/156, entitled *Trafficking in Women and Girls*, appeared on 30 January 2009.<sup>24</sup> This resolution encompasses a great many subjects relating to various forms of human trafficking, ranging from forced prostitution to child pornography, child abuse and child sex tourism. The

17 This working group met for the first time on 14-15 April 2009, see <http://www.unodc.org/unodc/en/treaties/CTOC/working-group-on-trafficking-in-persons-protocol.htm>.

18 Report of the Conference of the Parties to the United National Convention against Transnational Organised Crime on its fourth session, held in Vienna from 8-17 October 2008, UN Doc. CTOC/COP/2008/19, 1 December 2008, pp. 12-13.

19 La Strada International, GAATW, Anti-Slavery International organised a side event on this subject during the 4<sup>th</sup> Review Conference; *La Strada Newsletter*, No. 11, December 2008, p. 3.

20 The Conference of States Parties also decided during the fourth session to form a working group 'on Possible Mechanisms to Review Implementation of the United Nations Convention against Transnational Organised Crime and its Protocols'. This working group met for the first time in Vienna in September 2009.

21 Resolution 62/141 on the Rights of the Child, UN Doc. A/Res/62/141, 22 February 2008.

22 Resolution 62/140 on the Girl Child, UN Doc. A/Res/62/140, 19 February 2008.

23 Resolution 62/132 on Violence against Women Migrant Workers, UN Doc. A/Res/62/132, 31 January 2008.

24 Resolution 63/156 on Trafficking in Women and Girls, UN Doc. A/Res/63/156, 30 January 2009.

General Assembly's resolution stresses the need for a gender- and age-sensitive approach in all anti-human trafficking efforts. The resolution also refers to the lack of reliable data and the need to promote the use of new information technologies such as the internet and calls on states to discourage the demand that fosters trafficking of women and girls.<sup>25</sup>

States are encouraged to improve the collection of data and sharing of information and to prevent corruption and the laundering of the proceeds of human trafficking. The resolution calls on states to take the necessary measures to ensure that victims are not penalised for being trafficked and do not suffer re-victimisation and to prevent victims of human trafficking being prosecuted for illegal entry or illegal residence in a country. The resolution also suggests that states should consider setting up a national coordination mechanism – such as a national rapporteur – with the participation of civil-society organisations (including NGOs).

The business sector, including the tourism industry and telecommunications companies, is directly invited to cooperate with governments in eliminating human trafficking. States are invited to encourage internet service providers and other media to adopt self-regulatory measures. Governments, as well as inter-governmental bodies and organisations, are encouraged to ensure that military and humanitarian personnel and participants in peacekeeping operations that are stationed in regions of conflict and other emergency situations are given training and information about human trafficking.<sup>26</sup> The resolution also contains recommendations concerning the prevention of trafficking, as well as help for victims and training. Finally, the Secretary-General is asked to submit a report to the 65<sup>th</sup> session of the General Assembly with recommendations on ways of strengthening a gender- and age-sensitive approach in the efforts to address trafficking in persons.

During the same (63<sup>rd</sup>) session, in January 2009 the General Assembly passed Resolution 63/194, *Improving the Coordination of Efforts against Trafficking in Persons*.<sup>27</sup> This resolution followed a report by the UN Secretary-General on the need to improve the coordination of efforts to combat human trafficking.<sup>28</sup>

In the resolution, the General Assembly again called on states to ratify and fully implement the relevant treaties. The General Assembly also asserted that broad international cooperation between member states and relevant international governmental organisations and NGOs is essential in tackling human trafficking.

The Secretary-General was called on to prepare a background document, which was then discussed during the second debate devoted to human trafficking in May 2009 (see § 3.3.3 below). The contents of the report from the Secretary-General are connected with the invi-

25 Resolution 63/156 on Trafficking in Women and Girls, UN Doc. A/Res/63/156, 30 January 2009.

26 See also the Report on the implementation of the human rights strategy 'Towards a dignified existence', Ministry of Foreign Affairs, 27 March 2009, *Parliamentary Documents II 2008/09*, 31 263, no. 27; USA Trafficking in Persons Report (TIP Report) 2009.

27 Resolution 63/194, *Improving the Coordination of Efforts against Trafficking in Persons*, UN Doc. A/Res/63/194, 23 January 2009.

28 UN Doc. A/Res/63/90, 3 July 2008.

tation made to states in Resolution 63/194 to reflect on the desirability of a global action plan against human trafficking.

### *Reports of the Secretary-General*

The Secretary-General of the United Nations has submitted several reports on human trafficking to the General Assembly and the *Economic and Social Council* in the last two years. One of those reports stressed the importance of a comprehensive, multidisciplinary and gender-sensitive approach.<sup>29</sup> Another report, on the elimination of all forms of discrimination and violence against girls, referred to the discrimination and violence, including human trafficking, experienced by girls during armed conflicts and in post-conflict situations.<sup>30</sup> In a study into all forms of violence against women published by the Secretary-General, human trafficking was treated as one of the forms of violence against women.<sup>31</sup>

A number of recommendations in the study on violence against children touch on human trafficking, and suggestions are made for measures to reduce risk factors and to improve help for victims and support for high-risk individuals and families.<sup>32</sup> In response to one of the recommendations in the report, the General Assembly asked the Secretary-General to appoint a *Special Representative on violence against children*.<sup>33</sup>

### **3.3.3 Debate on human trafficking in the General Assembly**

In June 2008, the UN General Assembly devoted a debate to the subject of human trafficking for the first time. More than 40 delegations took part, including government representatives, NGOs, experts, the private sector and civil-society organisations. Two panels were formed to discuss multilateral cooperation, help for victims and cooperation with prosecutions. One of the conclusions to emerge during this debate was that there is still a wide gap between what is on paper and the reality in practice. Although there are instruments such as international legislation, they are not implemented at the national level. One suggestion that was made during the debate to accelerate implementation was the creation of a review mechanism.<sup>34</sup> According to one of the participating states, a lack of political will was not the only reason for the lack of implementation. The fact is that many countries lack the necessary resources. The US representative<sup>35</sup> mentioned corruption, in addition to other subjects, as one of the major challenges in combating human trafficking. The EU called on member states to improve the implementation of the Palermo Protocol and the exchange of informa-

29 Fourth Report of the Secretary-General on trafficking in women and girls, UD Doc. A/Res/63/215, 4 August 2008.

30 Report of the Secretary-General on the elimination of all forms of discrimination and violence against the girl child, UN Doc. E/CN.6/2007/2, 12 December 2006.

31 UN Doc. A/61/122/Add. I and Corr. I, 6 July 2007.

32 UN Doc. A/61/299 and www.violencestudy.org.

33 UN Doc. A/C.3/62/L.24/Rev. I, 16 November 2007, p. 15.

34 Press release UN Doc. GA/10712, 3 June 2008.

35 Mark Lagon, Director of the Office to Monitor and Combat Trafficking in Persons, US Department of State. His successor is Luis C. de Baca.



tion and best practices between countries. The IOM referred to the fact that the boundary between human smuggling and human trafficking is not always clear, although this distinction does have consequences in terms of the prosecution and protection of victims. Many speakers also argued that the root causes of human trafficking have to be addressed, as do the demand for cheap labour and commercial sex. During the debate there was a discussion of the desirability of formulating a UN strategy or action plan to prevent human trafficking and to protect and support victims. Among those that supported the drafting of an action plan were Belarus, the African Union, the Non-Aligned Movement (NAM) and Russia.

Another debate devoted to human trafficking, entitled *Taking collective action to end human trafficking*, was held in May 2009. One of the topics specifically discussed in various panels was the production of a *Global Action Plan*, partly in response to the Secretary-General's report on the need to improve coordination of efforts to combat human trafficking.<sup>36</sup> The EU said it is important to reinforce existing instruments and to focus on the ratification and implementation of existing treaties before establishing a new action plan, although it acknowledged that there was room for improvement in the synergy between existing instruments, organisations and agencies.<sup>37</sup> Despite reservations expressed by some countries, the president of the General Assembly said he supported the development of a Global Action Plan.

### 3.3.4 UN.GIFT

The *United National Global Initiative to Fight Human Trafficking* (UN.GIFT) was launched in March 2007 as a partnership between UNODC, ILO, IOM, UNICEF, OHCHR and the OSCE. The aim of the initiative is to mobilise state and non-state actors to eradicate human trafficking.<sup>38</sup>

The first global forum on measures to combat human trafficking, the *Vienna Forum to Fight Human Trafficking*, was held in Vienna in February 2008 under the auspices of UN-GIFT. It was attended by representatives of states, NGOs, the business sector, scientists, international governmental organisations and victims of human trafficking. The objectives of the forum were to increase awareness of human trafficking, create new partnerships and facilitate cooperation. More than 1,600 participants from 416 countries discussed the various dimensions of human trafficking in relation to security, development and human rights. The Vienna Forum focused on three themes: vulnerability, impact and action.

One of the forum's conclusions was that alliances can be expanded with various partners, including the private sector, the media and unions. An important recommendation made by

<sup>36</sup> See § 3.3.2.

<sup>37</sup> Declarations by the Czech Republic's EU presidency during the panel sessions, 13 May 2009. The EU stressed that international cooperation is very important in combating human trafficking and that the UN member states should focus primarily on operational cooperation and implementation of existing mechanisms and agreements, and not on drafting a new strategy. The Netherlands supported this position and has in fact declared that it will press for closer cooperation between the relevant UN organisations, the OSCE and the IOM (Letter to parliament on the guidelines for the Kingdom's delegation to the 63<sup>rd</sup> session of the UN General Assembly in New York, 4 September 2008, *Parliamentary Documents II* 2007/08, 26 150, no. 60)

<sup>38</sup> See [www.ungift.org](http://www.ungift.org).

one of the panels was to extend the three Ps (prevention, protection and prosecution) with the fourth ‘p’ of partnership.<sup>39</sup> In her summary of the proceedings, the chairperson stressed the need to address all forms of exploitation, including those in sectors other than the sex industry, which implies that national legislation should embrace every aspect of human trafficking and the ratification and implementation of the UN Protocol and other relevant international instruments. Another important conclusion was that parties in the labour market – employers’ organisations, trade unions, businesses and others – must become more active partners in guaranteeing labour rights and the protection of workers in order to prevent and tackle forced labour. It became clear that more research is needed to fill in the crucial information gaps and so enable adequate measures to be formulated against human trafficking. Research is also needed to produce indicators for objectives that can be used as a basis for developing and implementing appropriate mechanisms for monitoring and evaluation mechanisms, with the nature of suitable monitoring mechanisms addressed in more depth. The final report concluded by mentioning that there was broad agreement that the root causes of human trafficking must be confronted using a balanced approach, but that increased attention needs to be devoted to how to reduce the demand for trafficked persons in countries of destination.<sup>40</sup>

#### *Other UN activities and initiatives*

Many organisations within the UN have launched activities to tackle human trafficking or are involved in the activities of other international organisations. These include activities supported by governments and other stakeholders at a national level in areas such as coordination;<sup>41</sup> data collection, research, studies and support of policy formulation; preventive measures;<sup>42</sup> assistance in the drafting of legislation;<sup>43</sup> activities for victims; and capacity building.<sup>44</sup>

39 Commission on Crime Prevention and Criminal Justice, Report on the Vienna Forum to Fight Human Trafficking, UN Doc. E/CN.15/2008/CRP.2, 30 March 2008, p. 15.

40 UN Doc. E/CN/15/2008/CRP.2, 30 March 2008, p. 16.

41 UN.GIFT, for example.

42 Under this heading the OHCHR refers to the UNODC *Toolkit to Combat Trafficking in Persons* (October 2008, [www.unodc.org/documents/human-trafficking/HT\\_Toolkit08\\_English.pdf](http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf)), and to the ILO’s *Handbook Combating Forced Labour: A Handbook for Employers and Business* (October 2008), UN Doc. A/HRC/10/64 (2009).

43 UNODC has for example drafted model legislation based on the UN Protocol, the *UNODC Model Law against Trafficking in Persons*, 30 June 2009, [http://www.unodc.org/documents/human-trafficking/Model\\_Law\\_against\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf). UNICEF and IPU have jointly written the *Handbook for Parliamentarians: Combating Child Trafficking* (2005). The ILO has provided technical advice to several countries on legislative proposals concerning migration, including human trafficking.

44 An interesting aspect of this latter theme is that UN peacekeeping operations are also engaged in countering human trafficking. The UN mission in Liberia (UNMIL) is, for example, revising a Liberian bill to help ensure that children cannot be fraudulently adopted outside Liberia, UN Doc. A/HRC/10/64 (2009), pp. 9-10. Under Dutch legislation, trafficking in children without the intention of exploitation is not punishable as human trafficking (NRM5). Rules for inter-country adoption are laid down in the Act on acquiring foreign children for adoption (Bulletin of Acts, Orders and Decrees 2008, 425). The Optional Protocol on the sale of children, child prostitution and child pornography to the UN Convention on the Rights of the Child (*Bulletin of Treaties* 2001, 103 (2002)) requires states to criminalise the purchase or sale of children if there is exploitation or the intent thereto, article 3, section 1, subsection a (i) of the Protocol. Section 1 subsection a (ii) of the same article



The Office of the High Commissioner for Human Rights (OHCHR) says that coordination could be improved by creating an independent and adequately resourced secretariat to lay the groundwork for cooperation between organisations. The development and implementation of national action plans for a series of related subjects – such as forced labour, child labour and human trafficking – is one area in which such cooperation could contribute to more efficient use of resources, according to the OHCHR.<sup>45</sup> The question is whether existing organisations and structures could not be used.

### 3.3.5 Human Rights Council

#### *Universal periodic reviews*

The *universal periodic review* is a relatively new instrument used by the UN *Human Rights Council*, which was established in 2006, to analyse the human rights records of all 192 UN member states every four years. Human trafficking is one of the topics discussed during the sessions with almost every state that has taken part in the process up to now. The country reports for most states have contained a recommendation for the state to address the subject of human trafficking.<sup>46</sup>

The national report written by the Netherlands in 2008 for its universal periodic review by the UN Human Rights Council contained a lengthy section on human trafficking.<sup>47</sup> During the UN Human Rights Council session in April 2008 the State Secretary for Justice gave a briefing on the national report and was questioned about it. The subject of human trafficking was raised more than once. The Council made 31 recommendations to the Netherlands, some of which also concerned subjects relating to human trafficking (see below).<sup>48</sup>

One of the recommendations (No. 3) concerned the legalisation of prostitution. Egypt recommended that the legalisation of (the exploitation of) prostitution should be reconsidered, given the impact of legalisation on a wide range of rights. The Netherlands said in response that the regulation of the sex industry allows the government to exercise more control over the industry and to tackle abuses, that this approach is in the interests of sex workers and that legalisation facilitates action against sexual violence, sexual abuse and human trafficking. The government has announced new measures relating to control and enforcement of the law and will provide special protection and care for victims and for women who want to leave the sex industry. The Netherlands therefore did not support this recommendation.

says that states must insert 'improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption' in their criminal law.

45 UN Doc/A/HRC/10/64 (2009), p. 12.

46 Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, UN Doc. A/HRC/10/16, 20 February 2009, p. 12

47 See *Parliamentary Documents II*, 2007.08, 26 150, no. 54. For the Dutch reaction to the recommendations, see UN Doc. A/HR/8/31/Add. 2, 13 June 2008

48 The recommendations and the Dutch reaction to them are included in UN Doc. A/HRC/8/31/Add. 2, 13 June 2009. Response of the Kingdom of the Netherlands to the recommendations it received during the universal periodic review on April 15, 2008.

Another recommendation – from Bangladesh – was that demand in the country of destination (the Netherlands) should be addressed if efforts to tackle human trafficking are to be successful. The Netherlands endorsed this recommendation, referring in that context to a campaign to raise awareness among employers, measures to strengthen the Labour Inspectorate and the SIOD and transnational cooperation between countries of destination and countries of origin such as Nigeria. But the Netherlands also referred to the need for push and pull factors to be addressed by both countries of origin and countries of destination.

Algeria also recommended an in-depth investigation into human trafficking and exploitation of children, particularly with respect to sexual abuse, child prostitution and child pornography. The Netherlands supported this recommendation and said that it had already been implemented. The Netherlands referred to various studies by bodies such as ECPAT<sup>49</sup> and the Ministry of Justice and to the reports of the NRM and annual reports of CoMensha.

### *Recommended Principles and Guidelines on Human Rights and Human Trafficking*

At the request of the Human Rights Council,<sup>50</sup> the *UN High Commissioner for Human Rights* published a report in February 2009 on the most recent developments in the United Nations with regard to combating human trafficking.<sup>51</sup> The report not only contains a comprehensive overview of UN activities and initiatives, but also highlights the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.<sup>52</sup>

These principles and guidelines were drawn up in 2002 and provide a framework for good practice as well as more specific and detailed advice for states on subjects such as legislation, the prosecution of human trafficking and the protection of and help for victims. The UN High Commissioner observed in her report that the Principles and Guidelines are frequently used and cited, particularly by the UN agencies most closely concerned with human trafficking<sup>53</sup> and by NGOs.<sup>54</sup> It was felt, however, that additional information was needed and, for that reason, since 2008 the OHCHR had been drafting a detailed commentary on the Principles and Guidelines, which was due to be published in 2009.<sup>55</sup>

49 End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes.

50 HRC Resolution 8/12 ‘Special Rapporteur on trafficking in persons, especially women and children’.

51 Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General, Report of the Office of the United Nations High Commissioner for Human Rights on the latest developments in the United Nations relating to combating trafficking in persons as well as on the activities of the Office on this issue, UN Doc. A/HRC/10/64, 6 February 2009.

52 UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.I.

53 Including the Division for the Advancement of Women, UNICEF, UNIFEM, United Nations Agency Project on Human Trafficking in the Greater Mekong Sub-Region (UNIAP), UNDP, UNICRI, ILO; the Special Rapporteur on trafficking in persons has also adopted these principles and guidelines as the basis and framework for her work. The principles and guidelines are also used by IPU and IOM.

54 The report mentions Amnesty International, Anti-Slavery International, Human Rights Watch, Global Rights, ECPAT, Physicians for Human Rights, Save the Children and the Global Alliance Against Traffic in Women (GAATW) as some of the organisations that adhere to the principles and guidelines in their research and campaigns.

55 A/HRC/10/64 (2009), p. 20.

Importantly, the UN High Commissioner noted in relation to the Principles and Guidelines that at every step of every response ‘the human rights impact of that step and of the overall response must be considered and monitored’.<sup>56</sup> According to the report, the ultimate aim of responses to human trafficking should be to prevent it, to protect individuals against human trafficking-related violations of their rights and to offer help whenever such violations are not or cannot be avoided. In its conclusions, it warns that some measures against human trafficking actually harmed the people they were intended to protect, since victims of human trafficking sometimes suffer ‘collateral damage’ from (criminal) enforcement; human rights must be central to any credible strategy against human trafficking.

While some measures against human trafficking do benefit certain groups, they can also stigmatise others or curtail the freedom of movement of some groups. Measures can also be counter-productive with respect to groups that should actually be protected. This, in a nutshell, is the conclusion of the report published in 2007 by the *Global Alliance Against Trafficking in Women* (GAATW) entitled *Collateral Damage: The Impact of Anti-Trafficking Measures Around the World* ([www.gaatw.org](http://www.gaatw.org)).

Measures and policies designed to combat human trafficking can have a negative effect on the people they are intended to protect. The reasons given are that states often give greater priority to national security, tackling crime and safeguarding national borders against illegal migrants over the rights of trafficked persons. For example, the Indian government regarded female migrants as a particularly vulnerable group and therefore promulgated a rule prohibiting every female domestic worker under the age of 30 from accepting employment in Saudi Arabia under any circumstances, thereby depriving female migrants of the right to leave their country. To avoid this ban women had to rely on riskier migration routes, which made them more vulnerable to exploitation at their destination, according to the GAATW report. Another example concerned a number of Brazilian women who tried to enter the EU. They were denied entry and then repatriated because immigration officials thought that they looked like prostitutes and were therefore probably victims of trafficking. Measures of this type are couched in terms of prevention of human trafficking but, according to the report, constitute violations of human rights, including the rights of women.<sup>57</sup> These are examples of the negative impact that measures against human trafficking can have on specific groups such as women and migrants; in other words on groups that are broader than the group that can be regarded as victims according to the definitions of human trafficking.

The OHCHR is in fact reviewing the possibility of writing a practical guide to help states and others to ensure that reactions to human trafficking are effective and in accordance with international standards and existing and evolving good practices. The OHCHR also feels that such an instrument could give practical guidelines for evaluating national action plans from a human rights perspective.

<sup>56</sup> A/HRC/10/64 (2009), p. 20.

<sup>57</sup> See also: *Need for an integrated approach to promote and protect the human rights of trafficked persons and all migrant workers*. Joint written statement submitted by GAATW, LA Strada International and Anti-Slavery International, for the 8th session of the Human Rights Council (2-18 June 2008).

*Special Rapporteurs*

The UN Human Rights Council has appointed a number of special rapporteurs who produce reports on specific aspects of human trafficking as well as country reports. They include the *Special Rapporteur on Trafficking in Persons, especially Women and Children*,<sup>58</sup> the *Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*,<sup>59</sup> the *Special Rapporteur on Violence against Women, its Causes and Consequences*,<sup>60</sup> and the *Special Rapporteur on the Human Rights of Migrants*.<sup>61</sup> In Resolution 6/14, the Human Rights Council created a new mandate for a *Special Rapporteur on Contemporary Forms of Slavery*<sup>62</sup> to replace the *Working Group on Contemporary Forms of Slavery*.<sup>63</sup> Various rapporteurs hold regular meetings to avoid duplication of work and to plan joint initiatives.

The Human Rights Council's predecessor, the *Commission on Human Rights*, decided in 2004 to appoint a *Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children*<sup>NRM5</sup>.<sup>64</sup> The mandate of the *Special Rapporteur on trafficking in persons, especially women and children* was extended for a period of three years by Resolution 8/12 (18 June 2008).<sup>65</sup> The rapporteur submitted her latest annual report to the Human Rights Council in February 2009.<sup>66</sup>

In her report, the *Special Rapporteur on trafficking on human beings, especially women and children* identified a number of developments. For example, she observed that the complex phenomenon of human trafficking has become even more insidious because of its covert nature and increasingly because of the growing use of modern information technology as an instrument for recruiting victims. She also explicitly mentioned that human trafficking within national borders occurs on a large scale.

Estimates of the number of victims by various organisations and agencies vary and, according to the rapporteur, indicate the need for the systematic and coordinated collection and management of data to provide certainty about the scale of the problem. In the absence of systematic and reliable figures, it is difficult to say with any precision whether the number of human trafficking cases is rising or falling or why. What is clear is that there is a global consensus that human trafficking takes many different forms and that it is a serious violation of human rights as well as a violation of national and international criminal law. The *Special Rapporteur* said that her aim was to improve the exchange of information and possibilities

58 Since 18 June 2008 this position has been filled by Ms. Joy Ngozi Ezeilo Emekekwe from Nigeria.

59 Since May 2008, this position has been filled by Ms Najat M'jid Maala from Morocco.

60 Since August 2003, this has been Ms Yakin Ertürk from Turkey.

61 Jorge A. Bustamante (Mexico), since August 2005.

62 Ms. Gulnara Shinian from Armenia.

63 Resolution 6/14 (2007).

64 Decision 2004/110.

65 Resolution 8/12 (2008).

66 Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, UN Doc. A/HRC/10/16, 20 February 2009, and UN Doc. A/HRC/10/16/Corr. I, 12 March 2009.

for data collection<sup>67</sup> and that she intended to act as a contact person for gathering and disseminating data.

Human trafficking can be approached from a number of different perspectives, including human rights, criminal law, migration and labour. However, the Special Rapporteur prefers an integrated approach, saying that as far as her mandate is concerned she feels that human rights should be the focus of all efforts. The Special Rapporteur's mandate encompasses every form and manifestation of human trafficking. Her report provides a summary (presented below) to explain what that means:

- (1) Trafficking in children – children who are trafficked for sexual purposes, adoption, child labour (e.g., domestic work, babysitters/nannies, begging, criminal activities like selling drugs, etc.) and participation in armed conflict – mercenaries/child soldiers, sex slaves. The initial belief that only girl children were being trafficked for sexual purposes no longer holds true as the incidence of young boys being trafficked and sexually exploited through unsuspecting areas like sports is fast gaining ground;
- (2) Trafficking in men for forced labour and other exploitation – not much attention has been paid to this form of trafficking but the reality is that it is also becoming rampant. Men and boys in particular are trafficked for labour exploitation in construction work, in agriculture, and also in fishing and mining;
- (3) Trafficking in women and girls for forced marriage, forced prostitution, sexual exploitation and forced labour (including domestic work, working in factories and mines and other forms of labour) – understandably, much attention has been paid to sex trafficking and available data on trafficking in persons are mainly on this subject. The Special Rapporteur will explore further trafficking of women for labour exploitation, especially in domestic work and other sectors;
- (4) Trafficking in human beings for organs, human body parts and tissue – obtaining facts and figures on this form of trafficking is quite challenging, but it is becoming a growing trend with a ready market, and need to be studied closely with a view to framing appropriate interventions;
- (5) There are other forms that have been sporadically recorded, such as trafficking in persons for ritual purposes as well as trafficking of prisoners.

She also intends to extend her agenda to embrace a number of subjects that she regards as crucial in relation to human trafficking. These include not only the lack of research and data, but also migration and connections with human trafficking, with HIV and AIDS, armed conflicts, the *Millennium Development Goals*,<sup>68</sup> gender-related violence and gender inequality, in-depth research into the demand for victims of human trafficking, facilities for integrated help and services for victims and the promotion of international, regional and sub-regional cooperation. Her main aim is to launch activities in areas that have not previously been studied or where interventions have been limited up to now. Examples would be human trafficking where men and boys are victims and the root causes of human trafficking, such as

<sup>67</sup> See Resolution 8/12, para. 2 (k), which she also refers to.

<sup>68</sup> In 2000, 189 countries signed the Millennium Declaration, promising to actively combat global poverty. Eight specific and measurable objectives, the Millennium Development Goals (MDGs), were formulated to be achieved by 2015.

gender inequality, poverty, a lack of security and demand for cheap labour. Another issue specifically mentioned as requiring attention is the question of compensation for victims. Using a questionnaire,<sup>69</sup> the Special Rapporteur collected information from various countries about human trafficking. She concluded from the responses that most countries have made human trafficking in the sex industry a criminal offence but that few countries have done so with regard to human trafficking in other sectors (trafficking for forced labour) or with respect to human trafficking where the victims are men. And, although many countries have ratified the UN Palermo Protocol,<sup>70</sup> according to the Special Rapporteur its implementation is generally weak due to the absence of comprehensive national legislation, a lack of resources for enforcement and a lack of political will. In her conclusions, she states that strategies against human trafficking should not be confined to punishing perpetrators but should focus to an equal extent on victims, while at the same time addressing the root causes of human trafficking. States are called on to sign up to the UN Protocol and to the UN Convention on the Rights of All Migrant Workers and Members of Their Families.<sup>71</sup> States should observe the OHCHR's Principles and Guidelines on Human Rights and Human Trafficking<sup>72</sup> and incorporate them in their legislation and policies to address all forms of human trafficking. States should give all trafficked persons access to specialist support and help, regardless of their status under immigration law. According to the Special Rapporteur, issuing a temporary or permanent residence permit and/or providing access to assistance should not depend on cooperation with criminal procedures. States should consider appointing a national rapporteur who would work closely with the Special Rapporteur in collecting, sharing and processing information and monitoring measures. Finally, the Special Rapporteur expressed support for a global action plan to combat human trafficking.<sup>73</sup>

The *Special Rapporteur on contemporary forms of slavery, its causes and consequences* presented her first report in July 2008, a few months after she was appointed<sup>74</sup>. In this report, she mentions the areas she will focus her attention on: the root causes and consequences of forced labour and its impact on men, women and children. She will also devote special attention to domestic work and child labour. Like the *Special Rapporteur on trafficking in persons, especially women and children*, she also intends to adopt a gender- and age-sensitive approach in her work.

69 In October 2008 the rapporteur sent a questionnaire to UN member states to gather information for the purposes of her future work and to set priorities. According to her report at the beginning of 2009, she received replies from 68 countries.

70 132 states (as of 11 September 2009).

71 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, UNGA Res. 45/158, 18 December 1990. The Netherlands is not a party to this treaty, see NRM5.

72 *Principles and Guidelines on Human Rights and Trafficking*, UN Doc. E/2002/68/Add.1 (2002).

73 The rapporteur refers in this context to the General Meeting of the African Union, which during its session in Cairo in July 2008 called for a 'global action plan for combating human trafficking in all its facets'.

74 Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, UN Doc. A/HRC/9/20, 28 July 2008.



In performing her task, the Special Rapporteur will use the definitions in the *Slavery Convention* of 1926<sup>75</sup> and the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* of 1956.<sup>76</sup> Given the changes in economic and social conditions since the conventions took effect, the Special Rapporteur also takes into account definitions adopted later by the UN and other organisations.<sup>77</sup>

To clarify her mandate, she also refers to the persistence of old forms of slavery that are embedded in traditional convictions and customs. She notes in this context that these forms of slavery are the result of enduring discrimination of the most vulnerable groups in society, such as those who are regarded as being of a low caste, tribal minorities and indigenous populations. The Special Rapporteur concludes by saying that during her period in office she will make specific recommendations, mainly on ways of preventing slavery and protecting the rights and human dignity of enslaved persons. She will also devote attention to old – but still existing – forms of slavery, such as bonded labour and serfdom.

### 3.3.6 Supervision mechanisms based on human rights treaties

Some UN treaties and protocols have established mechanisms to supervise compliance by member states with the obligations they have assumed by virtue of these international human rights documents. Human trafficking and measures to address it are regularly discussed in the country reports produced by these bodies formed under human rights treaties, including the legislation and practice in the Netherlands. These bodies generally express concern

75 *Bulletin of Treaties* 1928, 26. Article 1, paragraph 1 defines slavery as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.’ Slavery is defined as ‘all acts involved in the capture, acquisition or disposal of a person with the intent to reduce him to slavery’.

76 *Bulletin of Treaties* 1957, 118. Article 1 requires states to abolish a number of practices related to slavery, including ‘(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined; (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such a person, whether for reward or not, and is not free to change his status; (c) Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person; (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young persons or of his labour.’

77 Accordingly, slavery is also defined as ‘any form of dealing with human beings leading to the forced exploitation of their labour’, in the report of the Special Rapporteur of the former *Sub-commission on Prevention of discrimination and Protection of Minorities*, UN Doc. E/CN.4/Sub.2/1982/20/Add.1, 7 July 1982, and ‘enslavement’ as ‘the exercise of any or all of the powers in the course of trafficking in persons, in particular women and children’, see, for example, article 7, section 2, subsection c of the Charter of the International Criminal Court.

at the continued existence of human trafficking despite the fact that states have passed legislation and adopted national action plans and other measures against it.

- The *Human Rights Committee*, which supervises compliance with the International Convention on Civil and Political Rights,<sup>78</sup> has repeatedly found that human trafficking is a possible violation of article 3 (equal rights of men and women), article 8 (ban on slavery and forced or mandatory labour), article 24 (right to protection of the child), and article 26 (ban on discrimination) of the Convention. The committee has also acknowledged the risk of the negative effects that measures against human trafficking can have on the rights and freedoms of trafficked persons. The committee feels that victims of human trafficking should be allowed to stay in a country regardless of whether they cooperate with a prosecution.<sup>79</sup> The committee discussed the report on the Netherlands in July 2009<sup>80</sup> and one of the topics it raised was the approach to human trafficking in the Netherlands. The committee was positive about the existence of the National Action Plan on Human Trafficking (2004) and the establishment of the Human Trafficking Task Force (2008).<sup>81</sup>
- The *Committee against Torture* has referred to the importance of providing help for victims of human trafficking purely on the basis of their needs, regardless of whether they cooperate with criminal investigations.<sup>82</sup> With respect to Aruba, the committee expressed its concern at the lack of information about existing mechanisms for preventing and prosecuting human trafficking.<sup>83</sup>
- The UN Women’s Convention explicitly prohibits human trafficking and forced prostitution of women.<sup>84</sup> The *Committee on the Elimination of Discrimination against Women* (CEDAW Committee) under the Convention on the Elimination of All Forms of Discrimination against Women is concerned about the practice in a number of countries of making the awarding of residence permits dependent on the victim’s willingness to cooperate with the authorities.<sup>85</sup> The CEDAW Committee’s recommendations for the Netherlands were published in February 2007.<sup>86</sup>

78 Bulletin of Treaties 1978, 177.

79 ‘Moreover, the State party should ensure that permission to remain in the State party is not dependent on the cooperation of victims in the prosecution of alleged traffickers’, see Concluding observations of the Human Rights Committee, UN Doc. CCPR/C/IRE/CO/3, para 16. See also La Strada Newsletter No. 10, September 2008, p. 4.

80 UN Doc. CCPR/C/NET/4.

81 UN Doc. CCPR/C/NLD/CO/4.

82 UN Doc. A/HRC/10/64 (2009), p. 15, which includes a reference to the country report for Australia.

83 Conclusions and recommendations of the Committee against Torture; Netherlands CAT/C/NET/CO/4,3 August 2007.

84 Article 6 of the UN Women’s Convention reads: ‘States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.’

85 UN Doc. A/HRC/10/64 (2009), p. 15, which includes a reference to the country reports for France and Mexico.

86 Concluding comments of the Committee on the Elimination of Discrimination against Women: Netherlands, CEDAW/C/NLD/CO/4, 2 February 2007. For the government’s reaction of 13 July 2007, see [www.minocw.nl/documenten/25791.pdf](http://www.minocw.nl/documenten/25791.pdf).



With respect to the Netherlands, the CEDAW Committee expressed concern about, among other things, the number of women and girls that are victims of human trafficking. The committee also encouraged the Netherlands to conduct independent research into the effects of the abolition of the ban on brothels on foreign prostitutes, in particular, with special attention to the risks of violence and to health (a second evaluation of the abolition of the ban on brothels had, however, already been completed in 2007). The committee also recommended that all victims of human trafficking should be offered protection and help, including granting them temporary residence permits. According to the committee, this should also apply for victims who are not willing to cooperate with a prosecution of the perpetrators. In its reaction, the Netherlands said that the policy does not provide for a general right to residence for victims as such but that it does allow humanitarian aspects to be taken into account, including the fact that a person is a victim. Persons granted residence on these grounds can be offered protection and help.

The Netherlands addressed these issues at length in the fifth report to the CEDAW Committee (see the *Fifth Periodic Report of the Netherlands*, UN Doc. CEDAW/C/NLD/4, 24 November 2008), which the committee plans to discuss in 2010. In response to the Dutch report, the committee asked – in light of the concerns expressed earlier about the link between the protection of victims and their cooperation with criminal investigations – whether the Netherlands will offer temporary residence permits and reintegration and support for victims of human trafficking irrespective of whether they cooperate with an investigation and prosecution of suspected human traffickers (see *List of issues and questions with regard to the consideration of periodic reports*, The Netherlands, UN Doc. CEDAW/C/NLD/Q/5, 13 March 2009). The committee asked what measures had been taken to ensure that female victims of human trafficking are properly identified and no longer held in aliens' detention. The committee wanted to know whether underage victims have access to specialist agencies and whether an investigation into the disappearance of underage asylum seekers who are suspected of falling into the hands of human traffickers had been completed. The committee also asked the Netherlands to explain why NGOs were not represented on the Human Trafficking Task Force. Finally, as far as it is relevant in this context, the committee posed a number of questions about the pending Regulation of Prostitution Act. In this context, the committee wondered in particular how the Netherlands had evaluated the risks to privacy and safety of compulsory registration of prostitutes with local authorities, and the impact of the legislation on the possibility for these women to work independently.

- The CEDAW Committee published its *General Recommendation on Women Migrant Workers* in November 2008.<sup>87</sup> Although the recommendations do not specifically refer to human trafficking, many parts of the document are also relevant to situations where female migrants are victims of human trafficking.<sup>88</sup>
- The UN Convention on the Rights of the Child prohibits the trade in children with a view to exploitation, sexual exploitation and child labour. The Optional Protocol to the

87 General Recommendation No. 26 on Women Migrant Workers, 7 November 2008, see [http://www2.ohchr.org/english/bodies/cedaw/docs/general\\_recommendation/GR26MigrantWomen.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/general_recommendation/GR26MigrantWomen.pdf).

88 According to La Strada, these General Recommendations precisely describe the vulnerable position of female migrants and offer solutions that address the causes rather than symptoms, 'an approach commonly lacking in anti-trafficking policies', La Strada Newsletter, no. 11, December 2008, p. 5.

Convention on the sale of children, child prostitution and child pornography contains provisions relating to human trafficking that are also very relevant for the Netherlands.<sup>89</sup> The *Committee on the Rights of the Child* has raised the issue of unaccompanied and separated underage children, in a General Comment, for example, in which it referred to the risk of human trafficking or ‘re-trafficking’.<sup>90</sup>

In 2008 the Netherlands submitted its reports on the Optional Protocol on the sale of children, child prostitution and child pornography to the UN Convention on the Rights of the Child, UN Doc. CRC/C/OPSC/NLD/I, 8 January. In a reaction in January 2009, the committee said that the Dutch government should intensify its efforts to prevent minors from becoming victims of (sexual) exploitation, for example by improving registration and by conducting more research into child pornography, youth prostitution and child sex tourism. It said the government should draw up a cohesive national action plan to tackle the exploitation of children, sexual or otherwise. Underage victims of (sexual) exploitation should receive better protection. Social workers, police and prosecutors should receive special training in how to meet the special needs of minors. The government should provide specialist shelter and help for underage victims. Perpetrators should be prosecuted more strenuously. Cooperation with other countries should also improve. The Dutch police should be assigned more manpower, knowledge and resources, see *Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child, The Netherlands*, UN Doc. CRC/C/NLD/CO/3, and UN Doc. CRC/C/OPSC/NLD/CO/I, 30 January 2009.

In the government’s response to the UN Committee’s report, the Minister for Youth and Family said that the Netherlands would take the committee’s recommendations to heart. With respect to recommendations relating to the detention of unaccompanied underage aliens, the minister explained that this instrument is only used if there is no adequate milder alternative. The minister referred to the pilot scheme launched in 2008 in which possible victims of human trafficking are housed in sheltered accommodation in small-scale reception centres (see § 4.6). The government also intends to continue the special reintegration programmes for unaccompanied underage aliens and victims of human trafficking. The committee asked the Netherlands to collect data on child trafficking, child prostitution and child pornography on a systematic basis. The National Rapporteur on Trafficking in Human Beings already gathers data on the first two subjects. In relation to child pornography, the minister said that programmes already underway would improve the systematic collection of data by the police and the public prosecution service, starting in 2010. The minister also said in the reaction that motions had been submitted in parliament calling for sex with minors in other countries to be actively addressed and that there is an active policy to tackle child pornography couriers (*Parliamentary Documents II 2008/09*, 31 001, no. 66).

89 The Optional Protocol was signed by the Netherlands on 7 September 2000 and ratified on 23 August 2005. On 23 September 2005, the Protocol entered into force (*Bulletin of Treaties* 2001, 130). In this context see also the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Convention of Lanzarote) (*Bulletin of Treaties* 2008, 58). The Netherlands has not yet ratified this treaty, see § 3.5.3.

90 Committee on the Rights of the Child, General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

- The UN Convention on the Rights of All Migrant Workers and Members of their Families<sup>91</sup> is intended to ensure equal treatment for migrants, including working conditions equal to those of a state's own subjects. The Convention can play an important role in tackling the exploitation of migrants because it also refers to the prevention of inhumane living and working conditions, physical and sexual abuse and humiliating treatment, including slavery, subservience and forced or mandatory labour<sup>NRM5,92</sup>. The *Committee on the Protection of the Rights of All Migrant Workers and Members of their Families*, which was founded in 2004, consists of independent experts who monitor the implementation of the treaty.

The Netherlands is not a party to this convention.<sup>93</sup> However, calls to accede to the convention have been supported by the *UN High Commissioner for Human Rights*,<sup>94</sup> the *Special Rapporteur on Trafficking in Human Beings*,<sup>95</sup> the CEDAW Committee,<sup>96</sup> CERD<sup>97</sup> and some NGOs.<sup>98</sup> During the universal periodic review conducted by the UN Human Rights Council, a number of countries recommended that the Netherlands should ratify the convention.<sup>99</sup> In its response, the Netherlands reiterated its position that it could not support this recommendation 'because it is opposed in principle to rights that could be derived from it by aliens without legal residence rights'.<sup>100</sup>

It is in any case clear that *illegal* migrants are particularly vulnerable to various forms of exploitation, particularly women – often in domestic work – and children.<sup>101</sup>

91 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, A/RES/45/158, adopted by the UN General Assembly on 18 December 1990. The Netherlands is not a party to this instrument.

92 See also article 11 of the UN Convention on the Rights of All Migrants and Members of their Families.

93 The number of member states has risen from 20 to 42 since the entry into force of the Convention on 1 July 2003 (situation as of 11 September 2009). However, they do not include any countries of destination of migrants. The Netherlands does not propose ratifying the treaty because the absence of a distinction between legal and illegal migrant workers in awarding rights is not compatible with the point of departure of the Benefit Entitlement (Residence Status) Act, see NRM3, p. 46 and NRM5.

94 UN High Commissioner for Human Rights (at that time Louise Arbour), Statement to the Parliamentary Assembly of the Council of Europe, 18 April 2007; 'It is imperative that more European countries sign, ratify or accede to this Convention, which to a large extent simply makes explicit for migrants many of the rights already set out elsewhere in binding treaties.'

95 Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, UN Doc. A/HRC/10/16, 20 February 2009.

96 Concluding comments of the Committee on the Elimination of Discrimination against Women: Netherlands UN Doc. CEDAW/C/NLD/CO/4, par. 43; General Recommendation No. 26 on Women Migrant Workers, 7 November 2008, see [http://www2.ohchr.org/english/bodies/cedaw/docs/general\\_recommendation/GR26MigrantWomen.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/general_recommendation/GR26MigrantWomen.pdf).

97 Concluding observations of the Committee on the Elimination of Racial Discrimination: the Netherlands, UN Doc. CERD/C/64/Co/7, 10 May 2004, par. 16.

98 For example by La Strada, Combating Trafficking by Protecting Migrant's Human rights, La Strada statement on the occasion of the 2<sup>nd</sup> EU Anti-Trafficking Day, 18 October 2008.

99 Egypt, Peru, Algeria.

100 Response of the Kingdom of the Netherlands to the recommendation it received during the universal periodic review on April 15, 2008, UN Doc. A/HRC/8/31/Add.2, 13 June 2008, p. 3.

101 See on this, for example, Special Rapporteur on Migrants and Chairman of the Committee on Protection of Migrant Workers issue joint statement to mark International Migrants Day, 17 December 2007, UNOG

### 3.4 European Union

#### 3.4.1 Implementation of EU Action Plan

The *EU plan on best practices, standards and procedure for combating and preventing trafficking in human beings* (further referred to as the Human Trafficking Action Plan),<sup>102</sup> was evaluated by the European Commission at the end of 2008. The Council of Ministers of Justice and Home Affairs had asked the Commission to evaluate the action plan in order to ensure that efforts to combat human trafficking would continue in 2008.<sup>103</sup> The 2005 action plan consists of a list of actions relating to the coordination of EU efforts, the identification of problems, prevention, the reduction of demand, investigation and prosecution, the protection of and assistance for victims, repatriation, reintegration and external relations<sup>NRM5</sup>.

In December 2007, the Commission asked the member states for updated information about the implementation of national policies to tackle human trafficking. Twenty-three member states and Norway complied with this request. The Commission also consulted other bodies responsible for implementing a number of items in the action plan, including Europol.

The Commission's evaluation<sup>104</sup> showed that many countries have now adopted legislation relating to prosecution and protection of and help for victims. The legislation frequently involves the expansion of national criminal law to encompass human trafficking in sectors other than the sex industry.

However, the available information shows that there is a wide gap between the legislation and its implementation in practice. The Commission observed that the number of prosecutions is still not high enough and emphasised the serious lack of effective implementation in terms of protection of victims. As far as national legislation is concerned, the Commission found, for example, that victims are not adequately protected from prosecution or criminal sanctions for criminal offences committed as a result of their situation as trafficked persons. According to the Commission, the available figures show that in countries where a significant number of victims did receive help the number of prosecutions was higher.<sup>105</sup> This implies, according to the Commission, that a human rights approach is necessary not only to protect victims, but is also in the interests of justice. In this document the Commission announced a review of the framework decision on human trafficking, partly with a view to guaranteeing more effective mechanisms for helping victims.

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News; UN calls for protection of migrants' human rights regardless of legal status, 18 December 2007, UN News Centre.

102 OJ 2005, C311, 9 December 2005.

103 Conclusions of the Council of Justice and Home Affairs Ministers, 8-9 November 2007, *Parliamentary Documents* II 2007/08, 23 490, no. 475.

104 The document does not mention any figures to support this finding.

105 *Commission working document, Evaluation and monitoring of the implementation of the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, 17 October 2008, COM (2008) 657 final.

In light of these findings, the Commission made a number of recommendations for the short term (see below). These recommendations are addressed to member states, Europol, Eurojust, the EU Presidency and the European Commission itself. In addition, a new strategy will be formulated at the end of 2009.

- One recommendation concerns the establishment of an institute of national rapporteurs or equivalent mechanisms to monitor trends in human trafficking and the results of policies and measures against human trafficking.
- National mechanisms for identifying and referring victims to social services should be established or improved; they should be based on agreements between law enforcement agencies and civil society organisations and should adopt a gender perspective and human rights approach.
- Systems of child protection should be set up or strengthened to facilitate effective investigations into whether there are reasons to suspect that there may be human trafficking – begging and illegal activities are explicitly mentioned as forms of exploitation.
- NGOs that offer help to victims should receive support and be given adequate financial resources. Efforts by NGOs to establish a more permanent network should be supported, and such a network should be recognised as an important consultative partner.
- Europol, Cepol and members states should organise systematic training for key figures involved in identifying human trafficking cases, with special attention for exploitation outside the sex industry.
- Coordination of criminal investigation and prosecution should be improved, including promoting the use of Europol and Eurojust’s resources.
- Current action with respect to external relations should be improved, for example by removing obstacles to legal cooperation in criminal cases, particularly with authorities in the western Balkans, the eastern neighbours of the EU and countries in North Africa.

### 3.4.2 European Commission’s Group of Experts

In 2008 the European Commission established a new *Group of Experts on Trafficking in Human Beings*.<sup>106</sup> The 21 members serve in a personal capacity and have different backgrounds. A number of participants are government representatives; others come from NGOs, Europol, international organisations and academia. They are experts with experience in tackling human trafficking, with particular emphasis on the aspect of labour exploitation. For the time being, there are no members from trade unions or employers’ organisations. The members are appointed for a period of three years.

The task of the Group of Experts is to advise the European Commission on human trafficking and to publish reports and opinions on the subject. Its working programme includes providing advice on the reform of the EU framework decision on human trafficking, on the drafting of a new EU strategy for tackling human trafficking and on the Directive on tempo-

<sup>106</sup> Commission Decision of 22 July 2008 on the appointment of members of the Group of Experts on Trafficking in Human Beings (2008/604/EC).

rary residence permits<sup>NRM5.107</sup> The Commission can ask the Group of Experts for advice, but the group can also submit advice and reports to the Commission on its own initiative. The group's chairperson can also advise the Commission to consult the group on a particular issue.<sup>108</sup>

In October 2007, the European Commission decided to form a new Group of Experts to continue the tasks of the first *Expert Group*, which was appointed in 2003<sup>NRM5</sup>. A number of members from the first group are also in the current Group of Experts. The Group of Experts has meanwhile published opinions on Directive 2004/81, the Commission's proposed reform of the Framework Decision against trafficking in Human Beings and the European Anti-Trafficking Day (18 October).

The Group of Experts has said that existing Directive 2004/81 does not adequately address the legitimate needs and rights of victims to support and help, in particular the fact that granting a residence permit and related help depends on the victim's cooperation with relevant national procedures.<sup>109</sup>

According to the Group of Experts, the principal aim of the new Directive should be to extend the grounds on which member states can grant residence permits to subjects of third countries who are victims of human trafficking. Secondly, subjects of EU member states (like subjects of third countries who are living legally in the EU), who are victims of human trafficking should have equal access to the possibilities and rights afforded by the Directive.

The Group of Experts also feels that the scope of the Directive should be limited to human trafficking. The current Directive covers human smuggling, a different offence that includes an element of consent on the part of the person who is smuggled over a border. In the case of human trafficking, there is no question of consent. Different measures are called for in tackling the two offences, as well as in terms of the help and protection needed by victims. A new Directive should also apply to children. A legal guardian should be appointed for this purpose and any measure should put the child's interests first.<sup>110</sup>

The Group of Experts feels it is essential that a new Directive should oblige member states to adopt measures to promote the early and effective identification of trafficked persons.

Member states should comply with their duty to inform victims of human trafficking of their rights in a language and in a manner that the person concerned understands. The current provision on the period of reflection needs to be strengthened. The reflection period, which is also intended to allow victims to recover, should be granted immediately to those persons who have been found to have been victims of human trafficking or of whom there are indications

107 Directive 2004/81/EC of the Council of 29 April 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 action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6 August 2004.

108 Commission Decision of 17 October 2007 establishing the Group of Experts on Trafficking in Human Beings (2007/675/EC).

109 Opinion No. 4/2009 of the Group of Experts on Trafficking in Human Beings set up by the European Commission – On a possible revision of Council Directive 2004/81/EC of 29 April 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 relevant authorities, 16 June 2009.

110 In the Netherlands, Nidos is appointed as guardian under a special emergency procedure.



that they have: 'It should be assumed, until established otherwise, that the individual has been trafficked.' The reflection period should not be less than three months.

The Group of Experts also feels that granting a residence permit, for at least one year, should not depend on the trafficked person's participation in the criminal proceedings against alleged human traffickers. With a human rights approach, a residence permit should also be granted on the basis of the victim's personal situation, regardless of the relevant national procedures: 'The trafficked person should not be treated as an instrument for the prosecution.' In cases where a victim does cooperate, the validity or duration of a residence permit should not depend on the outcome of the criminal proceedings.

Subjects of EU member states should be entitled to at least the same assistance and the same rights as provided to subjects of third countries. Finally, the Group of Experts refers to the fact that in addition to this Directive, member states may also be bound by international obligations to provide protection such as those laid down in *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection in the content of the protection granted* (OJ L 304/12).

18 October has been designated the European Anti-Trafficking Day. The Group of Experts made a number of suggestions for themes that should be given priority in this third year of the event. More needs to be done to increase public awareness of the problem of human trafficking, particularly of exploitation in sectors other than the sex industry. The group also referred to the status of nationals of EU member states who are victims of human trafficking in other EU member states or third countries. According to the Group of Experts, there are major differences in the degree of assistance provided for this group of victims.<sup>111</sup>

### 3.4.3 Council's conclusions on the establishment of a network of national rapporteurs

In June 2009 the Council of the European Union adopted conclusions on establishing an informal EU network of national rapporteurs or equivalent mechanisms on trafficking in human beings. The document invited every member state to participate in an informal and flexible network whose task would be to increase understanding of the phenomenon of human trafficking and provide the EU and member states with objective, reliable and comparable up-to-date strategic information on human trafficking.<sup>112</sup>

According to the Council's conclusions, the network should be open to EU bodies and EU agencies. Relevant international bodies, such as the OSCE, UNODC, IMO, ILO and the UN *Special Rapporteur on trafficking in persons, especially women and children* and the IC-MPD could be invited as observers.

111 Opinion No. 3/2009 of the Group of Experts on Trafficking in Human Beings set up by the European Commission – On the Anti-Trafficking Day, 16 June 2009.

112 Council conclusions on establishing an informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings, 2946<sup>th</sup> meeting, Luxembourg, 4 June 2009.

Other agencies, such as the UN *Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography* and the UN *Special Rapporteur on Contemporary Forms of Slavery* could perhaps also be invited to join the network.

An important aspect of these conclusions is that every member state is (again) invited to appoint a national rapporteur or equivalent mechanism. National rapporteurs or equivalent mechanisms are particularly invited to share best practices and experiences at the national and European level, contribute to existing efforts to develop indicators and criteria to improve the comparability and consistency of information and assist in developing new activities relating to the collection of statistics on human trafficking. National rapporteurs are also invited to help collect and analyse essential quantitative and qualitative information about human trafficking gathered by national rapporteurs during their activities.

The intention is that the European Commission will support the network and report on its progress. The EU presidency, in association with the Commission, will coordinate the activities of the network and chair the meetings.

The first steps in creating a network of national rapporteurs and equivalent mechanisms were already taken during Sweden's presidency, in Brussels.<sup>113</sup> It is not yet clear how the network will evolve in the future.

#### 3.4.4 Draft Framework Decision on human trafficking

In March 2009 the European Commission adopted two proposals for new framework decisions.<sup>114</sup> One proposal was for an amendment of the Framework Decision on the sexual exploitation of children, sexual abuse and child pornography;<sup>115</sup> the other was for an amendment of the Framework Decision on human trafficking.<sup>116</sup> Both proposals are intended to bring European legislation into line with the conventions that have already been adopted by the Council of Europe on these subjects.<sup>117</sup>

The intention is that the European Council will adopt the Framework Decision on human trafficking before the end of 2009.

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113 18 June 2009.

114 Proposal for a Framework Decision of the Council on the prevention and combating of human trafficking and the protection of victims, revoking Framework Decision 2002/629/JBZ, COM (2009) 136 definitive, 25 March 2009.

115 Proposal for a Framework Decision of the Council on tackling sexual abuse, sexual exploitation of children and child pornography, revoking Framework Decision 2002/68/JBZ, COM (2009) 135 definitive, 25 March 2009.

116 Proposal for a Framework Decision of the Council on the prevention and combating of human trafficking and the protection of victims, revoking Framework Decision 2002/629/JBZ, COM (2009) 136 definitive, 25 March 2009.

117 Convention of the Council of Europe on Action against Trafficking in Human Beings (2005) and the Convention of the Council of Europe on the protection of children against sexual exploitation and sexual abuse (Convention of Lanzarote, 2007).



By contrast with earlier framework decisions on relevant criminal law, the proposed Framework Decision on human trafficking not only contains provisions on the harmonisation of relevant criminal law but also on prevention, prosecution, the rules of criminal procedure<sup>118</sup> and help for victims.<sup>119</sup> Other provisions in the proposal concern the rights of victims during criminal proceedings and monitoring by national rapporteurs or equivalent mechanisms. By explicitly referring to ‘the prevention and combating of human trafficking and the protection of victims’, the provisional title of the draft framework decision is therefore also wider than that of the current framework decision (2002), which does not mention the protection of victims.

According to the European Commission, the proposed framework decision builds on the Council of Europe’s Convention on Action against Trafficking in Human Beings (2005) and provides added value in a number of respects. For example, the proposal contains new provisions on special treatment for vulnerable victims in criminal proceedings to prevent secondary victimisation (article 9), expands the scope of the provision concerning the non-application of sanctions with respect to victims for their involvement in illegal activities (non-punishment clause, article 6), sets higher standards with regard to help for victims, particularly with respect to medical treatment (article 10), contains a more extensive and more binding rule on extra-territorial jurisdiction (article 8), and prescribes a level of punishment adapted to the seriousness of the offences (article 3). The proposal also contains new provisions on criminal investigation, prevention and monitoring by national rapporteurs.

The inclusion in the EU *acquis* of provisions similar to the existing treaty provisions also yields further advantages arising from the strong binding force established by the EU’s legal order, according to the Commission, referring to the immediate entry into force of the provisions and the supervision of compliance with them.

The debate on the proposal for a new framework decision on human trafficking and its implementation must not, however, be at the expense of the ratification of the Council of Europe’s Convention on Action against Human Trafficking (2005). Provisions concerning help for and protection of victims in the proposal for a new framework decision must not curtail what has already been achieved in the Council of Europe’s convention. The proposal for a new EU framework decision must also not weaken the willingness to implement the provisions of the convention.

118 For example, member states must ensure that the persons, units or services responsible for investigating or prosecuting human trafficking possess the instruments used for investigating organised crime, such as telephone taps, electronic surveillance and financial investigation (article 7, section 4 of the proposal).

119 It is therefore also doubted whether a number of elements of the proposal have a basis in (European) law. For example, binding rules with respect to investigations and the hearing of victims have never previously been included in a framework decision. Letter from the State Secretary for Foreign Affairs of 7 May 2009, *Parliamentary Documents II* 20008/09, 22 112, no. 859, p. 6.

### 3.4.5 Directive providing for sanctions against employers of illegally staying workers

In May 2007 the European Commission presented a proposal to address the employment of illegal, undocumented migrants – in order to prevent illegal immigration of workers from third countries to the EU – and to harmonise the rules in the member states on the sanctions for employers who hire illegal workers.<sup>120</sup> Besides criticism of the degree of detail in the proposal, some countries, including the Netherlands, criticised the provision that at least 10% of all companies in a member state should be inspected every year for the presence of illegal workers. In mid-2007, 1.5% of companies in the Netherlands were inspected, meaning that under the provision the number of inspectors employed by the Labour Inspectorate would have to rise sharply, at an estimated cost of between 60 and 70 million euro a year.

The Directive was finally adopted in May 2009<sup>121</sup> and entered into force on 20 July 2009.<sup>122</sup> According to the Directive, EU member states must introduce effective, proportionate and dissuasive sanctions for employers who hire illegal immigrants. The sanctions can be fines, but also criminal sanctions for the illegal employment of minors, for repeated offences, for the employment of a significant number of illegal immigrants, for working conditions that are exploitative or where the employer knows the workers are victims of human trafficking.<sup>123</sup> The size of the fine depends on the number of illegal aliens a company has employed, but employers who break the rules must also pay all social insurance contributions that have not already been paid. They can also be charged the costs of the repatriation of their illegal employees and they must also any back wages due to the employees in full, even if the employees have already been deported from the country. As an additional deterrent, the Directive provides that companies that are caught may be disqualified from receiving government contracts and subsidies for five years, and if the seriousness of the infringement justifies it, the establishment where the infringement occurred will be closed.

The European Commission's original proposal was significantly amended. In the Commission's proposal, a main contractor could be prosecuted if one of its subcontractors used illegal employees. Under the terms of the current Directive, the main contractor, and any intermediary contractor, can only be held liable if they were aware that the subcontractor was using illegal employees. The Directive provides that the member states can adopt stricter rules on liability in national legislation, and it no longer specifies the number of inspections that the member states must carry out.

The Directive has to be implemented in national legislation no later than 20 July 2011. Its implementation will probably require some Dutch laws to be amended, such as the Act on

120 Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals, 16 May 2007, COM (2007) 249 final.

121 Decision of the Council of 25 May 2009.

122 Directive 2009/52 EC of the European Parliament and of the Council of 18 June 2009 establishing a minimum standard for sanctions and measures against employers of illegally staying third-country nationals, L 168/24, 30 June 2009.

123 Article 9 in conjunction with article 10 of Directive 2009/52/EC, L 168/24.

the Employment of Aliens, in which the principal sanctions are administrative fines. The threshold for criminal sanctions in the Directive is lower than in the Dutch legislation, nor does Dutch law require the employer to pay the costs of deportation of the employees. It is also not the Dutch government's task to collect arrears of wages (with the exception of payments prescribed by the Minimum Wage and Minimum Holiday Allowance Act).

The government has already submitted a bill to amend the Netherlands Civil Code as it pertains to the liability of employers hiring employees on secondment (see Chapter 2 and § 12.5.1).

### 3.4.6 Agency for Fundamental Rights

On the same day that the European Commission introduced its proposals for two new framework decisions, the *Agency for Fundamental Rights* published a report on the rights of children.<sup>124</sup> The agency, which is based in Vienna, was founded in 2007.<sup>125</sup> It provides assistance and expertise to the relevant bodies and authorities in the European Union, and to the member states in the implementation of Community law, in the field of fundamental rights. The agency focuses on the EU and its 27 member states. Candidate member states and countries that have concluded a stabilisation and association agreement with the EU may be invited to participate in the agency, whose activities encompass the fundamental rights set out in Article 6(2) of the EU Treaty.<sup>126</sup> These are mainly the fundamental rights guaranteed by the European Convention on Human Rights.

At the request of the European Commission, in 2007 the agency launched the project *Implementation, protection, respect and promotion of the rights of the child in the European Union*.<sup>127</sup> The aim of the project was to formulate a set of indicators by which to regularly measure the extent to which the rights of children are being implemented, respected and promoted in the EU member states. The intention of the project is also to analyse relevant legal measures that have already been taken, such as statistics from courts and jurisprudence, and to produce a sociological analysis of relevant data.

The report *Developing indicators for the protection, respect and promotion of the rights of the child in the European Union* appeared in March 2009. This report covered four topics, including the protection of children against exploitation and violence,<sup>128</sup> a subject that covers child

124 European Union – Agency for Fundamental Rights, *Developing indicators for the protection, respect and promotion of the rights of the child in the European Union*, March 2009, <http://fra.europa.eu>.

125 Regulation (EC) No. 168/2007 of the Council of 15 February 2007 establishing an Agency of the European Union for fundamental rights.

126 The European Union's Charter of Fundamental Rights was formally adopted in 2000 by the European Parliament, the Council of the European Union and the European Commission, but possesses no legal force until the Treaty of Lisbon enters into force.

127 See *Towards a Strategy on the Rights of the Child*, European Commission Communication, 2006, COM (2006) 367.

128 The three other areas are 'family environment and alternative care', 'education, citizenship and cultural activities' and 'adequate standard of living'.

trafficking, sexual and economic exploitation and violence against children. The agency published a more in-depth study of the exploitation of children in 2009.<sup>129</sup>

### 3.4.7 The Return Directive

Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in the member states for returning nationals of third countries living in their territory was published in December 2008.<sup>130</sup> This Return Directive lays down general standards for the (forced) repatriation of nationals of third countries who are residing illegally in the EU, with respect for their human rights. The directive applies unless more favourable provisions exist (article 4 of the Directive), including those formulated in the directive on temporary residence permits for victims of human trafficking.<sup>131</sup> Since that directive applies to victims of human trafficking, the new directive will generally not apply to them<sup>NRM5</sup>.

A decision to return a third-country national is accompanied by an entry ban for up to five years. Without prejudice to the provisions of Article 11, section 1, under b (the failure to comply with the obligation to return), and on condition that they do not form a threat to public order, public safety or national security, no entry ban will be served on victims of human trafficking who have been granted residence in accordance with the Directive on temporary residence.<sup>132</sup> However, the Return Directive does not exclude the possibility that vulnerable groups, such as unaccompanied minors and victims of human trafficking, will be detained pending deportation.<sup>133</sup>

### 3.4.8 Cooperation between the police and prosecution services at EU level

#### *The Prüm Convention*

The objective of the Prüm Convention<sup>134</sup> is to intensify a number of aspects of cross-border cooperation with a view to combating transnational crime, terrorism and illegal migration more effectively.<sup>NRM5</sup> Seven countries, including the Netherlands, have had similar agree-

129 European Union – Agency for Fundamental Rights, *Child Trafficking in the European Union - Challenges, Perspectives and Good Practices*, July 2009.

130 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348.

131 Directive 2004/81/EC of the Council of 29 April 2004 on residence in exchange for cooperation with the competent authorities to third-country nationals who are victims of human trafficking or have received help in illegal migration, OJ L 261.

132 Earlier proposals did not exclude the possibility of banning entry for victims of human trafficking. A number of UN human rights experts – primarily Special Rapporteurs – responded extremely critically to this. *UN Experts express concern about proposed EU Return Directive*, UN press release 18 July 2008.

133 Critical responses to this have already appeared from UN human rights experts: *UN Experts express concern about proposed EU Return Directive*, UN Press release 18 July 2008.

134 *Bulletin of Treaties* 2005, 197.

ments since 2005.<sup>135</sup> In June 2008 the European Council adopted a decision to transpose the most important provisions of the Prüm Convention into a decision of the European Union.<sup>136</sup> These provisions of the Prüm Convention (Schengen III) now apply throughout the EU.

### *Europol*

As of 1 January 2010, the current Europol agreement<sup>137</sup> will be replaced by the decision of the European Council establishing the European Police Office (Europol).<sup>138</sup>

### *Eurojust*

In December 2008 the Council of Ministers of the European Union adopted a decision on the strengthening of Eurojust with a view to strengthening the fight against serious crime.<sup>139</sup> This decision also relates to the prevention of human trafficking since Eurojust endeavours to assist national governments in this type of case.

The main priority with respect to human trafficking lies in improving the exchange of information. Member states should inform Eurojust of any cases (a) directly involving at least three member states, (b) in which requests for judicial cooperation have been transmitted to at least two member states and (c) when any of the following apply: there are factual indications that a criminal organisation is involved, the case has a serious cross-border dimension, or the case involves one of the following offences: human trafficking, sexual exploitation of children and child pornography.

Expansion of Eurojust's operational capacity, by establishing an on-call contact point for receiving requests for judicial cooperation, for example, is another important feature of the decision, which also expanded Eurojust's power and tasks. For example, a country's representatives at Eurojust can ask the national authorities to take measures justified for investigation or prosecution. The decision also refers to closer cooperation with national authorities and the European Judicial Network contact points. The decision provides for the establishment of a Eurojust national coordination system (ENCS) and, finally, the decision envisages

135 The treaty was concluded in May 2005 by the governments of the Netherlands, Belgium, Luxembourg, Germany and Austria. The Upper House of Parliament debated the Treaty of Prüm on intensification of cross-border cooperation in tackling terrorism, crime and illegal immigration in Europe (Schengen III) on 15 January 2008. The factions of GroenLinks and D66 maintained their objections, primarily concerning the protection of personal data, and noted their opposition to the act of approval of the Treaty of Prüm. The act of approval was adopted without a vote on 15 January 2008. By requesting a reservation, members could show that, if a vote had taken place on a bill, they would have voted against it. The act entered into force on 30 January 2008. The Dutch parliamentary debate is in fact separate from the decision making at European level.

136 Decision 2008/615/JHA of 23 June 2008 on intensification of cross-border cooperation, particularly to combat terrorism and transnational border crime, OJ L 210 (6 August 2008).

137 OJ C 316 of 27 November 1995.

138 Decision of the Council of 6 April 2009 establishing the European Police Office (Europol), OJ L 121 (15 May 2009), p. 37 et seq.

139 Decision 2009/426/JHA of the Council of 16 December 2008 on strengthening Eurojust and amending Decision 2002/187/JHA establishing Eurojust in order to strengthen the fight against serious forms of crime, OJ L 138 (4 June 2009).

enhancing the role and capacity of Eurojust by establishing closer relations with preferred partners (such as EUROPOL, OLAF, Frontex and Interpol) and non-member states.

### 3.4.9 Stockholm programme

The current long-term programme for EU policy on justice and home affairs, The Hague programme, runs from 2005 to the end of 2009. This programme refers to ten priorities designed to strengthen the scope of freedom, security and justice in the European Union, one of which is the development of a balanced migration policy. On the one hand, this encompasses action against illegal migration and human trafficking, and on the other, the drafting of a plan on legal migration.<sup>140</sup> Work has already started on the drafting of the justice and home affairs policy for the period from 2010 to 2014. Given the intention to adopt this long-term policy framework during Sweden's presidency of the EU, it is also referred to as the 'Stockholm programme'.

During the preparation of the Stockholm programme, the Netherlands has raised a number of points that it regards as highly relevant for tackling human trafficking at European level. These points include the need to optimise the exchange of information for the purposes of fighting crime, the use of administrative measures against organised crime in association with preventive measures and criminal sanctions – in the realisation that offences like human trafficking cannot be tackled through criminal law – and the operational implementation of both EU and regional priorities.<sup>140</sup>

The Swedish EU presidency has announced that it wants to give priority to the external dimension of EU cooperation in justice and home affairs issues.<sup>141</sup>

The EU's ambition is to launch an *Action-Oriented Programme* for the external dimension of human trafficking before the end of 2009. The Netherlands wants at least to create more coherency and coordination in the EU's external policy, *per se*.

Combating human trafficking remains a priority in the EU. The *EC Group of Experts* correctly feels that this priority should apply not only in the field of justice and home affairs, but also in the agendas of the ministries of social affairs and employment, foreign policy and development cooperation, equal opportunities and gender and public health.<sup>142</sup>

140 Action programme relating to the points the Netherlands will actively press for in the context of the preparation of the Stockholm programme 2010-2014, *Parliamentary Documents II* 2008/09, 23 490, no. 557.

141 Sweden is the EU president in the second half of 2009. On the occasion of the (third) European Anti-Human Trafficking Day, a conference was held in Brussels entitled 'Towards Global EU action against Trafficking in Human Beings'. The conclusions of this conference will provide input for the AOP.

142 Opinion No. 3/2009 of the Group of Experts on Trafficking in Human Beings set up by the European Commission – On the Anti-Trafficking Day, 16 June 2009.

### 3.5 Council of Europe

#### 3.5.1 Convention on Action against Trafficking in Human Beings (Warsaw Convention, 2005)

The Council of Europe's Convention on Action against Trafficking in Human Beings is the result of the negotiations of the *Comité Ad Hoc sur la lutte contre la Traite des Êtres Humains* (CAHTEH). The treaty was adopted by the Committee of Ministers on 3 May 2005 and opened for signature on 16 May 2005.<sup>143</sup> It entered into force on 1 February 2008 after it had been ratified by the requisite ten states, including at least eight member states of the Council of Europe. The convention has now been ratified by 26 states.<sup>144</sup>

The definition and punishment of human trafficking in the convention are based on the UN Protocol on human trafficking and the EU Framework Decision. Since the convention uses the same definition of human trafficking as the UN Protocol, after ratification the convention is also relevant on this point for the interpretation of the sanctions in article 273f of the Netherlands Criminal Code, implementing the Protocol and Framework Decision. Like the UN Protocol, the Council of Europe's convention also relates to human trafficking aimed at the removal of organs. The convention applies to all forms of human trafficking, national and transnational, and whether or not it is connected with organised crime (article 2).

The treaty has three objectives: (1) to prevent and combat human trafficking, while guaranteeing gender equality, (2) to protect the human rights of victims and to ensure effective investigation and prosecution, and (3) to promote international cooperation on action against human trafficking<sup>NRM5</sup>. The human-rights approach is an important perspective of the convention. According to the preamble, trafficking in human beings is a violation of human rights and an offence to the dignity and the integrity of the human being.

The Netherlands signed the treaty on 17 November 2005, but has not yet ratified it.<sup>145</sup> The bill for the Approval of the Council of Europe Convention on Action against Trafficking in Human Beings adopted in Warsaw on 16 May 2005 was published in April 2008 and passed by the Lower House of Parliament in November 2008. It had already been established that the convention would not require the amendment of any legislation since the Netherlands already complies with the obligations in the treaty.

However, given the nature of the crime of human trafficking, the government later proposed adopting the maximum scope of protection afforded by the convention. Article 31 of the convention regulates the question of jurisdiction over human trafficking. By virtue of article 45

143 *Bulletin of Treaties* 2006, 99.

144 Situation on 11 September 2009, the states that are now party to the treaty are Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Latvia, Luxembourg, Malta, Moldavia, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Spain, Macedonia, the United Kingdom and Slovenia. 16 countries have signed the Treaty (but are not yet parties to it): Andorra, Finland, Germany, Greece, Hungary, Iceland, Italy, Ireland, Lithuania, the Netherlands San Marino, Slovenia, Sweden, Switzerland, Turkey and Ukraine.

145 See *Parliamentary Documents II* 2008/09, 31 429 (R1855).



of the convention, the Netherlands can make a reservation to this provision, but it will not do so in view of the nature and seriousness of the offence of human trafficking.<sup>146</sup> For this reason, it was proposed that, in accordance with the convention,<sup>147</sup> the jurisdiction over the offences defined in the convention would be expanded on three points (see Chapter 2).<sup>148</sup> This proposed legal amendment regarding the expansion of jurisdiction meant that tacit (and earlier) ratification was no longer possible.

### 3.5.2 GRETA (Group of Experts on Action against Trafficking in Human Beings)

The Convention on Trafficking in Human Beings has a dual supervision mechanism consisting of a group of independent experts, the so-called *Group of Experts on Action against Trafficking in Human Beings* (GRETA) and the Committee of the Parties (the Committee). GRETA is a unique instrument in terms of international documents relating to human trafficking<sup>NRM5</sup>. The intention is that GRETA, on the basis of information that member states are obliged to provide under the convention, will analyse the implementation of the treaty by the member states and make recommendations on how to address any shortcomings it identifies. The reports it produces after giving a right of reply are made public.

On the basis of GRETA's reports and conclusions, the Committee can then make recommendations to a state. The treaty does not lay down a procedure for compelling enforcement of the recommendations. The Committee of the Parties consists of representatives of the Committee of Ministers of the Council of Europe from the states that are party to the treaty and representatives of states that are party to the treaty but not members of the Council of Europe.<sup>149</sup> It is therefore an intergovernmental political body. Meetings of the Committee can be requested by one-third of the parties, by the Secretary General of the Council of Europe or by the President of GRETA. The Committee met for the first time in December

146 *Parliamentary Documents II 2007/08*, 31 429 (R1855), no. 3, p. 15: 'Human trafficking is a very serious crime, which is often committed in the context of organised and transnational crime. It deeply affects the lives of its victims. Human trafficking seriously shocks our legal system and there is a great deal of consensus in the international community about the need to criminalise and effectively prosecute it.'

147 Article 31, paragraph 1 under a to c require the establishment of jurisdiction when the offence occurs on a country's own territory or onboard a country's own ship or aircraft (articles 2 and 3 of the Dutch Criminal Code). Article 31, section 1 under d requires the establishment of jurisdiction for offences committed outside the country itself by a subject or a stateless person who is permanently resident in that country, if the offence is a punishable offence under the law of the place where the offence or the offences were committed or the offence is committed outside the jurisdiction of any state. Article 31, section 1 under e requires the establishment of jurisdiction for offences committed against a country's own nationals.

148 *Parliamentary Documents II 2007/08*, 31 429, no. 3: Partial amendment of the Netherlands Criminal Code, the Code of Criminal Procedure and several related laws in connection with legal developments, international obligations and observed technical defects and gaps. *Parliamentary Documents II 2007/08*, proposal for law, 32 391 no. 2: Partial amendment of the Netherlands Criminal Code, the Code of Criminal Procedure and several related laws in connection with legal developments, international obligations and observed defects and gaps in the law. *Parliamentary Documents I 2008/09*, amended bill, 31 291, A (16 June 2009).

149 The Committee was chaired for the first year (until December 2009) by P. Elferts (Latvia) and B. Gain (France) was appointed vice-chairperson.



2008, within one year of the entry into force of the treaty, when one of its tasks was to elect the members of GRETA.<sup>150</sup>

The text of the convention does not allow nationals of states that are not party to the treaty to be members of GRETA;<sup>151</sup> however, GRETA's members are appointed as independent experts.<sup>152</sup>

GRETA currently has thirteen members who have been appointed for a period of four years.<sup>153</sup> The members of the group were appointed to create a balance in terms of gender, geographic distribution and multidisciplinary expertise.<sup>154</sup> The group's members also represent the most important legal systems and no two members are nationals of the same state.<sup>155</sup>

GRETA met for the first time in Strasbourg in February 2009.<sup>156</sup> The intention is that GRETA will submit an annual report on its activities to the Committee of the Parties and the Committee of Ministers of the Council of Europe. These annual reports will be published.<sup>157</sup>

Meanwhile, the Trafficking Information Management System (TIMS) has also been established to provide technical support for GRETA, to ensure that information from governments, NGOs and others is collected efficiently, for example, and that the information can be analysed and reported on.<sup>158</sup>

150 The election of the members of GRETA was based on *Resolution CM/Res(2008)7 on rules on the election procedure of the member of the Group of Experts on Action against Trafficking in Human Beings (GRETA)*. During the first meeting of the Committee in December 2008, the *Rules of procedure of the Committee of the Parties* were adopted, THB-CP(2008)2, 5 December 2008.

151 Article 36, paragraph 2: 'GRETA shall be composed up of a minimum of 10 and a maximum of 15 members, taking into account a gender and geographic balance, as well as a multidisciplinary expertise. They shall be elected, for a term of office of 4 years, renewable once, by the Committee of the Parties from amongst nationals of the States Parties to this Treaty.'

152 The importance of independence and impartiality was also correctly stressed by NGOs. See Anti-Slavery, La Strada and Amnesty International: Council of Europe Convention against Trafficking: Call for the election of independent experts of the highest calibre to monitor implementation, AI Index No.: IOR 61/010/2008, 2 December 2008.

153 The following members were elected to serve from 1 January 2009: V. Banova (Bulgaria), L. Calleja (Malta), J. Christodoulou (Cyprus), D. Derencinovic (Croatia), v. Gilca (Moldavia), H.S. Greve (Norway), N. Le Coz (France), A. Malangone (Slovakia), N. Rasmussen (Denmark), L.M. Rodrigues (Portugal), G. Shahinian (Armenia), R. Stratoberdha (Albania) and D.-F. Tudorache (Romania).

154 See article 36, paragraph 2 of the Treaty.

155 See article 36, paragraph 3 of the Treaty.

156 See List of items discussed and decisions taken, 1<sup>st</sup> Meeting of GRETA, THB-GRETA(2009)LD1, 27 February 2009. H.S. Greve was elected as chairperson for a period of two years, N. Le Coz as first vice-chairperson and G. Shahinian as second vice-chairperson. The following meetings were held in June, September and December 2009.

157 Rule 26 of the Internal Rules of Procedure of GRETA, THB-GRETA(2009)LD1, Appendix III.

158 TIMS consists of representatives of the Information Technology Department, Gender Equality and Anti-Trafficking Division and other departments of the Directorate General of Human Rights and Legal Affairs.

### 3.5.3 Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Convention, 2007)

The Convention on the protection of children against sexual exploitation and sexual abuse was adopted in Lanzarote and opened for signature on 25 October 2007.<sup>159</sup> The Netherlands signed the convention at that time. The proposal for a law approving this convention was submitted to parliament on 9 December 2008.<sup>160</sup> The treaty will enter into force as soon as it is ratified by five states, including at least three member states of the Council of Europe.<sup>161</sup> The convention has been signed by 36 states and ratified by Greece and Albania.<sup>162</sup> The Netherlands has not yet ratified the treaty, although it has already announced that it will not avail itself of reservations that can be made at the time of ratification.<sup>163</sup>

#### *Content of the convention*

The convention has three objectives: (1) to prevent and combat sexual exploitation and abuse of children, (2) to protect the rights of child victims of sexual exploitation and abuse, and (3) to promote national and international cooperation against the sexual exploitation and abuse of children. Like the Council of Europe’s Convention on Action against Trafficking in Human Beings, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse is comprehensive and multidisciplinary, relating to the protection of children in the widest sense. Apart from provisions on punishment and sanctions, the treaty includes preventive and protective measures, procedural rules, interventions and measures relating to national coordination and international cooperation.

The treaty defines a ‘child’ as any person under the age of 18, which is the conventional international definition. ‘Victim’ is used in the treaty to cover any child that is subject to sexual exploitation or sexual abuse.

#### *Relevant international instruments*

The Lanzarote Convention is based in part on existing agreements in this field. The Explanatory Report<sup>164</sup> explicitly refers in this context to the UN Convention on the Rights of the Child (1989)<sup>165</sup> and the Optional Protocol to that convention (2000) on the sale of children, child prostitution and child pornography<sup>166</sup>, the UN Protocol on human trafficking (2000),<sup>167</sup>

159 *Bulletin of Treaties* 2008, 58.

160 *Parliamentary Documents II* 2008/09, 31 808 (R 1872), no. 1 and no. 2.

161 Article 45, paragraph 3 of the Treaty.

162 Situation as of 11 September 2009.

163 *Parliamentary Documents II* 2008/09, 31 808 no. 3, p. 3.

164 *Parliamentary Documents II* 2008/09, 31 808 no. 3 (Explanatory Memorandum), p. 2.

165 Convention on the Rights of the Child (New York, 20 November 1989), *Bulletin of Treaties* 1990, 46 and 17.

166 Optional Protocol on the sale of children, child prostitution and child pornography to the Convention on the Rights of the Child (New York, 25 May 2000), *Bulletin of Treaties* 2001, 63 and 130.

167 Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (New York, 15 November 2000), *Bulletin of Treaties* 2001, 69 and 2004, 35.

and the ILO Convention on the elimination of the worst forms of child labour (1999).<sup>168</sup> A number of EU framework decisions are relevant, such as the Framework Decision on combating the sexual exploitation of children and child pornography (2003),<sup>169</sup> the Framework Decision on the standing of victims in criminal proceedings (2001)<sup>170</sup> and the Framework Decision on combating trafficking in human beings (2002).<sup>171</sup> Finally, earlier conventions of the Council of Europe are also relevant because they provide binding instruments in related areas. These are the *Convention on Cybercrime* 2001<sup>172</sup> and the Convention on Action against Trafficking in Human Beings (2005).<sup>173</sup>

In a number of respects the Lanzarote Convention goes further than these instruments, by including a number of new criminal provisions, more extensive provisions on jurisdiction to combat child sex tourism and provisions relating to intervention programmes and measures targeted at perpetrators.<sup>174</sup> Whereas other international instruments concentrate mainly on sexual exploitation of children – with the emphasis, according to the Explanatory Report, on a commercial component (child prostitution, child pornography and child trafficking) – the Lanzarote Convention encompasses sexual abuse, per se, in addition to exploitation. In the explanatory memorandum to the bill approving the convention, the government stated that sexual exploitation and sexual abuse are serious forms of child abuse. The protection of children against them is an integral part of the general approach to preventing child abuse. For the full range of facilities and measures that are being undertaken in the Netherlands in this area, see the Action Plan against Child Abuse.<sup>175</sup>

#### *Reporting suspicions of sexual exploitation or sexual abuse*

Article 12 of the Convention provides that states must take legislative or other measures to ensure that rules of professional confidentiality do not constitute an obstacle to the possibility of certain professionals, who work in contact with children, reporting to the authorities responsible for protecting children any situation in which they have reasonable grounds for assuming that a child is the victim of sexual exploitation or sexual abuse. The explanatory memorandum states that there are no legal restrictions in the Netherlands to prevent a person, even a person who falls under a code of professional confidentiality, from reporting a reasonable suspicion of sexual exploitation or sexual abuse.

168 Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Geneva, 17 June 1999), *Bulletin of Treaties* 2001, 61 and 2004, 35.

169 Framework Decision 2004/68/JHA, 22 December 2003, OJ L 13.

170 Framework Decision 2001/220/JHA, 15 March 2001, OJ L 82.

171 Framework Decision 2002/629/JHA, 19 July 2002, OJ L 203.

172 Budapest, 23 November 2001, *Bulletin of Treaties* 2002, 18 and 2004, 290.

173 Warsaw, 16 May 2005, *Bulletin of Treaties* 2006, 99.

174 Explanatory Memorandum, *Parliamentary Documents II* 2007/08, 31 808 no. 3, p. 3.

175 *Parliamentary Documents II* 2006/07, 31 015, no. 16. The additional measures, from 2006, to the National Human Trafficking Action Plan are however not mentioned here.

*Criminalisation*

Article 18 of the Convention requires that sexual abuse of children must be made a criminal offence. In the first place, engaging in sexual activities with a child who has not reached the age of sexual consent is made a criminal offence. These are children that, according to national law, have not yet reached the legal age for sexual activities. In Dutch law a child reaches the age of sexual consent at 16.<sup>176</sup> Article 18, section 3 of the Convention in fact provides that this criminalisation is not intended to apply to voluntary sexual acts between minors. Secondly, on the grounds of this provision engaging in sexual activities with a child (any person under the age of 18) is a criminal offence if it is accompanied by the use of coercion, violence or threats, involves abuse of trust or dominance or abuse of the exceptionally vulnerable position of the child or a situation of dependency.<sup>177</sup>

Article 19 of the Convention requires states to criminalise certain intentional conduct relating to child prostitution, such as recruiting a child for prostitution, coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes. These actions are made criminal offences in article 273f, section 1, under 3, 5, 6 and 8 of the Dutch Criminal Code. Article 19 also requires states to make it a criminal offence to have recourse to child prostitution, which the Explanatory Report to the Convention<sup>178</sup> defines as ‘making use of the services of a child prostitute’. This action is made a criminal offence in the Netherlands in articles 247 and 248b of the Dutch Criminal Code. The convention defines ‘child prostitution’ as the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless of whether this promise, payment or consideration is made to the child or a third person.<sup>179</sup> Payment, promise or compensation can also cover supplying narcotics or providing food or shelter.<sup>180</sup>

Article 20 of the Convention contains obligations on states to criminalise a number of intentional actions relating to child pornography. Some of these acts are defined in more or less the same terms as in other international instruments, such as the production, offering, distribution, procurement and possession of child pornography. Article 240b of the Dutch Criminal Code makes these actions criminal offences. However, Article 20, section 1 under f of the Convention contains a new provision requiring states to make knowingly obtaining access to child pornography through information and communication technologies a criminal offence.<sup>181</sup>

Article 21 of the Convention obliges states to make intentional conduct relating to the performance of children in pornographic performances a criminal offence. This refers to recruiting or coercing a child to participate in such performances, profiting or otherwise deriving benefit from it, otherwise exploiting a child for such purposes and knowingly attending pornographic performances in which children participate. These actions are made criminal offences in articles 248c and 273f of the Dutch Criminal Code.

Article 22 of the Convention provides that states must criminalise the intentional causing of a child to witness sexual abuse or sexual activities for sexual purposes (the corruption of children). It is not required that the child has participated in the sexual activities. This is a new criminal offence compared with existing international instruments. The aim of this provision is to protect children against harmful influences on their personal and sexual development and

176 Because the statutory age of sexual majority varies greatly in the various member states of the Council of Europe (from 13 to 17 years), the Convention gives the member states freedom to determine this age themselves, *Parliamentary Documents II* 2008/09, 31 808 (R1872), no. 3, p. 10.

177 Article 18, paragraph 1 under b of the Convention.

178 <http://conventions.coe.int/Treaty/EN/Reports/Html/201.htm>.

179 Article 19, paragraph 2 of the Treaty.

180 *Parliamentary Documents II* 1008/09, 31 808 (R1872), no. 3, p. 11.

181 It is possible for states to make a reservation to this article, article 20, paragraph 4 of the Convention.

relates in particular to conduct that is intended to make a child susceptible to sexual exploitation or sexual abuse. This will require additional legislation in the Netherlands.

Article 23 of the Convention, finally, requires states to criminalise ‘grooming’, the act of intentionally approaching children for sexual purposes. The Convention defines it as the intentional proposal by an adult, on Internet sites or chatrooms, to meet a child beneath the age of sexual consent with the ultimate aim of sexually abusing that child. The perpetrator’s conduct must specifically involve a proposal for a meeting with the child followed by a specific act designed to bring about that meeting, according to the Explanatory Report. The simple fact that an adult approaches and communicates with a child on the internet, regardless of the intent and the content of the communication, falls outside the scope of the offence. In some cases, but not all, persons can be prosecuted in the Netherlands for grooming on the basis of article 248a of the Dutch Criminal Code.

A number of the obligations to criminalise conduct included in this convention will therefore require the Netherlands to amend its legislation on these points. The amendment are included in a bill to implement the Lanzarote Convention that was sent to the Lower House of Parliament in December 2008 (see Chapter 2).<sup>182</sup>

#### *Aggravating circumstances*

The Convention does not require judges to apply these aggravating circumstances, but on the grounds of article 28 of the Convention, in determining the sentence, judges must be allowed by national legislation to take a number of aggravating circumstances into account. The aggravating circumstances set out in the Convention are that the offence seriously damaged the physical and mental health of the victim, the offence was preceded by or accompanied by acts of torture or serious violence or the offence was committed against a particularly vulnerable victim.<sup>183</sup> The provision also covers the fact that the offence was committed by a family member, a person cohabiting with the child or a person who has abused his or her authority. The fact that the offence was committed by several people acting together or in the framework of a criminal organisation and where the perpetrator has committed similar offences in the past are other aggravating circumstances that a national judge should be able to take into account.

An important provision is that in determining the sanction, states must also make it possible to take into account final sentences that have been imposed in another member state for similar offences.<sup>184</sup>

<sup>182</sup> *Parliamentary Documents II* 1008/09, 31 810, no. 1 and 2.

<sup>183</sup> Examples of vulnerability are given in the Explanatory Report, such as children who are physically, mentally or socially handicapped, children without parental care (street children or single underage aliens), very young children or children under the influence of drugs or alcohol.

<sup>184</sup> Article 29 of the Convention. See also EU Framework Decision on the exchange of information extracted from criminal records, 22 December 2005, COM(2005)690. This Framework Decision obliges the member states to ensure that a final sentencing rendered in another member state can have consequences that are equivalent to the consequences that can be attached to an earlier conviction in the country itself. The Framework Decision was adopted on 26 February 2009 during the meeting of the Council of Ministers of Justice and Home Affairs

*Jurisdiction*

The Convention requires states to establish jurisdiction for offences that are committed in their own territory or on board a ship or aircraft of that country or when the offence is committed by one of its nationals or residents.<sup>185</sup> The Netherlands complies with these provisions on jurisdiction, which, according to the Explanatory Report, are mainly intended to combat sex tourism.<sup>186</sup> Article 25, section 2 of the Convention says that states should endeavour to establish jurisdiction over offences committed abroad against their own nationals and residents. The explanatory memorandum states that the Netherlands has no general rule for extraterritorial jurisdiction over offences committed against Dutch victims.<sup>187</sup> In view of its nature and seriousness, the government has submitted a bill to expand the existing Dutch rules of jurisdiction with respect to this offence, for example with respect to Dutch victims.<sup>188</sup>

*Monitoring mechanism*

The Convention creates a mechanism for monitoring the effective implementation of its provisions in the form of a Committee of Parties.<sup>189</sup> The committee has less extensive powers to monitor compliance than those laid down in the Council of Europe's Convention on Action against Trafficking in Human Beings (2005), since that convention has a dual monitoring mechanism, including GRETA, which is made up of independent experts (see § 3.5.2).

**3.5.4 Resolution of the Parliamentary Assembly**

In 2007, the Council of Europe's Parliamentary Assembly adopted a resolution on prostitution<sup>190</sup> in which it condemned coerced prostitution and human trafficking as modern slavery and as one of the most serious violations of human rights in contemporary Europe. Member states of the Council of Europe were called on to ratify the Convention on Action against Trafficking in Human Beings. The Assembly also recommended that the European Community should accede to the Convention as soon as possible and that GRETA should be provided with all the necessary resources to allow it to operate independently and efficiently as soon as the Convention enters into force.

The Assembly recommended that every member state should prohibit prostitution by people under the age of 18 since prostitution by minors cannot be regarded as voluntary (the consent of a minor is after all irrelevant). It said the approach to the problem should correspond with the approach in the Council of Europe's Convention on Action against Trafficking in Human Beings (2005) that all minors should be regarded as victims and must be protected accordingly; they should not be prosecuted. There should be an active policy to prosecute clients of underage prostitutes.

185 Article 25, paragraph 1 under a to e, inclusive.

186 See articles 2, 3, 5 and 5a of the Dutch Criminal Code.

187 See implementing legislation cited in *Parliamentary Documents II* 2008/09, 31 808, no. 5, p. 9.

188 31808 (R1872), no. 3, p. 14.

189 Article 39 of the Lanzarote Convention.

190 Resolution 1579 (4 October 2007), Prostitution – Which stance to take?



The resolution is mainly concerned with the policy towards voluntary prostitution by adults. The Assembly observed that this policy varies greatly in the 47 member states. According to the Assembly, roughly one-third of the countries pursue a policy that bans prostitution and criminalises both prostitutes and pimps (not necessarily clients) – the prohibitionist approach. A minority of countries (nine, according to the PA) pursue a policy of regulating prostitution. Twenty of the countries pursue a policy that could be described as abolitionist, meaning that their aim is to abolish prostitution by punishing pimps. Sweden, which has gone a step further by also criminalising clients of prostitutes, was explicitly mentioned in this context.<sup>191</sup> The Assembly argued that the problem is that in many countries, particularly where prostitution is banned but also to some extent in abolitionist countries, prostitution is forced underground. Consequently, organised crime is more likely than not to be involved and prostitutes are more vulnerable.

The Parliamentary Assembly points out that international organisations, such as the WHO, have abandoned moralistic approaches and opted instead for a more pragmatic attitude. The Assembly does not recommend a particular policy but does feel that an explicit policy should be formulated, one that avoids double standards<sup>192</sup> and prevents prostitutes going underground or falling under the influence of pimps. Countries should instead strengthen the position of prostitutes, particularly by not criminalising and punishing them and by developing programmes that (1) help them leave the profession if they want to, address, (2) address the personal weaknesses of prostitutes (for example, mental problems, child abuse, drug abuse), and (3) address structural problems (poverty, political instability or war, gender inequality, lack of education). If necessary, this should also be done in countries of origin to prevent people being forced into prostitution due to their circumstances. The policy should ensure that prostitutes have access to safe sex and sufficient independence to insist on this with clients and should strengthen the position of prostitutes by respecting their right, if they voluntarily choose to work as prostitutes, to have a say in policies relevant to them at national, regional and local level.

In its reaction, the Committee of Ministers endorsed the view that the EU should ratify the Convention on Action against Trafficking in Human Beings (2005) and that prostitution by minors can never be voluntary, referring in that context to the Convention of Lanzarote (2007).<sup>193</sup> As regards voluntary prostitution involving adults, like the Assembly the Committee observed that policies on prostitution vary greatly in the 47 member states of the Council of Europe and that formulating a common policy on this subject will be difficult at the present time. In light of the major human rights implications of prostitution, the Committee instructed the *European Committee on Crime Problems* (CDPC) to carry out a study into the

191 Also in Norway as of 1 January 2009.

192 Resolution 1579 (4 October 2007), para. 8: *'The prohibitionist and abolitionist approaches furthermore have the disadvantage of enshrining a certain double standard. In many countries applying these approaches, for example, paid sex itself is not prohibited, but offering paid sex is. The height of the hypocrisy is that even where prostitutes are sanctioned, clients are not.'*

193 Reply from the Committee of Ministers adopted at the 1029<sup>th</sup> meeting of Ministers' Deputies (11 June 2008), on Prostitution – Which stance to take? Recommendations 1815 (2007), Doc. 11641, 17 June 2008.

feasibility of formulating a common policy on prostitution. At the time of writing, it was not yet known when the findings of that study could be expected.

### 3.5.5 Commissioner for Human Rights

In addition to human rights in general and other specific issues, the *Commissioner for Human Rights* continues to systematically raise the question of human trafficking during his visits to member states of the Council of Europe and his reports on them. The purpose of the visits is to assess the human rights situation in the country concerned in relation to international standards. In his reports, the Commissioner stresses that human trafficking is a serious and complex human rights problem with a distinct international dimension. He devotes particular attention to criminal law, effective implementation of national action plans (where they exist), the facilities for victims and the protection of victims, with special attention to children.

The Commissioner for Human Rights visited the Netherlands in 2008. His report on (the protection of) human rights in the Netherlands following this visit contained a number of recommendations for measures against human trafficking.<sup>194</sup> The Commissioner first recommended ratifying the Convention on action against Trafficking in Human Beings and defining the term ‘labour exploitation’ more precisely in article 273f of the Dutch Criminal Code. The government’s view on the latter recommendation is that the interpretation and scope of article 273f of the Dutch Criminal Code on ‘other forms of exploitation’ will develop in legal practice and that it is inappropriate to propose separate legislation on labour exploitation at the present time.<sup>195</sup> Secondly, the Commissioner recommended improvements in measures to identify victims quickly to avoid victims of human trafficking being detained in aliens detention. Young victims should also be given the benefit of the doubt when it is difficult to establish whether they are minors or not. The government said in its reaction that the Netherlands already follows the recommended procedure where it cannot be established with certainty that a person is a minor, since persons falling into this category are offered the B9 procedure, which makes no distinction by age. With respect to detaining victims in aliens detention, the government said this must be avoided where possible. It pointed out that when indications are missed or aliens only say that they are victims after being detained, they can still be interviewed while in custody. ‘If the police and the public prosecution service conclude that the person is a victim and the victim avails of the reflection period or makes a complaint to the police, the grounds for detention lapse and it is lifted’.

A third recommendation concerned the provision of shelter for victims. According to the Commissioner, the capacity in terms of specialist shelter must be increased. Municipalities should also be given adequate support in efforts to tackle human trafficking.

194 *Parliamentary Documents II* 2008/09, 31 700 V, no. 85

195 *Parliamentary Documents II* 2008/09, 31 700 V, no. 95, pp. 8-9.



### 3.5.6 Campaigns and other activities

The meeting of heads of state and government leaders of the member states of the Council of Europe in 2005, at which adopted the Convention on Action against Trafficking in Human Beings was adopted, also agreed to the *Action Plan*<sup>NRM5.196</sup>. As part of the Action Plan, in 2006 the Council of Europe started the two-year *Campaign to combat trafficking in human beings*<sup>NRM5.197</sup>. The campaign has two objectives: the first is to increase the awareness among governments, NGOs and the public of the scale of human trafficking in Europe; the second is to encourage as many states as possible to sign and ratify the Convention on Action against Trafficking in Human Beings. To this end, the Council of Europe organised regional seminars that were attended by 41 member states.<sup>198</sup> One element of the publicity campaign for the general public was a strip cartoon for young people entitled *You're not for sale*, which appeared in 16 languages. Other important steps taken by the Council of Europe were a study into the abuse of the internet to recruit victims<sup>199</sup> and the publication of a *Handbook for parliamentarians on the Council of Europe Convention on Action against Trafficking in Human Beings*. Under the slogan *Human being – not for sale*, this campaign ran until the Convention entered into force in February 2008.

## 3.6 OSCE

### 3.6.1 Evaluation of progress with national action plans, coordination structures and reporting mechanisms

In 2006, the OSCE's Special Representative and Co-ordinator for Combating Trafficking in Human Beings (*Special Representative*) published the report *From policy to practice: Combating trafficking in human beings in the OSCE region*.<sup>200</sup> The report contained a survey of how different member states had implemented the OSCE's action plan from 2003.<sup>201</sup> On the basis of the conclusions in this report, in 2007 it was decided to evaluate the progress being made in producing national action plans and establishing national coordination structures

196 CM(2005)80 final, 17 May 2005.

197 Resolution 210 (12006) on the Council of Europe campaign to combat trafficking in human beings.

198 These seminars took place in Bucharest, Riga, Rome, Oslo, Athens, Nicosia, Berlin, Yerevan, Paris, Belgrade and London. Seminars also took place in the South Caucasus region, which were attended by Armenia, Azerbaijan and Georgia as well as Turkey (February 2008); in the form of bilateral cooperation with Montenegro (April 2006 and July 2007) and the Russian Federation (November 2006); in Strasbourg with a view to the entry into force of the Convention on Action against Trafficking in Human Beings, and the monitoring mechanisms of the Convention, GRETA (November 2007), and during the Spanish presidency of the Council of Europe in Madrid (December 2008).

199 *Trafficking in human beings: Internet recruitment of victims of trafficking in human beings* (2007), available via [www.coe.int/trafficking](http://www.coe.int/trafficking).

200 SEC.GAL/152/06, 26 September 2006. Since 19 October 2006 Eva Biaudet has been Special Representative and Coordinator on Combating Trafficking in Human Beings.

201 OSCE Action Plan to Combat Trafficking in Human Beings, PC. Dec/557, 24 July 2003. See also Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings, PC. Dec/685, 7 July 2005.

and national reporting mechanisms.<sup>202</sup> The Special Representative circulated a questionnaire receiving 40 responses from OSCE member states and four from partner countries<sup>203</sup> of the OSCE.<sup>204</sup> The results were presented in the annual report for 2008<sup>205</sup> and formed the basis for a number of recommendations for increasing the capacity of national coordination mechanisms and improving national action plans and national rapporteurs or equivalent agencies. For example, the Special Representative said that states should continue to encourage and facilitate the participation of and input from NGOs and other members of civil society in the work of the national coordination mechanisms and national rapporteurs or equivalent mechanisms and the formulation of national action plans. National action plans should also promote coordination and/or cooperation at every level of government. National rapporteurs or equivalent mechanisms should share best practices and compare and study findings to generate insights that could promote transnational cooperation and coordination. In this context, it was also recommended that participating states should provide relevant documents concerning action against human trafficking for the ODIHR website.<sup>206</sup> One general recommendation was that participating states should ensure that their coordinating mechanisms and national rapporteurs or equivalent mechanisms are adequately financed and staffed. The activities of these bodies should encompass all forms of human trafficking, not only exploitation in the sex industry but also in other sectors and human trafficking with a view to organ removal. Reports by national rapporteurs should be used to regularly review and amend measures in national action plans and to adopt and improve measures.

*National coordination mechanisms*

The response to the questionnaire showed variation in the structures of national coordination mechanisms. At least 58% of the member states and partner countries have such a mechanism. These agencies are usually managed by ministries from a perspective of (criminal) law enforcement or immigration: a Ministry of Justice or a Ministry of Home Affairs. Only a few countries directed the coordination of the approach to human trafficking primarily from the perspective of the victims. According to many states (66.7%), a lack of funds affected the work of national coordination mechanisms. Many mechanisms have little or no funding to support their efforts to prevent human trafficking.

202 The priorities set by the Special Representative for 2007 were 1. to encourage action at the national level and the establishment of national structures to combat human trafficking; 2. to promote evidence-based policy and programs; 3. to increase efforts to prevent human trafficking; 4. to give priority to actions against child trafficking; 5. to address all forms of human trafficking; and 6. to promote effective help for victims and access to the court for all victims, 2007, *A Platform for Action*, Annual Report of the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings presented at the Permanent Council Meeting, 22 November 2007.

203 Israel, Japan, Jordan and Thailand.

204 The questionnaire was sent to 56 member states of the OSCE and to 11 partner countries. 34.4% of the countries did not respond to the questionnaire.

205 *Efforts to Combat Trafficking in Human Beings in the OSCE Area: Coordination and Reporting Mechanisms*, 2008 Annual Report of the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings presented at the Permanent Council Meeting, 13 November 2008.

206 See [www.legislationline.org](http://www.legislationline.org).

Of the states that have a national coordination mechanism, 48.7% said that they have a national working group, committee or task force, and 46.2% also have a national coordinator. More than half (61.5%) of the respondents said that civil society plays a role in national coordination. This sometimes takes the form of membership of the coordination mechanism and, sometimes, formal consultation. This corresponds with earlier recommendations, for example by the OSCE, to establish a *National Referral Mechanism*. The report says that a recent trend has been to formalise these working relations between authorities and social workers, although this subject was not included in the questionnaire. Less than a third of the states (30.8%) said that civil society is not involved in the relevant mechanism, although coordination mechanisms in some countries use other methods to secure input from and the participation of NGOs.

#### *National action plans*

National action plans are used to plan (policy) actions against human trafficking in a systematic, organised and coordinated manner. Most states (53.7%) said that they have an action plan or similar coordinated policy, while more than 10% of the respondents said they did not, including several that are very active in fighting human trafficking. Almost all of the states with a formal action plan said that their national policy plan encompasses the following themes: legislation, prevention, protection of and help for victims, investigation and prosecution, international cooperation and the role and responsibilities of various relevant agencies. Most national action plans contain timetables for monitoring progress in implementing the planned measures.

#### *National rapporteurs or similar mechanisms*

According to the OSCE annual report 2008, national rapporteurs or similar mechanisms should help states to collect quantitative and qualitative data, analyse this information and report on it to improve measures against human trafficking. A total of 26 (38.8%) of the member states and partner countries said that they have a national rapporteur or similar mechanism, while 23.9% of the states reported they did not.

In response to this report the EU said that it shared the Special Representative's concerns about all forms of human trafficking, particularly in view of the limited extent to which victims are identified and the small number of human traffickers that are convicted. The EU is convinced that it would be useful for every state to have a dedicated coordination and reporting mechanism and endorsed the recommendations in the OSCE report.<sup>207</sup> The Czech Republic, as president of the EU in the first half of 2009, then organised a conference on this subject.<sup>208</sup> On the basis of another questionnaire, the Czech presidency developed a website with information about national rapporteurs on human trafficking in the EU member states.<sup>209</sup>

207 Statement by the European Union at the 739<sup>th</sup> Meeting of the OSCE Permanent Council – In response to the report by the Special Representative and Coordinator for Combating Trafficking in Human Beings PC.DEL/972/08, 13 November 2008. Turkey, Croatia and the former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Montenegro and Serbia. Iceland and Lichtenstein, Ukraine, Moldavia and Armenia supported this declaration.

208 *Joint analysis, Joint Action* - Conference of EU National Rapporteurs on Trafficking in Human Beings, Prague, 30-31 March 2009.

209 See [www.national-rapporteurs.eu](http://www.national-rapporteurs.eu).

In connection with the EU Anti-Human Trafficking Day, the Special Representative issued a statement on behalf of the AECT<sup>210</sup> on the importance of national rapporteurs and equivalent mechanisms.<sup>211</sup>

### 3.6.2 Decisions of the Permanent Council

In one of its Decisions in 2007, the OSCE's Permanent Council urged ratification of the UN Convention against organised crime and called on states to share information about implementation of this convention and to facilitate communication on it with the UNODC.<sup>212</sup> The Permanent Council also called on states to establish effective central authorities to receive, implement and pass on requests for legal assistance in accordance with the UN convention, to participate actively in UNODC technical working groups on mutual legal assistance and, where possible, to cooperate. In 2008, the Permanent Council decided that one of the topics to be addressed at the 2008 *Human Dimension Implementation Meeting* should be the focus on the identification of, help for and access to the courts for victims of human trafficking.<sup>213</sup>

### 3.6.3 Decisions of the Ministerial Council

The annual Ministerial Council of the OSCE published a *Decision on Combating Labour Trafficking* in 2007.<sup>214</sup> This document contains recommendations to the member states relating to human trafficking in sectors other than the sex industry. The recommendations cover subjects such as access to courts and the identification of and help for victims. The Council also called on member states to establish effective and proportionate sanctions for anyone who facilitates human trafficking, including employers who exploit workers, and to consider holding contractors criminally responsible if they consciously make use of subcontractors that are involved in human trafficking. States are also called on to create the possibility for victims not to be punished for involvement in illegal activities in so far as they are forced to perform them (non-punishment clause). The Decision also suggests expanding or strengthening legislation to offer victims of human trafficking the possibility of securing compensation, including back payment of wages, where appropriate.

210 OSCE/ODHIR, UNICEF, ICMPE, IOM, ILO, Interpol, NRM, Nexus Institute, Anti-Slavery International, ECPAT, La Strada International Terre des Hommes International Federation and Save the Children. The IFRC supports the aim of the declaration although this organisation is not formally able to sign it.

211 Alliance Statement on National Rapporteur or Equivalent Mechanism, Presented by the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings on behalf of the Alliance Expert Coordination Team (AECT), 16 October 2008.

212 Permanent Council, Decision No. 810 Implementation of the United Nations Convention against Transnational Organised Crime, 689<sup>th</sup> Plenary Meeting, PC.DEC/810, 22 November 2007.

213 Permanent Council, Decision No. 842 Topics for the Second Part of the Human Decision Dimension Implementation Meeting, 706<sup>th</sup> Plenary Meeting, PC.DEC/842, 13 March 2008. The other subjects were education and awareness raising to promote human rights, and freedom of religion or conviction.

214 Ministerial Council, Madrid 2007, MC.DEC/8/07, 30 November 2007.

One of the decisions made at the OSCE Ministerial Council<sup>215</sup> in 2008 was to intensify action against human trafficking. For example, it published the *Decision on Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach*.<sup>216</sup> This document appeared after the OSCE conference *Successful Prosecution of Human Trafficking: Challenges and Good Practices*.<sup>217</sup>

This Decision encourages states, in so far as they do not already do so, to criminalise human trafficking in their national legislation and to ensure that criminals do not avoid punishment. Training on human trafficking should be included in the curricula for police and the relevant authorities in national prosecution agencies and the judiciary should receive specialist training. States should also take account of policy and consequences in relation to human trafficking in the instructions issued to military personnel and citizens that are being deployed abroad. States are also urged to promote cooperation between law enforcement agencies, the judiciary (where appropriate), other agencies (including social services) and relevant civil-society organisations (where appropriate) to improve the identification of victims. States should also consider establishing partnerships between law enforcement agencies and civil-society organisations, partly with a view to providing help to victims.

States are also called on to (1) recognise the need for victims to have adequate time to recover from trauma and (2) to take measures to enable victims to receive a fair and suitable compensation for damage they sustain and to be allowed to submit these claims during criminal or civil proceedings. The document refers to the importance of cooperation between national authorities and international bodies, such as Europol and Interpol and urges states to intensify measures to disrupt human trafficking networks, using instruments such as financial investigations, investigations into money laundering connected with human trafficking and the attachment and confiscation of the property of human traffickers.

Finally, the Special Representative is instructed to make recommendations, in its regular reports to the Permanent Council and in association with the member states, on ways of improving the response of criminal law to human trafficking.

### 3.6.4 Resolutions of the Parliamentary Assembly

At its 14<sup>th</sup> annual meeting in 2006<sup>218</sup> the Parliamentary Assembly adopted the *Resolution on Combating Trafficking and the Exploitation of Children in Pornography*.<sup>219</sup> In this resolution, the Assembly condemns sexual abuse and sexual exploitation of children and calls on states to create a legal basis for combating the distribution of child pornography via the internet. States are also called on to provide regular information about the activities of national authorities to combat human trafficking and exploitation of children in prostitution and por-

215 Helsinki, 4-5 December 2008.

216 Ministerial Council, Helsinki 2008, MC.DEC/5/08, 5 December 2008.

217 Helsinki, 10 and 11 September 2008.

218 Brussels, 4 and 5 December 2006.

219 MC.DEC/15/06.

nography. The resolution encourages states to consider setting up telephone or internet hot-lines where individuals can report situations involving child pornography anonymously so that such situations can be investigated by the prosecuting authorities. States are also encouraged to collect data about criminal investigations into child pornography.

In 2007 the Assembly adopted a resolution entitled *Strengthening of Counteraction of Trafficking in Persons in OSCE Participating States*.<sup>220</sup> The resolution expresses concern about the emergence of new methods of recruitment and exploitation of victims and describes human trafficking as an international crime and a serious violation of human rights.

The Assembly called on states to intensify their efforts to prevent human trafficking, including human trafficking within national borders. National governments and parliaments are called on to give priority to signing and ratifying the Council of Europe's Convention on Action against Trafficking in Human Beings (2005) and to apply the provisions in it relating to the protection of victims and to the strengthening of international cooperation and preventive measures. It says that victims should be protected regardless of their willingness to cooperate with the prosecuting authorities.

States are encouraged to introduce or to strengthen transparent, effective and independent methods to monitor activities against human trafficking. The resolution refers to civil society and NGOs as important partners, and states are called on to cooperate actively with NGOs. It says it is necessary to give victims access to the courts and to strengthen the effectiveness of legal protection of victims; according to the resolution, victims should therefore receive unconditional and free legal assistance.

The resolution also calls on states not to limit efforts (such as criminalisation) to prevent human trafficking to exploitation in the sex industry and to focus more on such aspects as widespread forced labour and services, including indentured labour and child labour. States should develop strategies to address the socio-economic causes of exploitation in other economic sectors than the sex industry. Addressing the root causes of human trafficking, such as poverty, gender inequality and discrimination, is seen as a fundamental component of the international fight against human trafficking. Accordingly, the resolution says that the corresponding policy should include measures to address these causes. The resolution devotes special attention to the needs of child victims of human trafficking, for example by strongly recommending educational programmes targeted at particularly vulnerable groups of children, including those in institutional care. It says that national hotlines should be set up to receive reports of missing children and children who are being exploited in sex tourism, human trafficking, pornography and prostitution.

Finally, the resolution states that measures against human trafficking must not have a negative effect on – or violate – the human rights of trafficked persons or other groups and must comply with the standards and principles of the international human rights system.

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220 16<sup>th</sup> annual meeting, Kiev, 5-9 July 2007.



At its 17<sup>th</sup> annual meeting in 2008 the Assembly passed a resolution on *Strengthening Efforts to Combat all Forms of Human Trafficking in Human Beings and Addressing the Special Needs of Child Victims* (the *Astana Declaration*).<sup>221</sup> This resolution explicitly expresses concern that corruption by government representatives continues to undermine efforts to combat human trafficking.

By contrast with the general human trafficking resolution adopted by the Assembly in 2007, this resolution also expresses concern that military and civil personnel serving in international peacekeeping operations or other missions, including contractors and field workers of international organisations, may contribute to the demand side of the human trafficking cycle. Reports of misconduct by military and civilian personnel during such missions have a negative impact on the ability to fulfil the mandates of these missions, according to the resolution.

Other resolutions referred to in the Astana Declaration also touched on human trafficking: the resolution on *Combating the Sexual Exploitation of Children*<sup>222</sup> and the resolution on *Violence against Women*.<sup>223</sup>

With regard to human trafficking, the Parliamentary Assembly said in the Declaration of Vilnius (2009) that economic dependency of women on men could make them victims of prostitution and human trafficking.<sup>224</sup> The OSCE also encouraged member states to tackle human trafficking with preventive programmes and by raising public awareness. Member states should also open a national telephone number for reports of exploitation of children, including human trafficking, pornography, prostitution and sex tourism. The Declaration calls on member states to actively combat human trafficking and to ratify the UN Conventions and Protocols, as well as the Council of Europe's Convention on Action against Trafficking in Human Beings (2005).

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221 Astana, 29 June-3 July 2008.

222 For example, the PA expressed serious concerns about situations that had emerged in which children had been sexually abused or assaulted by members of peacekeeping forces, private security forces and humanitarian organisations in a number of areas of conflict. The resolution also refers to the 2006 Brussels Resolution of the PA on *Combating Trafficking and the Exploitation in Pornography*, and to Decision No. 9/07 of the Ministerial Council on *Combating Sexual Exploitation of Children on the Internet*. In this resolution states were also called on to ratify the Convention of the Council of Europe on the *Protection of Children against Sexual Exploitation and Sexual Abuse* (2007).

223 In this resolution the OSCE PA remarks that 'women's economic dependency on men makes women easy targets for oppression and abuse, as well as potential victims of prostitution and human trafficking, and affirms the importance of reducing poverty and of actively promoting possibilities for women in the labour market.'

224 Vilnius, 29 June-3 July 2009, AS (09) D1E.

### 3.7 Dutch foreign policy and human rights

In November 2007, the Dutch government devoted a separate section to human trafficking in its human rights strategy for foreign policy for the first time. The government stated that serious offences such as terrorism and human trafficking can lead to serious violations of the fundamental rights of the victims, such as the right to life and the right to freedom, and that ‘... it is the task of the government to put an end to that, since it is the government’s duty to protect its citizens’.<sup>225</sup> The government also stated that the Netherlands ‘will continue to press actively for action against human trafficking at national and international levels. The human rights aspects will be included in every phase of the effort to tackle human trafficking’,<sup>226</sup> in other words in prevention, investigation and prosecution and – where applicable – repatriation and reintegration. Human rights aspects arise more specifically with respect to the protection of victims, according to the accompanying action plan.<sup>227</sup>

The action plan also mentions specific bilateral activities undertaken by the Netherlands with Romania, Bulgaria and Nigeria. In the NRM’s reports these countries have always been among the top five most common countries of origin of registered victims in recent years.<sup>228</sup> The first report on the implementation of the human rights strategy was published in March 2009.<sup>229</sup> The section on human trafficking contains a concise overview of several international developments and some current activities that were mentioned earlier. The section on the rights of children also devotes attention to the elimination of child labour, child prostitution, child pornography and child sex tourism.

In the human rights strategy for foreign policy the subject of human trafficking still seems to be limited to exploitation in the sex industry or the exploitation of children. There is, in any case, no explicit mention of the exploitation of adults in other sectors.

### 3.8 Conclusions

This section outlines outstanding problems relating to the subjects discussed in this chapter, and topics that demand special attention.

Human trafficking remains an important theme on the agendas of many international organisations. The activities of international governmental organisations – UN (and ILO), EU,

225 Towards a dignified existence – A human rights strategy for foreign policy, *Parliamentary Documents II* 2007/08, 31 263, no. 1, p. 15. See also H. Reiding (2008), Towards a dignified existence?: the new human rights strategy of Minister Verhagen, *International Spectator*, 62 (4), 208-213.

226 Towards a dignified existence – A human rights strategy for foreign policy, *Parliamentary Documents II* 2007/08, 31 263, no. 1, p. 43.

227 Action plan for implementation of the human rights strategy, *Parliamentary Documents II* 2007/08, 31 263, no. 6, p. 48.

228 In that respect, the Netherlands insists that in recent years the most frequently reported (suspected) victims of human trafficking in the Netherlands come from the Netherlands, see Chapter 4.

229 *Report on the implementation of the human rights strategy ‘Towards a dignified existence’*, Human rights report 2008, Ministry of Foreign Affairs, 27 March 2009, *Parliamentary Documents II* 2008/09, 31 263, no. 27.



Council of Europe and OSCE – suggest that some subjects are receiving special attention. They include exploitation in sectors outside the sex industry, the root causes of human trafficking and the demand side. International organisations are also devoting special attention to vulnerable groups such as women and children. Instruments being developed to tackle (sexual) exploitation of children also encompass child pornography. There is also continued attention to combating human trafficking connected to missions by military personnel and civilians in conflict areas.

Various international organisations – the EU and OSCE in particular – have specifically referred to the importance of national action plans against human trafficking. There are growing calls for states to appoint a national rapporteur or equivalent mechanism to monitor measures that have been taken and to evaluate policy.

The process of developing a network of national rapporteurs and equivalent mechanisms had already started during Sweden's EU presidency, with meetings in Stockholm and Vienna in 2009. It is not yet clear how the network will evolve in the future. A similar meeting has also been held in Brussels.

A crucial aspect of efforts to address international human trafficking is the collection of reliable data. Various initiatives have already been taken at international level, for example to formulate international standards for data collection. To this end, various indicators are being formulated on which national governments should supply information for the purposes of international comparison. There is not yet a single formal international standard. The standards that have been developed often also require the collection of a large volume of data, much of it difficult to collect. The likely consequence of this is that the information supplied is incomplete and of poor quality. It appears that while various international organisations are currently developing systems of international data collection there is not enough cooperation and that, therefore, different standards are being developed.

On paper, there is now a very extensive range of international legal instruments. However, many countries are still not party to treaties such as the UN Protocol against trafficking in persons and the underlying UN Convention against transnational organised crime, although these instruments provide a firm basis for international cooperation in criminal law, particularly with countries outside the EU. This applies, for example, to countries like China and India, a number of whose nationals are registered as victims in the Netherlands.

The EU should also continue to highlight the importance of ratifying these instruments, for example in the context of the external dimension of the Justice and Home Affairs policy. A third of the UN member states are still not party to the UN Protocol.

Although most countries have criminalised human trafficking in the sex industry, few countries in the world have done so with respect to human trafficking in other sectors (trafficking for forced labour, for example) or human trafficking where men are the victims. In so far as states have ratified the UN Palermo Protocol, its implementation is generally lagging due to the lack of comprehensive national legislation, a lack of resources for enforcement and a lack of political will, according to the UN *Special Rapporteur on Trafficking in Human Beings*.

The Council of Europe's Convention on Action against Trafficking in Human Beings (2005) has also not yet been widely ratified, not even by the Netherlands, because of a proposed amendment to the law intended to expand jurisdiction over human trafficking.

The European Commission's evaluation of the EU Action Plan on human trafficking shows that efforts to tackle human trafficking must remain high on the European agenda. A positive aspect is that the Netherlands is pressing for this (see also recommendation 58 in NRM5), since the evaluation of the EU Action Plan showed that there is a wide gap between current legislation and its implementation in practice in Europe.

In March 2009, the European Commission adopted a proposal for a new Framework Decision on combating trafficking in human beings. However, the discussion and implementation of the proposed new Framework Decision should not be at the expense of ratification of the Council of Europe's Convention on Action against Trafficking on Human Beings (2005). Provisions relating to help for and protection of victims in the proposal must not curtail what has already been reached in the Council of Europe's Convention. The proposal for a new EU Framework Decision should also not weaken the willingness to implement the provisions of the Council of Europe's Convention.

The EU Directive on sanctions against employers of illegally staying third-country nationals, which entered into force on 20 July 2009, is also relevant to efforts to tackle human trafficking. This directive lays down a number of minimum standards for sanctions and measures against employers of third-country nationals living illegally in a state. These minimum standards will probably require amendment of Dutch legislation.

Today it is clear, internationally and nationally, that human trafficking has to be regarded as a violation of human rights. This is also apparent from the activities of various mechanisms established to monitor the enforcement of human rights, including UN agencies. It is an advance that combating human trafficking is now an explicit element of Dutch foreign policy on human rights. The Dutch human rights strategy for foreign policy could, however, more clearly state that human trafficking also affects adults who are exploited in sectors other than the sex industry.

With any human rights approach to human trafficking – including one pursued by the Netherlands – it is important to take *a priori* account of effects that measures against human trafficking could have on those same human rights and to avoid collateral damage as far as possible. A vision should be formulated on how to achieve this. A relevant fact in this context is that a number of international mechanisms that supervise compliance with human rights, in the Netherlands as well as in other countries, argue that help to victims of human trafficking should not depend on cooperation with the (criminal) investigation.

### 4.1 Introduction

This chapter provides information about victims of human trafficking and the facilities available to provide shelter and care for them. The chapter opens with a description of a number of specific categories of victims (§4.2). Section 4.3 covers the registration of data about victims and presents statistics for 2007 and 2008, including comparisons with earlier years in some cases. The statistics include some background features of victims, such as country of origin, age and gender, residence status and the agency that reported the individuals as victims (provided by CoMensha<sup>1</sup>), as well as information from the Immigration and Naturalisation Service (IND) about applications for and the awarding of B9 status. Section 4.4 contains information, provided by the Central Fine Collection Agency (CJIB) and the Violent Offences Compensation Fund (SGM), about compensation awarded to victims. Section 4.5 examines the reporting of human trafficking by victims. First-line facilities for providing shelter for victims are discussed in §4.6, which first covers shelter for specific categories of victim, closed youth care and alternative shelter facilities. Incidental problems facing victims of human trafficking are discussed in §4.7. Basically, the information follows on from the details provided in earlier NRM reports. The chapter concludes with a review of some issues requiring attention and problems that need to be addressed (§4.8).

### 4.2 Specific categories of victims

This section describes a number of specific groups, namely women from the La Strada countries, men from Eastern Europe, victims of loverboys and other minors working in prostitution, young boys and Roma children. Other groups discussed are the children of victims and the previously mentioned risk groups of women and girls in asylum centres and persons with slight mental handicaps.

#### 4.2.1 Women from the La Strada countries

The NRM's first report analysed in detail the factors that make women vulnerable to exploitation. Subsequent reports devoted attention to specific groups of women and girls, such as women in asylum centres and women whose residence status depends on others. This section discusses the vulnerable position of many women in some Eastern European countries

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1 Until December 2007, CoMensha was known as the Foundation against Trafficking in Women (STV).

(the so-called La Strada countries<sup>2</sup>) on the basis of desk research<sup>3</sup> carried out by La Strada International (LSI). Blokhuis<sup>4</sup> concludes that although men and women have equal rights in the majority of the La Strada countries<sup>5</sup>, in practice, the rights of women are infringed. The political transformations and the transition from centrally planned economies to the free-market economy that have taken place in many La Strada countries have been accompanied by an upsurge in patriarchal values and standards. Gender equality has come to be associated with the communist regime. Unemployment is greater among women than among men, women are paid less and they have been forced from the public into the private domain. This has consequences for their position in the home, in the labour market and in the migration process.

There is a lot of domestic violence and there seems to be a correlation between a person's status as a victim of domestic violence and of human trafficking.<sup>6</sup> The feminisation of poverty leads to feminisation of migration, but the fact that possibilities for migrating legally are limited fosters the use of the services of smugglers and other intermediaries, which increases the risk of exploitation. The position of women from a social, civil and economic perspective is also worse than that of men in many other parts of the world. In that context, gender inequality is an important contributing factor to human trafficking. Economic empowerment could prove a powerful tool for preventing human trafficking.

#### 4.2.2 Men

Surtees (2008) conducted research into the situation of men as victims of human trafficking, which is very rarely highlighted. She analysed the data on 685 men from Belarus or the Ukraine who were registered in the IOM's database as victims who had received counselling from the IOM or its partners in the period 2004-2006. She also interviewed victims and studied case files. Although none of the victims ended up in the Netherlands and none of the recruiters – as far as is known – were from the Netherlands, it is nevertheless interesting to report some of the findings from the study. Many of the victims migrated to provide for their children. More than half of the men had work qualifications (from trained labourer to a university education) and by no means all were unemployed before they migrated. They responded to interesting offers of work, apparently with binding contracts with reliable employers. Almost all of the males were victims of 'other forms of exploitation', but a few were also victimised in other ways: being sold as a child, being forced to beg and sexual exploitation. Most of the men from Belarus ended up in the Russian Federation, as did many of the Ukrainian men. Other destinations were South East Europe, the EU, the United States of America, Turkey, Central Asia, Northern Asia and the Middle East. The men experienced

2 Together with interviews with La Strada officials

3 In addition to the Netherlands, the following countries were studied: Poland, the Czech Republic, Bulgaria, Ukraine, Belarus, Moldavia, Macedonia and Bosnia Herzegovina.

4 Blokhuis (2008).

5 They have all ratified the CEDAW Convention, for example.

6 See also Warnath (2007) on this subject.

poor, often traumatising, working and living conditions, which damaged their physical and mental well-being. A combination of violence or the threat of violence, debts, not receiving payment and limited freedom of movement meant that the men were unable to break free from the situation of exploitation. Even if they were able to, their problems were not necessarily solved; they were usually homeless, with no money or documents and no knowledge of where they could go for help. Even when they were identified as victims of human trafficking, appropriate help was not always available. Elements of the 'standard package' for victims of human trafficking (shelter, medical care, psychological counselling, legal advice, safety, protection and help with reintegration, for example) are also relevant for male victims, but need to be adapted to their specific needs. For example, shelter is tailored mainly to women and medical assistance is geared mainly to the consequences of sexual exploitation. Furthermore, men are not always willing to accept help. Often, for example, because they do not feel they are the victims of human trafficking but regard their situation as one of 'failed migration'.

Men are also exploited in prostitution in the Netherlands. Information from the police<sup>7</sup> shows that the victims include both victims of loverboys in the gay scene and foreign victims who are coerced into working in prostitution. Some victims are minors. In 2008, four shelters were opened in the Netherlands with places for 40 men who are victims or are at risk of becoming victims of domestic violence, honour revenge or human trafficking.<sup>8</sup> In February 2009, the State Secretary for Health, Welfare and Sport announced that 38 male victims had been accommodated in the shelters up to that time. They included victims of human trafficking,<sup>9</sup> but the ministry did not know the precise number of victims of human trafficking in the shelters.<sup>10</sup>

#### 4.2.3 Victims of loverboys and other minors in prostitution

Despite the enormous concern about the problem of loverboys and minors working in prostitution, and although the figures show that minors are reported to CoMensha as victims of human trafficking every year, it is in practice difficult for researchers to identify minors in prostitution. For example, Goderie and Boutellier (2006), who investigated prostitution in Rotterdam, say that it is very difficult for researchers to trace minors working in prostitution because of the great secrecy surrounding the subject and because the minors move around a lot. Goderie and Boutellier do not provide any specific examples of underage prostitutes they

<sup>7</sup> Report of OOM and LEM.

<sup>8</sup> At the initiative of the G4 cities (Amsterdam, Rotterdam, Utrecht and Den Haag) and in collaboration with the Ministry of Health, Welfare and Sport (VWS) there are now also shelters for men who are victims of domestic violence. Each city has ten shelters for men aged 14 and older who have been threatened. Men from anywhere in the Netherlands who need a place in a shelter can find one in any of these cities. See press release by Ministry of Health, Welfare and Sport, Opening of shelter for abused men, 10 February 2009.

<sup>9</sup> Speech by the State Secretary for Health, Welfare and Sport, Behoeftte aan mannenopvanghuizen, 10 February 2009. <http://www.minvws.nl/toespraken/dmo/2009/behoeftte-aan-mannenopvanghuizen.asp>

<sup>10</sup> The Ministry of Health, Welfare and Sport announced this on 11 June 2009 at BNRM's request.

found in the course of their research in Rotterdam, but they refer to other studies, describe the general situation with youth prostitution and conclude that ‘there can be no doubt that there are many minors working in prostitution’.

They did uncover various possible indications of exploitation, such as clients who had to pay the ‘driver’, girls who did not speak Dutch or English, very low prices, security guards in private homes and women who were clearly working reluctantly. In 2005 and 2006, the report *Tippelen na de Zone* by the Bonger Institute and a quick scan of teenage prostitution in Amsterdam by the municipal health service caused considerable disquiet in the Amsterdam Zuidoost district, as the two studies showed that illegal prostitution, including teenage prostitution, was occurring there, although no statistics were provided. A quick scan in Amsterdam Zuidoost in 2008, based on a survey of the police, youth workers, employees of the Public Order and Safety Department, housing associations and other key figures, showed that illegal prostitution was still only a sporadic phenomenon in the urban district: little or no street prostitution was found, one illegal brothel was discovered and closed, few, if any, reports or other indications were received of prostitution in bars and there were only a few registered cases of girls from the district becoming victims of loverboys.

There can be no doubt that every minor working in prostitution is one too many and that in such cases, the social services must be called in; if there is exploitation, the suspects should be investigated and prosecuted. But research findings like these do raise questions about the scale of the problem. It is important in this context for the registration of youth prostitution proposed by CoMensha (when it was still STV) at the end of 2005 to quickly become operational and start yielding information.<sup>11</sup>

*The Rood study*

Rood, the youth section of the Socialist Party (SP) in Utrecht, conducted research into victims of loverboys. They talked to 21 women who had become victims of a loverboy. They were aged between 12 and 24 at the time and they had been victims for periods ranging from two days to seven years. The girls were forced to work in prostitution, perform in porn films, smuggle drugs or take out loans and pay the money to the offender. The majority of the 15 girls who pressed charges were put in touch with Victim Support Netherlands or specialist support agencies.<sup>12</sup>

The Education Inspectorate has conducted research into sexual diversity and the ability to withstand sexual pressure in schools, including the issue of identifying signs of victims of loverboys.<sup>13</sup> According to the report, there had been incidents relating to sexual pressure at many schools. A quarter to a third of the school managements in primary and secondary

11 Kwiz developed a registration system in consultation with chain partners in the field and a meeting was held at the end of 2008 where partners could sign the associated agreements on privacy. Participating organisations can find the system on the CoMensha website and can access it with a password.

12 ROOD Utrecht, *In gesprek met slachtoffers van loverboys, een onderzoek naar ervaringen met politie en justitie van het proces van aangifte tot de veroordeling*, June 2009.

13 Education Inspectorate, *Weerbaar and divers, een onderzoek naar de seksuele diversiteit and weerbaarheid in the onderwijs*, April 2009.

special-needs education and lower secondary vocational education (VMBO) had encountered loverboy practices. Case studies by the inspectorate confirm that picture.<sup>14</sup> Eleven of the 35 schools reported incidents of loverboy practices. A large majority of the special-needs schools that were visited had experienced such incidents and there had also been incidents at a large majority of the VMBO schools. The police were contacted in connection with all of these incidents. The cases generally involved ‘cool boys in expensive cars’ parked in front of the school (which does not, in itself, necessarily indicate loverboy practices). According to the schools, most of the problems were resolved with extra patrols by the police and heightened alertness by the schools themselves.<sup>15</sup> These types of incidents have generally not led to the formulation of explicit policy, but projects have often been started in response to them.<sup>16</sup> The Education Inspectorate describes it as remarkable that the incidents have not led to a preventive/curative policy or to a structural programme designed to increase the ability of pupils to withstand sexual pressure.

*Case of complaint against school*

Maria Mosterd, author of the book *Echte men eten geen kaas*, in which she described the period when she fell prey to a loverboy, lodged a complaint against her school in 2009. She argued that the school should have raised the alarm sooner when she was repeatedly absent from school. She accused the school of not protecting her from the loverboys who were operating around the school. She claimed almost €74,000 in damages and compensation. In 2006, the National Education Complaints Commission had rejected a complaint by Maria’s mother. At the time this report was written, the complaint had yet to be heard by the district court in Zwolle.

Since 2006, medical and psychology students have been providing information to pupils in the last two years of primary school as part of *Tienerwijs*, an educational project about relationships and sex. *Tienerwijs* is organised by the International Federation of Medical Students. The project is carried out in Amsterdam, Rotterdam and Leiden, and there are plans for similar projects in Groningen and Maastricht.

#### 4.2.4 Young boys

The Bonger Institute of the University of Amsterdam carried out research for the Ministry of Justice’s Research and Documentation Centre (WODC) into boys who are sexually exploited and the prostitution of young males.<sup>17</sup> This study was carried out following reports

14 The inspectorate visited 35 schools, of which 14 were VMBO schools, seven were general secondary education (HAVO)/ pre-university (VWO) schools, six were special-needs schools and eight were secondary vocational education (MBO) schools. Some schools referred to more than one incident. There were no reports of incidents at the HAVO/VWO schools.

15 See also Chapter 9, Suspects and convicted offenders, §9.4.3.

16 Education Inspectorate, *Weerbaar and divers, een onderzoek naar de seksuele diversiteit and weerbaarheid in the onderwijs*, April 2009.

17 Korf, Benschop & Knotter (2009).



in the media that large groups of underage ethnic males were being sexually exploited. The authors of the study tried to gain an insight into methods of preventing the sexual abuse of youths, the nature and circumstances of the abuse that occurred, the nature and scale of the activities performed by boys in prostitution, the ethnic origins of the members of this group and the extent to which these youths are known to the social services. The researchers concluded that it is impossible to reliably estimate the number of underage boys working in prostitution. There is evidence to suggest that this group constitutes a minority in male prostitution as a whole. One of the reasons for the impression that youth prostitution is so prevalent is that boys pretend to be younger than they really are because that is what the market wants. The ethnic preference of clients could also contribute to the impression that exists about the ethnicity of these prostitutes; the researchers could not confirm the theory that Moroccan boys are over-represented in youth prostitution.

*Study of youth prostitution*

The study involved field research at a number of locations in Amsterdam and Twente, where the researchers looked for indications of youth prostitution and networks around it. It proved difficult to establish contact with youths, who communicate via internet.

It was found that the subjects of the research engaged in various forms of prostitution. For some it was almost a daily activity and a regular source of income; for others, it was something they enjoyed doing and which they did in order to be able to go out and buy luxury items. For others, it was a way of paying the rent, financing an addiction or securing free accommodation.<sup>18</sup> Clients were recruited in three ways: via internet, through work in a brothel or for an escort agency or informally, in which case clients were found in bars, by word of mouth, on the street, etc.

The study divided the youth prostitutes into three groups: (1) professionals and weekend amateurs, (2) victims, and (3) adventurers. The members of the first category are all adults, in the other two groups the ages vary. The youngest group is over-represented in the third category (39% are minors). Most youths fall into the two latter categories, but this could be related to the age groups covered by the study.

The study found that all the subjects were victims of coercion and abuse since they had all had sex while still minors with a person in a 'position of authority',<sup>19</sup> although the subjects themselves did not all regard this as abuse. Half of the group had had sex involuntarily at least once, and it was not always for payment. A third of them had experienced verbal violence, the threat of physical violence or actual physical violence. The study showed that each young person's life history was different. The researchers concluded that sexual abuse was not the only reason that the youths entered prostitution.

Specialist help seems to reach older youth prostitutes almost exclusively, a group in which Eastern European youths are over-represented. Younger prostitutes do receive other types of assistance, but these agencies generally do not know that the young people engage in commercial sex. The clinics for sexually transmitted diseases have the greatest reach, since the majority of the youths have contact with them.

18 These youths often stay for a lengthy period with one man, having sex with him in exchange for a place to stay.

19 The researchers define a person in a position of authority as an adult or a minor who is at least five years older.



In a letter of 9 June 2009,<sup>20</sup> the Minister of Justice informed parliament about the results of the study. He reported that in the meantime CoMensha had started the Registration of Youth Prostitution project, which is designed to identify the problems facing the social services in relation to youth prostitution and, at the same time, form an impression of nationwide efforts to prevent youth prostitution. The minister said that more organisations would be actively encouraged to cooperate with the registration project, for which he was providing a subsidy. He did not feel that the findings of the study required him to take additional measures to help this group of young people.

PMW, an organisation that provides help for prostitutes in Rotterdam, devoted special attention to youths exploited in prostitution in 2008. It hired a field worker specifically to establish contact with them both face-to-face and via internet. Three youths sought its help in 2006, one in 2007 and seven in 2008. They could have been victims of human trafficking or young people who were working voluntarily in prostitution.

#### 4.2.5 Roma children

Children from Eastern Europe, usually Romania, are regularly discovered selling newspapers, playing music for money, begging or committing thefts or pickpocketing in the Netherlands. They include children who are required to attend school but who do not, and it is not always clear whether they are in the care of a parent or guardian. Police and youth agencies have little control over these children and their carers. It is difficult for the Child Protection Council (*Raad voor de Kinderbescherming*) to intervene, for example, if the individuals in question are not registered with a municipality but are staying with compatriots, operate in places other than where they live and make sure not to stay in the same place for too long.<sup>21</sup>

The crisis service of the Youth Care Agency (*Bureau Jeugdzorg*) in Haaglanden has recently encountered more of these children, who may be victims of human trafficking. The agency in The Hague feels that the children should be returned to their country of origin and placed under the supervision of the youth-care services there. According to the agency, the children should be placed in closed youth care until it is known where they come from and where their parents are. It is, in any case, important to ensure that the children cannot run away or be removed by unauthorised persons. This would also send a signal to the gang that might be behind the exploitation. The possibility that the parents are responsible for the exploitation should also be taken into account.

<sup>20</sup> *Parliamentary Documents II* 2008/09, 31 700 (VI), no. 131.

<sup>21</sup> Information received in a conversation with the national office of the Child Protection Council.

Klostermann<sup>22</sup> carried out a pilot study of Eastern European children working in the Netherlands,<sup>23</sup> looking at three cases of apparent crime in relation to underage Roma children and how they were dealt with in 2007. He also conducted interviews with the police, the EMM, the Romanian liaison officer, the Youth Care Agency, the Child Protection Council and school attendance officers.

The three cases involved children who were not yet 12: (1) a girl playing music on the street in Den Bosch (the parents were present), (2) children begging in Tilburg (they were accompanied by adults, some of whom were involved in criminal behaviour, and there were indications of youth prostitution), and (3) a young boy in Dordrecht who was caught trying to pick pockets (no accompanying adults).

The analysis of the cases highlighted a number of problems:

- the relevant agencies, such as the municipality and social services, are unclear about which legal instruments can and should be used;
- there is no systematic information or consistent policy as regards registration, partly because the agencies do not all regard incidents with Roma children as a structural problem (in terms of crime);
- tackling the problem calls for cooperation between many agencies, but there is no joint policy;
- the complexity of the problem (including the lifestyle of the persons in question, which cannot be understood in a Dutch context) quickly leads to the practical choice of tackling the symptoms (adapting the municipal rules and moving them on);
- a report by Europol also shows that this is a problem that has to be seen in a wider European context.

Klostermann made three recommendations:

- better agreements on the registration of incidents, without it leading to the criminalisation of Roma as a group;
- closer cooperation and better coordination between police and youth agencies at regional, supraregional and international levels in the interests of a consistent approach that corresponds with a clearly formulated view of the problem;
- the formulation of policy, based on knowledge about the children's background and in cooperation with Roma organisations and Romanian agencies.

The Child Protection Council says it is an illusion to think that it is a problem that can be solved solely in the Dutch context<sup>24</sup> and in mid-2008, it adopted a course of action designed to address it.<sup>25</sup> The key points are:

- as a second-line agency, the Council will investigate whether a child protection order is necessary and inform the court when it suspects that the minor has committed a criminal offence;

<sup>22</sup> As part of the criminal intelligence training, 2008.

<sup>23</sup> The research questions were: What is the crime problem in relation to underage (travelling) Roma in the Netherlands? What are the major problems in dealing with it? And what points of departure do subcultural and social theory offer for the policy of the Dutch police?

<sup>24</sup> That it is indeed an illusion is illustrated by the information from Europol about the Romania – United Kingdom joint investigation team (JIT). See later in this section.

<sup>25</sup> Memo from G. Cardool to the National Management Team of the Child Protection Council (4 June 2008), which was adopted by the team.

- the local offices will register the number of cases and notify the national office;
- best practices will be posted on the Council's intranet.

*Best practices*

Two municipalities have formulated a policy to address this problem. In Den Bosch, when a child is found on the street outside the school holidays and is unable to produce a certificate showing that he or she is not required to attend school in the country of origin, the incident is reported to the school attendance officer, who then enquires whether the child is registered with a school in the municipality and whether he or she regularly attends school.<sup>26</sup> If not, the school attendance officer asks the RvdK to investigate. If parental authority is not being exercised over the child, the Council will request the children's court to issue a provisional custody order, whereupon the Youth Care Agency will exercise authority. If parental authority is being exercised, but the situation in which the child is being raised demands it, a child protection order (a supervision order) may be requested, which the Youth Care Agency will execute after it is granted by the children's court. The agency investigates whether the child can stay in the Netherlands and what help is required, or whether the child should be accompanied back to the country of origin.<sup>27</sup>

In Amsterdam, a flow chart produced by the Council and some chain partners is used. The police investigate the child's situation, by seeking information from the school attendance officer, for example. There are then four options:

- If the child needs protection, the Youth Care Agency is notified. The agency decides whether the report should be passed on to the Child Protection Council. If necessary, a child protection order will be requested and shelter will be arranged. The Youth Care Agency and Nidos will investigate whether the child should be accompanied back to the country of origin.
- If no parental authority is being exercised or the identity of the guardian is unknown, the police notify the Youth Care Agency, which then assesses whether the Council needs to be called in. The Council investigates whether parental authority is absent and if necessary requests an order assigning guardianship. Nidos is the agency designated to act as legal guardian.<sup>28</sup>
- If there is a suspicion that a child has committed a criminal offence, the police notify the Council, whereupon the Council orders an investigation and consults the public prosecution service on the most appropriate way to deal with the matter.<sup>29</sup>
- If none of these options is possible, the child (and his or her parents) will be given a stern talking-to and clearly informed that their behaviour is regarded as inappropriate and unacceptable in the Netherlands.

In 2009, Anti-Slavery International published a report on children who are forced to beg in Albania, Greece, India and Senegal.<sup>30</sup> All 162 child beggars, former child beggars or children who faced the risk of being forced into begging in Albania and Greece covered in the report

26 If the child lives outside Den Bosch, the other municipality takes over the case.

27 Since this policy was announced, underage Roma musicians seem to be avoiding Den Bosch.

28 It is noteworthy that in Den Bosch, authority is delegated to the Youth Care Agency and in Amsterdam to Nidos. In the case of foreign children, it seems more logical to delegate authority to Nidos.

29 The non-punishment principle is also relevant for cases where these children are forced to commit criminal offences. See Chapter 6.

30 Anti-Slavery International (2009).

were children from the Roma/Balkan-‘Egyptian’ groups. These children were forced to beg, either by their parents or by third parties. Of the 53 Albanian children interviewed at length, a third said that their parents used violence to force them to beg. The researchers believed it was possible that this group was even larger, but that children felt a deep sense of shame about telling of their parents’ involvement. The majority of the children were boys. All 19 of the Albanian children forced to beg were younger than 14 or had stopped begging before reaching puberty. From 15 lengthy interviews with children who were forced by their parents to beg, it emerged that the children had to beg for at least six hours a day and that the families used the money to survive. The research also showed that poverty is an important cause of children being forced to beg, as are migration to urban areas and a lack of education. The report, which is not specifically concerned with the Netherlands, outlines the international context of the problem. The following information from Europol indicates that it is a major problem that extends beyond the Netherlands.

*Joint Investigation Team: Trafficking of children from Romania to the UK*

In 2007, Europol was advised of parallel investigations in the UK and Romania targeting the exploitation of hundreds of Romanian Roma children, who had been trafficked from Romania to other EU states. The persons responsible were identified as a Romanian organised crime group, based in Romania but with significant links and bases of operation elsewhere in Europe.

As a result of the circulation of a list of 1107 children suspected of having been trafficked, it was established that at least 200 of the names on the list were on police databases in the UK. It was suspected that large numbers of the children were being forced into the commission of criminal offences on behalf of the traffickers. The exploitation of the children in the UK was connected to ‘street crime’ offences such as pickpocketing, bag snatching, aggressive begging, shoplifting, and distraction thefts. It has since been established that the organised crime group have earned millions of euros from the exploitation of these children and it has recently been learned that the traffickers are now using the children for the purpose of defrauding the UK’s social security benefits system.

This investigation, which remains current, is being carried out within the framework of a Joint Investigation Team (JIT) that began on 1 September 2008 and has led to the secondment of Romanian police officers to the Metropolitan Police in London. The JIT has allowed unprecedented investigative actions, such as victim and witness interviews, conducted by Romanian prosecutors in London, and has also led to multiple deployments of Europol officers to support the collection and analysis of intelligence with a mobile office.

#### 4.2.6 Victims in aliens detention

The people held in aliens detention include victims of human trafficking<sup>NRM5</sup>. Several years ago, Bonded Labour in the Netherlands (BLinN) conducted research on this topic,<sup>31</sup> which showed that identification was too late if a victim was already in detention, since it was then seldom possible to report human trafficking and secure B9 status. This problem was ad-

<sup>31</sup> Claassen (2005).

dressed and the fifth report of the NRM indicated that the situation had improved; however, the problems have not yet been fully resolved. Since 2005, BLinN has been helping victims of human trafficking and trying to improve the identification of victims in detention. It reported that in the period 2006 – 2008 it reached 112 possible victims (the number of ‘genuine’ victims is probably significantly lower): 88 women and 24 men. They included 48 in border detention (under Article 6 of the Aliens Act)<sup>32</sup> and 64 in aliens detention (under Article 59 of the Aliens Act).<sup>33</sup> Countries of origin included Nigeria (39), China (20), India (10), Sierra Leone (6), Ghana (5), Cameroon (5), Moldavia (3) and 21 other countries (1 or 2 persons from each). BLinN reported its findings in *Uitgebut en in de bak! Slachtoffers van mensenhandel in vreemdelingendetentie*.<sup>34</sup> According to that report, it was still not easy to make a report human trafficking from aliens detention, partly because exploitation outside the sex industry is not always recognised as human trafficking and partly because there is considerable suspicion of the complainant’s motives. BLinN devoted a lot of time to advising the individuals on the report of the crime. Ultimately, 35 of the victims made a report of human trafficking and were granted B9 status. BLinN also offered individual assistance, even to victims who were to be deported or who were cooperating with their return (occasionally after they had been released from detention), and organised group activities (workshops dedicated to health and ‘surviving in detention’). Boermans (2009) says that aliens detention is unsuitable for victims of human trafficking, many of whom are traumatised, and describes the downward spiral they enter and the psychological and physical problems they experience. Boermans also describes how the centres are not equipped to deal with traumatised victims, or various other problems, including the fact that the detention sector does not regard identifying victims as part of its task<sup>35</sup>. Providing information to and cooperation with the staff of the centres is a precondition for identifying victims. But things also go wrong even in the period prior to and after detention.

*Findings from the BLinN study of victims in aliens’ detention*

Boermans observed that police forces still sometimes err by failing to identify victims, by failing to respond promptly or correctly to requests to make a report of the crime human trafficking, or by not offering a reflection period as required by the B9 regulation. Another problem is that cases are sometimes dropped without an official decision not to prosecute: the case is ‘shelved’ and the victims or their lawyers are not always informed about the decision to shelve the case, or to drop the prosecution, so the periods for making an objection to the decision not to prosecute and to appeal against revocation of the B9 status expire without their realising it. Boermans also mentions the limited task of the Repatriation and Departure Service (DT&V) as a problem: the service reports possible victims of human trafficking to the police or the Royal Netherlands *Marechaussee*, and if no action is taken it proceeds with the deportation pro-

32 People who have been denied entry to the Netherlands.

33 Everyone living in the Netherlands without a valid residence permit.

34 Boermans (2009).

35 However, see also the Repatriation and Departure Service’s Protocol for processing victims of human trafficking from the beginning of 2008, which describes, among other things, what has to be done if there is an indication that a person is a victim of human trafficking.

cedure. He also refers to the reactive role played the IND's gender liaison officers, who do not personally identify victims but merely respond to notifications by the police and *Marechaussee*, and to lawyers, who do not always do their work properly or are not sufficiently aware of the issue of human trafficking and the accompanying procedures. Problems also occur in the transition from detention to assistance: for example, there is a shortage of places in shelters and a lack of knowledge about aliens detention, and there are no facilities for victims who decline or don't dare to report the crime.

In response to the report, the government said that many measures had been taken since 2005 to improve the identification of victims and that the matter receives constant attention<sup>36</sup>. It is important to maintain the quality of the process of early and careful identification of victims. Nevertheless, the detention of (presumed) victims of human trafficking cannot always be prevented, according to the State Secretary. Victims are sometimes only identified when they are already in detention. The State Secretary said, in fact, that the numbers of victims mentioned did not tally with the figures available to her<sup>37</sup>.

#### 4.2.7 Victims with a slight mental handicap

The fifth report of the NRM referred to the particular vulnerability of slightly mentally handicapped<sup>38</sup> persons to exploitation. Victims in this category are still being identified, also by the police.<sup>39</sup> Loverboys are said to target mentally handicapped girls and women in their recruiting and officials in the shelters for victims have become aware of the fact that some problems in caring for foreign victims are related to the weak mental capacity of these victims. The MEE (a national social pedagogic service with regional offices that provides help for people with a handicap, physical disability or chronic disease, including people with a slight mental handicap) is nowadays one of the partners in a number of networks to provide assistance for victims and in loverboy projects. The State Secretary for Health, Welfare and Sport has also said that the Centre of Expertise for Youth Prostitution has included a proposal to provide advice and training in seven insitutions for slightly mentally handicapped persons in its plan of activities for 2009.<sup>40</sup>

### 4.3 Registration of data about victims

#### 4.3.1 Statistics on victims

One of CoMensha's most important tasks is to keep a national register of (suspected) victims of human trafficking. However, up to now it has proved impossible to register more than the basic characteristics of most victims, such as country of origin, age and gender. Part

<sup>36</sup> Letter from the State Secretary for Justice, *Parliamentary Documents II* 2008/09, 28 638, no. 41.

<sup>37</sup> Report of plenary debate. 10 June 2009, *Parliamentary Documents II* 2008/09, 28 638, no. 44.

<sup>38</sup> In the literature they are also described as people with a slight mental disability, referring to people with an IQ of 50/55-75.

<sup>39</sup> Reports of Operational Consultation Group on Trafficking in Human Beings (OOM) and the National Expert Group on Trafficking in Human Beings (LEM).

<sup>40</sup> Letter from Minister of Justice of 8 July 2009, Toezeggingen en motie mensenhandel, *Parliamentary Documents I* 2008/09, 28 638, no. 42.

of the reason for this is that CoMensha depends on information that is provided in many different ways, from a large number of agencies<sup>41</sup>. As a result, we do not know very much about the victims, and the possibility of double-counting cannot be ruled out. The victims registered by CoMensha are not victims who can be regarded as ‘official victims’ by virtue of a formal assessment on the basis of specific criteria, after a conviction in a criminal trial, for example. This is particularly important when these figures – as happens more and more often – are compared with data on victims from other countries, where registration may might also cover official victims, but might cover only victims who have received assistance or only those who have been formally recognised.

It is generally acknowledged that there is a need for a uniform system of registering victims, at both the national and international level. A number of international initiatives have been taken, which highlight the importance of good registration.<sup>42</sup>

In 2007, the first trend report on the position of victims of human trafficking was published by the consultancy firm Van Montfoort and the Verwey-Jonker Institute.<sup>43</sup> This so-called ‘victim monitor’ represented an attempt to identify the situation of victims in terms of seven aspects: (1) identification, (2) access to and use of the B9 regulation, (3) legal advice and criminal proceedings, (4) shelter/housing, (5) health care, (6) income and education, and (7) continued residence or repatriation. The aim was to improve the methods of measuring the effects of policy interventions. The trend report said, among other things, that it is generally known that there are constraints to the use of existing registration systems and that the data in the registration systems are not always complete, which limits the reliability of the key figures collected in the Human Trafficking Monitor. The report’s main proposal was to improve the registration by CoMensha, as the central agency for reporting all victims of human trafficking in prostitution.

The intention is to publish the monitor every two years, but that will not be done until the system of registration has improved.

Since the registration of victims is a core task of CoMensha, the Ministry of Justice has earmarked additional funds for its subsidy to CoMensha to enable it to improve its records. According to the progress report on the Human Trafficking Task Force’s action plan, CoMensha has submitted a plan for a project to improve its registration by determining, in consultation with the parties that supply the information, what datasets should be provided and securing a commitment to deliver the information.<sup>44</sup>

41 See also the report *Onderzoek Keteninformatisering Zorg Slachtoffers Mensenhandel*, a study carried out by Pheidis Consultants on behalf of CoMensha, 19 December 2008

42 Such as IOM (2007). *Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators*, IOM: Vienna; and ICMPD (2008). *Handbook on Anti-Trafficking Data Collection in South-Eastern Europe: Developing Regional Criteria*. ICMPD: Vienna. See Chapter 3, §3.2.

43 Consultancy firm Montfoort and Verwey-Jonker Institute (2007). *Positie of slachtoffers of mensenhandel. 1<sup>e</sup> trendrapportage 2006*. Consultancy firm Montfoort and Verwey-Jonker Institute: Utrecht.

44 Human Trafficking Task Force, 2009b.



### 4.3.2 Registration of victims by CoMensha

This section contains information about (suspected) victims registered by CoMensha and is based largely on their databases, although the figures presented differ in several respects from the figures in CoMensha's annual reports. Where the figures refer to those in the annual reports, that fact is explicitly mentioned. The number of victims has grown steadily in recent years, from 579 in 2006, to 716 in 2007 and 826 in 2008.

#### *Country of origin*

Table 4.1 contains a ranking of the five most common countries of origin of victims in each year.<sup>45</sup>

*Table 4.1 Rankings of the most common countries of origin of (possible) victims reported to CoMensha, by year<sup>46</sup>*

Country	2004	2005	2006	2007	2008
Netherlands	1	1	1	1	1
China			5	4	2
Nigeria	4	3	2	2	3
Hungary					4
Sierra Leone				5	5
Bulgaria	2	2	3	3	
Romania	3	4	4		
Czech Republic		5			
Russian Federation	5				

As in the three previous years, in 2007 and 2008 the Netherlands was the most common country of origin of victims of human trafficking. China, Nigeria, and Hungary occupied positions two to four in 2008, and accordingly China's emergence as a leading country of origin has continued. A noteworthy newcomer in the list is Sierra Leone.

The victims registered by CoMensha in 2008 had 62 different nationalities. Table 4.2 lists the most common.<sup>47</sup> In Appendix 4, Table B1 provides a complete list of all nationalities, in alphabetical order.

<sup>45</sup> Countries are listed according to their rank in 2008.

<sup>46</sup> Based on the nationality of the (possible) victims.

<sup>47</sup> A country is included if more than 10 (possible) victims originated there in any one year.



Table 4.2 Nationality of (possible) victims registered with CoMensha, by year

Nationality	2004		2005		2006		2007		2008	
	N	%	N	%	N	%	N	%	N	%
Belarusian	12	3	3	1	–	–	2	0	1	0
Brazilian	5	1	8	2	17	3	4	1	13	2
Bulgarian	55	14	52	12	39	7	50	7	32	4
Chinese	9	2	5	1	29	5	33	5	78	9
Guinean	3	1	4	1	8	1	15	2	20	2
Hungarian	3	1	9	2	13	2	15	2	45	5
Indian	–	–	–	–	7	1	3	0	13	2
Cameroon	11	3	4	1	4	1	6	1	11	1
Moroccan	11	3	11	3	9	2	13	2	10	1
Dutch	59	15	98	23	146	25	270	38	320	39
Nigerian	39	10	28	7	86	15	104	15	64	8
Polish	8	2	13	3	27	5	14	2	6	1
Romanian	45	11	23	5	34	6	28	4	19	2
Russian	14	3	13	3	12	2	9	1	5	1
Sierra Leonean	6	1	14	3	20	3	29	4	44	5
Thai	2	0	2	0	3	1	9	1	12	2
Czech	2	0	18	4	3	1	4	1	7	1
Other	103	26	92	22	84	15	106	15	120	15
Unknown	16	4	27	6	38	7	2	0	6	1
<i>Total</i>	403 <sup>48</sup>	100	424	100	579	100	716	100	826	100

The percentage of Dutch victims has increased in each of the last five years and in 2008, 39% (320) of the victims reported to CoMensha were from the Netherlands. A relatively large proportion of victims registered in 2008 came from China (9%) and Nigeria (8%). However, whereas the relative number of Chinese victims almost doubled from 2007 to 2008 (going from 5% to 9%), the number of Nigerian victims almost halved (dropping from 15% to 8%).

### Age

Table 4.3 shows the distribution by age of the victims reported to CoMensha from 2004 to 2008.<sup>49</sup>

48 The database provided by CoMensha for 2004 reports only 403 victims; this table is based on that figure. However, CoMensha's annual reports mention a total of 405 and the following tables in this section are based on that figure.

49 This is the client's age at the time he/she was reported to CoMensha.

Table 4.3 Age distribution of (possible) victims reported to CoMensha, by year

Age	2004		2005		2006		2007		2008	
	N	%	N	%	N	%	N	%	N	%
10 to 14	3	1	1	0	10	2	29	4	7	1
15 to 17	23	6	23	5	93	16	170	24	162	20
18 to 23	165	41	167	39	222	38	288	40	321	39
24 to 30	141	35	150	35	151	26	140	20	196	24
31 to 40	61	15	50	12	66	11	70	10	108	13
41 and older	–	–	15	4	9	2	19	3	32	4
Unknown	12	3	18	4	28	5	–	–	–	–
<i>Total</i>	<i>405</i>	<i>100</i>	<i>424</i>	<i>100</i>	<i>579</i>	<i>100</i>	<i>716</i>	<i>100</i>	<i>826</i>	<i>100</i>

Source: CoMensha (2004-2006: annual reports; 2007-2008: databases).

As in the preceding years, most of the reported victims in 2007 and 2008 were aged between 18 and 23. The number of reports of underage victims rose in 2007 (from 103 in 2006 to 199 in 2007) and declined slightly again in 2008 (169). This trend is particularly evident in the 10-to-14 age group (from 10 in 2006, to 29 in 2007 and to seven in 2008).

#### Age & nationality

Tables 4.4 and 4.5 show the ages of the victims in 2007 and 2008, linked to their nationalities.

Table 4.4 Table with cross references by age and nationality of victims

	2007				2008			
	Dutch nationality		Foreign nationality		Dutch nationality		Foreign nationality	
	N	%	N	%	N	%	N	%
10 to 14	16	6	13	3	5	2	2	0
15 to 17	84	31	86	19	99	31	63	13
18 to 23	130	48	158	36	143	45	175	35
24 and older	40	15	187	42	73	23	260	52
<i>Total</i>	<i>270</i>	<i>100</i>	<i>444</i>	<i>100</i>	<i>320</i>	<i>100<sup>50</sup></i>	<i>500</i>	<i>100</i>

Investigated is whether the number of minors among Dutch victims is different than among foreign victims. Table 4.4 shows that 37% of the Dutch victims in 2007 were minors, compared with 22% of foreign victims. The corresponding percentages in 2008 were 33% and 13% respectively. These differences are significant.<sup>51</sup>

50 This is not the same as the sum of the percentages in this column because the individual percentages have been rounded off.

51 2007: U=41968.00; p<0.01 and 2008: U=52139.00; p<0.01.

Table 4.5 Nationality of underage victims

	2007		2008	
	N	%	N	%
Dutch victims	100	50	104	62
Nigerian victims	50	25	7	4
Victims with another nationality	49	25	58	34
<i>Total</i>	<i>199</i>	<i>100</i>	<i>169</i>	<i>100</i>

At least half of all underage victims in 2007 were Dutch; in 2008 the figure was 62%. At least half of all foreign underage victims came from Nigeria in 2007, but in 2008 Nigeria no longer stood out in this respect. The likely reason for this is the investigation in the 'Koolvis' case, which continued until the end of 2007 and in which many of the victims were underage Nigerian girls.<sup>52</sup>

In 2008, more than a fifth of all underage foreign victims were Chinese, as shown in Appendix 4 (Table B2), which includes a complete list of all nationalities of underage victims between 2006 and 2008.<sup>53</sup>

### Gender

Table 4.6 presents the gender of victims reported to CoMensha from 2004 to 2008, broken down between minors and adults.<sup>54</sup>

Table 4.6 Gender of (possible) victims reported to CoMensha, by year

Age	2004		2005		2006		2007		2008	
	N	%	N	%	N	%	N	%	N	%
Female	404	100	422	100	549	95	664	93	779	94
- of whom underage	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	96	18	182	27	164	21
Male	1	0	2	0	30	5	49	7	46	6
- of whom underage	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	5	17	16	33	5	11
Unknown	–	–	–	–	–	–	3	0	1	0
<i>Total</i>	<i>405</i>	<i>100</i>	<i>424</i>	<i>100</i>	<i>579</i>	<i>100</i>	<i>716</i>	<i>100</i>	<i>826</i>	<i>100</i>

Source: CoMensha (2004-2005: verbal information from CoMensha; 2006-2008: databases).

52 For more information about the Koolvis case, see §9.5.5.

53 This information is not available for previous years.

54 Their age at the time they are reported to CoMensha.

The number of women among the newly reported victims in 2006, 2007 and 2008 fluctuated around 94%. In 2007, the number of underage girls rose from 18% to 27%, but in 2008 the figure fell again to 21%. The number of men fell slightly in 2008 (from 49 to 46), and the proportion of minors among them declined particularly sharply, from 33% (16) to 11% (5). The countries of origin of the male victims in 2008 were:<sup>55</sup> China (12), India (8), Nigeria (7), Sierra Leone (6), Netherlands (3), Egypt (2), Canada, Chile, Cameroon, Morocco, Romania, Sudan, Surinam and Vietnam (one each).<sup>56</sup>

The number of reports of male victims has been significantly higher since 2006, probably because of the increased attention to exploitation outside the sex industry and the launch of investigations into this type of human trafficking. Only one male victim was reported in 2004, and in 2005 the 424 newly reported victims included only two males, both of whom were in fact exploited in prostitution.<sup>57</sup>

*Sectors in which victims worked*

Table 4.7 shows the various sectors in which the registered victims were exploited, broken down by gender.

Table 4.7 Sectors in which victims worked in 2007 and 2008

Sector	2007					2008				
			un-known	total				un-known	total	
	N	N	N	N	%	N	N	N	N	%
Have not yet worked	93	10	2	105	15	50	8	–	58	7
Sex industry <sup>58</sup>	329(+4 <sup>59</sup> )	9(+1 <sup>60</sup> )	–	338(+5 <sup>61</sup> )	47(+1 <sup>62</sup> )	465(+2 <sup>63</sup> )	7	1	473(+2 <sup>64</sup> )	57(+1 <sup>65</sup> )

55 Between brackets is the number of men/boys from the country concerned.

56 The countries of origin of male victims in 2007 were: Nigeria (13), Romania (8), China (5), Netherlands (5), India (3), Ukraine (2), Chile (2), Bulgaria, Armenia, Russian Federation, Guinea, Hungary, (former) Yugoslavia, Rwanda, Sierra Leone, Sri Lanka, Togo and Uganda (one each).

57 Verbal information from CoMensha.

58 Including massage parlours.

59 This should actually be 333, since four female victims were exploited in both the sex industry and in another sector. In this table they are registered only under the other sector so that the totals in the table add up to 100%.

60 This should actually be 10, since one male victim was exploited in both the sex industry and in another sector. In this table he is registered only under the other sector so that the totals in the table add up to 100%.

61 Hence, there are actually 343 victims.

62 Hence, the figure is actually 48%.

63 This should actually be 467, since two female victims were exploited in both the sex industry and in the hospitality sector. In this table they are registered only under hospitality so that the totals in the table add up to 100%.

64 Hence, there are actually 475 victims.

65 Hence, the total is actually 58%.

Hospitality	2(+1 <sup>66</sup> )	5	1	8(+1 <sup>67</sup> )	1	3 <sup>68</sup>	4	–	7	1
Domestic service	12(+1 <sup>69</sup> )	–	–	12(+1 <sup>70</sup> )	2	6	–	–	6	1
Drug trade	–	–	–	–	–	4	1	–	5	1
Cleaning	1	–	–	1	0	2	1	–	3	0
Au pair	1	–	–	1	0	1	–	–	1	0
Agriculture and horticulture	–	–	–	–	–	1	–	–	1	0
Construction	–	3	–	3	0	–	–	–	–	–
Textile industry	1	–	–	1	0	–	–	–	–	–
Organ donation	–	1	–	1	0	–	–	–	–	–
Other <sup>71</sup>	6	8	–	14	2	15	14	–	29	4
Unknown	219	13	–	232	32	232	11	–	243	29
<i>Total</i>	<i>664</i>	<i>49</i>	<i>3</i>	<i>716</i>	<i>100</i> <sup>72</sup>	<i>779</i>	<i>46</i>	<i>1</i>	<i>826</i>	<i>100</i>

Source: CoMensha (databases).

As Table 4.7 shows, with respect to a significant share of the victims registered with CoMensha in 2007 and 2008 (32% and 29% respectively), it is not known which sectors they were exploited in. With respect to those about whom that information is known, almost half of all registered victims in 2007, and more than half in 2008, were exploited in the sex industry. Only around 3% of all victims in 2007 and 2008 were exploited in one of the ‘other forms of exploitation’ in a sector listed in the table. All of the victims of ‘other forms of exploitation’ came from abroad in both years. The case of the male victim who was forced to donate an organ in 2007 is interesting. It was the first report of a victim of organ trafficking in the Netherlands. The case involved an 20-year-old Indian man who was reported to CoMensha by the Groningen police. This (possible) victim claimed that he had been forced to donate a kidney. It is unclear whether that really happened because shortly after he was offered the reflection period, the man disappeared and his whereabouts are unknown.<sup>73</sup>

66 This should actually be three, since one female victim was exploited in the hospitality sector and another sector. In this table she is registered only under the other so that the totals add up to 100%.

67 Hence, the total is actually nine victims.

68 Hence, two of these female victims were also exploited in the sex industry.

69 This should actually be 13, since one female victim was exploited in domestic service and in another sector. In this table she is registered only under the other sector so that the totals in the table add up to 100%.

70 Hence the total is actually 13 victims.

71 The category ‘other’ can be either sexual or other forms of exploitation.

72 This is not the same as the sum of the percentages in this column. That is because the individual percentages have been rounded off to whole numbers

73 Verbal information from CoMensha. For more information about the trade in organs, see Chapter 13.

Of the 343 victims who were exploited (at least partly) in the sex industry in 2007, a quarter were minors (84 victims). In 2008, that figure had dropped to one-fifth (93 underage victims in the sex industry). In 2008, one minor was exploited in the hospitality sector.<sup>74</sup>

### Notifiers

Table 4.8 provides a list of the different categories of notifiers in the period from 2004 to 2008. In some cases, several different organisations were involved in a notification. Since 2007, CoMensha has recorded the names of every organisation involved in a notification. Consequently, the aggregate figures in the table since 2007 exceed the number of victims and the totals do not add up to 100%.

Table 4.8 Notifiers of (possible) victims, by year

Notifier	2004		2005		2006		2007		2008	
	N	%	N	%	N	%	N	%	N	%
Police <sup>75</sup>	192	47	218	51	310	54	385	54	493	60
Human trafficking victims networks <sup>76</sup>	Na	na	na	na	104	18	144	20	136	16
Royal Netherlands Marechaussee <sup>77</sup>	Nvt	nvt	nvt	nvt	56	10	23	3	15	2
IND	Nvt	nvt	nvt	nvt	15	3	5	1	4	0
Shelter <sup>78</sup>	49	12	75	18	21	4	20	3	22	3
Organisations for refugees/asylum seekers <sup>79</sup>	12	3	19	4	8	1	6	1	9	1
Social services <sup>80</sup>	18	4	2	0	9	2	9	1	2	0
Youth social services <sup>81</sup>	14	3	6	1	8	1	81	11	72	9
Health care/field work <sup>82</sup>	3	1	5	1	3	1	–	–	–	–

74 Five minors worked in the sectors included in the category 'other'.

75 These include all police services that might be involved with human trafficking.

76 The networks for victims of human trafficking were set up by CoMensha in order to provide integrated help for victims. The networks are supervised by a care coordinator or – if there isn't a care coordinator – by CoMensha itself. The few reports received from the networks were previously classified in the category 'shelter facilities'. Because of the increase in the number of reports from the networks in 2006, they were included as a separate category in the STV's 2006 annual report, and hence also in this table.

77 The Royal Netherlands Marechaussee reported (possible) victims for the first time in 2006; hence this separate category in the STV's 2006 annual report and in this table. The reports by the Marechaussee are the result of the activities of the *Sluis* team that intercepts (potential) victims at Schiphol airport.

78 Including public shelters and women's shelters and religious, private or local initiatives.

79 These are professional groups that work in notification centres, shelters and asylum centres, such as VluchtelingenWerk, but also counsellors and medical staff, the Central Agency for the Reception of Asylum Seekers (COA) and the aliens holding centre (*Grenshopitium*) at Schiphol

80 General social work and social work for prostitutes.

81 Child Protection Council, Youth Care Agency and the guardianship activities of NIDOS.

82 Institutions (municipal health services, doctors, hospital employees) where medical care is discussed and information is provided to prostitutes in the workplace or during surgeries.

Notifier	2004		2005		2006		2007		2008	
	N	%	N	%	N	%	N	%	N	%
Legal/community services <sup>83</sup>	22	5	10	2	16	3	27	4	55	7
Victim personally	12	3	12	3	7	1	3	0	2	0
Individuals <sup>84</sup>	23	6	n.a.	n.a.	20	3	15	2	10	1
Unknown <sup>85</sup>	–	–	37	9	2	0	–	–	–	–
Other	60	15	40	9	–	–	24	3	22	3
<i>Total</i>	<i>405</i>	<i>100</i>	<i>424</i>	<i>100</i>	<i>579</i>	<i>100</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>

Source: CoMensha (annual reports).

As in previous years, the largest number of notifications in 2007 and 2008 were made by the police, followed at some distance by the networks for victims of human trafficking.

*Other information about victims supplied by CoMensha*

Although there was little information recorded about many of the victims in 2007 and 2008, some details that may be of interest are presented here. The following figures and percentages have to be regarded as a minimum because of the missing data, so they are not compared with the data in the earlier reports for 2005 and 2006.

Of the victims reported to CoMensha in 2007 and 2008, it is at least known that:

- 27 of the female victims were pregnant (10 in 2007 and 17 in 2008);
- 188 female victims had children (83 in 2007 and 105 in 2008);
- 104 victims wanted to return to their country of origin (52 in 2007 and 52 in 2008).

This limited database highlights once again the importance of systematically recording data on the basis of international standards (see §4.3.1 and §3.2 above).

### 4.3.3 Victims and the B9 regulation

#### *Applications and permits*

Table 4.9 shows how many aliens submitted applications for B9 status per year, and how many applications were granted per year.

83 The category ‘community services’ (without specification) was introduced in the STV’s annual report for 2004. Previously, the category ‘legal services’ had been used (legal aid offices, citizen’s advice centres, victim’s aid offices and lawyers). The STV’s annual report for 2006 included both categories. For the purposes of comparison, the two categories have been merged in Table 4.8 for 2006; the data for 2004 and 2005 are for ‘community services’ and from 2006 they are for a combination of both.

84 These can be family, friends or a partner of the victim. Sometimes a report comes from a client (STV annual report, 2006).

85 It is noticeable that in 2005 many notifiers were categorised as ‘unknown’. None had been classified as ‘unknown’ previously. In 2006 there were a few and later none at all again.

Table 4.9 Number of B9 permits applied for and granted

	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
Number of applications for B9 permit	77	100	180	100	186	100	443	100
Number of B9 permits granted	61	79	150	83	143	77	235	53

Source: IND databases

Around 80% of the B9 permits applied for were granted each year in the period from 2005 to 2007. In 2008, however, the proportion fell to 53%. However, the actual number of applications and permits granted increased sharply in that year. This increase in applications and the relative decline in the number granted may be explained by the fact that more ‘hopeless B9 applications’ were made in 2008 than in previous years.<sup>86</sup>

#### Reflection period, reports

Tables 4.10 to 4.12 show how many foreign victims registered by CoMensha were offered a reflection period, how many of these victims accepted the reflection period, and how many ultimately also reported human trafficking.

Table 4.10 Offers of reflection period made to (possible) foreign victims reported to CoMensha, by year

		2004	2005	2006		2007		2008	
		N	N	N	%	N	%	N	%
Reflection period offered	Yes	Unknown	Unknown	101	23	134	30	201	40
	No	Unknown	Unknown	Unknown	Unknown	111	25	91	18
	n.a./unknown <sup>87</sup>	Unknown	Unknown	Unknown	Unknown	201	45	214	42
	Total	346	326	433	100	446	100	506	100

Source: CoMensha (2004-2006: annual reports; 2007-2008: databases).

Table 4.11 Acceptance of reflection period by (possible) foreign victims reported to CoMensha to whom a reflection period was offered, by year

		2004	2005	2006		2007		2008	
		N	N	N	%	N	%	N	%
Reflection period accepted	Yes	43	43	49	49	116	87	134	67
	No/unknown <sup>88</sup>	Unknown	Unknown	52	51	18	13	67	33
	Total	Unknown	Unknown	101	100	134	100	201	100

Source: CoMensha (2004-2006: annual reports; 2007-2008: databases).<sup>88</sup>

<sup>86</sup> See §5.3.

<sup>87</sup> This also covers foreign victims who had already made a complaint. These victims are not offered a reflection period. However, the majority of this group are unknown.

<sup>88</sup> In both years, for at least one foreign victim who was offered a reflection period it is unknown whether he/she accepted it.



Table 4.12 Report of human trafficking made by (possible) victims reported to CoMensha, by year

		2004		2005		2006		2007		2008	
		N	%	N	%	N	%	N	%	N	%
Report	Yes	185	46	155	37	208	36	234	33	246	30
	No/unknown	220	54	269	63	371	64	482	67	580	70
By foreign victims who accepted reflection period	Yes	Un-known	Un-known	Un-known	Un-known	Un-known	Un-known	71	61	80	60
	No/unknown	Un-known	Un-known	Un-known	Un-known	Un-known	Un-known	45	39	54	40
	Total	43	100	43	100	49	100	116	100	134	100
Total		405	100	424	100	579	100	716	100	826	100

Source: CoMensha (2004-2006: annual reports; 2007-2008: databases).

While the percentage of foreign victims who are offered the reflection period has grown annually (from 23% in 2006 to 40% in 2008), the number of foreign victims who ultimately accept the reflection period when it is offered has fluctuated over the years, from 49% in 2006 to 87% in 2007 and 67% in 2008.

The victims that accepted the reflection period made a report in roughly 60% of cases in 2007 and 2008. This figure is very high compared with the percentage of complaints made by all victims registered with CoMensha, (33% in 2007 and 30% in 2008). In 2007 and 2008, 18% and 11% of all victims who reported had Dutch nationality.

The results and trends described here need to be qualified with the knowledge that a large amount of information is unknown, as is apparent from Tables 4.10 to 4.12. It is also uncertain whether CoMensha is aware of all cases involving a reflection period.

### *B9 permits*

B9 permits are granted to victims or witnesses who have pressed charges of human trafficking, who are living illegally in the Netherlands and are willing to cooperate with the police and public prosecution service. In 2008, the IND awarded 235 B9 residence permits,<sup>89</sup> which is more than in previous years. See Appendix 2.5 for an explanation of the research and some additional reservations about the data.

Table 4.13 shows the breakdown by age of victims or witnesses who received B9 status between 2005 and 2008.

89 In the initial procedure, 221 B9 permits were granted. Objections and appeals led to an additional 14 B9 permits being granted.

Table 4.13 Age distribution of persons granted B9 status (2005-2008)

Age	B9 permits							
	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
0 to 10	–	–	–	–	–	–	1	0%
11 to 17	5	8%	27	18%	17	12%	17	7%
18 to 25	29	48%	70	47%	70	49%	120	51%
26 to 30	18	30%	23	15%	27	19%	33	14%
31 to 40	8	13%	24	16%	25	18%	49	21%
41 and older	1	2%	6	4%	4	3%	15	6%
Total	61	100%	150	100%	143	100%	235	100%

Source: IND databases

In all of the years studied, roughly half of the persons granted a B9 residence permit were aged between 18 and 26. Seventeen minors were granted a B9 residence permit in 2007, and 18 in 2008.<sup>90</sup> The number of minors granted a B9 residence permit therefore remained stable in absolute terms in 2008 but was smaller in relative terms.

Table 4.14 shows the gender of victims and witnesses who were granted B9 status between 2005 and 2008.

Table 4.14 Gender of persons granted B9 status (2005-2008)

Sex	B9 permits							
	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
Male	1	2%	16	11%	14	10%	25	11%
Female	60	98%	134	89%	129	90%	210	89%
Total	61	100%	150	100%	143	100%	235	100%

Source: IND databases

The shift in terms of the gender of the victims (more male victims, as a result of the expansion of the legal provision on human trafficking) that started in 2006 did not continue. The percentage of B9 permits granted to male victims stabilised at around 10%.

<sup>90</sup> As in previous years, children of victims and children of witnesses are also registered – incidentally and mistakenly – as recipients of B9 permits under the heading of minors. For example, in both 2007 and 2008 one of the minors appears in the same file as an adult victim, which strongly indicates a parent-child relationship.

Table 4.15 contains a list of the most common nationalities of victims and witnesses granted a B9 residence permit.<sup>91</sup> A table with all the nationalities is included in Appendix 4 (Table B3).

Table 4.15 Nationality of persons with B9 status (2005-2008)

Nationality	B9 permits							
	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
Bulgarian	11	18%	18	12%	10	7%	8	3%
Chinese	1	2%	9	6%	16	11%	42	18%
Ghanaian	–	–	–	–	1	1%	7	3%
Guinean	–	–	3	2%	5	4%	14	6%
Hungarian	1	2%	2	1%	4	3%	11	5%
Indian	–	–	3	2%	–	–	6	3%
Cameroonian	–	–	2	1%	4	3%	10	4%
Moroccan	1	2%	1	1%	6	4%	2	1%
Nigerian	4	7%	33	22%	34	24%	54	23%
Polish	3	5%	2	1%	5	4%	–	–
Romanian	6	10%	24	16%	5	4%	3	1%
Russian	5	8%	3	2%	4	3%	2	1%
Sierra Leonean	8	13%	10	7%	17	12%	23	10%
Other	15	25%	31	21%	18	13%	46	20%
Unknown	1	2%	1	1%	1	1%	7	3%
Total	61	100%	150	100%	143	100%	235	100%

Source: IND databases

In 2007 and 2008, once again a very large proportion (almost a quarter) of the victims/witnesses of human trafficking granted a B9 residence permit were Nigerian. As in 2006, Nigeria again topped the list of countries of origin of victims and witnesses with B9 status. In 2008, China ranked second, with a growing number of victims/witnesses with B9 status. The third-ranked country was Sierra Leone. In 2006, the second and third places were occupied by Romania and Bulgaria, countries from where the number of victims with B9 status has been declining slightly.

<sup>91</sup> A nationality is included in the table if five or more victims or witnesses who received a B9 permit possessed that nationality in at least one of the years between 2005 and 2008.

In Table 4.16 the victims/witnesses with B9 residence permits are broken down by region of origin. The classification makes a distinction within Europe between countries that were members of the EU in 1995,<sup>92</sup> countries that joined the EU in 2004 or were candidate member states at that time and joined in 2007,<sup>93</sup> non-EU countries in Eastern Europe<sup>94</sup> and non-EU countries in Western Europe.<sup>95</sup> There are also separate categories for the other continents.<sup>96</sup>

Table 4.16 Region of origin of persons with B9 status (2005-2008)

Region of origin	B9 permits							
	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
EU: 1995	2	3%	–	–	2	1%	1	0%
EU: new or candidate member states 2004	26	43%	51	34%	27	19%	26	11%
Non-EU countries in Eastern Europe	10	16%	12	8%	8	6%	10	4%
Non-EU countries in Western Europe	1	2%	–	–	–	–	–	–
Africa	17	28%	60	40%	74	52%	110	47%
Latin America & Caribbean	1	2%	2	1%	5	4%	6	3%
Asia	3	5%	23	15%	26	18%	75	32%
Unknown/stateless	1	2%	2	1%	1	1%	7	3%
Total	61	100%	150	100%	143	100%	235	100%

Source: IND databases

Africa has been the region of origin of the largest proportion of victims and witnesses granted a B9 residence permit since 2006. Asia's share has grown, while that of Europe – particularly the new (candidate) member states in 2004 and the non-EU countries in Eastern Europe – has declined.<sup>97</sup>

The police inform the IND of victims or witnesses of human trafficking who have made a statement, which is *ex officio* treated as an application for a temporary residence permit under the B9 regulation. Table 4.17 presents a list of the police regions where the applications

92 Belgium, Germany, France, Italy, Luxembourg, Netherlands, Denmark, Ireland, United Kingdom, Greece, Portugal, Spain, Finland, Austria and Sweden.

93 Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia, Czech Republic, Bulgaria and Romania.

94 Russian Federation, Moldavia, Ukraine, Belarus, Albania, Bosnia and Herzegovina, Serbia and Montenegro, Macedonia, Croatia, Montenegro, Kazakhstan, Turkey, Kyrgyzstan, Azerbaijan.

95 Switzerland, Norway, Iceland, Isle of Man, Faroe Islands, Andorra, Gibraltar, Greece, the Holy See, San Marino, Liechtenstein, Monaco.

96 Only included in the table if persons with B9 status came from there.

97 EU nationals also have rights under the B9 regulation.

that led to the granting of a residence permit came from. It is interesting to note the large number of B9 permits granted in the Haaglanden police region (see also §4.5).

Table 4.17 B9 permits awarded, by police region (2005-2008)

Police region	B9 permits							
	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
Amsterdam-Amstelland	6	10%	23	15%	16	11%	21	9%
Brabant-Noord	–	–	2	1%	2	1%	2	1%
Brabant-Zuid-Oost	2	3%	8	5%	8	6%	8	3%
Drenthe	2	3%	3	2%	2	1%	4	2%
Flevoland	2	3%	2	1%	1	1%	3	1%
Friesland	8	13%	4	3%	5	4%	7	3%
Gelderland-Midden	2	3%	2	1%	1	1%	6	3%
Gelderland-Zuid	–	–	2	1%	2	1%	4	2%
Gooi en Vechtstreek	1	2%	–	–	–	–	–	–
Groningen	3	5%	8	5%	12	8%	19	8%
Haaglanden	2	3%	16	11%	16	11%	41	17%
Hollands Midden	1	2%	3	2%	3	2%	3	1%
IJsselnd	1	2%	1	1%	8	6%	4	2%
Kennemerland	2	3%	34	23%	17	12%	31	13%
Limburg-Noord	–	–	–	–	2	1%	8	3%
Limburg-Zuid	1	2%	2	1%	2	1%	6	3%
Midden- en West-Brabant	1	2%	8	5%	4	3%	18	8%
Noord- en Oost-Gelderland	4	7%	2	1%	2	1%	5	2%
Noord-Holland Noord	–	–	3	2%	4	3%	1	0%
Rotterdam-Rijnmond	9	15%	11	7%	13	9%	14	6%
Twente	3	5%	1	1%	2	1%	1	0%
Utrecht	5	8%	4	3%	10	7%	13	6%
Zaanstreek-Waterland	1	2%	–	–	–	–	–	–
Zeeland	–	–	4	3%	1	1%	–	–
Zuid-Holland-Zuid	1	2%	1	1%	1	1%	1	0%
Unknown	4	7%	6	4%	9	6%	15	6%
Total	61	100%	150	100%	143	100%	235	100%

Source: IND databases

Quite a few victims want to remain in the Netherlands when their B9 status expires.<sup>NRM<sub>3</sub></sup> They can then apply for continued residence. For information about continued residence, see Chapter 5.

#### 4.4 Compensation<sup>98</sup>

The various possibilities open to victims of human trafficking for claiming compensation for material damages or emotional injury were described in the fifth report of the NRM.<sup>99</sup> Two of these options are discussed in more detail in this section: (1) the order to pay compensation that the judge can impose in criminal proceedings and which is executed by the Central Fine Collection Agency (CJIB), and (2) the right to make a claim to the Violent Offences Compensation Fund (SGM). The analysis is concerned mainly with the benefits of these procedures for the victims.

##### *The order for compensation*

The judge in criminal proceedings can, either on request or *ex officio*, order the payment of compensation when passing sentence. Data from the public prosecution service provide (some) information about judicial decisions concerning compensation. The use of the order for compensation is discussed at length in NRM5. This section is concerned mainly with the execution of the order for compensation by the CJIB, which collects the amount owed to the victim.

##### *The CJIB*

When the judge makes an order to pay compensation in criminal proceedings, the CJIB collects the compensation for the victim. Table 4.18 presents some data about the collection of compensation in human trafficking cases. Acquired from the CJIB, the data relate to cases against individual, anonymous defendants.

98 The subject of compensation for victims of human trafficking is discussed at length in Chapter 11, although the subject is covered largely from the perspective of criminal procedure. It focuses mainly on the way in which the criminal judge assesses the claim of the injured party. In almost every case, the order for compensation is imposed in combination with the award of the injured party's claim.

99 Including the civil proceedings and the joinder of the injured party in the criminal proceedings.

Table 4.18 Compensation

	2000	2001	2002	2003	2004	2005	2006	2007 <sup>100</sup>	2008
	N	N	N	N	N	N	N	N	N
<i>Number of victims involved</i>									
1	4	1	2	3	13	8	8	10	11
2	–	–	–	–	2	1	1	2	1
3	1	1	1	–	1	2	–	1	1
4	–	1	–	–	1	1	–	–	–
<i>Amount of the claim (in €)</i>									
1-500	2	–	–	–	–	–	–	1	1
501-5,000	1	1	3	3	13	6	6	10	7
5,001-15,000	2	2	–	–	1	3	2	2	5
15,001-25,000	–	–	–	–	1	1	–	–	–
25,001-35,000	–	–	–	–	–	–	1	–	–
more than 35,000	–	–	–	–	2	2	–	–	–
<i>Status</i>									
Open	1	1	1	–	9	6	4	9	10
Closed	4	2	2	3	8	6	5	4	3
<i>Settlement*</i>									
payment in full	2	1	1	2	6	4	3	4	3
custodial alternative	1	1	1	–	2	2	2	–	–
Other	1**	–	–	1***	–	–	–	–	–
n.a. (open)	1	1	1	–	9	6	4	9	10
<i>Financial settlement (in €)****</i>									
0	1	1	–	–	5	4	1	4	1
1- 500	2	–	–	–	3	2	–	1	5
501-5,000	2	2	3	3	8	3	8	8	6
5,001-15,000	–	–	–	–	1	3	–	–	1
15,001-25,000	–	–	–	–	–	–	–	–	–
25,001-35,000	–	–	–	–	–	–	–	–	–
more than 35,000	–	–	–	–	–	–	–	–	–
<i>Total</i>	5	3	3	3	17	12	9	13	13

Source: CJIB (reference date 28 January 2009).

\* the method of settlement relates to the *final action* by the CJIB. \*\* the claim is barred by lapse of time. \*\*\* arrangement between the convicted person and the victim. \*\*\*\* by case (not by victim).

100 The figures on claims for and the award of compensation in the 108 human trafficking cases in 2007 are presented in section 11.11. There were at least 21 claims awarded in 16 judgments in which an order for compensation was made, although Table 4.18 shows 17 claims in 13 cases. A possible explanation for this discrepancy is that a judgment is not yet final in all cases and the order has therefore not yet been registered by the CJIB.

In the period from 2000 to 2003, the CJIB collected compensation in three to five human trafficking cases. The number has been significantly higher since 2003, between nine and 17 cases. The CJIB only receives the claims when the judgments have become final. This is sometimes in the same year that the offence was committed, but can also be many years later.<sup>101</sup> Most of the claims are for a single victim; others are for two victims and occasionally for three or four. Generally speaking, the amounts claimed – per case, not per victim – are not more than €5,000, occasionally they are higher, and in four cases<sup>102</sup> (in the period 2000-2008) the amounts were higher than €35,000.<sup>103</sup> Collecting compensation is a time-consuming business, as is apparent from the large number of outstanding cases from earlier years (in the table under ‘status’). The fact that a case is still open does not in fact mean that nothing has yet been paid. The court might decide, for example, that the compensation can be paid in instalments,<sup>104</sup> which means that a case is, by definition, open longer. In certain cases and under strict conditions,<sup>105</sup> the CJIB can also agree a payment schedule (an arrangement to pay in instalments or to delay payment for a specific period).<sup>106</sup> By comparing the cases in the table in which there was a claim with those where has been a financial settlement, it is obvious that in many cases, the amount has either not been paid or has been only partially paid. When the convicted person does not pay or does not pay in full, recourse through the public prosecutor is possible.<sup>107</sup> If that doesn’t work, the public prosecutor may issue an arrest warrant to execute the custodial alternative (the court decision already specifies how many days the defendant will have to serve if he or she does not pay). The custody does not in fact replace the compensation, but is intended to exert pressure. The involvement of the CJIB ends after the defendant has been placed in custody. If this does not produce any result, the matter is transferred to the victim, who is given a judgement with which he or she can authorise a bailiff to execute the decision (but the victim is then, in fact, left almost empty-handed). Since 2005, the CJIB has also had the task of informing victims about the collection of their compensation. The Victim Compensation Information Centre (SIS) has gradually assumed this task from the various offices of the public prosecution service, a process that was completed at the end of 2006. According to the CJIB’s records, in 2007 and 2008 letters were sent to a large majority of the 36 victims concerned asking whether they wanted to be kept informed of progress with their claim. Seventeen said that they did wish to be kept informed.

101 For example, in 2006 the CJIB received a claim for an offence committed in 1994.

102 Two in 2004 and two in 2005.

103 These were €42,500 and (rounded off) € 167,000 in 2004 and € 38,000 and € 204,000 in 2005.

104 “These periods are fixed at a minimum of one and a maximum of three months. In the event of a judgment, they may not exceed a period of two years; in the case of an out of court settlement, they may not exceed a period of one year” (Article 24a, Dutch Code of Civil Procedure).

105 For these conditions, see: Council of Procurators General Instruction on execution of alternative sentences of imprisonment, community service for adults, fines, orders of compensation and confiscation, European monetary sanctions and applications for conditional release (2008Ao13), appendix 3 (entered into force on 1 July 2008, valid until 30 June 2012).

106 See also Van Wingerden, Moerings & Van Wilsem (2007).

107 This can be done with or without an order enforcing execution (see Articles 575 and 576, Dutch Code of Civil Procedure).



To sum up, it can be concluded that although an order for compensation means that the victim does not personally have to chase after the convicted person to collect the money, there is no guarantee of an (early) settlement or that the ultimate outcome will be positive.

In that context, it is important for the bill to strengthen the position of the victim in criminal proceedings<sup>108</sup> to include an arrangement for advance payments, to be implemented by the Violent Crimes Compensation Fund. The Minister of Justice has explained that this provision is intended for victims of violent crimes and crimes against public decency. The crimes falling under these headings will be further defined by Order in Council, but it seems obvious that the scheme will also apply to victims of human trafficking.

*The Violent Offences Compensation Fund(SGM)*

Various criteria have to be met to qualify for financial compensation from the compensation fund. The violent offence must have been committed intentionally in the Netherlands, the victim must have suffered severe physical and/or emotional injury, the victim must not have been jointly guilty of the offence, the victim must not be able to recover compensation in any other way and the offence must not have occurred before 1973. Of particular relevance in the Violent Offences Compensation Fund Committee's policy towards assessing applications from victims of human trafficking (up to now almost exclusively women, all victims of sexual exploitation<sup>109</sup>) is the extent to which the applicant was in a state of dependency sufficient to force him or her to perform sexual activities. Circumstances that could play a role in the assessment of whether or not a violent offence occurred are whether the victim's passport was confiscated, the victim had to surrender all or most of the earnings, the victim was under constant supervision or locked up, the victim's freedom of movement was constrained or the victim was intimidated or assaulted.

In 2007, SGM received 25 applications from victims of human trafficking. Eighteen of them were awarded.<sup>110</sup>

In 2008, 19 applications relating to human trafficking were submitted.<sup>111</sup> They were received from five different law firms, Victim Support Netherlands, Juridisch Loket, BLinN and Stichting Humanitas. Eighteen of the applications were awarded and one was rejected. The rejection was connected with the fact that the woman in question had not reported human trafficking and that further investigation by the compensation fund and the woman's own statements had not plausibly shown that it was a case of human trafficking. Seven of the applications that were awarded involved situations in which the woman concerned entered prostitution more or less voluntarily but where the situation had become one of forced

108 This bill was submitted to the Upper House of Parliament in December 2007.

109 One case concerned a foreign man who was repeatedly sold as a slave and forced to perform sexual acts with various people.

110 Written information from the Violent Offences Compensation Fund.

111 Written information from the Violent Offences Compensation Fund.

prostitution.<sup>112</sup> The awards involved compensation for emotional injury in category four (12 times), category two (3 times) and categories five and six (one time each).<sup>113</sup>

On the subject of compensation for victims, the Human Trafficking Task Force's action plan reviewed the use of (among other things<sup>114</sup>) the Violent Crimes Compensation Fund and formulated a 'quick win' to be achieved in this area. Its aim was to complete a survey of the use of the Violent Crimes Compensation Fund by victims of human trafficking before 1 July 2009. It also said that an action plan should be drawn up to increase the use of this service.<sup>115</sup>

#### 4.5 Victims, and reports of human trafficking<sup>116</sup>

##### *General*

Victims of human trafficking have various entitlements (see later in this chapter), and aliens also have certain rights under immigration law. This is one reason why it is important to establish whether a person can and should be regarded as a victim. After all there is a lot at stake, and not just for the victim personally. It is also important in the interests of combating human trafficking through investigation and prosecution of human traffickers. The identification of victims is usually a first step in that process; the complaint made by a victim can form the basis for further investigation and prosecution.<sup>117</sup> Although a victim can also benefit from a prosecution, and particularly a conviction, in practice there are obstacles to reporting relating to fear of, or even attachment to, the human trafficker. It is therefore important to remove as many obstacles as possible that could prevent victims from reporting and to take measures that will help victims to take that step. This is the purpose of the B9 regulation (see Chapter 5), under which illegal immigrants who might be victims of human trafficking can be granted a reflection period to decide calmly whether they wish to report or otherwise cooperate with an investigation. During that period they can remain legally in the Netherlands.

##### *Reports of human trafficking made in the Haaglanden region*

There are a number of small organisations in the Haaglanden region that provide help for victims of human trafficking, usually operating in the prostitution sector. These organisations, such as Vital Aid Netherlands and the Lydia Foundation, help women, mainly African women, to report human trafficking to the police. The number of investigations into human trafficking in the Haaglanden region doubled from 43 in 2007 to 88 in 2008. The number of reports made by African women rose from 14 to 42 in the same period (annual report of the Haaglanden police). Recording these reports takes a lot of time, leaving less time for investigation. These

112 The voluntary entry into prostitution is apparently – and rightly – not regarded as relevant.

113 Category four €2,750; category two €1,400; category five €4,150; category six €5,500.

114 The action plan also refers in the same context to Victim Support Netherlands.

115 Human Trafficking Task Force, 2009a.

116 More information about complaints and willingness to press charges can be found in Chapter 5.

117 A case can also be investigated and prosecuted without a complaint by a (possible) victim. On this point, see also Chapter 8.

cases often provide few leads for an investigation, whereupon the investigation is halted in consultation with the public prosecution service. The number of official reports submitted was 12 in both years.<sup>118</sup>

This example clearly shows that help for immigrants in reporting the crime can lead to a sharp increase in the number of complaints<sup>119</sup> but, at the same time, could create the risk that more capacity has to be devoted to less promising cases.

Making it easier to make a report is also one of the elements in the Human Trafficking Task Force's action plan. The conditions experienced by victims while in a shelter can be very decisive. Social workers argue that the willingness of victims to report increases if they are accommodated in a closed environment and receive help tailored to their needs.

#### *Anonymity when reporting human trafficking*

The Human Trafficking Task Force's action plan<sup>120</sup> refers to the letter from the Minister of Justice and the Minister of Home Affairs and Kingdom Relations in response to the results of the study entitled *Anonimiteit in het strafproces*.<sup>121</sup> The study also addressed human trafficking and measures to combat it, although the recommendations in the report are not specifically intended for victims of human trafficking. These recommendations include the following points designed to increase anonymity in criminal proceedings. Choice of domicile – concealment of the address of the victim or witness when this is not relevant for the evidence in the trial – will be used more often. Complainants will also be identifiable only with a unique identification number rather than an address.<sup>122</sup> The public prosecution service, the police and victims could make more frequent use of the status 'witness with limited anonymity' on the grounds of Articles 190 and 290 of the Dutch Code of Criminal Procedure. The relevant guidelines and procedures of the public prosecution service<sup>123</sup> will be amended to promote this, and the police professional code will be reviewed<sup>124</sup>. Articles 190 and 290 of the Dutch Code of Criminal Procedure will also be reviewed to see whether a more subjective criterion can be adopted for the risk that a witness faces or might face because of his or her testimony.<sup>125</sup>

One reservation to these measures, which are designed to make it easier to make a complaint by providing anonymity, is that in practice the human trafficker is usually able to easily identify which of his victims must have provided the information, so the victim's fear of reper-

118 Annual report of Haaglanden Police 2008.

119 For a detailed discussion of this subject, see Chapter 5.

120 Human Trafficking Task Force, 2009a, p. 23.

121 *Parliamentary Documents II* 2008/09, 28 684, no. 176.

122 The anonymity may be lifted again when the enquiries become a criminal investigation. It was stated that this will be studied further in a pilot project.

123 This is the manual for 'taking a (partially) anonymous complaint/statement'.

124 The professional code describes the relationship between the police and victims.

125 This point will be further reviewed in the legislative process for the Amendment of the Dutch Code of Civil Procedure with regard to the position of the witness in criminal proceedings.

cussions from the offender will not really be removed. Accordingly, this type of measure has only limited applicability for the offence of human trafficking. It also remains uncertain whether the anonymity can actually be permanently guaranteed, given the basic principles of criminal law such as equality of arms. The so-called programmatic approach, where information is collected from various sources, could perhaps offer a solution. Accumulating that information would reduce the relative importance of and dependence on a complaint.

#### *Reporting human trafficking*

On behalf of the public prosecution service's research department, the Verwey Jonker Institute launched a study into the willingness of victims of human trafficking to report the offence. Unfortunately, this research was halted before it was completed.

ROOD, the youth section of the SP in Utrecht, Pretty Woman and a former victim of exploitation by a loverboy produced a descriptive study of the problems experienced by victims of loverboys in making complaints and the role of the police in the process.<sup>126</sup>

## **4.6 Shelter for victims of human trafficking**

### **4.6.1 General**

Victims of human trafficking very often need help: help to escape from the situation they have been forced into, help to recover and help to work through traumatic experiences, to be able to contribute to a possible trial of the human traffickers, to follow procedures they themselves are involved in and sometimes to return to their country of origin.

In practice, however, it is frequently difficult to find suitable shelter, not only for specific categories of victims of human trafficking, such as men, minors and victims with particular problems such as psychiatric complaints or addictions. Even female victims of exploitation in the sex industry are not always certain of receiving shelter immediately. The waiting time can stretch from several days to several weeks. According to information from CoMensha,<sup>127</sup> at the beginning of September 2009, there were 15 clients waiting for initial shelter and 28 waiting to move onto another setting where they could receive help. The situation had been similar in the preceding months. A victim is sometimes held in a police cell.<sup>128</sup> It is also often impossible to provide shelter immediately for victims at Schiphol. Until there is a place for them, they are held as detainees on remand or kept in the lounge.<sup>129</sup>

The seriousness of the problem with regard to 'categorical shelter' is apparent from the following e-mail from the Royal Dutch Marechaussee.

126 ROOD Utrecht, June 2009. *Slachtoffers van Loverboys, Een onderzoek naar ervaringen met politie and justitie van het proces van aangifte tot de veroordeling*. See also §4.2.3 above.

127 Verbal information during the meeting of the Human Trafficking Task Force on 9 September 2009

128 According to a reply from the Minister of Justice and the State Secretary for Health, Welfare and Sport to parliamentary questions (September 2008).

129 Written information from the Youth & Vice Team, Schiphol.

*“On 16 April 2008 we received a telephone call reporting a possible victim of human trafficking. The first interview by an employee of the AC IND Schiphol produced sufficient indications that it could be a case of human trafficking. After careful consultation, it was decided that this 19-year-old woman would be interviewed at the end of the 48-hour asylum procedure. She was interviewed on Monday 21 April 2008. Various indications of human trafficking and sexual abuse emerged from the interview. The interviewing detectives offered her the B9 regulation and she accepted the reflection period. She was seriously traumatised and needed expert counselling and help. Unfortunately, there was no place available at the HVO de Roggeveen on Monday. The HVO is the first point of contact for the Marechaussee at Schiphol when it wants to find shelter for adult victims of human trafficking. We have only praise for their cooperation because they really do their very best and the municipality of Amsterdam is also very cooperative in looking for solutions. From today CoMensha is looking for a place in a shelter for her, up to now without success. For all that time she has been in the AC Schiphol and should actually have already left at the weekend.”<sup>130</sup>*

A victim is sometimes moved several times and non-specialist shelters for women, where most victims end up, have various problems with this target group, including language problems, administrative problems (because the victims initially often have no papers), the unsuitability of the approach (which is often future-oriented, due to the uncertain residence status of the victims), and the high security risk.<sup>NRM3</sup> The problems with capacity in the shelters also take up a lot of police time because they generally transport victims to the shelter. They also have to interview them at these shelters, which are sometimes a very long distance away since it is not always possible to find a shelter in the region where the investigation is taking place, although an effort is made to do so.<sup>131</sup>

*Specific problems concerning victims of other forms of exploitation*

Specific problems – characteristic of this group – arise in providing shelter for victims of other forms of exploitation. First, where there is a suspicion of another form of exploitation the situation often involves a relatively large number of (possible) victims. For example, in the case ‘Exploitation on an asparagus farm in Someren’<sup>132</sup> 55 possible victims of human trafficking were found. There would have been practical problems in quickly finding adequate shelter for all of these victims.

Unlike victims of sexual exploitation, victims of other forms of exploitation are usually male, and there are few places in shelters for male victims. Furthermore, it is conceivable that victims of other forms of exploitation require a different type of shelter and counselling than victims of sexual exploitation.

The following case illustrates the difficulty of finding a good shelter:<sup>133</sup>

Following a search of a dwelling in which 11 Indonesians were found living under dreadful conditions, the Social Intelligence and Investigation Service (SIOD) immediately looked for places in a reception facility for the four victims who wished to avail themselves of their rights under the B9 regulation. However, because CoMensha could not find a place for the four (potential)

130 E-mail from Royal Dutch Marechaussee to BNRM.

131 As a rule, shelter will be sought within the relevant police region during the reflection period in the interests of the investigation (B9 regulation, §3.2.7).

132 For a detailed description of this case, see §12.2.

133 This case is described in §12.2.

victims of other forms of exploitation, the SIOD felt compelled to arrange accommodation for them itself in hotels, and later in a holiday home. After more than a week, CoMensha was able to find a place in a reception facility. Remarkably, this reception facility was two streets away from the place where the victims had worked and been exploited, and consequently they found themselves in a place where they felt unsafe.

### *Care coordinators*

The care coordinator provides oversight in the chain of care providers and other partners and also tries to arrange suitable care and shelter. Chapter B9 of the Aliens Act Implementation Guidelines 2000 (see Chapter 5) states that a care coordinator will ensure that the victim is properly informed about the legal consequences of reporting a crime or otherwise cooperating with a criminal investigation or prosecution.

In its progress report, published on 9 September 2009, the Human Trafficking Task Force called on municipalities to encourage the appointment of a care coordinator in every region as part of their duty of care towards victims of human trafficking. According to the progress report, the care coordinator has a clear overview of what is happening in relation to victims in the region and so can play a pivotal role in ensuring the effective delivery of data to CoMensha.

A study by Klein<sup>134</sup> into the police and chain partners showed that the regions of IJssel and Twente wanted to introduce a care coordinator for human trafficking. In IJssel, the police force's expert in human trafficking said that there are few facilities for women who do not want shelter but do want help. Shelter for victims in this region is arranged through CoMensha. A care coordinator could be involved in arranging shelter, but would also have access to a network of specialist social workers. In the Twente region, the police work with CoMensha and local social workers or shelters in specific cases. The regional police force's expert in human trafficking also said that it is not easy for the police to provide shelter for every victim they find. A care coordinator could serve as a sort of one-stop shop. Money has already been earmarked for a care coordinator in Twente. The tasks of the care coordinator will include coordinating assistance, referring victims to agencies such as legal aid, providing information and advice, building a network and coordinating and complementing the supply of help. The Kennemerland region also wants to appoint a care coordinator; according to the interview this region has no shelter for victims of human trafficking.

A care coordinator could be part of a chain approach to human trafficking in the region. For example, the ACM in Amsterdam functions as a care coordinator. In 2007, on the basis of the ACM's experiences, CoMensha wrote a handbook on the chain approach to human trafficking,<sup>135</sup> including best practices. This can be used to develop a joint approach at the local level. Other recommendations include providing clear information to victims of human trafficking, the use of a permanent coordinator for each victim (in many cases the care coor-

<sup>134</sup> Klein (2009).

<sup>135</sup> Van der Aa, (2007).

dinator), the use of a client file, a single contact point for clients and partners (for example, in the form of a website or office, preferably connected to the Support Centre for Domestic Violence and Reporting Centres for Child Abuse), close monitoring of cases, and sharing and learning from existing knowledge.

#### 4.6.2 Categorical shelter

Social services, the police and policymakers have agreed for some time that a first-line categorical shelter for victims,<sup>136</sup> where every victim could go and which could offer expert help and counselling, would solve a lot of problems. Registration should be done centrally and should be possible at any time of the day or night. During this initial period, victims could rest and their needs could be assessed. There would also be time to decide how best to address their needs later (arrange a move to another shelter, set them up to live more independently or perhaps help them to return to their country of origin). The victims would also be able to consult social workers and the police, or even a lawyer, in a safe environment. It is apparent that it is essential to arrange proper facilities that victims could move on to in order to guarantee access to the low-threshold initial shelter. Although there is broad agreement on what is needed, the need for consultation between the various ministries on the financing of categorical shelter has delayed its implementation.<sup>137</sup>

Measure five of the Human Trafficking Task Force's action plan addresses the issue of shelter for victims. The plan states that the State Secretaries for Justice and for Health, Welfare and Sport are organising a pilot project to "investigate whether victims of human trafficking can be accommodated safely and how this can be permanently organised. In this pilot project [they] ... will be sheltered by social workers with specific knowledge of this group. Besides this counselling, they will also be offered the necessary rest and safety. This should help victims as they consider whether or not to report the crime or cooperate with a criminal investigation against human traffickers. The pilot project will be carried out by a municipality. The greatest possible use will be made of existing facilities and networks." This is in line with a number of conclusions reached by a meeting of experts on categorical shelter for victims of human trafficking held on 21 May 2008, which was attended by BNRM and a number of other experts, including employees of the Ministry of Justice and CoMensha. Participants at this meeting expressed the view that the current centres of expertise should jointly develop a methodology and that the accommodations should have specialists who should be able to discuss the issue of repatriation, who must be able to provide psychosocial and psychiatric help, who should be multicultural and multilingual and who should be part of a network of agencies that cooperate and share information.

136 For a period of at least three months, according to one of the conclusions of BNRM expert meeting on categorical shelter for victims of human trafficking, capacity and methodology working group, 21 May 2008.

137 During the expert meeting on 21 May 2008 it was estimated that shelter would be needed for 200 victims annually (that means 50 places per quarter) and that it must be possible to adapt this number to the number of victims requiring shelter. The cost per place would be €40,000 for 'bed, bath, bread, security' plus the staff costs for certified social workers and any special expertise that is required.



During a plenary debate in parliament on 10 June 2009, the State Secretary for Justice said that the tender process for the project would commence shortly and that the first places should become available around September 2009 (although this deadline could not be met).<sup>138</sup> There would initially be 50 new places in shelters. The target group of the pilot scheme was described in the progress report on the Human Trafficking Task Force's Action Plan of 9 September 2009. In principle, the pilot project would encompass all victims: women, men, any accompanying children and, if necessary, minors, whether they are Dutch or of another nationality. Minors are not, however, regarded as the primary target group. This is apparent, for example, from the fact that the tender for the project relates primarily to adult victims and does not cover areas that are essential for the care of minors.<sup>139</sup> With regard to minors, the report notes that where the need for shelter is indicated, they (and particularly girls who are victims of loverboys) fall under youth care, and it refers to the pilot scheme for protected shelter for unaccompanied underage aliens. The fact that minors identified as needing shelter are covered by youth care does not negate the need for shelters (closed or open) in the youth care system specifically for this vulnerable group. It is still uncertain whether a distinction will be made in terms of age, gender and nationality in the facilities for categorical shelter. Categorical shelter does not mean that general principles relating to help and shelter can be set aside. For minors, attention must be given to creating a pedagogical climate and providing education<sup>140</sup>. Experience in shelters for women and girls has also shown that mixed groups are less suitable for these victims<sup>141</sup>.

#### *Protected shelter*

The pilot scheme, Protected Shelter for Unaccompanied Underage Aliens, was launched on 1 January 2008 to combat the disappearance of unaccompanied underage aliens from open reception centres<sup>142</sup>. The project was to run for two years and was targeted at unaccompanied underage aliens aged between 13 and 18 who are suspected of being potential victims of human trafficking and are consequently at risk of disappearing from the shelter. In consultation with relevant partners, the IND's Human Smuggling Information Group (MIG) draws up risk profiles, which are used to select the underage aliens at risk.<sup>143</sup> The pilot project is intended to protect the youths and prevent them, as far as possible, from disappearing from the shelter and ending up in situations of exploitation. The shelters are small in scale,<sup>144</sup> with intensive supervision and the youngsters must have permission to leave the shelter, and are escorted if necessary. Additional security measures include camera surveillance, the use

138 No new target date has been mentioned. See Human Trafficking Task Force (2009b).

139 Verbal information from the Ministry of Justice.

140 Van Dijke et al. (2007).

141 Van Dijke et al. (2007).

142 This was the formal starting date. NIDOS, the national (family) guardianship agency for refugees and asylum seekers, has been working with chain partners on protected shelter since 2006.

143 See, for example, the letter from the State Secretary for Justice of 4 November 2008 on the progress report of the protected shelter pilot project (*Parliamentary Documents II* 2008/09, 27 062, nr. 63).

144 A maximum of 12 young people at each location.



of security guards and firm understandings with external partners. While they are staying in the shelter, an effort is made to convince the underage aliens that they face major risks if they follow any instructions they may have received from the human traffickers before they departed. Whether they qualify for a residence permit and whether a criminal investigation can be launched is investigated. If no residence permit can be granted, preparations are made for the child's repatriation. The Central Reception Agency for Asylum Seekers (COA) is responsible for organising the protected shelter and developing the system's methodology<sup>145</sup>; the arrangements are implemented by contract partners.<sup>146</sup>

*The methodology*<sup>147</sup>

The methodology has to take account of some specific characteristics of the residents:

- there are major cultural, religious and social differences and large differences between boys and girls;
- many young people have a poor self-image and little self-confidence;
- some girls display sexualised behaviour as a result of experiences during the journey;
- there is a relatively large number of pregnancies – often caused by rapes during the journey
  - and, consequently, very young mothers;
- there are many physical complaints, frequent feelings of rage, sadness, shame and powerlessness and there is a high level of stress and tension.

In developing the methodology, the following information was used: factors that are effective in social services (the *what works* principles); literature about target groups with closely related problems, such as victims of loverboys; and various theoretical perspectives. The programme has two phases: Phase 1, Motivation and protection (eight to 12 weeks) and Phase 2, Growth to freedom (a minimum of eight weeks). For each phase, there is a description of the tasks and roles of the mentor, what protection will be provided, the cooperation with the guardian and the final objectives. Criteria for phase 1 include the following: the young person should have a relationship of trust with at least one adult and should have reported the crime (or it has become clear why no reporting was done). In phase 2, it is expected that the young people can handle the freedom given to them in a responsible manner, are sufficiently resilient and have decided what they want for the future. A third, and, possibly a fourth phase, were originally planned, but have not yet been implemented.

Nidos has legal guardianship over the young people,<sup>148</sup> monitors their supervision and reports any children who go missing. The police are responsible for investigating any disap-

145 The development of the methodology was outsourced; BNRM sits on the review committee.

146 Stichting Jade and the Zuidwester.

147 Based on the draft version of the methodology, 12 June 2009. Incidentally, it is noteworthy, to say the least, that eighteen months after the system had been in operation, and six months before the end of the pilot project, the methodology had still not been finalised, and training courses based on the methodology were only due to start in the autumn.

148 Guardianship can be arranged within 24 hours for young people at risk. According to Nidos' annual report for 2008, an important justification for placing a youth in a protected shelter is when an investigation is underway into human trafficking and the young person admits that it has occurred. Nidos also observes that the young people should be placed in an open setting as soon as possible, and this is increasingly possible because victims are less "bound" to the traffickers than in the past. This could be, for example, because they have already been sold to another trafficker on the way to the Netherlands.

pearances. The protocol for missing unaccompanied underage asylum seekers, which has been in place for some time but was not familiar to all the relevant partners and was not followed in the past,<sup>149</sup> is being used again, in modified form. A clear step-by-step plan for the response to the disappearance of an unaccompanied underage alien was drawn up and implemented in the regions where the pilot project is running. There are plans to incorporate this abridged protocol in the KLPD's national manual on missing persons.<sup>149</sup>

The EMM centrally processes all reports of relevant behaviour so that possible abuse can be identified early on. It also makes proposals for criminal investigations. The IND strives to make a decision on a request for asylum within three months,<sup>150</sup> and the Repatriation and Departure Service (DT&V) has the task of arranging the departure from the Netherlands of any minors who have no prospect of remaining legally in the country. Alternative shelter is sought for young people who have been sold by their families. The IOM helps anyone who chooses to leave independently. On the basis of figures for arrivals of so-called at-risk unaccompanied underage aliens in the first six months of 2006, the size of the target group was estimated at 80 persons a year. Most of the young people who arrived in that period were from Nigeria and India. On 4 November 2008, parliament was informed about progress with the pilot project. The report mentioned that the young people are under 24-hour supervision during their first three months in the shelter and that counselling is mainly concentrated on increasing their knowledge, skills and resilience and offering them the prospect of an alternative future.

*Progress report and Report on Aliens Chain*

According to the progress report in November 2008, from the start of the pilot scheme until the end of 2008 approximately 120 young people had been given shelter. Three young people had returned to their country of origin independently with the help of the IOM and one had been forcibly deported after reaching the age of 18. Apart from Nigeria and India, other countries of origin included China, Sierra Leone, Somalia, Guinea and Angola. During this period 18 young people disappeared from the shelter: 11 boys from India, five youths from China (three boys and two girls), one girl from Nigeria and one girl from Sierra Leone. Additional security measures were then taken and the police and Marechaussee intensified their supervision. All in all, there was a steep decline in the number of girls from Nigeria, a large number of whom had disappeared in the same period (January-October) in both 2006 and 2007. During that same period, 33 Indian boys disappeared in 2006 and 28 in 2007. It should be noted that the number of arrivals in this period was higher.

Finally, the progress report mentions two Indian boys who were found in France after they had disappeared and an international alert had been issued. A request was then made to have them returned to the Netherlands, which France granted. Before the deadline for their return

149 Written information from DMB, Ministry of Justice.

150 The statutory period of six months for deciding applies, but the IND's proposal that decisions will in principle be made within three months is based on the interests of the unaccompanied underage asylum seekers – to let them know for certain what their prospects for staying in the Netherlands are as soon as possible. Social workers responded to this with the criticism (expressed at meetings of the unaccompanied underage asylum seeker platform and elsewhere) that it is impossible to win the trust of the unaccompanied underage asylum seeker or discover the true story when there is time pressure.

and before the Netherlands could make all the preparation to have them handed over, a French court ordered that the boys be released from custody. The Indian boys were then able to evade supervision in France. This type of problem calls for a joint European approach to prevent children like this from again finding themselves in a situation of exploitation.

Conversations with the staff of shelters also show that many of the girls entering the shelters are pregnant, a situation that calls for a specific approach at these locations.

Confinement is an important element of protected shelter but, at the same time, the restriction of the freedom of movement of the young people is a cause for some concern,<sup>151</sup> even though it is in their own interests. It should be noted here that this restriction of movement does not mean that the shelters have to be regarded as closed youth care. Lawyers have expressed some criticism about the placement of these children in shelters without authorisation by the children's court,<sup>152</sup> but it is the guardian who places the young people there.<sup>153</sup>

The WODC will make a final evaluation of the protected shelter pilot scheme, when it will also analyse whether there has been a decline in the number of disappearances by unaccompanied underage aliens.

### 4.6.3 Closed youth care

#### *General*

Providing shelter and treatment for underage victims of sexual exploitation is complex. Some girls find it so difficult to prise themselves loose of a loverboy that they frequently run away from the shelter and refuse any help. Unfortunately, admission to a closed facility is then inevitable.<sup>154</sup> Naturally, the main priority is that admission to the shelter is never a goal in itself but, under certain circumstances, can be the least bad option. From that perspective, the question is how to provide the best shelter and treatment for this group within the constraints of confinement. Key to this is that the shelters must be small in scale, must be exclusively for girls and must offer protection. The need to find and apply alternatives to simply locking up this group of girls has already been mentioned in NRM5, and that need still exists.

There is no reason to exclude the group of girls for whom closed shelter is inevitable from the exploration of categorical shelter in the pilot project. The point is to investigate how shelter and care can be designed to fit the needs of each distinct group of victims within a complete range of open and closed facilities. As mentioned above, one of the options, particularly for

151 See, among others, Boermans (2008).

152 Lawyers have also remarked that the Youth Care Inspectorate should also exercise supervision in light of the restriction of freedom.

153 For the group for whom this is a very serious problem, there is access to closed youth care. According to the Youth Care Implementing Decree, underage aliens who are not living in the country legally are also entitled help, residence and observation diagnostics. For closed youth care, authorisation by the children's court is required.

154 Institute for Youth Care and Education Horizon, in Van Dijke et al. (2006).

underage victims, must be closed shelters. This research can incorporate the experience that has already been gained with facilities for specific categories of victims, such as the Asja and MEISSA facilities described earlier, and in the protected shelter pilot project. In this context, it is important that minors are also a target group of the pilot project, including girls for whom admission to a closed facility is the most appropriate solution.

A youth care indication is required for admission of a child to a closed facility. There is also an indication for ‘open’ youth care. The Minister for Youth and Family is responsible for youth care. According to the progress report,<sup>155</sup> the Minister for Youth and Family is primarily concerned with prevention. That is very important and there many projects in that area (see §4.6.4). It is evident, however, that prevention alone is insufficient. It is therefore also necessary to create national and categorical shelter within the system of residential or non-residential youth facilities and to establish sufficient capacity and specific approaches for dealing with these populations.<sup>156</sup>

#### *Youth Care Act*

On 1 January 2008, the Youth Care Act was amended (in theory, effectively splitting youth care up between those who are placed in care under criminal law and those who are placed under civil law). There had been a lot of criticism of placing minors admitted under a ‘civil authorisation’ together in the same facility with minors who were placed there on the grounds of criminal behaviour, as a punishment or sanction, or who are in provisional custody.<sup>157</sup> All minors placed in a facility under a civil authorisation are due to be transferred from the Juvenile Custodial Institutions (JCI) to accommodations for closed youth care by 1 January 2010. To this end, eight JCIs will be transformed into closed youth care accommodations between 2008 and 2010. After 1 January 2010, a number of JCIs will also be temporarily designated as closed youth care accommodations. And from 1 August 2009, young people with a court authorisation for closed youth care can only be registered and admitted to closed youth care accommodation. This transition period is intended to allow time to create the necessary capacity.

#### *Capacity*

As the Minister for Youth and Family stated in his letter to the Lower House of Parliament on 7 July 2009, the number of places available is not automatically the same as the number of places needed for closed youth care. It is unclear what this will mean for (possible) victims

<sup>155</sup> Human Trafficking Task Force, (2009b).

<sup>156</sup> Initiatives include those of Fier Fryslân in Leeuwarden and the Hoenderloo Group in Apeldoorn, which have devised plans to form a partnership with the aim of creating specialist youth care specifically for victims of loverboys (written information from Fier Fryslân) and Cardea Jeugdzorg in Alphen aan de Rijn, which is looking for accommodation for shelter specifically for teenage mothers and victims of loverboys (AD, 15 September 2009).

<sup>157</sup> The Council of Europe’s Commissioner for Human Rights Hammerberg also criticised joint placement (in his report of 5 January 2009), an important factor being that both a victim of human trafficking and the human trafficker concerned could be admitted to the same establishment.

of loverboys. The current facilities (with no treatment) for girls have 114 places.<sup>158</sup> For years a major problem has been the transfer to establishments for treatment, closed or open. The Minister for Youth and Family wants to greatly shorten the average period of treatment for young people.<sup>159</sup> There is also no distinction made between shelters and establishments for treatment in the case of closed youth care,<sup>160</sup> which could be an advantage and should in any case prevent or reduce problems caused by not enough young people moving on to other facilities. On the other hand, there is the risk that there will be no facilities for victims of loverboys to be placed because there is no capacity. It is not clear whether there will be specific places for treatment of (possible) victims of loverboys in closed youth care or whether it will take a different form: mixed accommodations, mixed accommodations with groups of girls and boys or accommodations specifically for this group (categorical), nor is it clear what method of treatment will be adopted.

### *Methodology*

The Human Trafficking Task Force's progress report of 9 September 2009<sup>161</sup> stated that the Minister for Youth and Family is responsible for preventing and combating the problem of underage victims of loverboys and that there are programmes in youth care 'to make girls who are susceptible to loverboys more capable of resisting bad influences'. As described later in this chapter, there are many different projects to address the loverboy problem. Nevertheless, providing shelter and residential care for these girls is unfortunately still an urgent problem and it is important to develop a methodology for it, particularly in closed youth care. There is currently no specific method of treatment for this group in the reception phase in the JCI's.<sup>162</sup> On this point, the progress report states that 'in the context of the quality of closed youth care, it is proposed that the treatment of young people in a closed youth care institution should be tailored to their individual problems.' This says nothing about specific treatment for victims of loverboys.

### *Supervision*

The situation with the target group of minors currently placed in the JCI's under civil law is often not straightforward. The Youth Care Inspectorate carries out initial assessments of the institutions that will provide closed youth care, with the exception of former JCI's. There is some concern about whether the institutions for closed youth care are immediately capable of providing the necessary care for victims of loverboys, who are difficult to protect and treat.

158 The Lindenhurst has 54 place and Alexandra has 60 places.

159 Letter of 7 July 2009 concerning closed youth care: building capacity and end of transition period, reference JZ/GJ-2935747.

160 Info DJI, IJZ department.

161 Measure 5.

162 See also the study by Hamerlynck (2008) into psychopathology and risky sexual behaviour of girls staying in a JJI, both on a criminal law and a civil law basis.

*Closed Youth Care in Haaglanden*

The Inspectorate's report on the initial assessment for Haaglanden refers to a site that is so open that the people inside are able to communicate with other youths hanging around the site and contraband can be passed through the fences to the youngsters, that young people can visit each other's rooms in the evening and that loverboys have also been seen around the site. Youths had also run away 63 times in the period from May 2008 to October 2008, which was very easy to do because the fences around the site were low.<sup>35163</sup> In this case, the Inspectorate observed that "the young people at the JIC face a great risk of becoming involved in incidents that harm them or in which they harm others. There is also a great risk that the young people will run away. The fact that outsiders, including loverboys, who do not have the best of intentions towards the young people, hang around near the building makes this even more disturbing." Admission to closed youth care is a measure designed to protect the young people from themselves, particularly victims of loverboys, and such signs are very disturbing. Following this initial assessment, the JIC took various measures to guarantee the safety of the young people and the Inspectorate placed the JIC under stricter supervision. The Inspectorate will carry out a further assessment within a year, based on the same criteria as the initial assessment so that the results can be compared.

*18 to 21*<sup>164</sup>

Figures from the Custodial Institutions Agency (DJI) show that on 7 July 2009, young people with a court authorisation for closed youth care spent an average of just over four months in a JCI shelter and almost a year in a JCI treatment centre.<sup>165</sup> Closed youth care should, in principle, be possible for young people up to the age of 21;<sup>166</sup> however, it is questionable whether this is compatible with the European Convention on Human Rights. According to Article 5 of the Convention, minors may only be placed in a closed facility for the purpose of educational supervision. The legislature had the following remark to make about the possible incompatibility of Article 29a, section 1 of the Youth Care Act with Article 5 of the European Convention on Human Rights: "Adopting a flexible approach may be necessary, particularly in the context of youth care. In the case of youth care, reaching the age of majority does not by definition mean that there is no longer a need or possibility for education. After all, parents do not immediately stop raising their children when they become adults. [...] In connection with the requirement of proportionality, it is very important to note here that stretching the rules in this way applies only in so far as it concerns continuation of mandatory youth care that commenced before the general age of majority was reached and where there are still serious problems in growing up and in education that seriously hamper the youth's development to adulthood, which still necessitate closed care. In other words, these are cumulative requirements. [...] The choice of the age of 21 is based on the experience that effective treatment is completed within a small number of

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164 See also Chapter 2, §2.5.

165 In individual juvenile cases. This is a snapshot, but could be a reasonably reliable picture, according to the IJZ department of the Custodial Institutions Agency.

166 Article 29a of the Youth Care Act.

years. By making it possible to continue closed youth care until the youth is 21, if a 17-year-old is admitted, a programme of at least three years can still be completed. By extension, the youth can be offered additional care, which is an entitlement under the Youth Care Act, on a voluntary basis until he is 23.”<sup>167</sup>

The Council of State has also questioned the compatibility of Article 29a of the Youth Care Act with Article 5 of the European Convention on Human Rights. Meanwhile, the line has been taken in case law that closed youth care for over-18s is possible under certain conditions if there are special circumstances while the youth is already being treated and if the youth is transferred to a different shelter (for example a psychiatric institution).<sup>168</sup>

#### 4.6.4 Ambulant help

##### *Exit programme for prostitutes*

The Ministry of Justice has an exit scheme for prostitutes. The recently launched Exit Programme for Prostitutes (*Regeling Uitstapprogramma's Prostituees*) is, in principle, open to all prostitutes (male or female) and therefore also to prostitutes from other countries, such as Bulgaria and Romania who have arrived in the Netherlands as victims of human trafficking. When a prostitute decides to stop, the implementing organisation and the individual concerned sign a contract containing binding agreements on such aspects as the effort the prostitute is required to make, the objectives to be achieved (which can also be to return to the country of origin), lifestyle (the use of medications and drugs, for example) and the structure of the programme.<sup>169</sup> If the former prostitute is likely to return to his or her own country, the aid agencies agree on how he or she can best prepare for the return and what knowledge and skills can be improved. According to the state secretary's letter, participation in the programme is not intended to help the individual's integration into Dutch society, which should in fact depend on the type of residence permit the individual holds. If the person has been granted permanent residence or continued residence, the skills that are strengthened should be those that promote integration into Dutch society.

##### *Loverboy projects*

The fifth report of the NRM mentioned that various municipalities had projects relating to loverboys. It mentioned a number of examples, and described the loverboy project in Zwolle in more detail. At BNRM's request, Garnier<sup>170</sup> conducted a survey of projects by municipalities and others aimed at preventing the loverboy problem for her Master's thesis. She identified a total of 37 projects in the Netherlands, most of them concerned with publicising the problem (33), providing help (20) and increasing expertise (19). A small number were

167 *Parliamentary Documents II* 2005/06, 30 644, no. 3, p. 8.

168 In this context, see Arnhem Court of Appeal, 26 May 2009, LJN: 3938, The Hague Court of Appeal, 26 March 2009, LJN: BH9207 and Amsterdam District Court, 23 January 2009, LJN: BH0778.

169 *Parliamentary Documents II* 2008/09, 31 700 VI no. 89.

170 Garnier (2009).



dedicated to investigating and prosecuting offenders. The target groups were ‘girls at risk’ (37), schools (31), victims (29), parents (18), teachers (16), experts (17) and in a small number of projects, offenders (11) or ‘boys at risk’. In most projects there were several partners involved, including municipalities (22), municipal health services (20), schools (20), the Youth Care Agency (19) and the police (18). Organisations that were less frequently involved included the public prosecution service (7), the youth information centre JIP (6), the Child Protection Council (6) or other agencies, such as the MEE. Since little was known about prevention targeted at offenders, Garnier devoted special attention to five of those projects (see Garnier (2009) for descriptions of the five projects): the Leerstraf Seksualiteit (Rutgers Nisso Group), On Track Again (Zwolle), the Project Beeldvorming (a theatre performance by Stichting Meerwaarde), the Stedelijk Mobiel Jongeren Team (The Hague) and the only project specifically targeted at potential loverboys, the Task Force Approach to Loverboys (Eindhoven).

#### 4.6.5 Specific help for foreign victims

##### *Perspective approach to (former)unaccompanied underage aliens*

The Perspective approach developed in Utrecht for (former) unaccompanied underage aliens reported on in the NRM’s fifth report has received wide support. Various municipalities have adopted a similar approach and the Lower House of Parliament adopted a motion calling for government support for a two-year national experiment with support centres for unaccompanied underage aliens in 15 municipalities.<sup>171</sup> In a home-like environment, the unaccompanied underage aliens receive legal advice, practical help and information, as well as assistance in making decisions about their future. The options offered are either to return to their country of origin or apply for a residence permit. In July 2009, the State Secretary for Justice said that a steering group, consisting of representatives of the Ministry of Justice and the Association of Netherlands Municipalities (VNG), had been set up to implement the motion. The municipal support centres that will take part in the experiment have still to be selected. The experiment was expected to start on 1 October 2009.<sup>172</sup> Meanwhile, the proposed length of the project has been shortened to 18 months because of cost considerations;

171 Extract from this motion by MP Spekman, which was adopted on 3 July 2008: “considering that 15 municipalities have successfully adopted a method with respect to (former) unaccompanied underage aliens, the so-called ‘Perspective Support Centre approach’, which can be effectively implemented and has proved humane (since this approach has led to an increase in the return of former unaccompanied aliens to the country of origin, a group of them was granted a residence permit and this group is prevented from being forced to live here illegally), requests the government, in consultation with the relevant municipalities to start an experiment for two years guided by the principles of the Perspective Support Centre approach and to evaluate the effect of this experiment in increasing the percentage of former unaccompanied underage aliens who actually return and reducing the percentage of former unaccompanied underage aliens whose whereabouts are unknown”.

172 Letter of 7 July 2009, reference 5607641/09 and letter of 29 June 2009.



the budget allows for participation by 10 regions. The plans call for the WODC to evaluate the approach in 2010.

### *Repatriation*

When foreign victims of human trafficking do not receive a residence permit they are required to return to their country of origin. Some victims choose to return voluntarily, in which case their actual return is arranged by IOM Nederland on the basis of the Return and Emigration of Aliens from the Netherlands (REAN) scheme. The IOM arranges a plane ticket, assistance at the airport at the time of departure and, possibly, on arrival, and sometimes a financial subsidy. For victims of human trafficking it is not always enough to organise the trip; the assistance provided must be tailored to take into account the vulnerable position and individual needs of the individual concerned and the safety of the victim, the victim's family and the social workers concerned. If necessary, IOM Nederland can, in association with BLinN and CoMensha, mediate in finding accommodation and can help with the victim's reintegration in the country of origin. Since 2008, IOM Nederland has been involved in setting up referral mechanisms in Benin and Lagos in Nigeria. The IOM coordinates the Dutch input to this project, which is called 'Counter Trafficking Initiative: analysis of the evolution of trafficking in persons, grass root social intervention, building social services and networking capacity and promoting direct assistance'. Having started on 1 October 2008, the project is designed to identify all the social services and NGOs and make agreements with them to provide care for victims, whether they are identified locally or have returned from Western countries.

The Netherlands also finances projects in Bulgaria and Romania to help these countries to create more and better structures for providing shelter.<sup>173</sup> In 2007, 29 victims (including two underage girls and one underage boy) returned to their country of origin under the REAN programme. The countries concerned were Bulgaria (10), Hungary (7) and Romania, Brazil, Nigeria, Poland, Sierra Leone, Lithuania and Syria (one each). The IOM is also active in ensuring the safe return of unaccompanied underage aliens. In 2007, 21 left (with the written agreement of the guardian), of whom 13 returned to Angola as part of the IOM project 'Return and reintegration of Angolan unaccompanied minor asylum seekers from the Netherlands'<sup>174</sup>. No unaccompanied underage asylum seekers returned under a similar project for the Democratic Republic of Congo in that year.<sup>175</sup>

The IOM arranged the return of 37 victims of human trafficking in 2008. Twelve of them came from Hungary, 8 from Bulgaria, 6 from Romania and 12 from other countries. Besides the assistance it provides as part of the REAN programme, it can also provide other forms of assistance with respect to reintegration, such as language courses, temporary accommodation or providing an escort for the journey to the final destination. Five of the victims who returned were minors, four girls and one boy.

<sup>173</sup> Appendix to *Parliamentary Documents II* 20008/09, 31 263, no. 27, pp. 114-115.

<sup>174</sup> IOM Nederland, Annual Report 2007.

<sup>175</sup> Information received by telephone from IOM Nederland.

Kersten (2009) conducted research into the process of remigration and reintegration of Bulgarian women who had been exploited in the prostitution sector in the Netherlands over the period 2003 to 2006. An important finding from the study of their files was that 36% (29) of the 81 women who returned voluntarily or were deported returned again to the Netherlands, according to CoMensha and IND data. The process of return and the remigration was therefore unsuccessful for a significant number of these women. Kersten describes repatriation as a temporary phase in the migration process. Some of the women were also repeat victims. The study produced little certainty about the risks of return and the dangers the women actually faced after their return. The files studied provide little or no indication of whether the risks were identified prior to their return, which is a requirement for repatriation. Furthermore, there was scarcely any feedback of information to the Netherlands after their return about problems that might have arisen after their return. Social services in Bulgaria generally seemed to know little about the group because the women went their own way. Because most of the women did not come from urban areas, they had to rely on themselves. It is therefore generally not known whether the women caused problems for themselves or their families because of the criminal network that might still have had them in their sights. The situation of the women that initially made them vulnerable to exploitation scarcely seems to have altered after their return. The victims often seem to have returned to problematic family relationships characterised by abuse and violence. The relevant social workers therefore felt there was little chance of reintegration for many of them after their return.

Kersten describes how the factors that lead to a woman falling into a situation of exploitation mean that the chance of her reintegration after returning is small. What the women have experienced often makes it even more difficult to settle after their return. There are macro factors underlying many of the problems at the root of human trafficking, and which again play a role on the women's return, such as their subordination, discrimination in the labour market, for example, unemployment, poverty and a lack of future prospects. These factors are heavily related to the political, cultural and economic changes in Bulgaria since the fall of communism and mean that the chances for women who have returned are just as limited as they were before they ended up in prostitution in the Netherlands. Organised crime in Bulgaria, which has grown strongly with the political and economic instability during the transition, is also an important factor. Human traffickers are happy to exploit women who are looking for a better future and will then not easily allow this source of income to go. In the face of threats or out of financial necessity, these victims regularly choose themselves to return to their trafficker. It is known that some women even actively cooperate in recruiting and exploiting other women, after they themselves have been exploited in prostitution.<sup>176</sup> The contacts with traffickers and pimps does not, in any case, end on their return and there is still a risk of exploitation, says Kersten. Accordingly, the problems connected with the human trafficking are beyond the reach of the Netherlands after the victims return to Bulgaria, but the problems are usually not resolved and the women often return to the Netherlands as repeat victims.

The position of victims of human trafficking who return to the country of origin is a subject that requires further attention and a greater effort. The finding from Kerstens' study highlight a lack of knowledge about the situation of women when they return to their country, their lack of prospects on their return and the problems surrounding remigration.

<sup>176</sup> See also §6.4.1 and §9.4.6.

## 4.7 Incidental problems of victims

### 4.7.1 The health of victims of human trafficking

Being a victim can have serious consequences for the health of the individuals concerned. People who move around under risky and exploitative conditions face an increased risk of contracting HIV/AIDS,<sup>177</sup> for example. In 2006, Zimmerman published a study on the physical and psychological consequences of human trafficking for victims in Europe.

Zimmerman's study (carried out between 2003 and 2004) focused on women who were forced to work in the sex industry or women who were sexually abused while performing household work and who had entered a reintegration programme. He interviewed 207 women. The victims were interviewed at different stages of the care programme, after between zero and 14 days, after a few weeks (28-56 days) and after more than three months (90+ days), covering three phases of the treatment programme and looking at the medical complaints present at each of these stages. Sixty-one percent of the women had been free of the situation of exploitation for less than three months before the treatment started. The most striking fact shown by the study is that the number of health problems quickly declined. The interviewees were asked to what extent they experienced a number of complaints. In the first phase, 57% had 12 or more physical symptoms that caused them pain or discomfort and 43% had between none and 11 symptoms. In the second phase, 7% of the victims had 12-23 symptoms and 93% between none and 11. In the final phase, the number of women in the high segment of symptoms fell to 6%. As regards the number of mental health symptoms, 71% suffered from 10 to 17 complaints in the first phase and 29% had zero to 9 complaints. In the subsequent phases, the percentage that mentioned having 10 to 17 complaints fell to 52% and then 6%.

17% of the women in the study said they had had at least one abortion during the period covered. It is not known whether they did so under coercion.

A significant finding is that in the first two weeks 63% of the victims had problems with their memory, which subsequently improved. The number of victims with Post Traumatic Stress Syndrome (PTSS) also fell in that period (from 56% to 12%). This is important information for the police who often have to interview victims immediately and want to collect evidence promptly. However, the most appropriate moment to interview victims to gather evidence has not yet been established.

There were also extreme symptoms of depression, anxiety and hostility. In the first phase of the programme, the scores were similar to those of the top 10% of the entire population. Only after more than 90 days did the anxiety and hostility decline in relative terms, but the score on depression remained close to that of the top 10% of the entire population, which would make it difficult for these women to participate again in daily life, to work or to follow an education. This factor must be therefore be taken into account in the treatment programme for victims, as well as the time needed to treat it.

177 ILO, 2008.

#### 4.7.2 Collateral damage

The Global Alliance Against Trafficking in Women (GAATW) has conducted research into the impact on human rights of measures to combat human trafficking.<sup>178</sup> The study covered Australia, (the former) Bosnia and Herzegovina, Brazil, India, Nigeria, Thailand, the United Kingdom and the United States. The reason for the study was the suspicion that measures that are taken to combat human trafficking sometimes actually restrict the possibilities and the rights of the people the measures are intended to protect, by curtailing freedom of movement and the right to work, for example. GAATW stressed the importance of the proportionality of measures and called for more attention to investigating and ending forced labour, rather than preventing recruitment. On this point, see also Chapter 3, International developments, §3.3.5.

### 4.8 Conclusion

In this concluding section the emphasis is laid on the problems and the points requiring attention that were raised in this chapter.

#### *Shelter*

There is insufficient capacity to provide shelter for victims, and not just for specific categories of victims of human trafficking, such as men (usually victims of other forms of exploitation), minors and victims with specific problems such as psychiatric problems or addictions. Even female victims of exploitation in the sex industry cannot always be given shelter immediately. The waiting time can range from several days to weeks and even to several months. Everyone concerned agrees in principle on the importance of initial shelter specially tailored to the specific circumstances of the different groups of victims. The Human Trafficking Task Force's action plan proposed a pilot project, which was unfortunately delayed. The progress report on the Task Force's action plan of 9 September 2009 stated that the pilot project is in principle intended for all victims: women, men, any accompanying children and minors, whether they are of Dutch or foreign nationality. That leaves open the question of whether a distinction will be made between genders and between the different age groups in the facilities for categorical shelter. Categorical shelter, in and of itself, does not mean that this distinction will no longer be made in the shelter. However, minors are not regarded as the primary target group of the pilot project. This is apparent, for example, from the fact that the tender for the project primarily relates to adult victims and does not cover issues that are essential in providing shelter for minors, such as education and a pedagogical climate. The purpose of the project is, in fact, to determine how a system of shelter and care can be designed for each individual group of victims (specifically including closed or protected facilities for underage victims) within an overall system of open and closed facilities. The

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<sup>178</sup> Global Alliance Against Trafficking in Women (2007).

project can incorporate the experience that has already been gained with categorical facilities and in the Secured Care pilot project. It is important in this context that the pilot project should also explicitly embrace underage victims, including girls for whom shelter in a closed or protected facility is most appropriate. Incidentally, it is unclear why agreement between the Ministry of Justice and the Ministry of Health, Welfare and Sport is required for underage victims. Primary responsibility for them would seem to rest with the Minister for Youth and Family. Another aspect requiring attention is the capacity, or lack of it, for closed youth care, partly as a result of the transformation of JCI's into facilities for closed youth care.

In January 2008, the two-year Protected Shelter pilot scheme started. The pilot project represents an attempt to provide protection for underage aliens who might be at risk of disappearing and being exploited. This is also a small-scale shelter.

There is also a trend towards the creation of private shelters, particularly for underage victims of human trafficking. There are risks to these initiatives, however praiseworthy they may be. Providing shelter demands specific expertise and a professional context. Lack of such expertise could cause additional harm to the members of this target group.

#### *Special risk groups*

This chapter discussed several groups who face particular risks of becoming victims of human trafficking, including women in the La Strada countries, women and girls in asylum centres and people with slight mental handicaps.

Special attention has also been devoted to Roma children. It is not easy to respond adequately to indications of human trafficking relating to this group of children, partly because of the specific cultural context, the legal complexity of the problem, the risk of stigmatising the Roma as a group, the possible involvement of parents in the exploitation and the absence of a party to coordinate the actions of the agencies involved in dealing with the problem. It is, in any case, clear that the problems can only be dealt with proactively and from a European perspective.

#### *Registration*

The task of maintaining a national register of (possible) victims has been delegated to CoMensha. The records are incomplete, however, and need to be improved. The Ministry of Justice has earmarked additional funds for CoMensha for this purpose, and as part of the Human Trafficking Task Force's action plan, CoMensha has submitted a plan for a project to improve the register. One element of the plan is that CoMensha will consult the agencies that supply the information to determine which data have to be registered. It will also endeavour to secure a commitment from these agencies that they will actually supply the data.

#### *Care coordinator*

The care coordinator provides oversight in the chain of care providers and other partners and also tries to arrange suitable care and shelter.

Many regions do not have a care coordinator. In its action plan, the Human Trafficking Task Force says it will encourage municipalities to appoint a regional care coordinator.

### *Compensation*

When the judge in criminal proceedings makes an order to pay compensation, the Central Fine Collection Agency (CJIB) collects it on behalf of the victim. Between 2000 and 2003, the CJIB collected compensation in between three and five human trafficking cases. Since 2003, the number has been significantly higher, between nine and 17 cases.

Chapter 11 also shows that it is very difficult for victim to *secure payment* of compensation. Although an order to pay compensation does mean that the victim does not personally have to chase the convicted person to collect the money, the procedure provides no guarantee that the case will be settled quickly, or that the final outcome will actually be positive.

In this context, it is important that the bill on measures to strengthen the position of victims in criminal proceedings includes a provision on advance payments, to be implemented by the Violent Offences Compensation Fund. The Minister of Justice has explained that this provision is intended for victims of violent crimes and offences against public decency. The crimes covered by this provision will be determined by Order in Council, but it seems obvious that this provision will also apply to victims of human trafficking.

### *The Violent Offences Compensation Fund*

In assessing applications by victims (up to now only victims of sexual exploitation), the Violent Offences Compensation Fund mainly considers the extent to which the applicant was in such a state of dependency as to force him or her to perform sexual acts for third parties. Circumstances that could play a role in the assessment of whether or not a violent offence occurred are that the victim's passport was confiscated, the victim had to surrender all or most of the earnings, the victim was under constant supervision or locked up, the victim's freedom of movement was constrained or the victim was intimidated or assaulted. In 2007, the Fund received 25 applications from victims of human trafficking, of which 18 were awarded. In 2008, 19 applications were submitted, one of which was rejected because human trafficking was not found to have been proved on the basis of statements by the victim and further investigation by SGM.

As part of the Task Force's action plan, a plan has been drawn up to increase the use of the compensation fund.

# 5

## B9 and continued residence (B16/7)

### 5.1 Introduction

Immigration law contains several regulations that may be relevant for aliens who are or may be victims or witnesses of human trafficking and who have no valid residence permit. The B9 regulation (Chapter B9 of the Aliens Act Implementation Guidelines 2000) allows aliens who are (possible) victims or witnesses of human trafficking to stay in the Netherlands legally, pending an investigation and prosecution, in order to help the police and public prosecution service with their inquiries.<sup>1</sup> Chapter B16/7 of the Aliens Act Implementation Guidelines sets out the rules under which continued residence can be granted on humanitarian grounds – after B9 residence status has expired. The applicable legislation has been amended or clarified several times since the NRM’s last reports were published.

One of the positive changes to the B9 regulation is that victims who do not report the offence but do otherwise cooperate with an investigation and prosecution are eligible for a residence permit. The grounds for allowing continued residence laid down in B16/7(a) of the Aliens Act Implementation Guidelines (the victim has reported an offence and the criminal proceedings have resulted in a conviction) is no longer limited to prosecutions that have led to a conviction for *human trafficking*. Even if the suspect is convicted of an offence other than human trafficking, but the charges included human trafficking, the presumption in law is that deportation would involve risks for the victim.<sup>2</sup> The grounds for continued residence have also been amended to reflect more clearly that, after three years with B9 residence status, the duration of the victim’s stay in the Netherlands constitutes humanitarian grounds for awarding an application for continued residence.<sup>NRM6</sup>

The current provisions of these regulations are summarised in §5.2. At the same time, there have been signals from the field that the implementation of the rules needs to be improved in some respects. Accordingly, NRM conducted a more detailed investigation into several issues. This chapter sets out the findings of various BNRM studies into the implementation of the legislation: ‘abuse of B9 regulation?’ (§5.3); an analysis of rulings of courts of appeal in objection proceedings filed under Section 12 of the Dutch Code of Criminal Procedure (§5.4; not included in this English translation); and an analysis of files from the Immigration and Naturalisation

<sup>1</sup> Nationals of the EU and European Economic Area (EEA) and Swiss citizens can derive rights from the B9 regulation in as far as they have no rights under Community law. For information about the B9 regulation, see also website [www.b9-regeling.info](http://www.b9-regeling.info).

<sup>2</sup> In this respect, B16/7 notes that a conviction on one of the other counts in the indictment will be sufficient, provided that human trafficking is included in the indictment. This is a broader definition than the one given in recommendation 8 of NRM5, ‘another offence *related to human trafficking*’ (emphasis added by BNRM).



Service (IND) on continued residence after B9 (§5.5). This chapter concludes with a discussion of some issues which require further attention and/or improvement (§5.6).

## 5.2 Current legislation

### 5.2.1 B9 regulation

The B9 regulation allows aliens who are (possible) victims or witnesses of human trafficking to stay in the Netherlands legally, although temporarily, in order to help the police and public prosecution service with the investigation and prosecution.<sup>3</sup> If the police or other government agencies – during an administrative audit,<sup>4</sup> for example – encounter aliens who may have fallen victim to human trafficking, they must inform them of their rights under the B9 regulation and of the availability of a reflection period, if there is even the slightest indication that human trafficking is involved. The period of reflection allows victims a maximum of three months to decide whether to report the offence or otherwise to assist in the investigation and prosecution. The deportation of the victim from the Netherlands is postponed during the reflection period<sup>NRM5</sup>. According to the Aliens Act Implementation Guidelines, the rationale for this rule is that it is vital for the investigation and prosecution that victims who press charges or otherwise cooperate should remain available to the public prosecution service for a longer period of time. This justifies postponing deportation or granting a temporary residence permit. The B9 regulation also applies to witnesses who report cases of human trafficking.

The aim of the regulation is to ensure that aliens remain available to the police and public prosecution service, but it also involves the granting of a residence permit, which makes it something of a hybrid scheme. On the one hand, it serves the interests of the police and the prosecution service, while on the other, it confers a right on the victims concerned. These two interests do not necessarily run parallel, an aspect that is analysed in greater detail in the following sections.

Chapter B9 of the Aliens Act Implementation Guidelines sets out the conditions for granting a residence permit. There are different rules for victims who report an offence or otherwise assist in the investigation and prosecution and for witnesses that report an offence (see §2.3).

If there is even the ‘slightest indication’<sup>5</sup> of human trafficking, the police or other government agencies must inform the individual of the possibility of reporting the offence or otherwise

3 Section 3.48 of the Aliens Decree contains special conditions governing the grant of a residence permit to victims who have reported an offence or who are otherwise cooperating in a human trafficking investigation or prosecution. The article imposes no obligation but merely grants the authorities the possibility of granting a residence permit.

4 Consider, for example, municipal authorities and other agencies that conduct regular inspections under the local bye-laws or the Aliens Employment Act.

5 B9/3.1.



cooperating with the criminal investigation or prosecution.<sup>6</sup> It is explained to presumed victims that they can report the offence or otherwise cooperate with the criminal investigation or prosecution of the suspect<sup>7</sup> and that they can make this decision immediately or after a three-month period of reflection, during which they can consider their decision *calmly* (see B9 regulation). A reflection period is granted because victims of human trafficking often need time to recover before being able to talk about their experiences.

The rationale of the reflection period – in the sense of being a period of calm – does not quite tally with the provisions of the B9 regulation governing situations in which (possible) victims are held in aliens detention ('in those cases a reflection period will *be granted only if agreed to by the public prosecution service and the police*' [emphasis added by BNRM]). Nor is it clear what criteria apply for deciding whether a reflection period should be allowed in those cases. Moreover, the provision is phrased in terms of a favour (the reflection period is 'granted') rather than a right.

The emphasis in these situations seems to be whether there are any indications justifying the *investigation* of human trafficking and not, or at least not primarily, whether the individual is a (possible) *victim*. This would seem to shroud the legal nature of the B9 regulation.

Victims are not allowed to work during the period of reflection.

The reflection period obviously does not apply to witnesses who have reported an offence, since the reflection period is intended, by its nature, to remove victims from a criminal situation and offer them the opportunity to recover and take a carefully-considered decision on whether to report the offence.<sup>8</sup>

#### *Victim identification*

The B9 regulation lists a number of examples of how even the slightest indications of human trafficking can be identified. The presence of a prostitute with no valid residence permit in a sex establishment may be an indication of human trafficking, and will usually be recognised as such. The police and other government agencies might also find potential victims of human trafficking during raids aimed at discovering illegal immigrants. Alternatively, victims (or witnesses) may come forward and file a report with the police of their own accord, or otherwise cooperate in the investigation and prosecution voluntarily.<sup>9</sup>

6 With effect from 14 November 2007, victims who do not report an offence but otherwise assist in an investigation and prosecution may also be granted a temporary residence permit, Section 3.48(1)(b) of the Aliens Decree, see *Bulletin of Acts, Orders and Decrees* 2007, 436. 'Assistance' includes making a statement or being heard as a witness (State Secretary of Justice's letter of 18 October 2007 on the residence status of human trafficking victims, *Parliamentary Questions II* 2007/08, 19 637, no. 1174). See also NRM6.

7 Contrary to what seems to be suggested in the recently published U.S. *Trafficking in Persons Report* (2009), this rule has been in place in the Netherlands since 1988. In fact, the maximum period of three months goes beyond the minimum 30-day period required under the Council of Europe's Convention on Action against Trafficking in Human Beings (2005).

8 B9/5. As far as witnesses are concerned, the legislation only mentions the reporting of an offence. See Section 3.48(1) (c) of the Aliens Decree.

9 B9/3.1.

The National Rapporteur on Trafficking in Human Beings observed that the categories of aliens entitled to invoke the B9 regulation needed clarification. Practice had shown that the impression could arise that the B9 regulation did not apply to (possible) victims of exploitation in sectors other than the sex industry ('other forms of exploitation'), although it was not the intention of the regulation to make any such distinction.<sup>10</sup> In April 2009, a new definition of the target groups was published to reflect more clearly the fact that the B9 regulation applied equally to (possible) victims of human trafficking subjected to exploitation in economic sectors other than the sex industry, since the B9 regulation applies to the offence of human trafficking as defined in Section 273f of the Dutch Criminal Code.<sup>11</sup>

It is worth noting that, in early 2009, the Dutch Ministry of Social Affairs and Employment published an information leaflet entitled 'Exploitation at the workplace' to raise awareness of exploitation and other malpractices involving potential victims. The leaflet cites examples of exploitation and briefly explains the rights of victims of human trafficking.<sup>12</sup>

Interviews with immigration and asylum judges indicate that the information they receive about the pretext for the investigation is very concise, which makes it difficult for them to establish whether there is any indication of human trafficking.<sup>13</sup> The interviews also suggest that immigration and asylum judges perceive victimisation differently in cases of sexual exploitation than in cases involving exploitation in other economic sectors.<sup>14</sup>

The public prosecution service's revised Instruction on Human Trafficking<sup>15</sup> has also been phrased more clearly – in terms of human trafficking in the sex industry and elsewhere – in the sense that procedures to be followed in the context of the supervision of aliens and procedures for inspections and preventive controls must now always include the stipulation that potential victims of human trafficking have to be given the opportunity to report or otherwise assist in the investigation and prosecution of the offence. Referring to the B9 regulation, the Instruction explicitly states that if there is the 'slightest indication' of human trafficking, aliens must be advised of the possibilities available under the B9 regulation and informed of their entitlement to a reflection period.

As regards intake interviews, the Instruction on Human Trafficking makes it clear, once again, that the B9 regulation applies to investigations into 'other forms of exploitation', such as forced labour or services, as well as investigations into exploitation in the sex industry. According to the Instruction, prior to filing a report, an intake interview should be conducted between the

10 It also seemed useful to clarify the B9 regulation against the background of the decision handed down by the Administrative Law Division of the Council of State on 30 June 2006. See NRM5, p. 79.

11 The NRM made a similar suggestion to the public prosecution service with a view to amending the Human Trafficking Instruction.

12 See §12.2.

13 Information provided by NRM at a meeting of immigration judges in The Hague, 9 June 2008; information provided to NRM by the Council of Immigration Judges, 18 June 2009. The Council of Immigration Judges is a regular meeting of the presidents of the immigration Law divisions of all district courts in the Netherlands.

14 See also §12.2.

15 On this issue, see §10.2.2.

investigating officer and the victim. ‘During the intake interview, the victim will be granted the opportunity to explain what has happened to him/her. The criminal system will also be explained to the victim. The victim will be advised of the possibilities of shelter and care (and, where necessary, assisted in obtaining shelter and care). If the victim is staying in the Netherlands illegally, the investigating officer will inform the victim of the rights available under Chapter B9 of the Aliens Act Implementation Guidelines (including the availability of a period of reflection) and of the possibility of filing a report or otherwise assisting in the investigation into and prosecution of human trafficking and the ensuing implications.’<sup>16</sup>

Oddly enough, as far as illegal workers who are found during an administrative or police inspection of a workplace are concerned, the B9 regulation makes no mention of the Labour Inspectorate or other special investigative agencies.<sup>17</sup> Under the B9 regulation, the police are required to advise aliens of their rights under the B9 regulation (including a period of reflection) if there is the slightest indication of human trafficking. It should be evident that not only the police and special investigative agencies, but also the Labour Inspectorate should (be able to) do so immediately if it discovers illegal immigrants in a workplace (see §12.2).

It should, in any case, be clear who is responsible for providing assistance to (possible) victims in those situations. Assistance not only includes providing information about the B9 regulation and the availability of the reflection period, but also includes referring victims to organisations that provide shelter, for example. The agencies involved should make clear arrangements defining their duties, powers and responsibilities.

In this respect, the B9 regulation recommends that in preparing for a worksite immigration raid, the police should also explicitly focus on human trafficking and preparations should be made to provide shelter to potential victims human of trafficking. Prior to the raid, the police should, for example, contact the Coordination Centre for Human Trafficking (CoMensha), which can in turn alert the regional networks and contact care agencies in the victim’s home country.<sup>18</sup>

The B9 regulation, incidentally, notes that ‘the care coordinator will be responsible for ensuring that victims are properly advised of the legal implications of making a complaint or otherwise assisting in a criminal investigation or prosecution. If legal advice is needed, a legal aid worker can be engaged. Legal aid workers will be paid the usual fees by the Legal Aid Council.’<sup>19</sup>

Aliens with no valid residence permit who have worked in the Netherlands and who personally contact the police (or a special investigative agency such as the Social Intelligence and Investigation Service [SIOD]) may also assert rights under the B9 regulation and avail of the reflection period. Again, no mention is made of the Labour Inspectorate. The ‘Exploitation at the workplace’ leaflet states that it is possible – in addition to reporting the offence to the police – to file

16 *Government Gazette* 2008, 253.

17 The regulation makes no mention of the Labour Inspectorate at all.

18 B9/3.2.6.

19 B9/3.2.9.

a complaint with the Labour Inspectorate. This in itself provides no basis for asserting rights under the B9 regulation; filing a complaint with the Labour Inspectorate does not equate with pressing charges or otherwise assisting in a (criminal) investigation. However, if a complaint is filed with the Labour Inspectorate, it does constitute a ‘slight indication’ and may lead to a criminal investigation. Accordingly, it should be possible for the Labour Inspectorate to advise aliens who contact the Inspectorate voluntarily of their rights under the B9 regulation, including the reflection period. This is supported by international standards:

Government agencies that deal with possible victims of human trafficking, such as the police, Labour Inspectorate, Immigration and Naturalisation Service (IND) and Dutch embassies abroad, should be able to identify those victims and refer them to support organisations. This follows from Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings (2005), which the Netherlands intends to ratify (for more information, see Chapter 3, International developments, §3.6). Under Article 10, the Netherlands must ensure that those government agencies will be able to carry out their duties. If a government agency suspects that someone has fallen victim to human trafficking, the agency must arrange for care to be provided for that person. This means, first of all, that agency staff must be trained to recognise signs of human trafficking.

#### *Registration of (possible) victims with CoMensha*

The police must notify CoMensha if they have found a (possible) victim of human trafficking and he or she wishes to use the period of reflection.<sup>20</sup> This is important with a view to providing the (suspected) victim with shelter. It is equally important that the police notify CoMensha of every report of (possible) victims for the purposes of monitoring national progress in the fight against human trafficking.<sup>21</sup> This duty to register (possible) victims is not confined to foreign victims. According to the Instruction on Human Trafficking, the chief constables of the police forces must register the victims of all forms of human trafficking with CoMensha,<sup>22</sup> without any distinction in terms of the victims’ nationality or residence status.

Other government agencies that might have dealings with (possible) victims of human trafficking should also be allowed to refer victims to organisations that can provide them with assistance.<sup>23</sup>

#### *B9 and asylum*

Similarly, aliens who, pending an application for asylum, turn out to be victims of human trafficking can assert their rights under the B9 regulation. If a B9 permit is granted, the asylum application will be refused. Once the B9 permit has expired, however, a second asylum application, if it is made, will be reviewed on its merits and not be denied for being a repeat applica-

<sup>20</sup> B9/3.2.6 and 3.2.7.

<sup>21</sup> CoMensha is responsible for keeping a register of reported cases, which is used by the National Rapporteur on Trafficking in Human Beings in preparing its reports.

<sup>22</sup> *Stcrt* 2008, 235, in Bijlage 2. *Government Gazette* 2008, 235, in Appendix 2.

<sup>23</sup> See also Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings.

tion.<sup>24</sup> It is possible, however, for victims to report the crime without wishing to assert rights under the B9 regulation. In such cases, the asylum procedure will continue as normal.

#### *Victims in aliens' detention*

A period of reflection may also be granted to aliens held in detention (under Section 59 of the Dutch Aliens Act).<sup>25</sup> If there are indications suggesting that an alien in detention has been a victim of human trafficking, the police must inform him or her of the possibility of reporting the offence or otherwise assisting them in the criminal investigation or prosecution. In these cases too, potential human trafficking victims are entitled to a period of reflection. Granting a period of reflection removes the legal basis of detention, which must therefore be lifted. It can be inferred from the Aliens Act Implementation Guidelines, however, that in these situations a reflection period is granted only if the public prosecution service and the police agree to it. The criteria for doing this are not yet clear, nor are the implications in practice<sup>NRM6</sup>. In early 2008, the Repatriation and Departure Service (DT&V) published the Protocol on Procedures for Victims of Human Trafficking, which provides a step-by-step description of what needs to be done by the officer handling the case<sup>26</sup> when dealing with a potential human trafficking victim (see §8.3.2, identification in the repatriation procedure /aliens detention).

In January 2009, BLinN published a report entitled 'Uitgebut en in de bak! Slachtoffers van mensenhandel in vreemdelingendetentie'. The report's most important conclusion was that improvements were needed in identifying victims held in aliens detention. BLinN found that the police sometimes handle situations poorly by failing to identify victims, to respond quickly and correctly to requests to press charges or to offer a period of reflection, as required by the B9 regulation. Another sticking point is that cases are sometimes dropped without an ensuing formal decision not to prosecute: cases are 'discontinued' without the victims or their lawyers being notified of the discontinuance or a formal decision not to prosecute, which causes the time limits for filing an objection against the non-prosecution decision or filing an appeal against revocation of the B9 residence status to be exceeded without anyone noticing. BLinN also cites the limited scope of the duties entrusted to the Repatriation and Departure Service (DT&V) as a problem: the DT&V notifies the police or the Royal Netherlands Marechaussee of potential victims of human trafficking. If no action is taken on the basis of this notification, the DT&V simply resumes the deportation proceedings. BLinN also refers to the passive role played by the IND's gender-liaison officers, who do not actively identify victims but only act on reports from the police and Royal Netherlands Marechaussee, and to lawyers who do not always do a good job or who may have insufficient knowledge of the issue of human trafficking and the related procedures. Problems also occur during the transition from detention to a shelter: there is a

<sup>24</sup> *Government Gazette* 2007, 68 (5 April).

<sup>25</sup> This issue was clarified in the Amendment to the Aliens Act Implementation Guidelines 2000 (2008/09) of 21 February 2008, *Government Gazette* 2008, 37.

<sup>26</sup> Aliens who are staying in the Netherlands illegally are expected to leave of their own accord or face deportation. In January 2007, an independent agency, the Repatriation and Departure Service (DT&V), was set up to oversee this procedure. The Repatriation and Departure Service encourages aliens who are not eligible for a residence permit to leave the country voluntarily. This is done by means of a series of repatriation interviews, all conducted by the same officer. For more information about the identification of victims by the Repatriation and Departure Service, see Chapter 8.

shortage of shelters, there is not enough knowledge about aliens detention, and there are no facilities available for victims who do not report an offence (or who are afraid to do so). BlinN concludes that victims of human trafficking should never be held in aliens detention.

In its response to the report, the government stated that a large number of measures had been taken since 2005 to improve the process of identifying victims and that the issue was still high on its agenda (State Secretary of Justice's letter, *Parliamentary Questions II 2008/09*, 28 638, no. 41), offering an assurance that the quality of implementation – i.e. early and careful identification – remained important. Nevertheless, The State Secretary believed that detaining (possible) victims of human trafficking could not always be avoided. Occasionally, victims were not identified as such until after they had been detained (report of the plenary debate, 10 June 2009, *Parliamentary Questions II 2008/09*, 28 638, no 44.

#### *After reporting the offence/cooperation*

If a victim decides – whether after a period of reflection or otherwise – to press charges or to cooperate in the investigation and prosecution in another manner, either action will be treated as an application for a temporary residence permit under the B9 regulation. The IND will decide on the residence permit, with the public prosecution service being notified of its decision.

As a rule, the residence permit will be granted for one year, pending the investigation, prosecution and trial of the suspect in a court of first instance. The person concerned will be allowed to stay in the Netherlands legally. Previously this only applied until the court of appeal handed down its decision, but since 2 June 2008 the person can wait until the Supreme Court has heard the criminal case<sup>27</sup>. The residence permit expires if the public prosecution service decides not to prosecute, no appeal is lodged against the district court's decision, or the court of appeal has rendered a decision and no appeal is lodged with the Supreme Court (the decision thus having become final and irrevocable).<sup>28</sup> Under the terms of the regulation, the public prosecution service is required to notify the IND and the victim accordingly.<sup>29</sup> When considering a renewal application, the IND must contact the public prosecution service to check whether a criminal investigation or prosecution is still ongoing.<sup>30</sup>

#### *Objection*

If the public prosecution service decides not to prosecute, the police must notify the victim of the decision not to prosecute or to discontinue the prosecution against the suspect (the decision not to prosecute). Victims may file an objection with the court of appeal (under Section 12 of the Dutch Code of Criminal Procedure) on the grounds that their interests have been directly affected. Within two weeks of being notified of the decision not to prosecute, the victim must inform the police as to whether he or she will be filing an objection with the

27 *Government Gazette* 2008, 102 (30 May 2008).

28 Victims are not permitted to stay in the Netherlands to await the outcome of an appeal filed with the Supreme Court 'in the interest of the law', because this type of appeal does not affect the parties' rights and status and hence will have no legal implications for them. See B9/8.1.

29 B9/8.1.

30 B9/9.1.



court of appeal,<sup>31</sup> but there is no time limit for filing an objection. If the victim has pressed charges or is otherwise cooperating and holds a residence permit, the B9 residence status will remain in place until the court of appeal has dealt with the objection.<sup>32</sup>

The situation is rather confusing. Aside from informing the police within the two-week period after notification of the decision not to prosecute, there is no time limit for filing the actual objection – except where a notification of discharge from further prosecution is served on a suspect. In that case, there is a three-month time limit.<sup>33</sup> (It should be noted that there is not always an immediate suspect in human trafficking cases).

It is not clear precisely what the purpose of the two-week time limit for notifying the police is. It only seems relevant in terms of the implications for the victim's residence status. It certainly has no bearing on the period within which the objection must actually be filed.

It is quite possible, however, that the two-week time limit 'automatically' forces victims to file an objection against a decision not to prosecute. Consultations between legal counsel and the IND may result in the two-week limit being extended to allow more time to consider the pros and cons of commencing objection proceedings.<sup>34</sup>

The various offices of the public prosecution service do not apply a standard approach when deciding not to prosecute human trafficking cases,<sup>35</sup> but efforts are being made to improve this situation. The public prosecution service has announced that it will draw up a memorandum on the B9 working methods applied by the police and the service itself, which will provide details of those actions that particularly need to be taken when a decision on 'not to act on', 'not to continue investigating' or 'not to prosecute' reports of human trafficking is taken. The aim is to define more clearly who has to be informed and how this notification is to be documented.

### *Facilities*

Victims wishing to use the period of reflection will be entitled to shelter; medical, social and psychological support; legal aid; and a benefit to pay for the cost of living during this period of up to three months. During the period of reflection, victims are also insured against medical expenses. An interpreter will be provided if necessary. After reporting the offence – or otherwise cooperating – victims will be issued with a residence permit and, on the basis of their status as a legal alien, gain access to housing, education, study grants,<sup>36</sup> and employ-

<sup>31</sup> B9/10.

<sup>32</sup> If the (possible) victim does not yet have a residence permit, the police chief constable will postpone the deportation of the victim until the court of appeal has handed down its decision. See B9/10.

<sup>33</sup> Section 12l(2) of the Dutch Code of Criminal Procedure reads: 'If the objection concerns an offence in respect of which the suspect has been notified that no further prosecution will take place, the objection must be filed within three months of the party directly affected becoming aware of such notification.'

<sup>34</sup> Information from a lawyer who specialises in providing legal advice to victims of human trafficking.

<sup>35</sup> In 2008, the public prosecution office in Utrecht prepared a standard letter that it sends to victims, with copies forwarded to their lawyers and the Immigration and Naturalisation Service, if there are no indications justifying any investigation into the allegations of human trafficking.

<sup>36</sup> As far as study grants and allowances for educational payments and school tuition fees are concerned, they will have the same rights as Dutch citizens, *Government Gazette* 2007, 264.

ment. Victims who have B9 residence status are free to work once they have received a B9 residence permit;<sup>37</sup> they require no work permit.<sup>38</sup>

Local authorities are sometimes unclear about the rights and obligations arising from the B9 regulation. The question of whether a B9 residence card must be registered in the Municipal Personal Records Database is a case in point. The Minister and State Secretary of Justice have indicated that they are working on improving the provision of information to, and sharing of knowledge with, local authorities with regard to the B9 regulation and the issue of residence cards.<sup>39</sup>

*No charges/no cooperation; what to do next?*

In April 2007, Fatma Koser Kaya (MP for D66) and Naïma Azough (MP for GroenLinks) asked the Minister to explore the possibility of extending the B9 regulation to include ‘unaccompanied underage aliens if any of the assistance agencies involved indicate there is reason to believe they have fallen victim to human trafficking, even if the victims do not press charges.’<sup>40</sup> In a letter of 18 October 2007<sup>41</sup>, the State Secretary wrote that she saw no reason to extend the B9 regulation along those lines. In her opinion, the discretionary power (conferred by Article 3.4(3) of the Aliens Act 2000) to depart from the general rules in favour of aliens provided enough leeway to grant residence status to victims who do not press charges, if circumstances were so desperate as to necessitate such an action.

In the Netherlands, granting (temporary) residence status to victims of human trafficking under the B9 regulation depends on their willingness to cooperate in the investigation and prosecution. This is permitted under the Convention. Member states are free to decide which criteria they wish to apply for granting permits to victims of human trafficking: the victim’s personal situation and/or his or her willingness to cooperate with the authorities in the investigation or criminal proceedings.<sup>42</sup> In the Netherlands, some forms of assistance for victims are linked to this residence status – unless residence status is applied for on other grounds, such as humanitarian grounds. The Council of Europe’s Convention requires member states to provide such standards of living as to enable victims of human trafficking to “ensure their subsistence through such measures as accommodation, psychological and

37 The residence document will say ‘Restriction as per Minister’s decision. Free to work. No work permit required.’ This is to make it less obvious to third parties on what grounds the victim (or witness) of a human trafficking offence is staying in the Netherlands, *Government Gazette* 2007, 87 (7 May).

38 Under the B9 regulation, the victim or witness may continue to work in the sex industry, even if she was previously not allowed to do so as a self-employed person or as an employee because she had no permit. See Fifth NRM Report, p. 32.

39 *Parliamentary Questions II* 2008/09, 28 638, no. 42.

40 *Parliamentary Records II* 2006/07, no. 61, pp. 3422-3426. *Parliamentary Questions II* 2006/07 19 637, no. 1148.

41 *Parliamentary Questions II* 2006/07, 19 637, no. 1174. The EU proclaimed October 18 as EU Anti-Trafficking Day.

42 Article 14(1): ‘Each Party shall issue a renewable residence permit to victims, *in one or other of the two following situations or in both*: a. the competent authority considers that their stay is necessary owing to their personal situation; b. the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings’ (emphasis added, BNRM).



material assistance, access to emergency medical treatment, translation and interpretation services, legal aid, representation, and access to education for children.”<sup>43</sup>

The explanatory memorandum accompanying the bill to ratify the Convention states that victims wishing to use the period of reflection are entitled during this period to secure accommodation, medical, social and psychological support, legal aid, and a benefit to pay for the cost of living, and that they will be insured against medical expenses. An interpreter will be provided if necessary.<sup>44</sup> After reporting an offence – or otherwise cooperating – victims will be issued with a residence permit and, on the basis of their status as a legal alien, gain access to most facilities. Apart from the facilities referred to above, these include access to housing, education, study grants, and employment. Holding a residence permit is not a requirement for receiving urgent medical assistance. Nor is it a requirement for access to education for minors.

Reporting the crime is not an absolute requirement for obtaining assistance.<sup>45</sup> Victims who are unable to press charges or otherwise cooperate, and who are not eligible for a residence permit on the basis that they are victims, may nonetheless be eligible for a residence permit in circumstances of extreme hardship (continued residence for urgent reasons of a humanitarian nature, see §5.2.2).

Strictly speaking, the Netherlands is in compliance with the relevant (minimum) standards. It should be added, however, that several international bodies that monitor compliance with human rights have made it clear, referring to the Netherlands and other countries, that providing assistance to victims of human trafficking should not depend on their willingness to cooperate in a criminal investigation.<sup>46</sup> On a positive note, the State Secretary has promised to look at how, for example, Italy has gone about disconnecting the granting of residence permits from the requirement that victims cooperate in criminal proceedings, and what the implications of such a move would be.<sup>47</sup>

#### *Witnesses/complainants*

Witnesses who have reported a human trafficking offence may also obtain a temporary residence permit under the B9 regulation, if they have no valid residence status in the Netherlands. Witnesses/complainants may be aliens working in the same industry as the victim. They may also work in other sectors and have information about human trafficking.<sup>48</sup>

43 Article 12(1) of the Convention.

44 Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings signed in Warsaw on 16 May 2005, Explanatory Memorandum, *Parliamentary Questions II 2007/08*, 31 429 (R 1855), no. 3, pp. 9-10 (24 April 2008).

45 It is worth noting that the Explanatory Memorandum at that time inadvertently stated that the Aliens Decree, as amended, would provide that victims who did not press charges but who did otherwise cooperate with the police and public prosecution service would be issued with a residence permit that gave access to assistance, *insofar and as long as the public prosecution service required their presence in the Netherlands* (emphasis added by BRNM).

46 See Chapter 3, International developments, e.g. §3.2.6.

47 Report of a meeting of parliament's Standing Committee for Justice, 10 June 2009, *Parliamentary Questions II 2008/09*, 28 638, no. 44, p. 22.

48 B9/5.

In contrast to applications from victims, when a residence permit application is received from a witness/complainant, the contact person for human trafficking cases at the Immigration and Naturalisation Service (IND) must contact the public prosecution service, which has the decisive say in whether or not to issue a residence permit to witnesses/complainants.<sup>49</sup> The criterion applied is whether the presence of the witness/complainant is required in the interests of the investigation and prosecution of the suspect.<sup>50</sup>

A distinction is also made between victims and witness/complainants in terms of the time limit within which the IND has to decide on the application. As a rule, applications from victims must be handled within 24 hours of the application being faxed by the police to the IND. It's stated that this time limit simply cannot be met for applications from witnesses/complainants because of the obligation to consult with the public prosecution service prior to making a decision.<sup>51</sup> As shown by the following case, these differences in the policy rules for victims and witnesses can lead to confusion.

In June 2007, the applicant, who was from Togo, went to the Amsterdam-Amstelland regional police force to report a human trafficking offence of which he himself was a victim. He claimed that the IND subsequently treated him as a witness/complainant rather than a victim and failed to decide on his application within the prescribed 24 hours. He also claimed that both his application and his complaint about the absence of a decision were dealt with by the same member of staff at the IND.

While acknowledging that the IND had initially been misinformed by the police, the National Ombudsman made the following findings:

- the IND had subsequently received sufficient information indicating that the case involved a victim. By failing to act on this information, the IND had violated its duty to actively gather sufficient information.
- the IND could not be faulted for failing to handle the application within 24 hours because it had not received the correct information. However, its failure to monitor progress in the proceedings and the fact that it did not issue a decision until five months later, meant that the IND had acted in violation of its duty to act expeditiously.
- the anti-bias principle (Section 9.7 of the General Administrative Law Act) had been violated, because the same member of staff had dealt with both the application and the complaint.
- Finally, it was recommended that the State Secretary consider amending the B9 regulation such that the aliens agency (i.e. the IND) would henceforth send aliens and their lawyers a copy of the M55 Form. National Ombudsman, report number 2009/0026, 11 February 2009, Migratieweb ve09000219.

49 This more or less reflects the situation where people held in aliens detention, or detained at Schiphol Airport, are identified as victims.

50 B9/6.1.

51 B9/7.1.

The legal residence document issued to witnesses/complainants states that they are not permitted to perform work.<sup>52</sup> This changes once they have been granted a residence permit under the B9 regulation, when they are free to take a job and no work permit is required.<sup>53</sup>

The residence permit will remain valid as long as the public prosecution service considers it necessary that the witness stay in the Netherlands.<sup>54</sup> Under the regulation, the public prosecution service is required to notify the IND and the witness/complainant accordingly. The permit will be revoked if the case is dropped by the public prosecution service, if no appeal is lodged against the district court's decision in the case against the suspect or if the court of appeal has rendered a decision.<sup>55</sup>

The B9 regulation suggests that witnesses/complainants may file an objection with the court of appeal under Article 12 of the Code of Criminal Procedure if the suspect is not prosecuted or the prosecution is discontinued (i.e. the case is dropped).<sup>56</sup> Similar to victims, they may await the outcome of the objection proceedings in the Netherlands.<sup>57</sup>

### 5.2.2 B9 registration data<sup>58</sup>

#### *Applications made and permits granted*

Table 5.1 shows the number of aliens applying for B9 residence status per year and the number of permits granted per year.

Table 5.1 Number of B9 permits applied for and granted

	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
Number of B9 permits applied for	77	100	180	100	186	100	443	100
Number of B9 permits granted	61	79	150	83	143	77	235	53

In the period from 2005 until 2007, 80% of B9 permit applications were granted annually. In 2008, this percentage declined to 53%. In absolute terms, the number of applications and permits rose significantly in 2008. A possible explanation of the increase in applications and

52 B9/6.4 Cf. reflection period for victims under B9/4.1.1.

53 Fifth NRM Report: working as an employee with no work permit was not allowed prior to B9, but is allowed once B9 residence status has been granted.

54 The renewal application will be refused if the public prosecution service does not consider it necessary for the witness to remain in the Netherlands. See B9/9.2.

55 B9/8.2.

56 However, see Den Bosch Court of Appeal, 18 November 2008, K08/144 (not published), as discussed in §5.4.2.

57 The police must likewise notify the witness/complainant of the decision not to prosecute or to discontinue the prosecution against the suspect. Within two weeks of being so notified, the witness must inform the police as to whether he or she will file an objection with the court of appeal. See B9/10.

58 The tables shown in this section are also included in §4.2.3.

decline in the proportion granted is that more ‘chanceless B9 applications’ were made in 2008 than in previous years.<sup>59</sup> On this point has to be taken into consideration that the mentioned percentages are of relatively limited importance, because not all applications are dealt with in the year of application.

*Period of reflection, offences reported*

Tables 5.2 to 5.4 show the number of foreign victims registered with CoMensha who were offered a period of reflection, how many of them took up the offer, and how many eventually pressed charges.

Table 5.2 *Reflection period offered to (possible) foreign victims registered with CoMensha, by year*<sup>60</sup>

		2004	2005	2006		2007		2008	
		N	N	N	%	N	%	N	%
Reflection period offered	Yes	Unknown	Unknown	101	23	134	30	201	40
	No	Unknown	Unknown	Unknown	Unknown	111	25	91	18
	NA/unknown <sup>1</sup>	Unknown	Unknown	Unknown	Unknown	201	45	214	42
	<i>Total</i>	346	326	433	100	446	100	506	100

Source: CoMensha (2004-2006: annual reports; 2007-2008: databases).

Table 5.3 *Reflection period accepted by (possible) foreign victims registered with CoMensha, by year*<sup>61</sup>

		2004	2005	2006		2007		2008	
		N	N	N	%	N	%	N	%
Reflection period accepted	Yes	43	43	49	49	116	87	134	67
	No/unknown <sup>2</sup>	Unknown	Unknown	52	51	18	13	67	33
	<i>Total</i>	<i>Unknown</i>	<i>Unknown</i>	101	100	134	100	201	100

Source: CoMensha (2004-2006: annual reports; 2007-2008: databases).

59 See §5.3.

60 These include foreign victims who had already pressed charges. They did not, of course, have to be offered a period of reflection. However, no information is available on the majority of these victims.

61 In both years, it was unclear for at least one foreign victim offered a reflection period whether he/she actually accepted the reflection period.

Table 5.4 Charges pressed by (possible) foreign victims registered with CoMensha, by year

		2004		2005		2006		2007		2008	
		N	%	N	%	N	%	N	%	N	%
Reports of the offence	Yes	185	46	155	37	208	36	234	33	246	30
	No/unknown	220	54	269	63	371	64	482	67	580	70
By foreign victims who accepted reflection period	Yes	Un-known	Un-known	Un-known	Un-known	Un-known	Un-known	71	61	80	60
	No/unknown	Un-known	Un-known	Un-known	Un-known	Un-known	Un-known	45	39	54	40
	Total	43	100	43	100	49	100	116	100	134	100
Total		405	100	424	100	579	100	716	100	826	100

Source: CoMensha (2004-2006: annual reports; 2007-2008: databases).

The percentage of foreign victims offered a reflection period increased annually (from 23% in 2006 to 40% in 2008). The number of foreign victims eventually accepting the reflection period fluctuated: 49% in 2006, 87% in 2007 and 67% in 2008.

In 2007 and 2008, 60% of victims who had accepted a reflection period went on to press charges. This is quite a high percentage compared to the percentage of total victims registered with CoMensha who pressed charges (33% in 2007 and 30% in 2008). Of all victims who pressed charges in 2007, 18% were Dutch nationals, compared to 11% in 2008.

These findings and developments should be interpreted cautiously, knowing that a lot of information is unknown, as shown in Tables 5.2 to 5.4. It is equally unclear whether CoMensha knows for each case whether a reflection period was used.

### 5.2.3 Continued residence (B16/7)

If legal basis for a residence permit under the B9 regulation lapses, the individual concerned must leave the Netherlands, unless he or she applies in a timely fashion for an amended permit for a different purpose and meets the requirements for such an amendment. One of the options is to apply for an independent continued residence permit under Article 3.52 of the Aliens Decree.

As a rule, victims of human trafficking and witnesses/complainants can apply for continued residence. They have to base an application for an independent continued residence permit on urgent reasons of a humanitarian nature. This is not, however, a permanent residence permit. Aliens can apply for permanent residence status after five years of continued residence. Because in practice the possibility of being granted continued residence on humanitarian grounds had been limited<sup>NRM3</sup>, the regulation as it stood then was the subject of protracted debate. The policy on continued residence after B9 status<sup>NRM5</sup> was amended with effect from

14 August 2006.<sup>62</sup> The then Minister for Immigration and Integration relaxed the conditions, as shown below:<sup>63</sup>

*Victims of human trafficking*

An application for continued residence will invariably be granted if the victim presses charges or otherwise cooperates in criminal proceedings (a) that have ultimately resulted in a conviction or (b) that, although not ultimately resulting in a conviction, involve a victim who at the time of the court decision had been residing in the Netherlands on a B9 residence permit for three or more years.

If the charges pressed by a victim of trafficking have ultimately led to the suspect being convicted of human trafficking<sup>64</sup>, since 14 August 2006 the Minister accepts that there is a presumption in law that the victim's return to his or her home country would involve risks (see (a) above). If, in those circumstances, the victim applies for continued residence, the application will be granted for that reason. With effect from 23 February 2008, a continued residence application may also be awarded if the criminal case in which the victim cooperated has led to an irrevocable conviction for another offence, provided that human trafficking was included as a charge in the indictment<sup>NRM6</sup>.<sup>65</sup>

This amendment to the rules on continued residence laid down in the Aliens Act Implementation Guidelines had been recommended in the fifth report of the NRM. The eighth recommendation was that the grounds for continued residence as set out in B16/7(a) of the Aliens Act Implementation Guidelines (i.e. the victim has reported an offence and the criminal proceedings have led to a conviction) should not be limited to criminal cases resulting in a conviction for human trafficking, but should also include cases resulting in a conviction of an offence related to human trafficking. If a charge of human trafficking was brought and the suspect was convicted of an offence *other than* human trafficking,<sup>66</sup> the presumption in law now is that the victim would run a risk if he or she were to return to his or her home country.

62 *Parliamentary Documents II* 2005/06, 28 638, no. 26. The letter resulted in the Amendment to the Aliens Act Implementation Guidelines (2006/36A), 8 November 2006 (*Government Gazette* 2006, 225).

63 The policy change was intended to simplify and accelerate the process of handling continued residence applications after B9 status, align the policy with the general policy governing continued residence (Section 3.51 of the Aliens Decree), and clarify and improve the position of victims. Another aim was to increase the number of continued residence permits awarded after expiry of B9 status. The Minister pointed to the limited number of continued residence applications, citing as a possible reason lack of awareness among victims of the options available under the policy. However, legal aid and victim assistance agencies described the heavy burden of proof resting on the victims as a major factor.

64 For human trafficking. In 2007, twenty cases tried at first instance – accounting for 19% of a total of 108 court decisions reviewed – resulted in an acquittal on human trafficking charges and a conviction on one or more other counts. See Chapter 11, Case law on exploitation in the sex industry, §11.2.

65 *Government Gazette* 21 February 2008, 37.

66 On this issue, B16/7 notes that a conviction on one of the other counts in the indictment will be sufficient, provided that human trafficking is included as a charge. As previously stated, this is a broader definition than the one given in recommendation 8 of the fifth report of the NRM, 'another offence *related to human trafficking*' (emphasis added by BNRM).

With this amendment, the assessment of whether an individual is a victim has largely passed from the courts to the public prosecution service. This test could, in fact, be fully entrusted to the public prosecution service without having to revise the policy.

The public prosecution service's decision to prosecute should be sufficient grounds for the IND to grant continued residence status to victims. At the same time, safeguards will have to be introduced to ensure that victims remain available to the police and public prosecution service. However, if the public prosecution service decides *not* to prosecute for technical reasons (e.g. the suspect cannot be found), they should, as a standard procedure, send the IND a statement confirming that the individual is a victim.

This does not, of course, affect the possibility provided for in B16/7 of the Aliens Act Implementation Guidelines of granting continued residence if, in the State Secretary's opinion, the victim cannot be required to leave the Netherlands given the special individual circumstances of the case. This discretion would be extended to include the latter category of victims, if the twelfth recommendation in the third report of the NRM were adopted. Victim assistance organisations should be assigned an important role in reviewing these applications.

Aliens wishing to invoke B16/7(a) have to present a copy of the court decision to demonstrate that they are eligible for continued residence. However, victims are not party to the criminal proceedings and do not automatically receive a copy of the court decision. In fact, they may not even be aware of a decision having been rendered.

Moreover, with effect from 14 August 2006, if a criminal case does *not* result in a conviction, and three years have elapsed between the grant of B9 residence status and the date on which the court decision became irrevocable, the Minister will consider the duration of the victim's residence to be the key humanitarian factor in taking a decision (see ground b for granting a residence permit at the beginning of this section).

In other words, victims who have been staying in the Netherlands on a B9 residence permit for three years may apply for continued residence even if the criminal case is ongoing (theoretically speaking, even before any decision to drop the case has been made).<sup>67</sup> This change was implemented in February 2008. In these cases, provided that there are no other general grounds for refusal, the application will be granted<sup>NRM6</sup>. The policy does not apply to cases in which victims pressed charges or otherwise cooperated with the police but no prosecution ensued.

### *Non-punishment*

There are cases in which victims are suspected and, eventually, convicted of an offence. In practice, this may have implications for undocumented victims in terms of their right to stay on the basis of their being trafficking victims. Because of the victim's criminal record, even if the offence was committed in a human trafficking situation (criminal exploitation), the victim may be declared *persona non grata* and refused continued residence under B16.<sup>68</sup> In

<sup>67</sup> *Government Gazette* 21 February 2008, 37, p. 11.

<sup>68</sup> This issue is explained in greater detail in §6.3.1 of this report on the basis of case studies.



deciding to declare victims *persona non grata* and deport them, explicit consideration should be given to the link between the offences committed and the human trafficking situation. The fact that these are victims of human trafficking and criminal exploitation<sup>69</sup> should, in any case, weigh heavily when their application for continued residence is reviewed.

*Human trafficking victims and witnesses/complainants whose complaints/cooperation did not result in a criminal case or court decision*

Continued residence applications for these categories of aliens will only be awarded if, given the special circumstances of the case, the alien cannot be required to leave the Netherlands. Fear of reprisals, the risk of prosecution in their home country (for prostitution, for example), or the absence of possibilities for social reintegration may all be reasons for allowing them to stay. According to the Aliens Act Implementation Guidelines, these are not the only factors that are relevant in assessing whether a victim or witness/complainant should be granted residence status for urgent reasons of a humanitarian nature. Mental-health problems for which victims or witnesses are being treated in the Netherlands, the fact that they are responsible for the care of children born or receiving education in the Netherlands, or the position of women in the country of origin may also be grounds for awarding the residence application<sup>NRM6</sup>. If a witness/complainant presses charges and these have resulted in a conviction of the suspect(s), the question of whether the conviction might trigger reprisals should be assessed on a case-by-case basis. The operative assumption is not necessarily the same for victims and witness/complainants, although this would be logical. Again, the suspect(s) must have been convicted of human trafficking, or of another offence in an indictment where human trafficking was one of the charges.

According to the Aliens Act Implementation Guidelines, if psychological or other medical grounds are invoked, these will merely be one of several factors to be considered.<sup>70</sup> If only medical grounds are invoked, ‘an assessment in light of the policy rules on medical treatment would be more appropriate.’ On this issue, see §5.5.

Victims or witnesses will themselves have to explain what urgent reasons of a humanitarian nature justify granting continued residence, as well as submitting relevant data and documents to substantiate their application.<sup>71</sup>

### 5.3 ‘Abuse’ of the B9 regulation?

Ever since it was established, BNRM has been alerted to aspects of the fight against human trafficking that need to be improved. Victim-care organisations and interest groups, for example, regularly make comments and complaints about cases involving victims of human trafficking that have not been properly dealt with by the police and the public prosecution

69 See §6.3.

70 B16/7.

71 If the application is not substantiated or insufficiently so, the Immigration and Naturalisation Service will allow the alien an opportunity to remedy this failure, usually a period of two weeks.

service. These often involve foreign victims (whether or not held in aliens detention) who are given no opportunity to report an offence or offered no period of reflection or B9 residence status, or whose cases have, in their view, been dropped or shelved for no valid reason.

At the same time, the police and public prosecution service say they have to devote a lot of resources to dealing with ‘hopeless B9 applications’. They are referring to situations in which foreign nationals who have been asked to leave the Netherlands, or who have only a limited chance of obtaining residence, claim they are victims of trafficking – sometimes at the very end of the proceedings – or are identified as such by their lawyer or a care provider. They report a human trafficking offence and obtain a B9 residence permit from the IND. If they are held in aliens detention, the detention is lifted. However, the reports they file contain few if any leads for an investigation and/or the offences were committed such a long time ago that they are difficult to investigate or verify. These cases rarely result in a conviction, but they do tend to place a strain on resources because they have to be investigated, according to the Instruction on Human Trafficking. Some of the agencies involved suspect that the ‘B9 route’ is used by people who are not victims of trafficking, but who just want to stay in the Netherlands.<sup>72</sup> BNRM has studied this problem and organised an experts’ meeting to brainstorm about possible solutions. The study reviewed 16 cases, all of which involved suspected abuses of the regulation.<sup>73</sup> Details of the study and the methodology are given in Appendix 2. This section looks at the findings of the study and the conclusions of the meeting of experts. Further research will, however, be needed.

The study and the experts’ meeting identified the factors that had led the police and public prosecution service to doubt the credibility of the complaints filed, and those that had prevented the cases from being dealt with successfully (regardless of whether the complainants were perceived as victims). These factors, the problems encountered, and possible solutions are discussed below. In this section, reference will be made to the neutral term ‘complainants’ rather than ‘victims’.

#### *The importance of obtaining residence status*

Those cases in which there were suspicions of abuse of the B9 regulation involved foreign victims who had no prospects of obtaining residence, but who did wish to stay in the Netherlands. This shows that complainants have multiple interests. Obtaining a residence permit might, however, be of greater importance to them than having the perpetrator(s) caught and tried. In fact, they may have no interest at all in having the perpetrators caught and tried because of the risks involved. If they were to be required to return to their home country, they might well run into the perpetrators and face all sorts of recriminations.

72 As cited in the ACVZ’s advisory report “Protect victims and fight human trafficking” (February 2009, p. 33). LEM estimates that half of all B9 applications are ‘questionable’.

73 First of all, an inventory was made of all cases in which the police had suspicions of abuse. This produced 88 cases from 13 police areas. Next, a random selection of 16 cases was made to identify those factors that had caused the police to doubt the credibility of the complainant and/or the story of human trafficking. The 16 cases involved people from Africa and China reporting human trafficking offences.

A related hypothesis is that victims of human trafficking press charges to obtain B9 residence status, assistance and protection, but at the same time try to *prevent* the perpetrators from being caught (and really have no wish to volunteer information). Reports of this kind usually contain few leads on which to base an investigation. Theoretically speaking, the possibility can not be ruled out that obtaining residence status is so important that individuals make up a human trafficking story just to become eligible for B9 residence status. This possibility has been widely publicised in the press, with headlines like ‘Illegal immigrants use new trick to stay’,<sup>74</sup> or ‘Human trafficking charges often false’.<sup>75</sup> One of the reasons for assuming that this does happen is that individuals sometimes come up with a human trafficking story precisely at the time they are required to leave the Netherlands, having not previously done so at earlier opportunities. Suspicions of abuse abound, but they can rarely be substantiated. The public prosecution service has prosecuted people for bringing false charges in only a few cases. Service providers assisting the complainant, such as lawyers and victim-care providers, may also be motivated by the importance of obtaining a residence permit for their client.

*Few useful leads, inconsistencies, falsehoods, implausible stories*

In nearly all of the cases reviewed, there were no investigative leads so these cases could not be solved. For example, complainants only knew the perpetrators by their first names or aliases (‘Good Boy’, ‘Mister’), could only provide vague descriptions and could not be specific about where they had been staying (‘in a flat in neighbourhood X’, a neighbourhood that only has blocks of flats). The statements also contained inconsistencies and provided incorrect information about age, identity and previous asylum applications. This makes it difficult for the police to investigate and reduces the chance of a successful prosecution.

Moreover, stories about human trafficking are not always plausible, although it cannot be ruled out that complainants are telling the truth. In one case, the complainant alleged there had been a passer-by in the country of origin who had helped the complainant get to the Netherlands for no consideration; the passer-by arranged and paid for the journey and identity documents, asking nothing in return. That is hardly likely. Nigerians sometimes tell strikingly similar stories, but the details are not very plausible. They claim they have told their story to a complete stranger in the street or at a bus stop, when they are hardly capable of telling their story to others, out of shame, fear or for other reasons. Moreover, they were then referred not to the police or a victim assistance agency, but to an asylum centre in a different place, with the train or bus fare being paid for them.<sup>76</sup>

A key question is whether complainants *cannot* or *do not want* to provide more detail. Apart from the fact that obtaining residence status is important for them, and supplying information

74 *De Telegraaf*, 2 July 2009.

75 *Algemeen Dagblad*, 7 April 2009.

76 There has, incidentally, been a case in which young Nigerian women were instructed by their traffickers to press charges of human trafficking to become eligible for B9 residence status. These young women were then picked up by the traffickers at the shelter where they were staying and put to work as prostitutes. More information on this case is provided in Chapter 9, §9.5.5.

might involve risks, the complainant's cultural background might play a role as well. In the cases studied, the complainants were from Africa and China. African victims often have had little education and the world they live in is different from the Western way of life. Although this is just speculation, they might not remember the kinds of facts that the police and public prosecution service would regard as investigative leads. What airline did you use? What was the destination of your flight? What did the accommodation look like? These are perhaps difficult questions for them to answer. In one of the cases reviewed, a young woman gave a very unusual description of a camera, presumably because she had never seen one before. An article published in a Dutch daily newspaper on 31 January 2009 suggested that it was also difficult for doctors to obtain information about health complaints from Africans,<sup>77</sup> so the problem does not seem to be confined to criminal investigations. Another example is that people from China have little faith in government agencies. Accordingly, they are unlikely to confide in government officials and usually tell little about what has happened to them.<sup>78</sup> It should be added that traumas can affect a person's memory and, hence, the quality of the information reported to the police.<sup>79</sup> The same goes for language barriers. Certain sexual expressions, for instance, which are necessary to describe the offence, are sometimes difficult to translate or untranslatable.

#### *Follow-up of 'hopeless' B9 applications*

Although there were few investigative leads, and offences had sometimes been committed a long time previously (after an asylum procedure or long-term illegal stay), in the majority of cases reviewed by BNRM, an attempt had been made to solve the case in accordance with the Instruction on Human Trafficking. It should be added that, in some cases, this was done because the police and public prosecution service expected that objection proceedings would be filed,<sup>80</sup> requiring them to relaunch the investigation, which would of course hardly be efficient. The cases reviewed had all been dropped or were expected to be dropped. The police and public prosecution service say that investigating these reports puts a strain on resources, especially in cases where they know in advance that any follow-up actions cannot possibly result in a conviction. These cases sometime caused other cases of human trafficking cases to be put on the back burner, which the authorities feel should not be allowed to happen. This is perceived as a major problem.

On the other side of the argument, victim-assistance organisations and lawyers (who do not necessarily represent the same interests as the police and public prosecution service) complain about the way in which reports are dealt with. The police and public prosecution service – who of course also wish to protect victims – primarily require information about human trafficking in order to launch and successfully complete an investigation. What has happened? Where? When? Can anyone be linked to the crime? This information is not al-

77 *De Volkskrant*, *Doktoren langs de rafelrand*, 31 January 2009.

78 Presentation by sinologist L. van der Made to the Operational Consultation Group on Human Trafficking (OOM), 3 July 2007.

79 See also Zimmerman et al. (2006).

80 As referred to in Section 12 of the Dutch Code of Criminal Procedure. See §5.4.

ways provided to a sufficient extent when the offence is reported and can prove insufficient even when investigative action is undertaken. And so cases have to be dropped. Whether or not there are sufficient investigative leads is, of course, a matter for debate, a debate that is ongoing. And the police and public prosecution service also make mistakes. In a recent study, BLinN revealed that reports are not acted on, or are not acted on quickly enough.<sup>81</sup> On the other hand, a review of cases in which an objection was filed shows that in nearly all cases the police had done a good job (see §5.4 and following sections). An additional study revealed that providers of assistance sometimes expect more from the police and public prosecution service than is possible or realistic. Assistance providers sometimes urge the police to intervene, when they have no legal power to do so. Or they urge the police to go and look for landmarks along a route described by the victim, although this is time consuming and adds little in the way of tactical value, in that it will not necessarily lead to the ‘scene of the crime’. In some cases, complainants suffered other horrific things like rape, but were not trafficking victims and could not invoke B9 residence status. This causes frustration and – because the provision on human trafficking is broadly phrased – leads to discussions about whether there may also have been human trafficking involved.<sup>82</sup>

### *Challenges and solutions*

What precisely is the problem? The problem is reports of human trafficking that contain little or no information (investigative leads). These impose a strain on the resources of the police and public prosecution service because the reports must be processed and what few leads there are must be investigated,<sup>83</sup> even when it is often clear from the start that the perpetrators will not be found. This is not only demotivating, but also at odds with the procedures followed for most other offences, when a decision is taken on the basis of the existence of leads.<sup>84</sup> In addition, these cases place demands on shelter accommodation, which makes it more difficult to find places for new trafficking victims.

The possibility of abuse – of a human trafficking story being fabricated in order to claim B9 residence status – cannot be ruled out, and there are several cases that point strongly in that direction. Stories may be made up on the trafficker’s instruction, much in the same way as B9 applications are sometimes orchestrated. Because it can be very difficult to identify these cases, it would seem more practical to refer to ‘chanceless B9 applications’ (rather than abuse) when describing reports filed by foreign nationals of human trafficking offences filed with few investigative leads. This is not to say, however, that there are no victims in those cases.

At the experts’ meeting organised by the BNRM, potential solutions to this problem were discussed. What is clear is that there is no ready-made solution. The solutions proposed run along two lines. On the one hand, ideas were put forward to improve the success rate

81 Boermans, 2009.

82 On this issue, see also Chapter 12, §12.6.1.

83 In other words, all information included the report must be ‘followed up’.

84 Landman, Schoenmakers & Van der Laan, 2007, p. 44.

of investigations by investing in, for example, the quality of complaints. Officers could ask more detailed questions, try to build a bond of trust, deploy auxiliary tools and provide extra support. The problem of capacity would remain (or indeed worsen), but the rate of success might increase. Other the other hand, it was suggested that devoting too many resources to these cases should be avoided by raising thresholds in, for example, the B9 regulation and/or during the investigation and prosecution. One option would be to deny B9 status to complainants who provide too little information. This kind of solution could, however, harm the interests of genuine victims.

Alternative solutions were mentioned, including offering assistance to all trafficking victims, regardless of whether they cooperate in the investigation and prosecution. One solution, which is already being applied, is to shorten the various proceedings (those leading up to the decision not to prosecute as well as the objection proceedings), which will improve efficiency and reduce the strain on the system.

#### *Additional research*

The debate about possible solutions to these challenges is made difficult by the fact that material information is still lacking. Additional research is needed, particularly to look at the two approaches discussed above. In terms of improving the quality of complaints, research could be done into why some reports of offences lack information. The low percentage of victims of human trafficking willing to press charges is also relevant and could be examined. In 2008, the public prosecution service commissioned a study into this subject, but at the time of writing the study had, unfortunately, been discontinued.

As far as ‘raising thresholds’ is concerned, the impact of such a move could be examined. By way of an experiment, one could select hopeless B9 applications likely to be dropped immediately (on the basis of set criteria or the opinion of experts) for lack of investigative leads. Those cases should then be investigated very thoroughly, using all means available. Next, it should be established whether those cases could be solved after all (and which approach is the most effective). The study should also explore the possibilities of helping victims who fail to cooperate in the investigation.

Incidentally, the approach involving creating higher thresholds for an investigation is less appropriate for complaints of ‘other forms of exploitation’, which already have built-in obstacles at this stage (see Chapter 12).

## **5.4 Continued residence after B9 status**

### **5.4.1 Introduction**

It has been known for years that many foreign victims/witnesses of human trafficking wish to stay on in the Netherlands after their B9 residence permit has expired.<sup>NRM3</sup> However, data on the annual number of applications for post-B9 continued residence did not become available until 2006. In that year, human trafficking liaison officers (currently: gender liaison of-

ficers) at the Immigration and Naturalisation Service began manually logging the number of continued residence applications they received from (possible) victims of human trafficking or witnesses/complainants, and how many of those applications were awarded at the initial decision stage. As a rule, these applications are handled by the liaison officers.<sup>85</sup>

Until recently, there was no information available on proceedings on continued residence were conducted in practice. This is why the BNRM has studied the cases of all applications for post-B9 continued residence registered in 2006. The study focuses on lead times, the characteristics of the complainants and how the applications were actually handled by the IND.

It is important to note that since 14 August 2006, various changes have been made to the rules on continued residence (B16/7 of the Aliens Act Implementation Guidelines), widening the possibilities for victims of human trafficking to obtain continued residence status under Article 3.52 of the Aliens Decree. These changes may explain the increased number of continued residence applications registered in 2007 (49 were registered, 21 of which were granted and 28 refused) and 2008 (149 were registered, 97 of which were granted and 52 refused).

The following sections provide information on the cases reviewed (§5.5.2) and on the victims who applied for continued residence (§5.5.3). Section 5.5.4 looks at the distribution of the ‘burden of proof’ in continued residence applications submitted on the basis of special individual circumstances (urgent reasons of a humanitarian nature). The link with criminal proceedings is discussed in §5.5. and, finally, §5.5.6 lists a number of documentary requirements.

#### 5.4.2 Case studies

According to the Immigration and Naturalisation Service, its human trafficking liaison officers received 34 applications for continued residence in 2006, half of which (17) were granted and half were refused at the initial stage. The IND had no data available on the number of objections or appeals filed and what the outcomes of those proceedings were. At the time of writing of the sixth report of the NRM, the IND was still unable to supply additional statistics on the number of applications for and grants of continued residence for, for example, 2007.

The 34 cases were reviewed from November 2007 until June 2008. It emerged that, in 2006, only 14 people had applied for continued residence after expiry of their B9 residence status. In 18 other cases, applications had been received by the IND in a different year. Not all of the applications were first-time applications for continued residence. As far as can be inferred from the files, two cases did not involve applications for continued residence. This is why several of the tables below show a total of 32 instead of 34.<sup>86</sup>

85 The possibility cannot be ruled that one or two applications were handled by other public servants and were not registered.

86 Review of all 34 cases showed that on some points – relating to the application for continued residence – only 32 were relevant.



Table 5.5 Post-B9 continued residence applications reviewed, by year

Year	N
2000	1
2001	0
2002	1
2003	1
2004	2
2005	11
2006	14
2007	2
Total	32

At the time of the study, out of the 32 applications received, 20 had resulted in the granting of a permit for continued residence for a period of five years.<sup>87</sup> Eight applications were refused, but the time limit for filing an objection or appeal had not yet run out. Four applications were finally refused, one in a decision *in primo*,<sup>88</sup> two in a decision handed down after an objection was filed<sup>89</sup> and one on appeal.<sup>90</sup> So it is not true that half of the 34 applications for continued residence were granted at the initial decision stage, as stated in the fifth and sixth reports of the NRM on the basis of information supplied by the IND. Table 5.7 shows the number of applications awarded according to the stage of the proceedings.

Table 5.6 Continued residence applications awarded, according to stage of proceedings

Instance	N	%
Decision at first instance	3	15%
Decision on objection	16	80%
Decision on objection, after successful appeal	1	5%
Total	20	100%

87 In one case, the permit for continued residence was granted for five years and immediately extended by three years.

88 In this particular case, an objection was filed and then withdrawn by the applicant after she had agreed with the IND that she would apply for asylum. The asylum application was granted at the initial decision stage.

89 A woman filed an appeal after her objection to the denial of continued residence had been declared unfounded, but went back to her home country under an IOM repatriation programme. The other file is unclear about what happened after the objection was declared unfounded on 2 February 2006.

90 After the continued residence proceedings had gone before the Dutch Council of State and the appeal had been dismissed, the alien applied for a residence permit to undergo medical treatment.

A review of each individual file, however, shows that the actual proceedings were often more complicated than suggested by the table above. For example, in three cases, an objection was filed against the granting of the application because the continued residence permit was issued with effect from 14 August 2006 (when the amended policy came into force) causing a ‘residence gap’ for the applicant.<sup>91</sup> One such objection to the commencement date was declared unfounded; that particular file is counted as an application granted at the initial decision stage. Two objections were awarded; those files have been classified as decisions on objection.

It was possible to trace the final outcome of the post-B9 proceedings for continued residence in 24 cases (20 granted, four refused). The table below shows how much time passed between the application and the outcome.

*Table 5.7 Lead times for completed proceedings for continued residence*

Lead time	N	%
Less than 1 year	8	33%
1 to 2 years	11	46%
2 to 3 years	3	13%
3 to 4 years	1	4%
4 to 5 years	–	–
5 to 6 years	–	–
6 to 7 years	1	4%
Total	24	100%

All 20 permits were issued with retrospective effect. Because of the lengthy proceedings, 11 of these 20 permits took effect more than a year earlier. Table 5.9 shows the amount of time between the date the permit for continued residence was granted and the date it took effect.

*Table 5.8 Time between date permit for continued residence was granted and date it took effect*

Time	N	%
0 to 6 months	4	20%
6 to 12 months	5	25%
1 to 2 years	7	35%
2 to 3 years	1	5%
3 to 4 years	2	10%
4 to 5 years	–	–
5 to 6 years	–	–
6 to 7 years	1	5%
Total	20	100%

<sup>91</sup> This has implications for the date from which the alien can apply for permanent residence and Dutch citizenship.

The following case study illustrates the lengthy proceedings that can be involved when continued residence is granted in a decision on an objection.

A woman from Russia claimed she had arrived in the Netherlands in May 2001. She was granted a B9 permit from November 2001 until November 2004.<sup>92</sup> On 18 January 2005, she applied for continued residence. On 30 August 2005, the Immigration and Naturalisation Service refused the application, and the woman then filed an objection on 28 September 2005. The objection was discussed at a hearing on 30 November 2005. In mid-February 2006, the IND declared the objection unfounded. The woman filed an appeal in the district court, requesting an injunction to have her deportation postponed pending the appeal. Then, on 15 June 2006, the IND withdrew its decision on the objection, allowing the appeal and requesting that the injunction be withdrawn. Eventually, on 26 June 2006, the IND again decided on the objection of 28 September 2005, this time declaring it to be sound. On the basis of the known facts and circumstances of the case, the IND ruled that the woman could not be required to return to her home country. She was granted a permit for continued residence from 18 January 2005 until 18 January 2010.

As the Minister wrote in a letter to the Lower House of Parliament on 14 August 2006,<sup>93</sup> these are labour-intensive cases that often involve proceedings that create uncertainties for victims in terms of how long they will be allowed to stay in the country, while the criminal proceedings, although also lengthy in nature, have usually already been dealt with.<sup>94</sup> Due to the length of these proceedings, several of the 34 files reviewed had been dealt with at some point on the basis of the policy as amended on 14 August 2006 (whether or not in anticipation of the amendment). In one or two files, the alien's lengthy stay was due partly to procedural errors made by the IND, which was considered in the decision to grant continued residence, as in the following case:

On 4 November 2002, a woman from Cameroon reported a case of human trafficking, which was treated as a B9 application in accordance with the Aliens Act Implementation Guidelines. On 22 November 2002, B9 residence status was granted, effective 4 November 2002. On 22 August 2003, proceedings commenced to renew the B9 permit. When the woman's application was dismissed in those proceedings in mid-July 2004, she applied for continued residence on 25 August 2004. The application was refused on 20 December 2005, after which she filed an objection in early January 2006. The objection was dismissed for procedural reasons on 21 March 2006. Subsequently, on 18 July 2006, the IND wrote to the woman's lawyer saying that it had become clear that the application of 25 August 2004 had been wrongly refused. The woman was allowed to make a fresh application. She did so on 16 November 2006. The application was refused on 26 February 2007. An objection was filed in March 2007, and a hearing held in July 2007. Finally, on 22 August 2007, the woman learned that she would be granted continued residence. The permit was issued with effect from 16 November 2006 and would run until 16 November 2011.

92 The fact that she was a cooperating victim and had held B9 residence status for three years would be sufficient grounds for granting continued residence under the current policy rules. See §5.2.2.

93 *Parliamentary Documents II* 2005/06, 28 638, no. 26.

94 One of the reasons to simplify and relax the policy rules. See §5.2.2.

When the files were being reviewed, 10 people were involved in proceedings unrelated to post-B9 continued residence. These were cases involving naturalisation (four), B9 renewal (two), under-age children staying with their mother (one), a permit to stay for medical treatment (one), obtaining a W2 document (one), and asylum (one). One woman returned to her home country voluntarily, with the help of IOM, withdrawing her appeal in the continued residence proceedings.

Although victims of human trafficking can apply for residence in many other countries, proceedings there may be equally protracted. British NGOs reviewed this issue in the UK.

#### *Victims' right to stay in the United Kingdom*

The United Kingdom has no rules similar to Chapter B16/7 of the Dutch Aliens Act Implementation Guidelines. Victims from outside the EU who do not want to go back to their home country may apply either for asylum or for a permit under the UK Human Rights Act. Two British NGOs investigated the outcomes of asylum applications made by clients in 2007 (Poppy Project & Asylum Aid, 2008). There were 25 women, eight of whom claimed asylum while in detention. At the time of writing, decisions had been made on 12 of the 25 claims; they were all refused. All of the women involved lodged an appeal, with eight victims being granted a residence permit by the court. The Home Office appealed in two of these eight cases. The remaining four cases were still ongoing. Although based on a small number of cases, the study shows that in the UK victims have to go to court to obtain the right to stay. This prolongs the uncertainty for victims and wastes public funds. The period from March 2003 until August 2005 showed the same pattern: of the 32 women who claimed asylum during that period, only one was granted asylum prior to appeal. However, the remaining women had a success rate at the appeal stage six times higher than the overall acceptance rate of asylum appeals. See Poppy Project (PP) & Asylum Aid, *Good intentions: A review of the New Asylum Model and its impact on trafficked women claiming asylum*, 2008.

### 5.4.3 Victims who apply for continued residence

All 34 cases reviewed for the NRM report involved women trafficked for sexual exploitation. Most of the victims that were registered in 2006 and applied for continued residence came from Bulgaria, followed by Nigeria and Sierra Leone. The 34 victims came from a total of 13 different countries.

Table 5.9 Home country of victims registered with the IND who applied for continued residence, 2006

Country of birth	N	%
Bulgaria	7	19%
China	1	3%
Guinea	1	3%
(former) Yugoslavia	1	3%
Cameroon	2	6%
Namibia	1	3%
Nigeria	7*	19%

B9 AND CONTINUED RESIDENCE (B16/7)

Country of birth	N	%
North Korea	1	3%
Ukraine	3**	8%
Poland	1**	3%
Russia	3	8%
Sierra Leone	7*	19%
Byelorussia	2	6%
Total	37	100%

\* Two people were registered at different times as originating from Nigeria and Sierra Leone. Their true country of origin cannot be inferred from the files. They were added to both nationalities.

\*\* One person was registered at different times as originating from the Ukraine and Poland. Her true country of origin cannot be inferred from the file. She was added to both nationalities.

Table 5.10 Age distribution of victims at time of application for continued residence

Age	N	%
18 to 25	13	41%
26 to 30	11	34%
31 to 35	5	16%
36 and over	1	3%
Uncertain*	2	6%
Total	32	100%

\* Because the file reported different dates of birth.

Table 5.11 Duration of stay in the Netherlands at time of application for continued residence<sup>95</sup>

Duration of stay	N	%
1 to 2 years	2	6%
2 to 3 years	2	6%
3 to 4 years	2	6%
4 to 5 years	7	22%
5 to 6 years	1	3%
6 to 7 years	1	3%
7 to 8 years	–	–
8 years or more	2	6%
Unknown	15 <sup>96</sup>	47%
Total	32	100%

95 Based on the dates when the aliens claimed they had first arrived in the Netherlands, as reported in their files.

96 The files which did not report an entry date contained enough information to infer how long the (potential) victims had at least been staying in the Netherlands at the time of application: six months (one), one year (three), two years (two), three years (four), four years (three), five years (one), and six years (one)

Table 5.13 shows how long applicants had been staying in the Netherlands on a B9 permit at the time of applying for continued residence. Reflection periods are not counted. In all cases but one, applicants had stayed in the Netherlands under the B9 regulation for an uninterrupted period of time.

*Table 5.12 Duration of B9 residence in the Netherlands at time of application for continued residence*

B9 duration	N	%
Less than 1 year	4	13%
1 to 2 years	9	28%
2 to 3 years	6	19%
3 to 4 years	10	31%
4 to 5 years	–	–
5 to 6 years	1	3%
6 to 7 years	–	–
7 to 8 years	2	6%
Total	32	100%

As far as can be inferred from the files, of the 32 women, 18 had children. The cases involved a total of 28 children, all of whom were minors. Some of them were born in the Netherlands, others came to the Netherlands at a later stage, and still others lived in their home country.

Of the 24 women, 20 suffered and were being treated for mental health problems, as evidenced by statements from a GP, psychiatrist, psychotherapist, the IND's Medical Advice Bureau (BMA), and the Centre for Asylum Seekers with Mental Health Problems (MAPP)<sup>97</sup>. These included a variety of often-serious problems, including suicidal tendencies, paranoia, chronic depression, reliving of experiences, nightmares and other sleeping disorders. Several files contained information about other health problems, such as gynaecological problems and seropositive/HIV infections, with two cases involving addiction. Medical practitioners often highlight the causal connection between mental and physical health problems and past experiences, referring to the sexual exploitation of victims. In one case, a victim was diagnosed by a psychiatrist as “predominantly socialised as a slave” rather than being mentally handicapped. In other cases, the problems were described as being mainly a response to the uncertainty about being allowed to stay in the Netherlands or having to return to her country of origin.<sup>98</sup>

<sup>97</sup> Those cases in which only the women or their lawyers reported mental health problems are not included. The same applies to the case in which a statement to that effect was made by a social worker, and the case in which a psychiatrist stated that the complaints described by Nidos were consistent with what one would expect given the client's history and that a psychiatric examination was required.

<sup>98</sup> For information on the physical and mental health problems of victims of human trafficking, see Farley (2003), Sent (2008), Tankink (2006), and Zimmerman (2006)

*Special involvement of IND staff with victims of human trafficking*

In a few cases, decision-makers in the Immigration and Naturalisation Service made a special effort to help victims of human trafficking who were in a particularly difficult situation. Three examples:

- A victim addicted to drugs had been living rough for some time. During that time, her B9 permit expired and she failed to apply for a renewal on time. Once she had been traced, had kicked her habit and cooperated in the investigation and prosecution, she was again granted B9 status.
- A near-term pregnant woman filed a report of human trafficking and was granted a B9 permit. A few months later, the IND staff member and a detective working on the case inquired whether she had given birth and reminded her of the fact that she would need to apply for a residence permit for her child.
- A victim had been granted post-B9 continued residence status. The IND staff member informed the victim's lawyer that she was handling the case of the trafficker, who was also the victim's ex-partner, in connection with a declaration as *persona non grata*. She advised the victim's lawyer to notify the victim and the shelter where she was staying with a view to her personal safety.

#### 5.4.4 Urgent reasons of a humanitarian nature

Of the 32 applications for continued residence investigated, 27 dated back to before 14 August 2006, when the policy rules were amended (see §5.2.2 in this chapter), while the final decisions on those applications were often issued after that date.<sup>99</sup> This section focuses on the distribution of the 'burden of proof' in applications for continued residence based on special individual circumstances. The issues addressed below are currently only relevant for the 'residual category' of victims who cannot be grouped into one of the two categories referred to above, and for witnesses/complainants.

##### *Distribution of 'burden of proof'*

Article 3.52 of the Aliens Decree gives wide discretionary powers to the Minister in regard to applications for continued residence that are based on special individual circumstances. It is up to victims to present a *prima facie* case that they cannot be required to leave the Netherlands. In practice, this means that the burden of proof largely rests on the victim. However, it is not easy to substantiate this type of application.<sup>NRM5</sup> The relevant agencies are aware of this, and in 2005 the chain partners agreed to assemble relevant information about each victim in an individual safety file. It is noticeable that in none of the cases studied had a safety file been compiled or inserted in the case file.

The government has a general duty of care and must gather the necessary information about the relevant facts and consider the various interests involved when preparing its decisions. From a human rights perspective, the government may not return victims of human traffick-

<sup>99</sup> Of the 14 applications made in 2006, only five were dated after 14 August. Accordingly, there seemed to be no increase in the number of applications in the first few months (up to and including 31 December 2006) after the policy rules were relaxed.



ing to their home country if to do so would threaten their safety.<sup>100</sup> This implies that before making any such decision, the government must ensure that a proper risk analysis is conducted.<sup>101</sup><sup>NRM3/NRM5</sup>

Of the 32 continued residence cases studied, 28 victims indicated that they and/or their family members might face reprisals from which the authorities in their home country could not or would not protect them. Sixteen victims also stated there were no possibilities for social reintegration in their home country. Fear of prosecution was cited much less frequently (two cases). In 20 cases, victims also described other factors, which included health complaints, the right to family life, the rights of their children, their long-term stay in the Netherlands and asylum-related grounds, such as fear of sexual violence by (former) rebels in their home country.

Table 5.13 *Circumstances cited by victims in applications for continued residence*

Grounds	N
Risk of reprisals and insufficient protection	28
No possibilities for social reintegration	16
Risk of prosecution	2
Revised policy, ground (a)	6
Revised policy, ground (b)	4
Other circumstances	20

The cases studied confirm that many of the victims who say they cannot return for one or more of these reasons subsequently have difficulty furnishing evidence. This is because of the requirements set by the IND for substantiating their applications. In the case of a Russian victim,<sup>101</sup> for example, the IND held that she had failed to present a *prima facie* case, because she had not yet contacted the authorities in her home country to ask for protection. According to her lawyer, however, the victim's duty to make a reasonable effort to demonstrate the risks involved in returning to her home country was given too broad an interpretation, in that the traffickers apparently had contact with the authorities, and because the government itself should, to some extent, investigate the victim's allegations. This rarely seems to happen. No individual background reports are drawn up in continued-residence cases involving victims of human trafficking (Koopsen, 2006), and the current study shows that the IND's own efforts to conduct a risk analysis are restricted to responding to the information sup-

100 See, for example, Article 16 of the Council of Europe Convention on Action against Trafficking in Human Beings (2005), Article 3 of the ECHR, and Article 3 of the ICCPR.

101 This is the same case as the one discussed in the box in §5.2. This argument was used against applicants in several cases.

plied by the victim and referring to the (theme-based) status reports on the countries of origin.<sup>102</sup> The following case is an example in point.

A woman from Kosovo was granted B9 residence status on 11 November 2004. The renewal application was denied after the Immigration and Naturalisation Service learned in January 2006 that the suspect at the centre of the allegations made by the victim had been acquitted in September 2005. On 6 April 2006, the woman applied for continued residence for fear of reprisals, among other things. On 23 October 2006, the IND refused the application saying that the victim had failed to demonstrate that here fear of reprisals from her family and her pimp and his associates was justified, and that she had failed to sufficiently substantiate her claim that, being single, she would not be able to reintegrate. Nor was there any documentary evidence to show that family relations had irretrievably broken down. Moreover, referring to the status report and a UNHCR document did not provide sufficient substantiation of the claim that not enough assistance would be provided in Kosovo. Similarly, the information submitted about foreign prostitutes in Kosovo and the penalisation of prostitution in Serbia and Montenegro did not prove that the applicant was exposed to the risk of prosecution.

In her objection, the woman argued that her Islamic relatives knew about her prostitution and wanted revenge because she had violated their honour. Clearly, her family had not said so in so many words, but her uncle had threatened her several times, which she had not dared to report to the police. The applicant had been abused as a child, was married off against her will when she was twenty, and no longer had any contact with her father and stepmother. She had two children and had lived with her family in Germany for a long time. She had been abused by her husband and then divorced, being forced to abandon her children. They now lived with her former mother-in-law. The applicant had been coerced into working as a prostitute in Belgium and the Netherlands. The violent trafficker threatened to kill her children and tried to abduct them after she had gone to the police. Again, the applicant did not dare to press charges. In her objection, she argued that she could not reasonably be expected to provide further substantiation of her fear of reprisals.

The status report cited cases of women being prosecuted in Kosovo after they were released from prostitution. A report published by Amnesty International in November 2006 revealed that the UNMIK forces were unable to provide protection from human trafficking and violence against women. The applicant was not eligible for social security benefit, which increased the chances of her ending up in prostitution once again. According to Amnesty's report, the assistance provided was inadequate and the applicant did not meet the criteria that applied. These facts did not merely concern the general situation. The IND should consider those facts in reviewing the applicant's individual situation, given the duty imposed upon the Netherlands under the UNHCR Guidelines, the Palermo Protocol and the findings of the UN CEDAW Committee to make a reasonable effort. In January 2007, additional grounds were advanced, in that a statement was added from the former mother-in-law saying that the applicant was not allowed to visit her because local custom prevented this. It was simply not done. This confirmed that the applicant's belief that she could not expect to receive any support from her former in-laws. In June 2007, the Immigration and Naturalisation Service interviewed the applicant about her last contact with her pimp, her family situation, fear of honour killing and treatment by the Regional Institute for Community Mental Healthcare (RIAGG).

Then, on 26 July 2007, the police notified the IND that the applicant had been moved to a shelter and had reported to the South Limburg police that she had again become a victim. Again,

<sup>102</sup> In seven cases, the IND did conduct some form of investigation of its own accord, in that it consulted the US *Country Report on Human Rights Practices* for the country in question, or the US *Trafficking in Persons Report*.

she was granted B9 residence status. The file includes a newspaper report dated 1 August 2007 about the police rounding up a ring of human traffickers after rescuing a victim who had earlier gone into hiding with the help of the police but had been tracked down and locked up in a house by the gang.

On 11 October 2007, the IND rejected the application for continued residence because the applicant had furnished no proof to justify her fear of her family, the pimp or the authorities, or in regard her belonging to a group of persons for whom inadequate social security was available in Kosovo. Regardless of the arguments advanced by the applicant in her defence, the objection was dismissed because the applicant held a B9 permit and would not become eligible for continued residence until her right to stay under Section 8(a) of the Aliens Act had expired.

The applicant appealed because she disagreed with the IND's line of reasoning. From 6 April 2006 – when she made the application – until 26 July 2007, she had had no right to stay under Section 8(a) of the Aliens Act. Moreover, continued residence status represented a stronger right than B9 residence status, which was important because her children had come to the Netherlands on a provisional residence permit and had applied to stay with their mother. The applicant argued that her fear of reprisals was supported by the report of 26 July 2007 and the fact that the police had advised her not to go to Maastricht because associates of her pimp were there. They had previously threatened her children in Kosovo, which was one of the reasons for recommending the granting of a provisional residence permit to protect the children. It was also clear from the proceedings for the provisional residence permit that, for safety reasons, the Dutch police had decided against contacting the Yugoslav authorities when the children were still in Kosovo. Continued residence should have been granted either for urgent reasons of a humanitarian nature or under the hardship clause contained in Article 4:84 of the General Administrative Law Act.

In April 2008, the IND withdrew its decision on the objection. According to the file, this was because they had to examine why a B9 permit had been granted twice, without looking at whether the application for continued residence should have been granted at that point. At the time of the study, the outcome was not yet known.

At the time of the study, the 32 applications had led to 20 permits being granted for continued residence, the vast majority of them on objection. The decisions provided very limited information as to the grounds on which the IND had granted continued residence. Of the 20 decisions, 15 merely stated that continued residence had been granted 'on the basis of the facts and circumstances currently known'. Four permits were granted referring to the outcome of the criminal proceedings: on the basis of the victim's report, the suspect had been prosecuted for and convicted of human trafficking (among other things), so the presumption was that any return would involve risks for the victim (revised policy, ground (a)). One decision contained the substantive finding that the applicant could not be expected to return because of the risk of ending up in prostitution in Sierra Leone and becoming the victim of violence.

#### *Medical factors*

In reviewing applications for continued residence based on special individual circumstances, the authorities not only look at the risk of reprisals, risk of prosecution and possibilities for social reintegration in the country of origin, other factors may also be relevant. The Aliens Act Implementation Guidelines now include, for example, mental-health problems for

which aliens are receiving treatment in the Netherlands. Because trafficking victims often have serious health problems (§5.3), it is important for health problems and medical treatment to be taken into consideration.

This argument was advanced by victims in several cases, with varying results. In one case, the district court found that, although the respondent had assessed the application for continued residence against the three factors listed in the Aliens Act Implementation Guidelines at that time, the respondent had disregarded the circumstance that the victim was suffering from post-traumatic stress disorder caused by forced prostitution and the related kidnapping of her small son. In reviewing the application, the respondent should have taken the reported mental-health problems into account and this should have been reflected in its decision.<sup>103</sup> The same issue lay at the heart of the following case:

A woman from Sierra Leone obtained a B9 permit effective 5 January 2006. Later that year, the IND indicated that they would revoke the permit because the investigation into the allegations made by the woman had been closed. The woman's lawyer objected by saying, among other things,<sup>104</sup> that his client was traumatised and, as shown in BMA reports, there was no proper medical care available in Sierra Leone. He was assuming the IND would *ex officio* review the application for continued residence now that it had revoked the permit. A hearing was held to discuss, among other things, the diagnosis made by a psychiatrist. The applicant suffered from PTSD with acute exacerbations, periods of memory loss, and fluctuating suicidal tendencies. The B9 permit was revoked. To the extent that the application relied on medical grounds, the IND ruled that she could apply for a permit intended for that purpose. The same applied to her claim of residence for urgent reasons of a humanitarian nature. The arguments advanced were not reviewed *ex officio* during the revocation proceedings. The applicant applied for a B9 renewal, which was refused.

In the objection to the revocation and refusal to renew the permit, the woman's lawyer argued that the Minister could have exercised his discretionary powers and granted a permit, and that the B9 application could be reviewed against Article 4:84 of the General Administrative Law Act. The objection was dismissed. The decision stated that a permit for continued residence or medical treatment could not be granted *ex officio*, and applications were tested against only one residence purpose at a time. Accordingly, the challenged decisions had not been reviewed against the other residence purposes listed by the applicant. Also, all of the arguments were embedded in the policy and, accordingly, there was no reason to award residence in departure from the policy.

The woman applied for continued residence for urgent reasons of a humanitarian nature, including the absence of proper psychiatric care in Sierra Leone. The application was refused. In the IND's opinion, the argument that the woman had no access to medical care in Sierra Leone was not explained in sufficient detail, specifically concerned with her personal situation, and was neither proved nor substantiated. The enclosed BMA report did not concern the applicant and was not up to date. Again, the IND concluded that if the applicant believed she was eligible for residence on medical grounds, she could submit an application to that effect. The IND held that no proof had been furnished of any urgent reasons of a humanitarian nature which justi-

<sup>103</sup> The Hague District Court, hearing held in Middelburg, 17 December 2004 (AWB 03/40809).

<sup>104</sup> The victim not only relied on medical grounds, but also mentioned the interests of her young children, her fear of becoming once again involved in prostitution, and her fear of the female-circumcision practices followed by the secret society of which her mother was a member.

fied granting residence, or of any special circumstances which, on the basis of Article 4:84 of the General Administrative Law Act, required deviating from the policy.

In the objection subsequently filed, the woman's lawyer submitted a recent BMA statement to show that no adequate treatment of psychiatric patients was available in Sierra Leone, and that that included treatment for the applicant. He also argued that the status report made no mention of assistance being provided for single mothers requiring psychiatric help in Sierra Leone. He referred to the UK Government's *Country of origin information report on Sierra Leone*: there was only one run-down psychiatric hospital, one psychiatrist and one psychiatric nurse in the whole of Sierra Leone. In July 2007, the lawyer filed an appeal against the absence of a decision on the objection. There followed a hearing, during which a new medical statement was submitted. According to the psychiatrist, repatriation would be extremely ill-advised. It would increase the complaints of depression and he was concerned about the impact any return would have on her suicidal ideation. The lawyer argued that a careful review of the interests involved should include all humanitarian aspects, including the health problems arising from what happened to the applicant in the Netherlands. If need be, she should be granted a permit on the grounds of a medical emergency. In November 2007, the IND upheld the objection and granted continued residence on the basis of the facts and circumstances then known. This case study shows that the medical consequences of human trafficking were taken into consideration.

The question of whether the current rules on continued residence do sufficient justice to the physical and mental harm often caused by human trafficking was addressed in 2008, in a report of a forensic medical study involving human trafficking (Sent, 2008).

*Medical consequences of human trafficking and continued residence*

Sent (2008)<sup>105</sup> explains that in reviewing applications for continued residence on humanitarian grounds, medical circumstances can currently only be considered as one of the other factors to be weighed. Medical circumstances are not regarded as independent personal circumstances as defined in Section 3.52 of the Aliens Decree, and continued residence cannot be granted on purely medical grounds. That is where 'medical treatment' comes in as a ground for awarding residence. According to Sent, a trafficking victim who submits medical documents when applying for continued residence should not be required to file a fresh application for a different residence purpose based on the same circumstances.

Moreover, Sent considers the ground of 'medical treatment' for residence to be of little use to trafficking victims. Chapter B8 of the Aliens Act Implementation Guidelines lists several conditions for relying on that particular ground. For example, the Netherlands must be the most appropriate country for treatment, the medical treatment must be necessary and financing must have been arranged. According to Sent, the authorities are not quick to find the Netherlands to be the most appropriate country, except perhaps for psychiatric treatment. This is relevant because trafficking victims are more likely to suffer from post-traumatic stress disorder (Zimmerman, 2006). It does not alter the fact, however, that receiving treatment is not in itself a reason for victims to wish to stay in the Netherlands, but rather a circumstance arising from the situation in which they find themselves (LJN: BB6829).

If, in the absence of treatment, the disorder is likely to result in death or severe mental or physical harm in the short term, and if no treatment is available in the country of origin, and if the treatment is expected to take more than a year, residence may be granted on the grounds of a

<sup>105</sup> Sent (2008, pp. 343-349).

medical emergency. Sent mentions, as an example, active suicidal ideation, a condition that human trafficking victims may might suffer from.

In light of the nature and extent of the health issues involved, Sent believes it would be more appropriate to regard medical circumstances as ‘urgent reasons of a humanitarian nature arising from human trafficking’ in their own right. This would avoid the need to file new applications, and would increase legal certainty.

The cases studied not only provide information about the problems involved in the distribution of the ‘burden of proof’, and the substantive review as to whether continued residence should be granted on humanitarian grounds, they also provide an insight into the relationship between the residence proceedings and criminal proceedings and related issues.

#### 5.4.5 Link with criminal proceedings

In all 34 cases, the (possible) victims reported a human trafficking offence. In 20 cases, the investigation into the allegations was discontinued at some point, whether or not followed by a formal decision not to prosecute. Nine complainants filed an objection against this under Article 12 of the Dutch Code of Criminal Procedure. One objection was upheld by the court of appeal, seven cases were unsuccessful<sup>106</sup>, and in one case, the outcome of the objection could not yet be inferred from the IND file. The average duration of objection proceedings was 12 months (see also §5.4.2).

In 20 cases, the report of human trafficking did not result in a decision by a criminal court. Of the remaining 14 cases, 10 led to convictions for human trafficking committed against the complainants. Table 5.15 provides information from IND files about the outcomes of criminal cases at first instance.

Table 5.14 Trial of suspect(s) on charges of human trafficking against complainant

Criminal court ruling	N	%
Convicted at first instance	6	43%
Acquitted at first instance	4	29%
Convicted on appeal	2	14%
Acquitted on appeal	–	–
Convicted at first instance or on appeal	2	14%
Total	14	100%

<sup>106</sup> In one case, the court of appeal commented that it could imagine that this was a disappointing outcome for the applicant. She had reported abuse, unlawful detention and human trafficking (forced prostitution in a street-walking zone). According to the court of appeal, the prostitution could be assumed to be established and the police suspected that the woman was referring to persons known to the police in connection with human trafficking. A year later, one of the suspects, whom the applicant had not in fact identified, was prosecuted and convicted of human trafficking, but not of the offences committed against her.



There was insufficient information in the files to indicate whether these were irrevocable acquittals and convictions.

At the time of the study, nine files stated that the decision was irrevocable. In two of four cases that failed to result in a conviction for human trafficking offences committed against the complainants, the district court did convict one suspect for embezzlement of money earned by the complainant working as a prostitute, and the other suspect was convicted for human trafficking against another woman. With effect from 23 February 2008, a permit for continued residence may also be awarded if the criminal case in which the victim cooperated has resulted in an irrevocable conviction for another offence, provided that human trafficking was included as a charge in the indictment<sup>NRM6.107</sup>.

Eighteen cases clearly show that problems often occur in the communication between the IND, the police, the public prosecution service and the alien involved about the progress and/or outcome of the investigation or the prosecution and the trial.<sup>108</sup> Under the B9 regulation, the public prosecution service must notify the IND and the victim if it has dropped the case, no appeal has been filed against the district court's decision in the case against the suspect, or the court of appeal has rendered a decision.<sup>109</sup> This is because each of these events removes the legal basis for the B9 permit. In practice, however, the B9 regulation is not always properly followed because, for example, the IND is not notified, or notified in time, that the decision in a criminal case has become final and irrevocable or that an objection has been filed against its decision. It has been known to happen that trafficking victims who have been staying on a B9 residence permit status for several years subsequently learned from an IND decision that the suspect against whom they had pressed charges had been convicted years before. This can happen, for example, when proceedings to confiscate illegal earnings are mixed up with the trial for human trafficking.<sup>110</sup>

A Russian woman obtained a B9 permit on 30 June 2000. She applied for a renewal on time, but also submitted an application for continued residence on 21 August 2001, because her lawyer had learned from the public prosecution service that the decision in the criminal case had become irrevocable. On 7 August 2002, the IND extended the B9 permit from 30 June 2001 to 29 June 2003, while refusing the application for continued residence on the grounds that one

107 In the first of the two cases referred to, the IND followed a similar line of reasoning when, on 9 November 2007, in its decision on the objection, it found that although the suspect had been prosecuted for but not convicted of human trafficking, the conviction for embezzlement was clearly related to the human trafficking offence reported by the applicant. This rendered her fear of reprisals plausible. Another important factor was that her name had been revealed in the ruling of the criminal court. In the other case, this line of reasoning was not followed and continued residence was denied. The applicant was again granted B9 status after a second suspect had been arrested.

108 Especially if the alien presses charges against various suspects and the prosecution has different outcomes.

109 With effect from 2 June 2008, a B9 permit is not only valid for the duration of the investigation, prosecution and trial at first instance, but also for the duration of any adjudication of the criminal case by the Supreme Court, following the court of appeal's decision. See §5.2.1.

110 The suspect's adjudication comes to an end once the criminal court's decision in the trafficking case has become final and irrevocable. This holds true even if the order to pay a sum of money to the State to confiscate unlawful earnings has not yet become final (Dutch Council of State, 8 October 2007, LJN: BB5765).



suspect had allegedly filed an appeal. The residence permit was subsequently renewed until 17 May 2004. A renewal application dated 16 March 2004 was refused on 9 June 2005, because information from the public prosecution service dated 19 May 2005 showed that the decision in the criminal case had become irrevocable on 23 May 2001, after the suspect had abandoned the appeal against his conviction of 18 December 2000 and sentence of four years' imprisonment. The B9 renewals in 2002 and 2003 were based on an incorrect interpretation of the information from the public prosecution service concerning an appeal against a confiscation order, which was something quite separate from the trial for human trafficking. The victim filed an objection. Her lawyer argued that the prolonged duration of her stay in the Netherlands under the B9 regulation was not based merely on an incorrect interpretation of information from the public prosecution service but had also been the result of the slow handling of her case by the IND. On 8 December 2005, the objection was dismissed on the grounds that the fact that there was no investigation, prosecution or trial at first instance ongoing had not been disputed. On 11 August 2005, pending the objection proceedings, the woman again applied for continued residence. On 12 January 2006, the IND wrote that the application had been filed too late, which revived the requirement of having a provisional residence permit. The lawyer responded by saying that, under the B9 regulation, the public prosecution service must notify the IND and the victim when the decision is made not to prosecute, no appeal is filed with the district court, or the court of appeal has rendered a decision, all of which would deprive the residence permit of its legal basis. The applicant had received no such notification. It was not until the decision of 9 June 2005 that she learned that the decision in the criminal case in which she was a victim had become irrevocable in May 2001. In that decision, the IND noted that they had also not received the information from the public prosecution service until 19 May 2005. Because the applicant did not receive the notification until 10 June 2005, she was not at fault for filing the application late. On 8 February 2006, the application was refused on the grounds that it had not been demonstrated that the applicant should not be required to return to her home country. An objection was filed on 10 March 2006 and amended on 29 March 2006. A hearing was held on 16 June 2006. On objection, the lawyer asserted that his client had made a witness statement during a hearing before the court of appeal in the case against the suspect as late as 8 March 2006. On 20 June 2006, in a decision on the objection, continued residence was granted from 11 August 2005 until 1 February 2010. The earlier summons to come forward as a witness had been taken into consideration (the IND felt it was likely that the traffickers would not forget the applicant once she had made a statement; moreover, the applicant would be eligible for continued residence under the pending amendment to the policy rules anyway).

In 10 of the 34 cases, the decision not to prosecute and the possibility of filing an objection against that decision were not properly communicated.<sup>111</sup> To give an example:

In April 2005, a Chinese woman made allegations of human trafficking. The report was treated as a B9 application and refused on 21 September. The objection filed on 19 October was upheld on 1 December, on the grounds that the woman had not been advised of the possibility of commencing Article 12 proceedings. In January 2006, the application was again refused because the applicant did not satisfy the conditions. Information from the public prosecution service and the police dated 20 and 21 September 2005 showed that, on 30 June, the decision had been made not to launch a criminal investigation, and the applicant had not filed an objection under

<sup>111</sup> See §5.4.

Article 12 of the Dutch Code of Criminal Procedure. In the objection to this refusal, the applicant's lawyer argued that previously his client had satisfied the conditions and that it was in her interests to be granted a permit for that period – when she had satisfied the conditions – so as to be able to apply for continued residence on humanitarian grounds. The objection was dismissed for procedural reasons on 22 March 2006, and the woman filed an appeal on 14 April 2006. She was notified that she could stay in the shelter because of her residence status until 27 September 2006 at the latest. This gave her lawyer cause to ask the district court for early adjudication of the case. On 24 August 2006, the IND wrote that the decision in January should be regarded as a decision on an objection and had been withdrawn, that the objection should be regarded as an appeal, and that the decision on 22 March had been issued incorrectly. The IND would issue a new decision on the objection dated 19 October 2005. On 30 August, the Chinese woman nonetheless asked the district court to uphold the appeal of 14 April 2006. On 16 October 2006, the IND decided, after all, to grant residence from 9 April until 30 June 2005, which is when the public prosecutor dropped the case, although the applicant's report of the offence had not been faxed to the IND until 19 September 2005. A member of staff at the shelter was notified of the decision to drop the case and was expected to inform the applicant. On 1 December 2005, the woman's lawyer was given the opportunity to file an objection under Article 12, which he never did. Subsequently, on 24 October 2006, the district court held that, although the withdrawal of the challenged decision did not prevent it from being quashed if that was in the appellant's interest, no such interest had emerged. The appeal was dismissed for procedural reasons. On 5 January 2007, the woman applied for asylum.

A likely cause of the confusion over decisions not to prosecute is that Chapter B9 of the Aliens Act Implementation Guidelines mentions a period of two weeks in which applicants – having been notified of that decision – must notify the police whether they will be filing an objection with the court of appeal.<sup>112</sup>

#### 5.4.6 Documents

Similarly, the requirement to submit certain documents and the right to be issued with a document also lead to complications in residence proceedings involving victims of human trafficking.

##### *Passport requirement*

A B9 application will not be refused if the victim does not have a passport, but she will immediately need to apply for one from the embassy or consulate of her home country. When applying for continued residence, the applicant must submit a passport or demonstrate that the authorities of her home country have prevented her from holding one. In 15 of the cases studied, this requirement proved to be a problem for victims from Sierra Leone (five), Nigeria (three), Cameroon, Ukraine, North Korea, Yugoslavia, Russia, Guinea, and Namibia (one each). Either they had no passport or no longer had one, and were consistently rebuffed

<sup>112</sup> See §5.2.1.

by their embassy or consulate.<sup>113</sup> The outcomes varied: in one case, it constituted a reason to exempt the victim from the passport requirement under discretionary powers; in another case, no exemption was granted.

In December 2001, a woman claiming to be from Sierra Leone reported a human trafficking offence. She was issued with a B9 permit, which was renewed several times. In August 2004, the public prosecutor handling the case notified the police that the case had been dropped. The IND passed on the notification to the applicant on 27 December 2004. In February 2005, the woman filed an Article 12 objection and again applied for B9 renewal. On 30 January 2006, the court of appeal upheld the objection. On 29 May 2006, the woman applied for continued residence. On 20 July 2006, the IND renewed the B9 permit, while refusing continued residence on the grounds of the passport requirement, arguing that the applicant had been given an opportunity in June and July 2006 to submit a valid passport or a written statement from the Sierra Leone authorities to show that she was unable to obtain a passport. It had been explained to the applicant as early as 16 January 2002 that she would not be denied B9 status for lack of a passport, but that she needed to apply for one immediately. The fact that B9 status had been renewed several times was no reason not to apply the requirement in the proceedings for continued residence. The argument that people from Sierra Leone could not obtain passports was refuted by the general status report of April 2005, and the fact that the applicant had written to the Sierra Leone authorities in March 2005 and July 2006 to obtain a passport and had received no answer to date, did not warrant the conclusion that the authorities would not give her a passport. After all, she had failed to make inquiries afterwards and hence had not done everything reasonably within her power to obtain a passport. In conclusion, the woman's identity and nationality had not been established. In August 2006, the woman filed an objection. She took the position that she had done everything within her power to obtain a passport, referring to a letter of 20 July 2006, which said that she was exempt from the passport requirement as far as the B9 renewal was concerned because of the justified expectations created by the decisions of 23 October 2003 and 25 March 2005. She argued that the same should apply to the application for continued residence. Alternatively, she asked for an exemption because the authorities were uncooperative. Despite what it said in the status report, nationals of Sierra Leone could not apply to their embassy or consulate for travel documents when they were abroad. Accordingly, contacts with the embassy were of no avail and a witness stated that the applicant had been sent away empty-handed by the embassy on 4 December 2006. The woman went on to say that the Minister could not now question her identity and nationality because of the absence of a passport when she had held a permit since 2001 without anyone ever raising any questions. On 14 September 2007, the applicant's lawyer submitted a general statement from the embassy dated 3 April 2007 saying that it did not issue passports or handle applications and citizens had to go to Freetown instead. On 10 October 2007, the IND wrote that the applicant was eligible for a residence permit on principle, provided that she submitted a valid passport within four weeks. If it was confirmed that Sierra Leone was her home country, the presumption would be that she could not go back. If she could not obtain a passport, she had to prove this by submitting a written statement from the authorities and submit additional documents to prove her identity and nationality. She could contact the chief constable of police to act as an intermediary in obtaining a passport. The applicant's lawyer then asked the IND how his client could possibly apply for a passport outside Sierra Leone and what action the IND expected her to undertake. He also informed

113 There are indications that staff from certain embassies treat victims of human trafficking unpleasantly. In one case, a staff member at the Humanitas aid agency stated that she had been told over the telephone that the embassy did not help people like her client because they were a disgrace to their country.

the IND that his client had shown the IND's letter to the aliens police, asking them to act as a go-between. She was told that the aliens police provided no support in obtaining travel documents. The lawyer asked the IND where else she could go for mediation.

In its response, the IND suggested, among other things, that the lawyer should investigate whether the applicant's passport, which had allegedly been taken by the human traffickers, could be claimed back in civil proceedings. It was the applicant's responsibility to get hold of a valid passport, and she was granted another six weeks to do so. The lawyer contacted the aliens police and was referred to the Repatriation and Departure Service. They, in turn, said they did not provide intermediary services for people to obtain entry documents. On 16 January 2008, the lawyer informed the IND of these developments, arguing that it was clear that the applicant could not obtain a passport and that travelling to Freetown or bringing a civil action went beyond the duty imposed under the Aliens Act Implementation Guidelines. On 7 March 2008, the IND dismissed the objection filed in the continued residence proceedings, saying that the exemption based on justified expectations concerned the renewal of the B9 permit and did not apply to the follow-up proceedings. According to the IND, no proof had been furnished in the objection proceedings that the applicant was, in fact, unable to obtain a passport from the Sierra Leone authorities. Writing twice to the embassy, being told by the embassy that she could not apply for a passport there, and the statement that passports must be applied for in Freetown did not justify the view that the applicant could not be issued with a passport from her government. According to the status reports of June 2006 and November 2007, citizens of Sierra Leone living abroad could apply for a passport via their embassy. If, for the sake of argument, it were to be assumed that the embassy did not handle applications, the applicant could apply for a *laissez-passer*, travel to Freetown and apply for a passport there. In conclusion, the woman's identity and nationality had not been established in the objection proceedings either. On 21 March 2008, the applicant appealed the decision on the objection. At the time of the study, the appeal was ongoing.

In September 2008, when asked, BLinN and a lawyer well-versed in B9 cases said that the passport requirement was still a sticking point in applications for continued residence, especially for victims from Sierra Leone. The only documents they could acquire from the Brussels embassy were individual nationality confirmations and a general statement that the embassy issued no passports and handled no applications; still, the IND referred to status reports saying that it was possible for people to obtain passports through Sierra Leone's embassies. The IND raised the issue with the Dutch Ministry of Foreign Affairs and in January 2009 the General Status Report on Sierra Leone 2008 was published. Page 34 reads: "Sierra Leone embassies abroad have no authority to issue passports. They can renew passports and issue *laissez-passers*. Practice has shown that the procedures referred to above are not implemented by all Sierra Leone embassies, including the Brussels embassy."

#### *Provisional residence permit*

In departure from the general rule, B9 applications will not be refused for lack of a provisional residence permit, nor is this a requirement for continued residence applications, provided that they are filed on time. If, however, the application for continued residence is not filed on time (within six months of expiration of B9 residence status), a provisional residence permit will be required.

On 28 April 2000, a Nigerian woman held in aliens' detention reported a human trafficking offence. The report was treated as an application for a residence permit, which was awarded by the IND on 12 December 2000, after an objection had been filed to an earlier decision. The permit was issued with effect from 28 April 2000 and renewed twice. On 17 January 2003, the woman applied for a renewal. By that time, the people against whom she had made the allegations had already been irrevocably convicted of human trafficking. The application was refused on 31 December 2003, an objection was filed, the objection was dismissed on 19 October 2005, and an appeal was lodged. Meanwhile, on 11 January 2006, the woman applied for continued residence. This was refused on 10 March 2006 because the application had not been filed on time and the applicant had no provisional residence permit. In her objection, the applicant argued that the delay in meeting the time limit was excusable and the grounds for granting an exemption from the requirement for a provisional permit had been given too restrictive an interpretation, considering that she had been the victim of human traffickers who had been irrevocably convicted and deported to her home country, where they were threatening members of her family. She also referred to the passage about human trafficking in the general status report on Nigeria. In August 2006, a hearing was held to discuss the objection. The public service committee asked the woman why she could not travel to Nigeria to apply for a provisional residence permit. She explained that she feared reprisals by one of the traffickers, who after completing her prison term had returned to Nigeria and had repeatedly threatened and abused the applicant's sister and niece, and provided documentary evidence in support of that claim. On 2 November 2006, the objection was upheld. Under Article 3.52 of the Aliens Decree, continued residence was granted from 31 August 2006 until 31 August 2011. The IND found that there was a likely risk of reprisals on the woman's return to her home country and granted the applicant an exemption from the provisional permit requirement on the grounds of hardship. The permit commenced on the date a copy of a valid passport was submitted, so all requirements were satisfied. In connection with a three-year residence gap, the victim persisted in her appeal against the refusal to renew her B9 permit. Proceedings went all the way to the Dutch Council of State, where the State Secretary's appeal was successful and the victim's appeal against the decision to deny her objection was dismissed.

A Nigerian woman held B9 residence status from 12 December 2000 until 12 December 2001. The suspects against whom she had pressed charges were convicted during that year. Thereafter, the woman was staying in the Netherlands illegally. She did not apply for continued residence and received notification in 2004 that she had to leave the country. This she did not do. In April 2005, she asked the Minister for Immigration and Integration to exercise her discretionary power and grant her a residence permit, but without success. In early October 2006, she applied for continued residence while being held in aliens' detention. Her lawyer argued that she could not be held responsible for the delayed application and should be exempted from the requirement of a provisional residence permit due to the special circumstances of the case, which included a homeless existence after leaving her violent partner. The IND regarded these arguments as insufficient substantiation of the request for exemption from the requirement of a provisional residence permit and denied the application for lack of a provisional residence permit. The detention continued. The woman filed an objection to the refusal, asking that she be allowed to await the outcome of the decision in the Netherlands. In the objection proceedings, her lawyer referred to the principle underlying the revised policy on post-B9 continued residence, which said that if the charges led to a conviction, there was a presumption in law that any return would involve risks for the victim. His client fell into this category and it was a policy

violation to require that she return to her home country to apply for a provisional residence permit there. On 24 January 2007, the IND said in its defence that it did not object to preliminary relief being awarded, but it did not want to release the applicant and did not have to release her until four weeks after the court had awarded the relief. The next day, the applicant appealed against her continued detention. On 5 February, the court awarded preliminary relief, ordering the respondent to refrain from making or preparing for any decision to remove or deport the woman until a decision on the objection had been rendered. Four days later, the district court held that since 24 January 2007 the detention had been unlawful and must be lifted. The court held that the respondent had acted in violation of the principle of fair play and had failed to act expeditiously, allowing almost three months to pass before saying that it did not object to the preliminary relief. The respondent had indicated that the applicant could stay in the Netherlands pending the decision on the objection and this constituted grounds to terminate the detention and award damages.

On 11 July 2007, a decision on the objection was issued. The IND issued the applicant with a permit for continued residence from 2 October 2006 until 2 October 2011, exempting her from the requirement of a provisional residence permit on the grounds of hardship. In arriving at this decision, the IND had attached weight to the information supplied by the officer heading the criminal investigation that the applicant had played an important part in the investigation.

### *W2 document*

In March 2007, the National Ombudsman published a report entitled ‘Bewijs maar wie je bent. De afgifte van identiteitsdocumenten (W2) door de Immigratie- en Naturalisatiedienst’ (2007/060), after receiving complaints that the general duty to produce identification was causing problems for people with no identity papers, including aliens who were allowed to stay in the Netherlands pending a decision on their residence application. The ombudsman also specifically referred to victims of human trafficking. The so called W2 document had been intended to resolve this problem for several categories of aliens; however, the ombudsman recommended that *all* legal aliens staying in the Netherlands with no passport should be issued with a W2 document in regular proceedings. He warned that, in particular, former asylum seekers who had submitted a regular application risked losing out. As far as this group of aliens was concerned, the State Secretary adopted the recommendation.<sup>114</sup>

In at least two of the cases studied, there had been problems with the issuing of a W2 document. It would seem, however, that issuing W2 documents to victims of human trafficking is no longer a problem.<sup>115</sup> Inquiries with BLinN and a lawyer who often handles B9 cases indicated that victims staying legally are usually issued with a W2 document, even after expiration of the reflection period,<sup>116</sup> on the grounds of special circumstances, with no litigation being necessary.

<sup>114</sup> Letter to the National Ombudsman, 14 November 2007, addendum to *Parliamentary Questions II* 2007/08, 19,637, no. 1177.

<sup>115</sup> In January 2008, a new method for issuing W2 documents was introduced, *Parliamentary Questions II* 2007/08, 19,637, no. 1218.

<sup>116</sup> Under Chapter B9 of the Aliens Act Implementation Guidelines, likely victims must be issued with a W2 document if they have no valid document for crossing borders.



## 5.5 Conclusions

This section summarises the sticking points encountered in relation to the issues discussed in this chapter, and highlights the areas where improvement is needed.

### *Clarity about the B9 regulation and associated arrangements*

The B9 regulation confers rights not only on the victims of exploitation in the sex industry, but also on victims of exploitation in other sectors. However, as regards the identification of victims of ‘other forms of exploitation’, the regulation was not very clear. In April 2009, the relevant passages were clarified without revising the policy. This is a significant improvement. Government agencies do not always seem to be able to recognise signs of human trafficking, particularly when it comes to exploitation in sectors other than the sex industry, and do not always know how to apply the B9 regulation. It should be clear that not only the police and special investigation agencies, but also the Labour Inspectorate, must immediately inform aliens of their rights under the B9 regulation when they discover illegal immigrants in a workplace. In addition, the Instruction on Human Trafficking, which is intended for the police and public prosecution service, says that victims of human trafficking must be reported to the Coordination Centre for Human Trafficking (CoMensha) in order to arrange shelter and coordinate care. However, it should also be clear to other agencies, such as the Labour Inspectorate and the SIOD, that they too must report victims to CoMensha and what the procedure is for doing so. The B9 regulation recommends that in preparing for a worksite immigration raid, the police should explicitly focus on human trafficking, and preparations should be made to provide assistance for possible human trafficking victims. This can be done by contacting CoMensha prior to the raid. This information is, however, missing from the public prosecution service’s Instruction on Human Trafficking.

To avoid any misunderstanding on this point, it must be clear that *all* government agencies must report *all* victims of *all* types of human trafficking to CoMensha. In other words:

- not only the police and public prosecution service must report victims, but also all other agencies involved;
- not only victims of sexual exploitation must be reported, but also victims of other forms of exploitation;
- not only aliens must be reported, but also Dutch victims.

It is of vital importance that all government agencies involved are familiar with the rules and associated arrangements, and that they pursue the same policy. Clearly, there has to be agreement on which government agency is responsible for (possible) victims. This can be achieved through firm agreements in which tasks, powers, and responsibilities are clearly allocated.

Sometimes there is also confusion about the differences between victims and witnesses/complainants in the B9 regulation. An example is the confusion over the length of time the IND has to decide on a residence application.



There is regular overlap between criminal law and immigration law, but there is a serious gap in knowledge of the other area of law among practitioners in each of these domains.

*‘Chanceless’ B9 applications*

There are victims who provide so little information when reporting an offence that the case cannot be solved. The police and public prosecution service devote a lot of resources to these complaints because every human trafficking case must be looked into. There is a suspicion that some individuals who are not actually victims seize on the B9 regulation as a last resort to secure residence. Every complaint must be treated with care, because, quite simply, it is so often difficult to recognise victims. There is no ready-made solution to the problem of balancing the need to consider the justified interests of genuine victims, on the one hand, and to prevent unlawful use of the regulation and unnecessary strain on resources and facilities for shelter and assistance, on the other. What could prove very useful would be to explore all of the circumstances surrounding the reporting of an offence in more detail. In that context, it is regrettable that the public prosecution service’s research department (WBOM) has discontinued the study ‘Human Trafficking: Chain, Victim and Knowledge Perspective’. The public prosecution service has done the right thing by drawing up a practical plan describing precisely what has to be done at each step of the process, from the time of an informal interview to the decision not to prosecute or to investigate the case further.

The introduction of shelter for specific categories of victims and arranging provision of adequate legal assistance can be expected to increase the willingness of victims to report offences.

*Linking of residence status to reporting of offence/cooperation in criminal proceedings*

Granting a (temporary) residence permit to victims and witnesses of human trafficking is currently conditional upon their cooperation in a criminal investigation.

Aliens are informed that they can report an offence or otherwise cooperate in the investigation immediately, but that under the B9 regulation they can also do so after a period of reflection, during which they have up to three months to *calmly* consider their decision.

It is important to make a distinction between the likelihood of a prosecution for human trafficking being successful, and the possibility that a person is a victim of human trafficking. Even if a report does not provide good leads and the investigation does not lead to a prosecution, the complainant may still be a victim. An unlikely story does not necessarily mean that the individual concerned is not a trafficking victim. The human trafficker might have instructed the victim to apply for B9 status and provided her with a story for that purpose. The victim might also be reluctant to provide specific facts out of fear of the trafficker.

*Continued residence (B16/7 Aliens Act Implementation Guidelines)*

The changes that have been made since August 2006 to the rules for continued residence after expiration of B9 status are largely connected with observed shortcomings in the rules and a desire to relax the policy. The revised policy simplifies the rules both for the IND and for victims and it seems legitimate to expect that the changes will shorten the period of uncertainty

for victims. Nevertheless, there do seem to be some problems with the implementation of the policy in practice. One problem concerns the flow of information between the authorities involved in the criminal investigation of human trafficking (the police and public prosecution service), the IND, and the alien or her lawyer. IND officials sometimes have to go to a great deal of trouble to discover the status or the outcome of the investigation or the trial in a human trafficking case. That information can be crucial for victims given the potentially serious implications for their residence status. Both the Aliens Act Implementation Guidelines and the Instruction on Human Trafficking adopted by the Council of Procurators-General require the public prosecutor to notify both the IND and the victim as soon as a decision is made not to proceed with the prosecution or final judgement is rendered. This rule is not always followed. There is often miscommunication, particularly a prosecution for human trafficking is discontinued. The cases looked at in this report indicate that there is confusion about the notification to the individual concerned and the conditions for filing an objection. This is an area where the care coordinator could perform a useful role.

An alien who wishes to invoke ground (1) of the B16/7 regulation (a conviction for human trafficking or for another offence in an indictment that includes human trafficking, where, as a result, there is a presumption in law that there are risks involved in repatriation to the country of origin) must personally submit a copy of the court decision to show that he or she is eligible for continued residence. However, the victim is not a party to the proceedings and therefore does not have a copy of the court decision and might not even be aware of it.

Since the B16/7 provision was amended, the prime responsibility for deciding whether a person is a victim has shifted from the courts to the public prosecutor, since even an acquittal on a charge of human trafficking can constitute grounds for the victim's continued residence, provided that the suspect is convicted of any of the other charges. In practice, victims remain uncertain about the decision on their application for continued residence for an extended period of time, even though it is already clear at the time of prosecution that they are regarded as victims by the public prosecution service. Victims would be spared much time and uncertainty if the regulation were amended to allow an application for continued residence to be made as soon as the public prosecution service decides to summons a suspect. This practical amendment might also encourage victims to report an offence with sufficient leads to launch a successful prosecution. It would, then, be necessary to build in sufficient safeguards to ensure that victims remain available and willing to cooperate in the investigation and prosecution.

In 2005, to help improve the method of assessing whether a victim should be granted continued residence for reasons of safety, the partners in the chain agreed to start preparing safety files. However, in practice no safety files have yet been compiled; nor is there any evidence that the IND always performs a risk analysis of its own before deciding whether a victim can be required to return to his or her home country.

The IND's decisions to allow continued residence for urgent reasons of a humanitarian nature generally provide no insight into the considerations on which those decisions are based.



## Victims as perpetrators and the non-punishment principle

### 6.1 Introduction

Victims of human trafficking sometimes commit criminal offences that are connected with the human trafficking situation. Examples can include victims who are forced to use a false passport, victims who are exploited in cannabis plantations or victims who issue a false statement under oath out of fear of the person exploiting them. There have also been cases where victims have been involved in drug smuggling, theft, fraud and assault under the influence of their trafficker.

At the time of writing, the Netherlands had almost reached the point of acceding to the Council of Europe's Convention on Action against Trafficking in Human Beings.<sup>1</sup> The convention is the first international treaty to include a non-punishment provision for victims of human trafficking. This provision obliges states to provide for the possibility of not sanctioning victims of human trafficking for their involvement in unlawful activities where they have been compelled to do so.

The Netherlands' accession to the convention, and reports BNRM had received about victims as perpetrators, caused it to investigate the legal possibilities in this country for not prosecuting or punishing victims who are also offenders, how the possibilities that exist are exercised in practice and what the situation should be. The BNRM studied international law, legislation in the Netherlands and other countries and the literature and examined a number of specific cases. The results of the research are presented in this chapter. The review starts with the international legal framework (§6.2.1), followed by the framework created by Dutch legislation (§6.2.2). A number of cases were selected and analysed in more detail to assess how the law is applied in practice (§6.3). Finally, there is a comparative survey of the legislation and practice in dealing with victims as perpetrators in other countries (§6.4). The issues and problems that need to be addressed are discussed in the concluding section (§6.5).

### 6.2 Legal framework

This section describes the legal possibilities for not prosecuting or punishing victims who also commit offences. It starts with an outline of the international framework, before discussing the Dutch framework.

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<sup>1</sup> At the time of writing, the bill was before the Upper House of Parliament.

### 6.2.1 International legal framework

Various international instruments contain a non-punishment or equivalent provision for victims of human trafficking. We will first discuss the non-punishment provision in the Council of Europe’s Convention before briefly reviewing each of the other instruments. The section ends with some conclusions about the scope of the non-punishment principle in an international context.

#### *Council of Europe’s Convention on Action against Trafficking in Human Beings*

The Council of Europe’s Convention, which entered into force on 1 February 2008,<sup>2</sup> is the first treaty to contain a non-punishment provision. Article 26 reads: ‘Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they may have been compelled to do so.’ The non-punishment clause contains the following elements:

- The provision refers only to not imposing penalties, which means that the decision rests with the courts. It does not exclude the possibility of the victim being prosecuted by the public prosecution service.<sup>3</sup>
- The individual must be a victim. However, it is impossible to determine from the definition of *victim*<sup>4</sup> in the convention the precise time at which a person should be regarded as a victim. For example, is a person a victim from the time that human trafficking is suspected or only when there has been a conviction for human trafficking? Neither the convention nor the explanatory report to it provides certainty on this point.
- A third element of Article 26 is *involvement in unlawful activities*. The choice of the phrase *unlawful activities* implies that their scope is wider than offences generally punishable under criminal law and that other offences can also fall under the scope of the non-punishment provision.<sup>5</sup> *Involvement* also implies that complicity, for example, can fall under this provision.
- The requirement of compulsion is reflected in the clause ‘to the extent that they have been compelled to do so’. It follows from the text of the explanatory report that there is in any case compulsion to commit an unlawful act if any of the means of committing the offence of human trafficking set out in article 4 of the convention is used.<sup>6</sup> The wording of Article 26 also implies that there must be a causal connection between the unlawful activity and coercion to commit it. The coercion does not have to be exerted by the human trafficker personally.

2 Requirement for entry in force: ten ratifications, including eight by member states.

3 The recommendation by, inter alia, the Parliamentary Assembly, to expand the provision to include not *prosecuting* victims was not adopted. See Recommendation 1695 (2005), 18 March 2005.

4 These are victims as defined in Article 4 of the Convention: ‘Victim’ shall mean any natural person who is subject to trafficking in human beings as defined in this article”.

5 For example, administrative offences.

6 Explanatory Report to the Convention, par. 273: “In particular, the requirement that victims have been compelled [...] shall be understood as comprising, at a minimum, victims that have been subject to any of the illicit means referred to in Article 4, when such involvement results from compulsion.”

Because the provision is laid down in the Council of Europe's Convention, it has direct effect and is mandatory for the states that are party to the Convention. No reservations can be made to this provision. The wording of Article 26 is so general, however, that the provision merely requires member states to provide the *possibility* that victims of human trafficking will not be punished if the requirements of Article 26 are met. The provision therefore does not go so far as to totally exempt victims from punishment. However, the non-punishment provision does highlight the situation of victims who are perpetrators and requires member states and judges to reflect on the phenomenon and take appropriate measures. The scope of the provision means it can be applied on a case-by-case basis.

*Formulation of the non-punishment provision in Article 26*

It is interesting that when the Council of Europe's Convention was being drafted, various amendments that go much further than the final text were submitted for Article 26. One of these read as follows: '*Victims of trafficking shall not be detained, charged or prosecuted on the grounds that they have unlawfully entered or are illegally resident in countries of transit and destination, or for their involvement in unlawful activities of any kind to the extent that such involvement is a direct consequence of their situation as victims of trafficking.*'<sup>7</sup> This amendment goes much further than the final version of Article 26, since it constitutes a direct obligation on member states. The amendment also refers to a ban on detaining, charging or prosecuting victims, and no coercion is required.

*General Assembly Resolution 55/67, Traffic in women and girls*<sup>8</sup>

Passed in 2001, this UN resolution was the first international instrument to contain a non-punishment provision for victims of human trafficking.<sup>9</sup> The resolution is not legally binding, but the fact that it was adopted by the UN General Assembly gives it political value. The provision goes further than the non-punishment provision in the Council of Europe's Convention in the sense that it refers to not *prosecuting* victims while the latter provision only refers to not *punishing* them. However, the scope of the provision in the UN resolution is also narrower since it is only concerned with the illegal entry or residence of victims; the

7 Doc. 10397, 17 January 2005. *Amendment* submitted by *The Committee on Equal Opportunities for Women and Men*. This amendment was supported by the *Committee on Legal Affairs and Human Rights* and was unanimously adopted in Opinion No. 253 of the Parliamentary Assembly (Opinion No. 253 (2005), 26 January 2005).

8 A/RES/55/67, 31 January 2001.

9 Paragraph 13: "Also invites Governments to consider preventing, within the legal framework and in accordance with national policies, victims of trafficking, in particular women and girls, from being prosecuted for their illegal entry or residence, taking into account that they are victims of exploitation;" Resolution A/RES/63/156 of 30 January 2009 also includes a non-punishment provision: "Urges Governments to take all appropriate measures to ensure that victims of trafficking are not penalised for being trafficked and that they do not suffer from re-victimisation as a result of actions taken by government authorities, and encourages Governments to prevent, within their legal framework and in accordance with national policies, victims of trafficking in persons from being prosecuted for their illegal entry or residence."

non-punishment provision of the Council of Europe’s Convention is not restricted to a particular type of crime or illegal activity.

*UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*<sup>10</sup>

This UN instrument contains a non-punishment principle in three places: once in the Principles<sup>11</sup> and twice in the Guidelines<sup>12</sup>. The *UN Recommended Principles and Guidelines* contain a broad definition of non-punishment, with the same scope as the amendments submitted for Article 26 of the Convention of the Council of Europe.<sup>13</sup> The premise of the UN Recommended Principles and Guidelines is therefore that the non-punishment principle will have a wide scope.

Although the UN Recommended Principles and Guidelines are not legally binding and therefore do not create mandatory obligations for member states, they do have significant political value and consequently have some force. The fact that the UN Principles are often referred to also indicates that they are widely accepted and have growing influence.<sup>14</sup>

*Brussels Declaration on Preventing and Combating Trafficking in Human Beings*<sup>15</sup>

The Brussels Declaration of 2002 contains a non-punishment clause in Article 13,<sup>16</sup> which goes further than not punishing victims because it also refers to not further stigmatising, criminalising or prosecuting victims and not detaining them in detention centres. The provision even goes a step further than the terms of the UN Recommended Principles and Guidelines, since the requirement of a causal link between the offence and human trafficking is less strong because of the formulation ‘[...] that may have been committed [...] as part of the trafficking process’.

10 UN Economic and Social Council, E/2002/68/Add.1, 20 May 2002.

11 Principle 7: “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their own entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”

12 Guideline 2 (Identification of trafficked persons and traffickers), paragraphs 5 and 6: “States should consider [...] 5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons. 6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention nor other forms of custody.”

13 See previous section.

14 Gallagher (2005). See chapter 5 of this report.

15 Concluded during *The European Conference on Preventing and Combating Trafficking in Human Beings – global Challenge for the 21<sup>st</sup> Century* on 18-20 September 2002. Participants: EU member states, candidate member states, neighbouring countries including Russia and Ukraine and other states such as the United States, Canada, China, as well as regions, international organisations, intergovernmental organisations, NGOs and the institutions of the EU.

16 Article 13: “Trafficked victims must be recognised as victims of serious crime. Therefore they should not be revictimised, further stigmatised, criminalised, prosecuted or held in detention centres for offences that may have been committed by the victim as part of the trafficking process.”



Like the UN Recommended Principles and Guidelines, the Brussels Declaration is not a legally binding instrument. However, the fact that the Declaration was agreed upon by more than 1,000 states and organisations is an indication that it is an important political instrument.

*OSCE Action Plan to Combat Trafficking in Human Beings*<sup>17</sup>

The OSCE Action Plan from 2003 also contains a non-punishment provision<sup>18</sup> but it is far narrower in scope than those in the other instruments. The text literally states that legislation should ensure that victims do not face prosecution solely because they have been trafficked.

The OSCE Action Plan is not a binding legal instrument but it does have political importance.

*Draft Conclusions of the EU Council*<sup>19</sup>

These Draft Conclusions include a non-punishment provision.<sup>20</sup> At the time of writing, the European Commission had informally accepted the Draft Conclusions.<sup>21</sup> Although the Council's Draft Conclusions cannot be regarded as a legal instrument, the Council's interpretation of the non-prosecution of victims will have political relevance in terms of the background to the non-punishment principle when the Draft Conclusions are formally adopted. In its earlier conclusions<sup>22</sup> the Council said that an important consequence of the possible punishment of victims of human trafficking is that it prevents victims from identifying themselves as such. The Council also argued that punishing victims is irreconcilable with the legal obligations of member states to protect and assist victims.<sup>23</sup> As examples of offences committed by victims, the Council mentions obvious criminal offences such as breaches of migration rules, the use of false documents and working without a work permit. Interestingly, the non-punishment provision in the Draft Conclusions refers only to not punishing victims, although the Council also says in its conclusions that in countries where the legality principle applies the non-punishment provision should guarantee that prosecutions are not brought or that they are interrupted by the court at an early stage. The term *prosecution* is also used earlier in the Draft Conclusions rather than *punishment*.

17 PC.Dec/557, 24 July 2003, 462<sup>nd</sup> Plenary Meeting, PC Journal No. 462, Agenda item 6.

18 Article 1.8: "Ensuring that victims of trafficking are not subject to criminal proceedings solely as a direct result of them having been trafficked."

19 Draft Council conclusions on Trafficking in Human Beings, 14186/07, 31 October 2007.

20 "Member States should take appropriate measures providing that victims including children are not punished for offences they have been involved in as a direct consequence of their situation as trafficked persons, such as violations of immigration law or working without a work permit, or the use of false documents. Exceptions from non-punishment should be possible in cases of extreme severity of the offence."

21 The Draft Council Conclusions have been notified and therefore do not yet have any formal status.

22 Draft Council Conclusions on Trafficking in Human Beings, 14011/07, 19 October 2007.

23 Draft Council Conclusions on Trafficking in Human Beings, 14011/07, 19 October 2007.

*Draft Framework Decision on preventing and combating trafficking in human beings*<sup>24</sup>

By contrast with the existing framework decision, the proposal for the new EU Framework Decision on preventing and combating trafficking in human beings,<sup>25</sup> which is due to be adopted by the Council of Ministers before the end of 2009, does contain a non-punishment provision.<sup>26</sup> It is not entirely clear why the formulation ‘[...] *unlawful activities* as a direct consequence of being subjected to any of the illicit means [...]’ was chosen in the proposal. According to this formulation, the criminal offences must be a direct consequence of the (coercive) illicit means rather than a direct consequence of the human trafficking situation the victims find themselves in.

The explanatory note to the proposed article 6 mentions the following examples of criminal offences by victims: breaches of migration law, then use of false documents or violations of the law governing prostitution. However, it should be clear that victims commit not only these obvious offences, but also other offences related to human trafficking. A wider formulation of the non-punishment provision, similar to those in a number of the instruments referred to earlier, would in any case seem more appropriate.<sup>27</sup> Article 6 is concerned with the non-punishment and non-prosecution of victims and in that regard it has a wider scope than Article 26 of the Council of Europe’s Convention. When it is adopted, the Framework Decision will be a legally binding instrument for EU member states.

*Comparison of the non-punishment provisions in different international instruments*

This section has discussed the various non-punishment provisions in international instruments. The following table summarises the content of these instruments, with a clear comparison of their different elements and the status of each instrument.

24 Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA.

25 For a detailed discussion of the EU’s Framework Decision on trafficking in human beings, see chapter 3.

26 Article 6: “*Each Member State shall provide for the possibility of not prosecuting or imposing penalties on victims of trafficking in human beings for their involvement in unlawful activities as a direct consequence of being subjected to any of the illicit means referred to in Articles 1 and 2.*”

27 See also chapter 3 of this report.

Table 6.1 Comparison of the non-punishment provisions in different international instruments

Element	Council of Europe's Convention	GA Resolution 55/67	UN Principles and Guidelines	Brussels Declaration	OSCE Action Plan	Council's Draft Conclusions	EU Framework Decision
<b>Status of instrument</b>	Legally binding (treaty)	Politically binding (recommendation)	Politically binding (principles)	Politically binding (declaration)	Politically binding (action plan)	Not yet politically binding ( <i>draft</i> conclusions)	Not yet politically binding (not yet adopted)
<b>Non-punishment in terms of</b>	Punishment – – – – –	– Prosecution – – – –	Punishment Prosecution Detention Indictment – – –	– Prosecution Detention – Secondary victimisation Stigmatisation Criminalisation	– Prosecution – – – –	Punishment Prosecution – – – –	Punishment Prosecution – – – –
<b>Nature of offence</b>	Involvement in unlawful activities – – –	– Illegal entry Illegal residence –	Involvement in unlawful activities Illegal entry Illegal residence Activities they are involved in as a direct consequence of their situation as trafficking victim	– – – Offences	– – – –	– – – Offences	Involvement in unlawful activities – – –
<b>Causal connection</b>	To the extent that they have been compelled to do so	Taking into account that they are victims of exploitation	To the extent that such involvement is a direct consequence of their situation as victims of trafficking	That may have been committed by the victims as part of the trafficking process	Solely as a direct result of them having been trafficked	Have been involved as a direct consequence of their situation as trafficked persons	As a direct consequence of being subjected to any of the illicit means referred to in articles 1 and 2
<b>The extent of the obligation of non-punishment</b>	Shall provide for the possibility of ...	Invites governments to consider preventing ...	Trafficked persons shall not be ...	They should not be ...	Ensuring that victims are not subject to ...	Provides <i>in casu</i> opportunities for the prosecutor or the court	Shall provide for the possibility of ...

A comparison of the non-punishment provision in Article 26 of the Council of Europe’s Convention with the six other legal instruments highlights a number of aspects:

- The Council of Europe’s Convention only refers to *non-punishment*; the other instruments also refer at least to non-prosecution.
- The Council of Europe’s Convention and the draft EU Framework Decision require means to compel the victim to commit the criminal offence or illegal activity. The other instruments do not require compulsion, but do require a direct link between the criminal offence and the human trafficking situation.
- The obligation of non-punishment is indirect in the Council of Europe’s Convention and the draft Framework Decision because member states must only provide the *possibility* of non-punishment, while the other instruments – with the exception of the UN General Assembly Resolution – contain a direct (political) obligation by requiring that a victim will not be prosecuted/punished (or detained, indicted, secondarily victimised, stigmatised or criminalised).
- The only two legally binding instruments, the Council of Europe Convention and the draft Framework Decision, go less far in some respects than the other, political, instruments.

Although the Council of Europe’s Convention is legally binding and the other instruments (with the exception of the draft EU Framework Decision) are not, the other instruments can be helpful in interpreting and applying the non-punishment principle in the Netherlands. Because the other instruments are based on political consensus, they have political importance. Furthermore, the Netherlands is free to employ a wider definition of non-punishment than is required by the Council of Europe Convention.

#### *Non-punishment from a human-rights perspective*

States are obliged to respect and protect human rights. This gives rise to the following obligations in relation to human rights: human trafficking cases must be investigated and the perpetrators prosecuted; victims must be actively identified as such; victims must be assisted and protected; and victims must not be detained or prosecuted for status-related offences.<sup>28</sup>

In regard to the first obligation, punishing victims of human trafficking for unlawful acts that they have committed in a human trafficking situation could conflict with the obligation on states to investigate human trafficking cases and prosecute offenders. For the criminal investigation and prosecution of human traffickers, the police and prosecution service rely to a large extent on statements made by victims. However, the willingness of the victim to make a complaint and cooperate with the investigation is closely related to the risk that victims face of being prosecuted themselves for unlawful activities they committed in the situation of exploitation.<sup>29</sup> This creates the risk that the victim will not make a complaint and that con-

<sup>28</sup> See Gallagher (2005, pp. 213, 271-335). By ‘status-related offences’ Gallagher means offences and crimes that are directly related to a person’s status as a victim of human trafficking.

<sup>29</sup> Report of the Experts Group on Trafficking in Human Beings, Brussels, 22 December 2004, p. 141.

sequently the case will never come to light and no investigation will be ordered. As a result, the human trafficker goes unpunished and the situation of exploitation continues.

Prosecuting victims of human trafficking can also conflict with the obligation to protect victims. The obligation to identify victims as such is also relevant in this respect, since a person who is not known to be a victim cannot be protected. Identifying a victim is also very important in the context of the obligation not to detain and prosecute victims. In practice, victims are often prosecuted because they have not been identified as such.<sup>30</sup> But even when a person is identified as a victim, the relationship between the criminal offence committed by the victim and the situation of exploitation will not always be entirely clear. The question is how far the state must go in meeting its human-rights obligation to protect victims. To what extent does the interest of protecting the victim prevail and in which cases should the interest of prosecuting the victim take priority?

### 6.2.2 National legal framework

This section discusses Dutch legislation pertaining to the possibilities for not punishing or prosecuting victims as offenders. The section starts with a review of the interpretation in the Netherlands of the international non-punishment provision and then goes on to discuss the more general possibilities of not prosecuting or punishing suspects.

#### *The interpretation of non-punishment in the Netherlands*

The explanatory report to the Council of Europe's Convention states that the requirements of the Convention's non-punishment principle are met by the remedy of the judicial pardon as laid down in Article 9a of the Dutch Criminal Code,<sup>31</sup> which reads: 'The judge may determine in the judgment that no punishment or measure shall be imposed, where he deems this advisable, by reason of the lack of gravity of the offence, the character of the offender or the circumstances attendant upon the commission of the offence thereafter.' Strictly speaking, the Netherlands complies with Article 26 of the Council of Europe's Convention with the judicial pardon. Article 9a of the Dutch Criminal Code does not contain any restrictions with respect to forms of offence. This, combined with the wording of Article 26 of the Council of Europe's Convention, makes it clear that it was also the intention of the Dutch legislature not to make any restriction in terms of the type of offence. In combination with the principle in the Netherlands that the public prosecutor has discretion to decide whether or not to prosecute (the principle of expediency) and the possibility for a case to be dismissed, in theory there are sufficient possibilities to observe the non-punishment principle. In view of the points made above and the application of the principle of expediency, there is also no restriction, in terms of the type of offence, on the possibility to dismiss charges.

<sup>30</sup> Gallagher (2005).

<sup>31</sup> *Parliamentary Documents II* 2007/08, 31 429 (R 1855), no. 3, p. 13.

The Dutch reaction to a UN resolution entitled *Improving the coordination of efforts against trafficking in persons*<sup>32</sup> sets forth a firm position with regard to victims as offenders: ‘One should also bear in mind that victims are often forced by traffickers to engage in activities that constitute infractions of the law. Clearly, victims should not be punished for this.’<sup>33</sup> The Netherlands then refers to the non-punishment clause of Article 26 of the Council of Europe’s Convention and says: ‘It [the non-punishment clause; BNRM] is a principle that should be highlighted.’<sup>34</sup>

#### *Decisions not to prosecute*

The principle of expediency means that charges brought against a victim who is also an offender can be dropped.<sup>35</sup> A decision not to prosecute goes further than the non-punishment provision of Article 26 of the Council of Europe’s Convention, since that provision refers to the *non-punishment* of a victim. If a case is dismissed, there is no prosecution at all. Prosecution can be a nasty experience for a victim, uncertainty about the outcome being one of the contributing factors. It might be desirable to spare the victim the possibly traumatic experience of criminal proceedings.

One of the grounds laid down for dismissing a case must apply before a decision can be made not to prosecute<sup>36</sup> and the decision must also not conflict with the principles of due process. In principle, the public prosecutor may decide not to prosecute any offence, with the exception of certain offences for which the Netherlands is obliged to prosecute by treaty. If the offence committed by the victim is of a more serious nature, the public interest in bringing a prosecution will weigh heavily and the charges are less likely to be dropped.

The situation of victims of human trafficking who are also offenders is not a specific ground for abandoning a prosecution. Because the public prosecutor who leads the investigation into a criminal offence committed by a victim is usually not the public prosecutor who investigates the human traffickers, he or she may not be sufficiently aware of the circumstances under which a victim committed an offence.

#### *Grounds for exemption from criminal liability*

When it is decided that the victim will be prosecuted, there are grounds that, where they apply, can lead to dismissal of the charges. Grounds for exemption from criminal liability that could apply to victims of human trafficking under certain circumstances are a (psycho-

32 A/Res/63/194, 23 January 2009.

33 Comments from the Netherlands with reference to General Assembly resolution 63/194 on “Improving the coordination of efforts against trafficking in persons”, date unknown.

34 Comments from the Netherlands with reference to General Assembly resolution 63/194 on “Improving the coordination of efforts against trafficking in persons”, date unknown.

35 The principle of expediency is laid down in Articles 167 (2) and 242 (2) of the Dutch Code of Criminal Procedure.

36 The grounds for deciding not to prosecute are laid down in the Instructions on the use of the grounds for declining to prosecute, *Government Gazette*, 26 August 2009, no. 12653.

logical) force that he or she could not be expected to resist (*overmacht*)<sup>37</sup> and necessary self-defence or self-defence or defence of another person against an unlawful attack or action exceeding the limits of necessary defence where the excess is the direct result of a strong emotion provoked by the attack.<sup>38</sup>

*Causing and soliciting the commission of a criminal offence and exploitation in crime*

There are various offences for which a human trafficker who causes the victim to commit a criminal offence can be prosecuted. In some cases, this will lead to immunity from punishment for the victim.

When a person intentionally causes another, innocent, person to commit a criminal offence it may constitute the offence of causing the commission of an offence.<sup>39</sup> Although there used to be a requirement that the actual perpetrator was an unwilling instrument, the only requirement now is that for one reason or another he or she is not criminally liable.<sup>40</sup> There are a number of reasons why the executor might not be criminally liable, such as the absence of intent, guilt or imputability, for example, or a psychological inability to resist.<sup>41</sup> When in a situation of human trafficking it is assumed that the commission of an offence by a victim of human trafficking was caused by the human trafficker, the human trafficker is punishable for it, while the victim (the perpetrator) is not liable for punishment. There is one known case in Dutch jurisprudence where a human trafficker was convicted of causing a victim to smuggle drugs.<sup>42</sup> This case is discussed in the following section as the Case of coerced drug smuggling.

Another offence that can be committed by a human trafficker who compels victims to commit a crime is solicitation of the commission of an offence.<sup>43</sup> The difference between soliciting and causing the commission of a criminal offence is that in the former case the actual perpetrator of the offence is punishable and in the latter he or she is not.

Rather than constituting soliciting or causing the commission of an offence, the conduct that compels a victim to commit a criminal offence can also be categorised as human trafficking if all of the elements of the definition of the offence are met.<sup>44</sup> The first conviction for human trafficking in the sense of criminal exploitation was rendered in April 2009.<sup>45</sup> In that

37 Article 40 Dutch Criminal Code. Particularly a psychological inability to resist and self-defence could apply for victims of human trafficking. For a detailed explanation of the Dutch concept of *overmacht*, see De Hullu, 2006.

38 Article 41 Dutch Criminal Code. See also De Hullu (2006).

39 Harteveld (2007).

40 Harteveld (2007).

41 Harteveld (2007).

42 Haarlem District Court, 22 April 2009, LJN: BI3519.

43 Article 47 (1) (2) Dutch Criminal Code: "Those who, by means of gifts, promises, abuse of authority, use of violence, threat or deception or providing the opportunity, means or information, intentionally solicit the commission of a crime."

44 By contrast with the Netherlands, in Belgium, for instance, exploitation in crime is explicitly mentioned as a form of human trafficking in the criminal law (Article 433quinquies, (1) (5) Criminal Code). See also §6.4.1.

45 Haarlem District Court, 22 April 2009, LJN: BI3519.



case, the court also found that the offence of causing the commission of drug smuggling had been proved.

### 6.3 Cases in the Netherlands

As explained in the preceding section, there is no specific non-punishment provision for victims of human trafficking in Dutch legislation. There are, however, general possibilities for declining to prosecute or punish victims, but the question is whether these options are availed of in practice and when a person's status as victim is actually taken into account. To investigate this, BNRM studied a number of cases involving victims who committed criminal offences.

The various cases covered in this qualitative study came from the police, the public prosecution service, NGOs, lawyers and case law. By studying different cases, we can discover how victims who are suspects are treated in practice and what problems arise. Because of the variety of cases studied, they are divided into the following categories: I. Exploitation in crime; II. Perjury/making a false statement (article 207 Dutch Criminal Code); III. Assisting in human trafficking; IV. Criminal behaviour related to migration law; V. Offences committed against the will of the human trafficker; and IV. Other. A review of the consequences under immigration law for victims who are suspects is given in §6.3.1.

#### *I. Exploitation in crime*

As mentioned in the preceding section, exploitation in crime is a form of human trafficking. A number of the cases that were studied showed evidence of (possible) cases of exploitation in crime, revealing some of the features of this form of exploitation.

The first characteristic is that criminal offences committed by the victim can be regarded as 'work or services'. In some cases the 'work or services' consisted solely of the commission of offences; in others there were also other forms of exploitation. In all of the cases investigated, the overriding motive of the human trafficker was financial gain. The human trafficker can be seen as the 'brain' behind the offences and the victim as the perpetrator. In some cases, the influence of the human trafficker was so great that he could also be regarded as 'causing the commission of the offence'. In every case studied, the victim surrendered the proceeds of the crime to the human trafficker. In some cases, the victim received a small fee. Three types of criminal offence were identified in the cases of exploitation in crime that were studied: drug-related offences, theft and fraud.

#### *Exploitation in crime: drug-related offences*

##### *Case of cannabis nursery – Fleurtop*

During a raid on a cannabis plantation, 28 people, mainly Bulgarian women, engaged in cutting the cannabis plants were arrested. During the criminal investigation, the suspicion arose that the cutters were being exploited. The Bulgarians were illegal immigrants and were in a vul-

nerable position. The work was poorly paid and the working conditions were bad. A number of the cutters were interviewed about exploitation in the employment relationship. Three of them made a complaint of human trafficking and were granted B9 status. The suspects then prosecuted but the court found that human trafficking had not been proved.<sup>46</sup> In a separate case before the police magistrate the three cutters who had received a residence permit on the grounds of the B9 regulation were prosecuted for offences against the Opium Act. They received prison sentences of several weeks. When the public prosecutor became aware that the cutters were being exploited when the offences were committed and that the 'employers' had been prosecuted for human trafficking, the sentences of the cutters were extinguished by prescription.<sup>47</sup> However, one of the three victims had already served her sentence.

Although there was no conviction for human trafficking in this case, the granting of B9 status to the three cannabis cutters shows that they were initially regarded as victims. There was a direct connection between the human trafficking and the criminal offence since the 'work or services' consisted of cutting cannabis, which is an offence against the Opium Act. Because the two cases were heard separately, the fact that one of the cutters was a victim only emerged after she had already served her sentence. Cooperation between the two public prosecutors in this case could perhaps have prevented that.

Another point is whether the three cutters should have been prosecuted in this case. They were regarded as victims of human trafficking, they cooperated with the criminal investigation against the suspects of human trafficking and they were granted B9 status. The investigation centred on human trafficking in the form of exploitation in a cannabis plantation. It is difficult to understand why the public prosecution service regarded them as victims of exploitation in a cannabis plantation, while at the same time regarding them as suspects because of the same work they had to perform in the cannabis plantation. Cooperation within the public prosecution service could also have led to a different decision in that respect.

Under certain circumstances, drug smuggling carried out under coercion can also be described as 'work or services' within the meaning of exploitation in crime.

*Case of coerced drug smuggling*

On 22 April 2009, the District Court in Haarlem<sup>48</sup> rendered judgement in a case involving exploitation in crime. In this case a woman was invited to visit Curacao under false pretences by her former boyfriend. The former boyfriend asked the woman to bring one of her children (a three-month-old baby). When she arrived in Curacao it emerged that the suspect had other plans for her. The suspect ordered the woman to smuggle his drugs to the Netherlands. He made serious threats against the woman and her baby. She was also beaten by the suspect and raped in the presence of her baby.

Without the suspect's knowledge, the woman telephoned the Dutch diplomatic mission in Curacao. She also called her father in the Netherlands and told him she was coming to the Nether-

<sup>46</sup> This case is also discussed in §12.6.2.

<sup>47</sup> This means that the sentence is not enforced.

<sup>48</sup> Haarlem District Court, 22 April 2009, LJN: BI3519. This case is also discussed in §12.6.2.

lands with drugs. She asked him to call the police and remove her two other children from the suspect's mother, with whom they were staying. Her father immediately went into action.

On the day of the woman's return flight the suspect forcibly pushed packages of cocaine into her vagina and anus, making various threats. He then brought her and her baby to the airport. On arrival at Schiphol, the woman was taken aside by customs officers. The packages of cocaine were found in her body and the woman made a statement. She was arrested and placed in custody.

The district court convicted the former boyfriend of human trafficking, describing the coerced drug smuggling as 'work or services'. The defendant was also convicted of rape and causing the commission of the offence of drug smuggling. He was given a prison sentence of four years. The district court found: 'By causing said import, the defendant abused the complainant [victim], a former girlfriend, whom the defendant treated as nothing other than a machine, an object.'<sup>49</sup>

The victim was not prosecuted. She was released from custody after three days and more than five months later the case against her was dismissed. It was not legally possible to prosecute her for drug smuggling because it had been proved that the former boyfriend had caused the commission of the drug smuggling.<sup>50</sup> If the court had declared causing the commission of the offence not proven, according to the public prosecutor concerned, the woman could have invoked a psychological inability to resist, which could have led to dismissal of the charges.

The above case led to the first conviction for human trafficking in the sense of exploitation in crime in the Netherlands. It was evident in this case that the victim was forced to smuggle the drugs, saw no alternative than to suffer the actions of the defendant and even tried to seek help and to call the authorities. In other cases that were studied, the degree of (physical) compulsion was less obvious, so it was more difficult to produce evidence of exploitation in crime and causing the commission of an offence.

#### *Drug smuggling case II*

The 18-year-old victim (X) fell into the hands of a loverboy (K) in the Netherlands, who forced her into prostitution. After some time, K, together with other suspects, started using victim X as a drugs courier. According to her statement, X was forced to bring a suitcase from the Dominican Republic to the Netherlands. At the airport in the Dominican Republic X was arrested with more than 20 kg of cocaine in the suitcase she was carrying. In first instance, X was sentenced to 10 years in prison for attempted drug smuggling. On appeal, the sentence was reduced to five years in the Dominican prison.

In the Netherlands, K was convicted of human trafficking and of complicity in an attempt to smuggle cocaine. He received a prison sentence of four years. The district court found: 'The second proven offence [drug smuggling; BNRM] is an extension of that [human trafficking; BNRM]. Through her loverboy, [victim] became involved in drug smuggling. [...] The defendant played an essential part in that offence by ensuring that [victim] was used as a drugs courier and departed for the Dominican Republic to collect drugs.'<sup>51</sup> The judgment has been appealed and the outcome of the appeal was not known at the time of writing.

49 Haarlem District Court, 22 April 2009, LJN: BL3519.

50 See also §6.2.2 on causing the commission of an offence.

51 Breda District Court, 21 March 2008 (unpublished judgment). The judgment was appealed. The outcome was not known at the time of writing.

This case differs from the previous case in a number of respects. For example, the victim in Drug smuggling case II was first exploited in prostitution, and only later used to smuggle drugs. In the Case of coerced drug smuggling, there was clearly coercion to smuggle drugs because of the finding that the physical violence, the rape and the threats had been proved. The means of coercion in Drug smuggling case II seem to be more subtle and are perhaps more difficult to prove. Furthermore, in that case, the legal system of another country had jurisdiction in the drug case against the victim. However, the smuggling of the drugs by the victim could be regarded as exploitation in crime, but that charge was not brought in this case.

Little is known about the number of victims that are prosecuted abroad for drug-related offences.<sup>52</sup> The impression is, however, that growing numbers of victims of loverboys are used to commit drug-related offences to generate additional income for the loverboy. In response to enquiries, the Asja shelter said it had the impression that roughly half of the victims staying there had been involved in drug-related crime.<sup>53</sup> A number of them had also been prosecuted for it. Some of the victims who were prosecuted subsequently made a complaint of human trafficking and entered the shelter after their detention. On the other hand, BNRM also knows of cases where victims were used exclusively to smuggle drugs, without sexual exploitation. A typical feature of all the cases involving drug smuggling by victims that were studied is that they involved young women who were persuaded to smuggle drugs through the use of loverboy methods. The victims had a personal relationship with the human trafficker, in contrast to the commercial relationship between the victims and human trafficker in the case of the cannabis cutters. In some cases of drug smuggling by victims, physical and/or sexual violence was used or threatened.

#### *Exploitation in crime: theft*

In its research, BNRM also encountered several cases of theft by victims of human trafficking. In the cases studied, the coerced thefts could be described as exploitation in crime.

As described in Chapter 4 of this report, there are examples of minors with no residence permit being used to commit thefts (pickpocketing and/or burglaries). Many of them are Roma children who do not go to school and earn money by playing music, selling newspapers, begging and/or stealing. These activities can be regarded as ‘work or services’, and can constitute human trafficking if the other elements of the offence exist<sup>54</sup>. According to a guideline

52 In response to questions from member of parliament Van Velzen (SP) (*Parliamentary Documents II* 2007/08, 4115) about the number of girls detained abroad who claim to have been forced to smuggle drugs by a loverboy, the Ministers of Justice and Foreign Affairs replied that on average 11% of all Dutch persons detained abroad say they did so under compulsion. However, it is not known whether they were compelled by a loverboy or in some other way (reply of 17 April 2008). It is therefore impossible to say how many are victims of human trafficking (see also *Parliamentary Documents II* 2008/09, 30 010, no. 11). See also §9.4.

53 Interview, Asja shelter, 23 April 2009.

54 It is important in this context that no means of coercion are required in the case of underage victims. See, for example, Article 273f (1) (2) Dutch Criminal Code.

issued by the Child Protection Council,<sup>55</sup> it will inform the judge if it suspects that the minor committed a criminal offence, and in Amsterdam it consults with the public prosecution service on how a case should be handled. As far as is known, there is no specific policy not to prosecute children when they are regarded as victims of human trafficking. However, minors are frequently not prosecuted because they have not reached the age of 12 and cannot be held criminally responsible.

*Pickpocketing*

In Amsterdam, several Romanian boys under the age of 12 were caught pickpocketing. A series of different people came to the police station claiming to be the boys' parents, but they were not. The boys were placed under the supervision of the Child Protection Council and repatriated to Romania. They were not prosecuted because of their age.

Although the public prosecutor believed that it might be a case of human trafficking, no group of offenders was found.

The fact that the boys might have been victims of human trafficking was not decisive in declining to prosecute the boys in this case. The case was dismissed because of their age. BNRM is not aware of any cases where child pickpockets were not prosecuted because of a suspicion that they were victims of human trafficking. There are other measures that are taken to protect this category of children.<sup>56</sup>

Another form of coerced theft that can be regarded as human trafficking in the sense of criminal exploitation involves victims of sexual exploitation who are used to commit thefts, usually to generate additional income for the exploiter. The cases investigated by BNRM involved adult victims who had a personal association with the human trafficker. These cases are similar to those involving victims of exploitation who were involved in selling and smuggling drugs under the influence of a human trafficker/loverboy.

*Case of theft and intimidation*

B was exploited in prostitution by her pimp (J). B was known to the police as a victim of human trafficking although she had never made a complaint against J. One day B became involved in a criminal offence when she tied up one of her clients during a sex game and then admitted her pimp J and his accomplice C. J and C threatened the bound client with a gun and robbed him. When the client reported the offence, B, J and C were arrested and placed in custody. Although the police regarded B as a victim of human trafficking, they did not consider dismissing the case against her. One of the factors in this decision was that she acted as a suspect and not as a victim of human trafficking. She was also uncooperative towards the police and the client who had been robbed.

55 G. Cardool, Memo to the national management team of the Child Protection Council of 4 June 2008, adopted by the team.

56 See §4.2.5 of this report.

Although in this case there was a certain relationship between B's exploitation and her role in the intimidation and robbery of the client (since the offence was committed in the situation of exploitation), it was not an option for the public prosecution service to dismiss the case against B by reason of the fact that she was a victim. The seriousness of the offence, B's role in it, the harm caused to the client and B's attitude were important factors in this decision.

*Case of fraud*

A was forced by D to work as a prostitute and had to give all her income to D. After some time, A became personally involved with one of her clients. The client, who was in love with A, wanted to give her a car as a present. When D discovered this, he pressured A into asking for an expensive car. The client agreed and bought the expensive car. A immediately had to give the car to D who, wanting to earn even more money from A, then repeatedly forced her to squeeze money out of D under false pretences. A had to give any money she secured in this way to D. The public prosecution service started a criminal investigation against D, who was charged with human trafficking and fraud. A was not a suspect because it was clear to the public prosecution service that her involvement in defrauding the client was directly connected with the compulsion exerted upon her by D. A was seen from the outset as a victim rather than a perpetrator.

In this case, D could have been charged with exploitation in crime. It is also possible to argue that he could have been guilty of causing the commission of fraud, particularly since A was not regarded as an offender.

In both of the cases discussed above, victims of human trafficking committed a criminal offence that seems to have been initiated by their exploiter. In both cases, the victim of the crime was a client. B, the victim of exploitation in the first case, was prosecuted, while A, the victim of exploitation in the second case, was regarded as innocent. The arguments for prosecuting B can also be raised against A since the offence in the second case was also serious, the victim played an active role in it and the client suffered serious detriment. However, because it was established in the second case that A was coerced into committing the fraud by her exploiter and immediately had to surrender the 'gains' to him, the prosecutor chose not to regard the victim as a suspect. This second case is also closer to an instance of causing the commission of an offence.

*Exploitation in crime: fraud*

A third form of coerced crime that can be regarded as human trafficking under certain circumstances is the commission of fraud under compulsion. In the fifth report of the NRM, various cases were described in which forcing a person to commit fraud was regarded as exploitation. Interestingly, the relationship between the victim and the exploiter in three of the four cases described in NRM5 was a personal relationship accompanied by physical violence. The fraud in the three cases consisted of forgery, making false statements, participation in the smuggling of a child, benefit fraud and use of false identities. None of the three victims were prosecuted for fraud. They were referred to the social services. In one case, the

person who forced the victim to commit fraud was himself prosecuted and convicted of assault and fraud. None of the exploiters were prosecuted for human trafficking.

## II. Perjury/making a false statement, Article 207 Dutch Criminal Code

Besides exploitation in crime, situations are also conceivable where the victim commits a crime that is *related* to human trafficking without being *part of* the human trafficking. One crime that often occurs in this context is perjury by a victim. These are cases where a victim makes a false statement (often under pressure from or out of feelings of loyalty towards the human trafficker) about the human trafficking. In contrast to exploitation in crime, in this instance the human trafficker's intention is not financial gain, but avoiding prosecution.

### *Case of making a false statement*

F made a complaint of human trafficking. She declared, among other things, that her pimp (M) had forced her to work in prostitution. Some time after M's arrest, F withdrew her incriminating statement about him. She denied being a victim of human trafficking and declared that she had lied in her earlier statements to the police. Because the public prosecutor suspected that F was a victim of human trafficking (on the grounds of statements made by other witnesses), he decided to arrest F and place her in custody for making a false statement. The public prosecutor hoped that F's arrest would persuade her to tell the truth. When she was brought before the examining magistrate, F finally admitted that she had been forced to retract her incriminating statement by M's brother.

Partly thanks to F's statements, both M and his brother were tried and convicted. The public prosecutor agreed with F that she would not be prosecuted if she committed no more offences for a certain period. F honoured the agreement and the case against her was dropped.

In this case, the victim was arrested for making a false statement in an attempt to persuade her to tell the truth. Placing her in custody also protected her against possible threats.

The question is to what extent it is desirable to charge and punish victims for perjury if they stick to their false statement for fear of reprisals. The district court in Utrecht explicitly considered this problem in a judgment in a human trafficking case.<sup>57</sup> The following passage is taken from the judgment.

### *Case of perjury*

“The attitude of the sworn witness at the hearing on 11 July 2007 could have given cause to execute an *ex officio* report of perjury. The court expressly considered this option. The public prosecutor stated in an official report of findings drawn up by her on 26 April 2007 (page 175) that the witness would have to tell the truth at the hearing but that she would not have the witness arrested on suspicion of perjury if she did not.

This statement appears undesirable to the court. It is, after all, essential for the criminal process, in which the finding of truth is central, that a sworn witness tells the truth and is not *a priori* granted a certain degree of immunity by the public prosecutor. On the other hand, the

57 Utrecht District Court, 25 July 2007, LJN: BB0450.



court understands that the public prosecutor wished to ensure that this witness would appear at the hearing so that the court could form its own opinion concerning her reliability. Finally, in this context the court has also taken cognisance of the report by Professor Bullens et al., inserted in the case file by the public prosecutor, with a detailed description of the position of victims of so-called loverboys, in which the threat of violence, great psychological pressure and playing on the feelings of guilt of mainly vulnerable young women are not shunned. The court feels that there is sufficient evidence that the witness was still in such a position at the hearing. For these reasons, the court has decided not to make an official report of perjury.”<sup>58</sup>

### *III. Assistance in human trafficking*<sup>59</sup>

The stereotype of men in the role of offenders and women in the role of victims of sexual exploitation is often inaccurate. As described in §9.2.3, 18% of the suspects of human trafficking in 2007 were women. A recent report by the UNODC shows that, in relation to their involvement in other offences, women are involved relatively frequently in human trafficking.<sup>60</sup> In 2006, having analysed 89 case files, Siegel and De Blank divided female suspects of human trafficking into three categories: executors, partners-in-crime and madams.<sup>61</sup> Offenders are described as executors when they are subordinate to the principal human traffickers and perform specific tasks for the leader or other members of the organisation, either “voluntarily” or under the threat of violence.<sup>62</sup> These tasks may include giving ‘work instructions’ to other victims and collecting money for the pimp. The category of executor includes women who perform executive tasks under compulsion as well as women who agree to do so out of loyalty, because they see a possibility of earning money or because of their feelings for a member of the criminal gang.<sup>63</sup> Interviews with the police show that another factor for some victims is that by helping with human trafficking they also rise in the pecking order among the prostitutes, which often brings certain privileges (such as a day off or having to earn less money). In that respect, performing certain tasks for the human trafficker can be regarded as a survival strategy. Since the degree to which these tasks are performed voluntarily varies, the distinction between offender and victim is often vague. Women in the categories partners-in-crime and madams operate voluntarily and play a larger role in human trafficking.<sup>64</sup> The actions of the women in these categories is not directly related to their being victims.

#### *Case of involvement in human trafficking I*

A was exploited in prostitution by H. When H wanted to force a new victim, B, into prostitution, A helped H under pressure. A declared: “H used me to convince B.” The judgment in the

<sup>58</sup> Utrecht District Court, 25 July 2007, LJN: BB0450. This judgment is also discussed in §11.3.4 of this report.

<sup>59</sup> For a comparison with Belgium, see §6.4.1.

<sup>60</sup> UNODC, 2009.

<sup>61</sup> Siegel & De Blank (2008). For a discussion of the role of women in human trafficking cases, see also §9.4.6.

<sup>62</sup> Siegel & De Blank (2008).

<sup>63</sup> Siegel & De Blank (2008).

<sup>64</sup> Siegel & De Blank (2008).

case against H states: “Furthermore, in association with this woman – and by abusing her love – he forced an underage girl [...] to work as a prostitute for him.”<sup>65</sup> A issued instructions to B and B had to surrender her earnings to A, who then gave them to H. Despite A’s (minor) role in the trafficking of B, A was never formally treated as a suspect. One of the factors in this was that statements by B showed that A was herself a victim of human trafficking. A was exploited and regularly abused by H. A and B became friends, which shows that B did not regard A as an offender.

H was prosecuted and convicted of human trafficking with respect to A and B.

In this case, A performed the role of executor. The public prosecution service regarded A as a victim, and therefore not as a suspect. The fact of being a victim was therefore a decisive factor.

*Case of involvement in human trafficking II*

In the previously mentioned *Sneep* case, one of the victims (O) was also suspected of (complicity in) human trafficking, because she collected ‘protection money’ from other victims. The public prosecution service dropped the case against O on the grounds of psychological inability to resist. The fact that O was initially regarded as a victim, her relatively small role in the human trafficking activities and the coercion were factors in this decision. Interestingly, the judgment convicting O’s trafficker explicitly states in its findings on human trafficking: “who persuaded [O; BNRM] to collect protection money from one or more prostitutes [...]”<sup>66</sup> Here, the court shows that collecting the money was part of the human trafficking. Consequently, O was primarily a victim of these actions, not an offender.

It is clear that in this case the actions of the two suspect victims were also seen as executive actions. The two victims consequently fell into the category described by Siegel and De Blank as executors<sup>67</sup> and they were not prosecuted.

*IV. Criminal offences related to migration law*

Foreign and underage victims regularly use false, forged or ‘look-alike’ travel documents. This constitutes a criminal offence under Article 231 (2) Dutch Criminal Code.<sup>68</sup> The documents may be needed to travel to the Netherlands, but also to create the pretence that the holders have legal status or are adults (to enable them to work in prostitution, for example). The possession of a false or forged passport is one of the indicators of human trafficking.<sup>69</sup> The victim often incurs a large debt to the trafficker for the false document, thereby creating a situation of dependency.

65 The Hague District Court, 4 May 2007, LJN: BA4460.

66 Almelo District Court, 11 July 2008, LJN: BD6957.

67 Siegel & De Blank (2008).

68 Article 231 (2) Dutch Criminal Code reads: “The punishment in section 1 is also applicable to a person who possesses a travel document he knows or should reasonably suspect to be false or falsified, or who intentionally makes use of a travel document not made out in his name.”

69 Instruction on Human Trafficking 2008A022, appendix 3, *Government Gazette*, 31 December 2008, no. 253.

In practice, a victim identified in the Netherlands as having illegal travel documents is unlikely to be prosecuted for a breach of Article 231 (2) Dutch Criminal Code. The problem, however, is that a victim is not always recognised as such and may be prosecuted and convicted despite being a victim. For example, Zwart argues: “I have also come across several cases where aliens have been prosecuted for the intentional possession of a false travel document even though the official report of the Royal Netherlands Marechaussee shows that they may be victims of human trafficking.”<sup>70</sup>

*Case of possession of false passports*

Three women were approached in China by a man who offered to smuggle them to the US where they could earn ‘a lot of money’. The man arranged the trip. During a stopover at Schiphol, where the women had travelled to on their own passports, they were met by another woman who told them that she would give them false passports for the rest of the journey. Shortly afterwards, the three women were arrested on suspicion of complicity in an attempt to secure a false passport. During further interviews with the three women it emerged that they had to pay a lot of money for the trip and did not know their destination. They had been told that they would have to work for around four years to repay the price of the trip but were not aware of the type of work they would have to perform in the US to repay the money. According to a statement by the interviewing officer, she suspected that the three women would be forced to work abroad for the organisation that organised the trip. The women did not dare to make a complaint of human trafficking for fear of the organisation, according to their lawyer.

At the trial, the women’s lawyer invoked the non-punishment principle. The police magistrate decided, however that it had not been established that the women were victims of human trafficking. The women received prison sentences of four weeks, two of which were suspended. The lawyer appealed.

There were several indications of human trafficking in this case, but because the women did not make a complaint or otherwise cooperate with the public prosecution service they were not regarded as victims of human trafficking. Since it was not established that they were victims, they could not invoke the non-punishment principle. This judgment pinpoints the problem when it comes to prosecuting potential victims of human trafficking. If a suspect is not recognised as a victim of human trafficking, the non-punishment principle will not be applied and the potential victim will be prosecuted and punished like anyone else.

*Cases of a privileged document*

L was an Asian working as a domestic worker for a foreign diplomat in the Netherlands. L was allowed to work in the Netherlands on the basis of a privileged document that was issued on the grounds of her employment contract with the diplomat. L was exploited by her employer and decided to run away. However, this was regarded as a breach of contract, on the grounds of which L was committing an offence because from that moment on she was no longer allowed to use the privileged document. The Ministry of Foreign Affairs was aware of the matter and wondered whether it was required to make a complaint against L for her unlawful use of the

<sup>70</sup> Zwart (2008), p. 227.

privileged document. In consultation with the police, it was decided not to make a complaint against L because she would then have been prosecuted even though she had no other way of escaping from her employer. L disappeared and started living illegally in the country.

This case illustrates that the situation where foreign domestic workers employed by a diplomat and working in the Netherlands on the basis of a privileged document cannot escape from the human trafficker/employer without committing an offence themselves.<sup>71</sup> After all, when the victim leaves the employer the privileged document that allows them to live and work legally in the Netherlands is no longer valid. In deciding whether to prosecute the victim it is therefore important to seriously consider the circumstances under which the offence was committed.

Another consideration is that fear of prosecution could make the victim reluctant to go to the police. It is therefore important for all victims of human trafficking to have the possibility of safely making a complaint to the police, without facing the risk of prosecution.

#### *V. Offences committed against the will of the human trafficker*

In all of the offences committed by victims discussed above, the exploiter benefited in some way from the offences that were committed. This section discusses offences of a different nature; a victim might commit a crime in order to escape from a situation of exploitation, for example. Victims might steal a car or money to escape from the exploiter or use a false document to move abroad and hide from the exploiter.<sup>72</sup> In such cases, it is important that the circumstances in which the offences are committed are taken into account in deciding whether to prosecute.

Another category of offence that can be committed against the will of the human trafficker are those where victims take the law into their own hands. BNRM has encountered two such cases in the Netherlands, one of which is described below.

#### *Case of making threats and extortion*

A was a victim of human trafficking who was exploited in prostitution by G. A had to surrender her income to G. When A was able to escape from G's influence, she and a friend decided one day to demand that G return the money she had earned. G then reported A for extortion and making threats. A was arrested. When she was interviewed, A declared that she was exploited in prostitution by G and that she only wanted to demand the return of the money she had earned from G. A was known to the police as a victim of human trafficking. She made a complaint against G, who was convicted of human trafficking with respect to a number of victims. It is not known whether A was prosecuted for extortion and making threats.

In this case, the victim was in no way forced to commit the offence. The offence took place after the situation of human trafficking had already ended. Although there was a certain

<sup>71</sup> See also §12.5.2 of this report for a discussion of the risk group 'domestic workers of diplomats'.

<sup>72</sup> For an example of this, see R v O case in the United Kingdom; §6.4.2.

connection between the human trafficking and the offence, the connection was less direct than in the cases described earlier because A had in fact already escaped from the influence of her exploiter when the offence was committed. A could have taken a civil action to claim back any income she had lost, but instead chose to take the law into her own hands. The non-punishment principle is not intended to cover such cases. However, it is conceivable that if A were prosecuted her personal circumstances could play a role in the sentencing.

#### VI. Other

Another case that does not fall under any of the above categories is one in which three victims of human trafficking were involved in the death of an infant.

##### *Mehak case (abuse of an infant causing its death)*<sup>73</sup>

At the beginning of 2006, three adults (A, B and C) brought the 18-month-old infant W to the hospital with severe injuries. Shortly afterwards, W was pronounced dead. Although the adults alleged that W was injured as a result of falling down the stairs, an autopsy showed that the infant's death was caused by abuse. The investigation into the cause of W's death brought to light another offence. A and B had exploited W's parents (C and D) and a cousin (E) in their household and assaulted them. It was a case of human trafficking. C, D and E came from India and were brought to the Netherlands by A and B. The victims depended entirely on A and B, received a very low wage and lived in A and B's house. C, D and E worked long days and their contacts with the outside world were severely restricted. Physical violence was used. The district court found that the victims' physical and mental integrity and personal freedom had been seriously violated and convicted A and B – in their absence – of human trafficking.

The abuses suffered by W were based on the belief of A (the employer/mistress of the house) that W was possessed by an evil spirit. W (or the spirit) was blamed every time anything went wrong in the house. W had to be beaten and tied up to tame the spirit.

The offences committed by each of the suspects are briefly described below.

##### *A – the employer/mistress of the house:*

A assaulted W and ordered W's parents to use violence against the infant. According to the judgment<sup>74</sup> in A's case: "The defendant caused the parents of [W] to neglect and beat their daughter." The grounds for the sentence also state: "To their detriment, the court finds that the situation of exploitation that existed must also be deemed to have created a breeding ground for the final acts of violence against [W]." A was found guilty of: (charge 1, alternative) accessory to premeditated assault, causing death; (charge 2, primary) human trafficking committed by two or more persons acting in concert, multiple offences; (charge 3) accessory to the intentional influencing of the freedom of a person to make a truthful or honest statement to a judge or public official, multiple offences; (second alternative) accessory to premeditated assault, multiple offences. With respect to the human trafficking, the court found: "All these facts and circumstances, taken together, mean that in the opinion of the court there was an excessive situation, in which the physical and mental integrity and personal freedom of [E], [C] and [D] were seriously violated." A was also found guilty of witness tampering.

The court found: "Although the court feels it has not been proved that the defendant intended the death of [W] on [the date of W's death; BNRM], it finds that the defendant's role during the

73 This case is also discussed at length in §12.6.

74 The Hague District Court, 14 December 2007, LJN: BC1195.

preceding period of neglect and escalating violence was substantial”. A was sentenced to three years and nine months in prison, far less than the sentence imposed on the parents.

*B – the employer/master of the house*

B was found guilty of human trafficking and accessory to intentional witness tampering.<sup>75</sup> He received a prison sentence of two years and three months. Although B knew of the assault on W, the court found that it had not been proved that B had personally beaten W. A and B are in India and their sentences have consequently still not been enforced.

*C – W’s mother*

W’s mother was convicted of: (charge 1, primary) murder; and (charge 2, primary) accessory to premeditated grievous assault, committed against her child.<sup>76</sup> She received a prison sentence of eight years. Her defence of psychological inability to resist failed. She was also deemed criminally responsible. C’s special duty of care towards her daughter and the very serious offences justified an unconditional prison sentence, in the court’s view. The fact that C was a victim of human trafficking as well as an offender did not lead to the application of the non-punishment principle, although it was a mitigating circumstance. On this point the court found: “The court also takes into account the circumstances under which the defendant lived in the Netherlands. [...] She found herself [...] in the Netherlands in a situation which the court in a judgment given today has decided involved exploitation. [...] On that ground the court assumes that the escalation of the violence committed against [W] by the defendant was encouraged by the said specific context within which the defendant lived in the Netherlands with her daughter.

*D – W’s father*

W’s father was convicted of (charge 1, subsidiary) accessory to premeditated grievous assault, causing death, committed against his child; (charge 2, subsidiary) accessory to premeditated assault committed against his child, multiple offences.<sup>77</sup> He received a prison sentence of six years. D’s defence of psychological inability to resist failed although the court found on this point: “[A] and [B] were convicted of exploitation of the defendant by the court in a judgment rendered by the court today. The defendant was therefore certainly in a weak, dependent position. In the court’s opinion, however, the defendant could have resisted the pressure to allow the assaults to continue.”

In the grounds for its sentence the court argued, on the one hand, that the special duty of care resting on the parents, the serious shock caused to society, the fact that D allowed his own interests to prevail over the interests of his daughter and the very serious nature of the offences justified a lengthy and unconditional prison sentence. As in the case of W’s mother, the fact that he was a victim was a mitigating circumstance.

*E – the cousin*

The cousin E was convicted of: (charge 1, second alternative) accessory to serious premeditated assault, causing death; (charge 2) in the cases in which a legal rule demands a statement under oath, verbally, personally and intentionally making a false statement under oath; and (third alternative) accessory to premeditated assault, multiple offences.<sup>78</sup> Specifically, E passed on instructions to beat W to the other defendants and gave C the stick with which W was assaulted. She herself did not assault W. E was also convicted of perjury. In the grounds for the

75 The Hague District Court, 14 December 2007, LJN: BC1761.

76 The Hague District Court, 14 December 2007, LJN: BC0775.

77 The Hague District Court, 14 December 2007. This judgment was not published.

78 The Hague District Court, 14 December 2007. This judgment was not published.

sentence for perjury the court said: “Since the defendant [...] was demonstrably under enormous pressure from the fellow defendants to give the replies they required to questions from the Dutch authorities, the court has attached considerable weight to this fact in imposing the sentence.” A and B were sentenced for witness tampering. In the judgment in A’s case the court found: “[...] the court finds that it can also be declared proven that the defendant, together with her husband, intentionally spoke to [E] with the aim [“manifest”] of influencing her freedom to make a truthful statement.” The judgment in B’s case states: “He thereby wanted to ensure that said persons would make statements in favour of the defendant and his wife in the present case.” Although it was proved that E made false statements under pressure from A and B, this did not lead to the application of the non-punishment principle, although the perjury did not play a major role in determining the sentence.

Her plea of self-defence and psychological inability to resist failed, although the court did find she was slightly less criminally responsible. As regards the reduced criminal responsibility the court found: “The circumstances under which the suspect lived here in the Netherlands play a major role in this. It is clear that she lived here for a long time in a very dependent and subordinate position, with scarcely any privacy, while violence was also used against her. The court will take this into account in imposing sentence.”

The fact that E was a victim and was young<sup>79</sup> constituted mitigating circumstances with respect to all of the offences. She received a prison sentence of three years.

The judgments in first instance were appealed, but the appeals had not yet been completed at the time of writing<sup>80</sup>.

In this case, there is a link between the offences committed by the three victims and the situation of human trafficking. This can be derived, for example, from the judgment in B’s case, where the court found as follows: “The court does feel it is relevant that the situation of exploitation underlying the proven human trafficking must also be deemed to have created a breeding ground for the ultimate violence towards [W].” The victims were in a situation of exploitation and to a large extent dependent on A and B. The initiative for the abuse of W came from A. The question is to what extent the three victims committed, or permitted, the assaults under pressure from A, and to a lesser extent from B? To what extent was it their own choice? E, in particular, who committed no assaults personally but was found by the court to have provided the stick with which W was beaten and to have passed on to C the instructions she had received by telephone from A, does not seem to have played a major role in the mistreatment. Nevertheless, she was heavily criticised for her actions and received a prison sentence of three years. Interestingly, the prison sentence that E received was only a few months shorter than the prison sentence imposed on A, the defendant who gave instructions for the assaults and was found guilty of human trafficking.

In view of the nature and seriousness of the offences, there were good reasons for prosecuting the three victims. It is remarkable, however, that there is no reference to the non-punishment principle to be found in any of the judgments, although the fact that C, D and E were victims did constitute mitigating circumstances.

<sup>79</sup> The court found that it was plausible that E is far younger than her passport says.

<sup>80</sup> 1 August 2009.



### 6.3.1 Consequences under immigration law for victims who are suspects

When undocumented victims are suspected or convicted of a crime, it can have practical consequences for the rights of residency, temporary or otherwise, to which they are entitled by reason of being victims of human trafficking. The following case illustrates this.

*Case of undesirable alien*<sup>81</sup>

E, from India, who also figured in the previous case, was a victim of human trafficking. The court, however, sentenced E to a prison term of three years as an accessory to grievous assault causing death, and for perjury.

As a result of these events, E suffered psychological problems (PTSS). In prison she received psychological help. E's lawyer invoked the B9 regulation for his client, since she was a victim of human trafficking and was the only defendant to cooperate with the police and the public prosecution service. The IND made no decision on this request. After E had completed her prison sentence, she was immediately transferred to aliens' detention. E was declared an undesirable alien because of her conviction for the above offences.<sup>82</sup> Because of her conviction, E was said to constitute a threat to public order and should be deported. Her lawyer appealed. More than a month later, the district court decided that E's detention was unlawful<sup>83</sup> and E was released. However, she had never lived independently. E was still very young when she came to the Netherlands, where she was locked up and exploited for years. E went from this situation to prison and from prison to aliens' detention. She was now suddenly on the street without being able to speak the language and without any financial means. E was finally able to find temporary lodgings with two women she knew from prison. Because she had been declared an undesirable alien, E did not receive the help and shelter to which she was entitled under the B9 regulation as a victim of human trafficking.

Meanwhile, E could not return to India because of serious threats made by her human traffickers who are living in India.<sup>84</sup> She had no right to shelter or help in the Netherlands. An appeal had been filed in the human trafficking case against A and B and the public prosecution service wanted E to remain available for this appeal.

Her lawyer requested that the order declaring her an undesirable alien be lifted. Three months later, the preliminary relief judge suspended the declaration against E. The judge found, *inter alia*: "In the court's opinion, however, in the decision declaring [E] an undesirable alien of 17 March 2008 the respondent wrongly failed totally to address the fact that the petitioner is a victim of human trafficking [...]. The respondent should, partly in view of its policy of protecting victims of human trafficking (B9, Aliens Act Implementation Guidelines 2000), expressly consider in weighing up the decision that the petitioner's former employers were sentenced in judgments of the criminal division of this court on 14 December 2007 for, *inter alia*, human trafficking, partly on the grounds of incriminating statements made by the petitioner. They are living in India. They have appealed against these sentences. The petitioner fears reprisals on the grounds of everything that has occurred in the past between her and her former employers

81 This case was also discussed in the previous section (§6.3).

82 A declaration that a person is an undesirable alien on the basis art. 67 section 1 opening lines, under c of the Aliens Act: "I. Our Minister may declare an alien to be undesirable [...] c. if he constitutes a danger to public order or national security and does not have legal residence as referred to in article 8, under a to e inclusive or l;"

83 The Hague District Court, 29 April 2008, AWB 08/13151.

84 A and B left the Netherlands when their provisional custody was lifted. They were sentenced *in absentia*.

and on the grounds of their social position in India. At the hearing, the petitioner's attorney submitted a letter from the sub-district court in The Hague of 28 May 2008 showing that the public prosecution service also wants the petitioner to be available on appeal for the investigation to find the truth. The respondent must explicitly consider the interests of the petitioner as a victim of human trafficking and the interests of the Dutch state in combating human trafficking in his decision to declare her an undesirable alien."<sup>85</sup>

Despite the suspension of the declaration that she was an undesirable alien and the fact that she met all the requirements for the B9 residence permit, E was not granted B9 status. As a result, E had no shelter or psychological care.

There are three aspects to this case that need to be distinguished: the right to temporary residence on the basis of the B9 regulation, the declaration as an undesirable alien and continued residence. E met the requirements for a B9 residence permit. She was a victim of human trafficking and cooperated with the criminal investigation into her traffickers. The authorities also wanted her to remain available as a witness for the appeal in the case. However, because E was declared an undesirable alien because of the offences she committed in her situation of exploitation, she was not granted B9 status. The question is whether this is desirable and correct. In a recent advisory report on its interpretation of the B9 regulation, the Advisory Committee on Migration Affairs (ACVZ) explained: "Criminal antecedents should not be used against an applicant in so far as they are directly connected with the offence for which she is charged."<sup>86</sup> In the present case, there is a clear link between the offences committed by E and the situation in which she was exploited. Clearly, every victim that cooperates with the criminal investigation against the human trafficker should be able to claim his or her rights under the B9 regulation. E was the only one of the three victims to cooperate with the criminal investigation. Her cooperation with that investigation made a significant contribution to the conviction of the two human traffickers. The victims' interests in receiving help and shelter and the interests of effectively combating human trafficking should weigh more heavily than the immigration-law interests of not awarding B9 status.

E was declared an undesirable alien. As the preliminary relief judge said, the fact that E was a victim should have been explicitly considered in the decision to declare her an undesirable alien, as well as the fact that E feared for her life if she was sent back to India. These factors should also have been taken into account in a decision on continued residence.

*Case of theft I*

A young Mongolian woman (D) was arrested in the Netherlands for shoplifting. During questioning, D declared that she was forced to commit the theft. However, she provided so little accurate information about the person she claimed had coerced her that the police were unable to do anything with the information and D had to pay a fine for the theft. Because D was living illegally in the Netherlands, preparations were made for her repatriation. During the interview

<sup>85</sup> The Hague District Court, 24 July 2008, AWB 08/11247.

<sup>86</sup> ACVZ (2009, p. 19). What 'direct connection' precisely means is not defined in the report. For BNRM's reaction to the ACVZ advisory report, see the text box in §5.2.1 of this report.

with D, the Return and Departure Service (DT&V) found indications of human trafficking. When DT&V persisted with the questioning, it emerged that a gang had forced D to work as a prostitute and commit thefts in the Netherlands. D ultimately reported the human trafficking. She was admitted to the B9 scheme. Because of her conviction for shoplifting, however, there is a good chance that D will not be granted continued residence, according to her social worker. The case against the human traffickers was still proceeding at the time of writing.

Besides the sexual exploitation suffered by D, the thefts that D had to commit can be described as exploitation in crime. D's conviction did not prevent her being granted temporary residence under the B9 regulation; however, it is still unclear whether D will be granted continued residence if her trafficker is convicted. Because of her criminal antecedents, arising from the thefts committed under compulsion, there is a chance that D will be declared an undesirable alien and will consequently not be granted continued residence. It is difficult to understand how a person can be a victim of exploitation in crime and at the same time be regarded as an offender because of that same offence and consequently be denied the possibility of continued residence. The fact that the victim was exploited in crime should be an important consideration in deciding on a request for continued residence. It is not enough simply to refer to a criminal conviction.

*Case of theft II*

P was a Serbian woman who fell into the hands of a human trafficker in the Netherlands, who forced her to commit thefts and pick pockets. After some time, he also forced her to work as a prostitute.

N was usually a look-out during the thefts and P always has to surrender the proceeds to him. P was arrested and convicted of theft several times, but she did not tell the police that she was a victim of human trafficking, so that fact was not taken into account in the prosecution. P was declared an undesirable alien because of her convictions. When P appeared in court again, some time later, in connection with thefts, she told the judge that she was a victim of human trafficking. Because P only mentioned that she was a victim of human trafficking for the first time at that hearing, and had not made a complaint at that time, the possibility that she was a victim was ignored. P ended up in prison again. While in detention she made a complaint of human trafficking. Although P met the conditions for B9 status, the fact that she had been declared an undesirable alien made it difficult to grant her B9 status. The relevant public prosecutor for human trafficking cases pushed hard for it, however, and the declaration that P was an undesirable alien was suspended and she was granted temporary residence on the basis of the B9 regulation. P entered a shelter.

It proved difficult for P to break loose from her trafficker, for whom she had worked for years. P repeatedly contacted N from the shelter. N blackmailed her. The pattern of committing thefts also proved difficult to break. At a certain point, P was caught in the act of shoplifting. Because N was not there, P had committed the theft without coercion by N. P was convicted and imprisoned.

Meanwhile, the public prosecution service had started an investigation into N's involvement in human trafficking and thefts. At the time of writing, it was not yet clear what offences N would be charged with.

There are some parallels between this case and Theft case I. The thefts that P committed under pressure from her human trafficker can also be described as human trafficking in the sense of exploitation in crime. As in the previous case, in being granted B9 residence status, P's position as a victim prevailed over her criminal antecedents.

When P applies for continued residence, however, her suspended designation as an undesirable alien could prove an obstacle. P not only committed offences under coercion, but also later committed thefts independently. The question is to what extent she can be entirely blamed for that. Victims of human trafficking regularly lapse back into a former pattern when they are in an aid programme, and the same can apply for criminal behaviour.

Aliens who commit offences that are related to the human trafficking situation face the risk of becoming victims twice over. As well as a conviction, they also face the risk of being declared an undesirable alien and consequently being placed in aliens' detention with a view to deportation.<sup>87</sup> Every victim who cooperates with the criminal investigation should be able to claim the B9 regulation. Even if the victim's criminal antecedents have no direct relationship with the human trafficking, they should not prevent them from claiming their rights under the B9 regulation. A person's status as victim and the relationship between the offence and the human trafficking situation should be explicitly taken into account in the decision to declare a victim an undesirable alien and subsequently deporting them.

## 6.4 Comparison with system in other countries

This section looks at the legislation and practice relating to the non-punishment principle in several European countries. The law and its application in practice in other European countries could provide leads for Dutch legislation and policy. The countries discussed are Belgium, the United Kingdom, Germany, Austria and Italy. For the purposes of this analysis, we studied the legislation in these countries and interviewed the public prosecution service and NGOs about the application of the non-punishment principle in practice. This is also a qualitative study. The countries were selected to include a combination of European countries in which prosecution is based on the principle of legality and the principle of expediency, countries that are party to the Council of Europe's Convention and some that are not and countries that have specific rules for victims who commit offences and countries that do not.

### 6.4.1 Belgium

#### *Legal framework*

As in the Netherlands, Belgium applies the principle of expediency with regard to the prosecution of offences. Belgium ratified the Council of Europe's Convention on Action to Combat Trafficking in Human Beings in April 2009.<sup>88</sup> In addition to the scope afforded by the

<sup>87</sup> See also Boermans (2009).

<sup>88</sup> Date of ratification: 27 April 2009. Date of entry into force: 1 August 2009.

principle of expediency, it is possible under Belgian law not to prosecute or punish victims of human trafficking who have committed crimes in the human trafficking situation. There are two provisions of Belgian law that apply specifically to victims of human trafficking who have committed offences.

First, paragraph 6 of the Minister of Justice’s directive entitled ‘Policy on the investigation and prosecution of human trafficking’ states: “Although it is possible that persons who are exploited in the context of human trafficking are not in compliance with the social legislation or the legislation concerning access to, residence in and establishment on the territory of our country, account must always be taken of the fact that they are first and foremost victims of forms of crime that must be tackled with priority.”<sup>89</sup> Although the terms of this provision do not expressly state that victims may not be punished, that conclusion can be drawn from the fact that the importance of tackling human trafficking takes precedence over the prosecution of the victim. The directive is limited to violations of social and immigration law. The directive contains no further conditions for the applicability of paragraph 6. The provision can be seen as a non-punishment provision. The directive is addressed to judges and is not binding. However, any derogation from the guideline ‘must be supported by reasons’,<sup>90</sup> which means that in principle the directive will be applied in practice.

Exploitation in crime is one of the forms of human trafficking explicitly criminalised in Article 433quinquies (1) (5) of the Belgian Criminal Code, which entered into force on 12 September 2005.<sup>91</sup> According to the explanatory memorandum, this is a modern form of human trafficking, established by case law with respect to drug dealing and theft.<sup>92</sup> According to the text of Article 433quinquies (5) (“in order [...] to cause this person to commit an offence or a crime against his will.”) exploitation in crime is not limited to these two offences. It seems reasonable to assume that victims of exploitation in crime will not be prosecuted in Belgium, since when an offence against that clause has been established it is also clear that the perpetrator of the offence is a victim and not an offender. The annual report of Belgium’s Centre for Equal Opportunities and Opposition to Racism (CGKR) says of point 5: “This should make it possible for potential victims to be recognised as victims and not as perpetrators of a crime.”<sup>93</sup>

#### *Prosecution and non-punishment in practice*

As described in the previous paragraph, Belgian legislation creates possibilities for not prosecuting victims of human trafficking for criminal offences they have committed in a situation of human trafficking. In practice, however, there seem to be differences when it comes

89 ‘Policy on investigation and prosecution of human trafficking’, Ministry of Justice directive, Letter no. COL 10/2004, entered into force on 1 May 2004.

90 ‘Policy on investigation and prosecution of human trafficking’, p. 1.

91 The text reads: “in order [...] to cause this person to commit an offence or a crime against his will.”

92 Doc 51/1560/001, 14 January 2005, The case law referred to is a case in which a Moroccan man was brought illegally to Belgium and then constantly forced to sell narcotics. It is also a reference to a case in which young girls were enticed to Belgium by promising them work as housekeepers but were then forced to steal. See also CGKR Annual Report 2003.

93 CGKR Annual Report 2007, p. 61.

to deciding whether or not to prosecute victims. The interviews with the relevant agencies in Belgium and a study of a number of case files identified the three most common types of cases. They will be discussed briefly below.

*Former victim becomes a human trafficker/madam*

In the first place, there were a number of cases where Nigerian women were found guilty of human trafficking although they themselves had formerly been victims of human trafficking.<sup>94</sup> These cases involved sexual exploitation. A situation that regularly occurs is that the victim, after years of being exploited in the Belgian sex industry, is able to free herself from the exploiters either by ‘buying her freedom’ or by entering a social programme and making a complaint against the human trafficker. After following a social programme and cooperating with the investigation of the human trafficker, the victim ultimately receives a residence permit. After some time the woman then herself recruits victims from Nigeria and exploits them in the sex industry.<sup>95</sup>

The outcomes of the cases studied in which former victims of human trafficking were themselves prosecuted for the offence differ. All four cases that were studied<sup>96</sup> involved Nigerian woman who were convicted of human trafficking. In contrast to the cases studied in the Netherlands,<sup>97</sup> the women operated not as executors but as madams. What is striking is the role played in the sentencing by the woman’s previous status as victim. In two cases (involving three defendants), the fact that they were former victims played *no* role in the sentencing. In one case, the former status as a victim was a mitigating factor: “The court also takes into account that the first defendant was initially herself a victim of exploitation, so that part of her sentence can be suspended.”<sup>98</sup> In another case, their past as victims of human trafficking actually led to a heavier sentence for two defendants: “Nonetheless, the fact is that she was herself a victim of such malpractices, so she should have been more aware than anyone of the offence she was committing against her victims.”<sup>99</sup>

Although only a few judgments were studied, it also became clear from the interviews that former victims who are guilty of human trafficking are usually prosecuted. The greatest differences in practice seem to be in sentencing, although since each of the cases studied is unique no straightforward comparison can be made between them. The interviewees also disagreed on this point. While some said that a former victim should actually be punished more severe-

94 For more information on this subject, see also §9.4.6, §9.5 and §6.3 of this report.

95 Since these are offenders who were no longer victims at the time of the offence, strictly speaking this category falls outside the scope of the non-punishment principle. However, because the dividing line between victims and offenders is not always clear with this category of former victims, and the two ‘roles’ are sometimes closely intertwined, they are nevertheless interesting.

96 Antwerp Correctional Court, 30 July 2004, chamber vac.A; Kortrijk Correctional Court, 7 June 2005, 8<sup>th</sup> chamber, Antwerp District Court, 19 September 2005, chamber 4C; Antwerp Correctional Court, 24 March 2006, chamber 4C.

97 See §6.3.

98 Antwerp Correctional Court, 24 March 2006, chamber 4C.

99 Kortrijk Correctional Court, 7 June 2005, 8<sup>th</sup> chamber.

ly, others could imagine that a lighter sentence would be more appropriate if the defendant had herself been a victim of human trafficking in the past.

*Victim is found with false passport or false work permit*

A second frequently mentioned category of case involved victims of human trafficking who were found in possession of a false passport or false work permit. As already shown in the earlier section on the legal framework, the directive on the investigation and prosecution of human trafficking should apply to this category of victim. Three cases were studied.

*False documents case I*

In a case in 2000, two Nigerian victims of sexual exploitation were discovered with false documents found during a control of prostitution and the police discovered that they had given false names. The victims were prosecuted. However, the sentences of both victims were suspended: “Taking account of: [...] the defendant’s vulnerable position as a victim of human trafficking [...] there are reasons to give the defendant the benefit of the suspension.”<sup>100</sup> Although the court regarded both women as victims of human trafficking, it is striking that their exploiter was not prosecuted for human trafficking; there was not even a criminal investigation of a suspect. The victims were known to the social services as victims of human trafficking.

*False documents case II*

In another case, also involving two victims who used false documents, one of the victims cooperated with the investigation of the human trafficker. For this reason, that victim was not prosecuted. The other victim refused to make a statement and would not ‘admit’ that she was a victim of human trafficking, and was consequently prosecuted in this case and sentenced for possession of a false passport.

*False documents case III*

A third case from 2007 involved a woman who, during a control of prostitution, was found with a false passport and also gave a false name. This woman had in the past been a victim of human trafficking in another city and was registered as a victim. Because the court could not establish with certainty that the offences for which she was arrested had not been committed under coercion, the woman was acquitted.

The picture to emerge from the cases outlined above and the interviews, together with an analysis of the directive on prosecution, is that victims of human trafficking who are recognised as such are, in principle, not punished for breaches of social and immigration laws. However, it is not entirely clear *when* a person is regarded as a victim. In the second case, for example, the prosecution of the victim simply proceeded because the victim did not identify herself as such and would not cooperate with the investigation. The identification of the victim is very important for the purposes of the directive on investigation and prosecution.

<sup>100</sup> Kortrijk Correctional Court, 13 March 2001.



*Victim of other forms of exploitation is accused by exploiter*

Third, the interviewees mentioned that it frequently occurs that victims of economic exploitation, when they leave their exploiter, are (falsely) accused of theft to assault by the exploiter, sometimes as revenge or as a deterrent to other victims. Because a prosecution of the human trafficker in the cases of economic exploitation are brought before the Labour Tribunal, while theft and assault cases are heard by the courts, the two cases are not joined, so victims face the risk that the fact that they are victims will not be taken into account in their prosecution. In that case, there will be no question of applying the non-punishment principle. In practice, social services do inform the magistrates of the connection with the human trafficking case, when they are aware of it. An additional problem for victims is that a conviction is a ground for not granting or extending a residence permit, since because of the conviction the victim represents a 'a danger to public order'. Apart from prosecution and punishment, the victim therefore also faces the risk of being forcibly repatriated. As already mentioned in § 6.3.1, this is also a problem in the Netherlands.

#### 6.4.2 United Kingdom

*Legal framework*

On 17 December 2008, the United Kingdom ratified the Council of Europe's Convention, which then entered into force on 1 April 2009. The United Kingdom adheres to the principle of expediency. In deciding whether to bring charges, the Crown Prosecution Service (CPS) follows the rules in *The Code for Crown Prosecutors*,<sup>101</sup> which provide, briefly, that a suspect will be prosecuted if two requirements are met: (1) there is sufficient convincing evidence, and (2) prosecution is necessary in the public interest.

There are two specific protocols for the prosecution of victims of human trafficking who commit an offence. The first is entitled *Prosecution of defendants charged with immigration offences who might be trafficked victims*.<sup>102</sup> This protocol provides that when the CPS has reason to believe that persons who are suspected of offences against immigration rules are also victims of human trafficking and committed the offences 'whilst they are being coerced by another' it should consider not prosecuting them, given the absence of a public interest.

The second protocol is entitled *Prosecution of young defendants charged with offences who might be trafficked victims*.<sup>103</sup> This protocol is aimed at young victims of human trafficking who have committed an offence 'in a coerced situation'. If there is convincing evidence that the young offender can credibly invoke *duress*, the case should be dismissed on evidentiary

101 *The Code for Crown Prosecutors* is a document that contains the general principles on which the CPS bases its decisions to prosecute. It is available online at <http://www.cps.gov.uk/publications/docs/code2004english.pdf>.

102 Site: [http://www.cps.gov.uk/legal/h\\_to\\_k/immigration\\_offences\\_and\\_protocol/#Prosecution\\_of\\_Defendants](http://www.cps.gov.uk/legal/h_to_k/immigration_offences_and_protocol/#Prosecution_of_Defendants), consulted on 14 September 2009.

103 Site: [http://www.cps.gov.uk/legal/h\\_to\\_k/immigration\\_offences\\_and\\_protocol/#Prosecution\\_of\\_Young](http://www.cps.gov.uk/legal/h_to_k/immigration_offences_and_protocol/#Prosecution_of_Young), consulted on 14 September 2009.

grounds. If the evidence of coercion is less convincing, further information should be sought to decide whether the public interest would be best served by dismissing the case.

Both protocols can be regarded as non-punishment principles, since they create the possibility of not prosecuting victims of human trafficking who are suspected of committing an offence. On the one hand, the protocols go further than the non-punishment principle in Article 26 of the Council of Europe's Convention, since they refer to prosecution rather than punishment. On the other hand, the protocols are more limited in the sense that the first protocol only refers to offences against immigration law and the second is confined to young people.

#### *R v O*

Both of these protocols came under the spotlight as a result of the notorious case of *R v O*.<sup>104</sup> This case centred on O, an underage Nigerian girl who was exploited in the sex industry in the United Kingdom. O was arrested by the British immigration service when she tried to escape from her human trafficker and flee to Spain. Although there were doubts about O's age, no investigation was carried out to discover whether the girl was a minor (the police, the CPS and her own lawyer all disregarded the suspicion that O was a minor). Although the British NGO Poppy Project and O herself said that she was a victim of human trafficking, this claim was not investigated or taken into account in deciding whether or not to prosecute O. O was sentenced to eight months in prison. After her conviction, O hired a new legal team and appealed. The appeal court then ruled that both the CPS and lawyers must conduct 'proper enquiries' when a possible victim of human trafficking is being prosecuted. Poppy Project's report on O's status as a victim should have been taken into account, as should the two protocols for victims of human trafficking. Finally, the court in first instance and the CPS and O's legal team were heavily criticised for not investigating whether O was a minor, a failure that constituted a violation of her right to a fair trial by the court of first instance, the appeal court found.

*R v O* sets a very important precedent for victims of human trafficking who commit a criminal offence. The judgment has drawn more attention to the two protocols in the UK, in the first place, by raising awareness of the two protocols in the CPS, so that this type of case is more likely to be dismissed. Another positive result of the case is that it will make lawyers more aware of the possibilities for victims of human trafficking who are prosecuted for an offence.

#### *Prosecution and the non-punishment principle in practice*

Although British legislation creates possibilities for not prosecuting victims of human trafficking who have committed offences in certain circumstances, in practice these options are not always availed of. A major problem in applying the two protocols is the identification of victims of human trafficking.<sup>105</sup> The two protocols are based on the principle that the suspect

<sup>104</sup> *R v O* [2008] EWCA Crim 2835.

<sup>105</sup> This merged from interviews in December 2008 with the Crown Prosecution Service, Anti-Slavery International, Poppy Project, Ecpat UK and the UKTHC.

is also a victim. However, a suspect who is not known to be a victim will be prosecuted like anyone else, without the application of the protocols. In practice, victims do not always reveal that they are victims, often out of fear of the trafficker, for example. Lawyers sometimes advise their clients to invoke their right to silence, while other lawyers advise their clients to confess in exchange for a lighter sentence. If the suspect fails to explain why the offence was committed, it is difficult to discover that he or she is a victim. Other actors in the process, such as the police, the CPS and the immigration service, are also not always sufficiently aware of possible indications of human trafficking and consequently fail to identify victims. Training of the police in how to identify signs of human trafficking<sup>106</sup> and involvement of NGOs in efforts to recognise victims<sup>107</sup> would improve the identification of victims.

Even when a person is identified as a victim, in practice the relevant actors do not all seem to be aware of the existence of the two protocols, so they are not always applied, as in the *R v O* case. However, the *R v O* case has increased awareness of the existence of the two protocols and their use. Although, according to interviewees, the protocols are now more widely used, there have still been cases where victims were nevertheless prosecuted and punished.

*Case of Vietnamese boy (15) in cannabis plantation*<sup>108</sup>

B, a Vietnamese boy, was only 9 or 10 years old when he left Vietnam to seek his fortune. After a number of detours he arrived in France, where he was recruited to work in a cannabis nursery in the United Kingdom. In the years following, B worked at various cannabis plantations. During a police raid on one of the nurseries, B was arrested. Although he was a minor and a victim of human trafficking, the CPS decided to prosecute B for working in the cannabis nursery. On the day of B's trial, he was asked by his lawyer whether the CPS had consulted the UKTHC about whether B was a victim. It had not. An investigation by the UKTHC showed that B was a victim of human trafficking, whereupon the CPS decided to drop the case against him because the public interest was not served by his prosecution.

In the United Kingdom, it happens more often that minors – mainly Vietnamese – are recruited to work in cannabis plantations where they are exploited.<sup>109</sup> It was this phenomenon, and that of underage Romas who were exploited by being coerced into committing thefts (picking pockets), that prompted the drafting of the second protocol. That protocol, and the attention drawn to it by the *R v O* case, have highlighted the possibility that these minors are victims of human trafficking. Interviewees say that the protocol is now followed more often.<sup>110</sup>

106 The UKHTC's *Prevention Group* provides training for the police. Since April 2009 every new police officer follows a course on human trafficking.

107 For example, an *Outreach project* by the NGO *Poppy Project* to actively look for victims in detention centres.

108 Ecpat UK. The events in the case took place in 2008-2009.

109 This phenomenon is also not unknown in the Netherlands.

110 To identify possible victims, UKHTC reviews all cases of Vietnamese who are charged with involvement in cannabis-related cases to check whether they could be victims. If it suspects that they are, it informs the public prosecutor concerned of the protocols, or if the case has already been heard it hires a lawyer for a possible appeal.

Besides the fact that the protocols are not always used in the case of victims, another problem is that the first protocol only refers to offences against immigration laws, while the second protocol is specifically aimed at minors. In other words, the protocols focus on specific categories of offences or victims. The principle of expedience, however, allows the CPS to decide whether to prosecute on a case-by-case basis. The protocols could therefore be applied by analogy to other categories of victims or offences. However, the threshold for deciding to dismiss a prosecution is likely to be higher in a case where, for example, an adult victim commits a drug-related offence than if the offender is a minor.

There is no binding obligation not to prosecute under the protocols. In practice, in every case the various interests are weighed in deciding whether to prosecute or not. According to some interviewees, if the CPS were obliged not to prosecute a victim of human trafficking it could foster possible abuses. Human traffickers could then take advantage of the protocols, by using minors as an instrument to commit offences, for example. The normative rather than mandatory nature of the protocols at least does not facilitate that.

*Theft to escape a situation of exploitation*

According to a British NGO, some victims become so desperate about a seemingly hopeless situation of exploitation that they go out shoplifting in the hope of being arrested and so being able to escape from the human trafficker. In such a case, it could be traumatic for the victim if he or she is then prosecuted. But since the shoplifting is not coerced it is difficult to apply the protocols. However, since it is not necessarily in the public interest to prosecute such victims, the CPS may decide not to prosecute them.

### 6.4.3 Germany

#### *Legal framework*

Germany had signed but not ratified the Council of Europe's Convention at the time of writing.<sup>111</sup> In Germany the legality principle applies, which means that in principle every offence will be prosecuted; however, there are exceptions to the ensuing requirement to prosecute. For example, the public prosecution service may dismiss a case on the grounds of Section 154 *Strafprozeßordnung* (StPO): *Einstellung wegen Gringfügigkeit* when no minimum sentence is prescribed for the offence, the degree of guilt is minor and there is no public interest in prosecution. Under certain – more stringent – conditions, prosecutions for offences for which there is a minimum sentence may also be dismissed.<sup>112</sup> Although prosecution in Germany is based on the legality principle, a significant number of cases are not prosecuted for reasons of expediency.<sup>113</sup>

Germany has no specific non-punishment provision for victims of human trafficking. Within the definition of labour exploitation, criminal exploitation is neither explicitly mentioned

111 The time of writing was 23 July 2009. Germany signed the convention on 17 November 2005.

112 For more information on the exceptions to the legality principle in Germany, see Van Daele (2000).

113 In 2006, 31% of prosecutions were abandoned: Statistisches Bundsamt, 2008, p. 13.

nor explicitly excluded.<sup>114</sup> It is therefore unclear whether criminal exploitation as a form of human trafficking falls within the scope of the German Criminal Code. In cases involving less serious offences, the public prosecutor can apply the general grounds of expediency to victims. The StPO also allows a prosecution to be dismissed when a person is coerced into committing an offence. By virtue of Article 154c StPO, the public prosecutor can drop the charges in such a case unless the seriousness of the offence does not allow it. This provision can also apply to victims of human trafficking.

When a person exhorts someone else to commit an offence, this can fall under the definition of incitement, so that the inducer will be punished as though he were the perpetrator.<sup>115</sup> The person who was incited may be spared prosecution if he or she had no way of escaping from the situation.<sup>116</sup> This is not often assumed, however. Cases of incitement are, in practice, applied mainly to children under the age of 14 because they cannot be prosecuted.<sup>117</sup>

#### *Prosecution of the non-punishment principle in practice*

In Germany there are three main categories of offence committed by victims of human trafficking. First, victims commit offences against immigration law. These are usually committed by non-EU nationals who work on a tourist visa. The penalty for this offence is a fine. Since it is a minor offence, these cases are often dismissed on the grounds of Section 153 StPO. A second category of offence involves violations of tax law. Victims of sexual exploitation earn a lot of money, although they often have to surrender their income to their exploiters. Under the tax laws, prostitutes are required to pay tax; the failure to pay tax is a criminal offence. There have been cases in which a victim, having testified against her human trafficker, then received a huge tax demand on the basis of her statement. Although it is possible for the tax authorities to drop a claim, it often does not. Ignorance of human trafficking is an important reason for this. The authorities have recently become more aware of this problem and a discussion has started on the possibilities of formulating guidelines for tax claims against this category of victims.<sup>118</sup>

In addition to offences against immigration and tax laws, victims sometimes also commit more serious crimes. For example, there have been cases in Germany where a victim of sexual exploitation recruited a new victim in order to buy her freedom.

#### *Case of recruiting a new victim for prostitution*

A, a Russian woman, was forced to work as a prostitute in Germany. To escape from the situation of exploitation, A made the following deal with her exploiter: if A provided a new victim to her exploiter, she could stop working as a prostitute and would be allowed to marry a German

<sup>114</sup> §224 Strafgesetzbuch (StGB).

<sup>115</sup> §26 StGB reads in English: “Whoever intentionally induces another to intentionally commit an unlawful act, shall, as an inciter, be punished the same as a perpetrator.”

<sup>116</sup> See the similarity with causing the commission of an offence in the Netherlands, §6.2.2.

<sup>117</sup> According to a public prosecutor who was interviewed in Dortmund, January 2009.

<sup>118</sup> A public prosecutor interviewed in Dortmund, January 2009.

man in order to secure a residence permit. A agreed and went to the Ukraine where she induced victim D to work as a prostitute in Germany under false pretences. D, who had been told by A that she would be a dancer, was subsequently exploited.

In this case, A was not prosecuted because both she and victim D disappeared. According to the public prosecutor concerned, if A's whereabouts had been known she would have been prosecuted. The following factors would have played a role in the decision to prosecute her: (1) recruiting D was not A's only option for escaping from her situation – she could have run away; (2) D suffered badly; (3) A played an active role in the human trafficking; and (4) it was a serious offence. Accordingly, A's status as a victim was not a factor in the decision to prosecute. The fact that A was a victim would have played an important role in the sentencing, since the public prosecutor would, in this case, probably have asked for a light sentence, part of it suspended.

#### 6.4.4 Austria

##### *Legal framework*

Austria was one of the first member states to ratify the Council of Europe's Convention.<sup>119</sup> The non-punishment provision in article 26 of this convention therefore applies in Austria. However, prosecution in Austria is based on the legality principle, so prosecution is mandatory. The fact that a suspect is also a victim of human trafficking does not constitute a ground for not prosecuting or not imposing a sentence. There are several exceptions to the legality principle. Austria complies with the terms of Article 26 because the general legal principles of *Rechtsfertiger Notstand* and *Entschuldiger Notstand*<sup>120</sup> can also apply to victims of human trafficking. These principles allow the public prosecution service to decide not to prosecute if an offence was committed under a direct threat and if the offence was not disproportionate to that threat. The fact that a person is a victim is not in itself ground for declining to prosecute or impose a punishment in Austria.

##### *Prosecution and the non-punishment principle in practice*

By virtue of the legality principle, victims in Austria will, in principle, be prosecuted. Although the simple fact of being a victim cannot lead to exemption from punishment, it can constitute a mitigating circumstance.

##### *Case of assistance in human trafficking*

C and M were two women from Romania. C worked as a prostitute in Romania; M did not. C and M were brought to Austria by four human traffickers. C knew that she would be working as a prostitute in Austria. M was not aware of this. C was instructed by the human traffickers

<sup>119</sup> Austria ratified the Council of Europe's Convention on 12 October 2006. The Convention entered into force there on 1 February 2008.

<sup>120</sup> This is codified in §10 StGB.

to tell M that she would be a dancer in Austria. C followed these instructions and lied to M, who agreed to travel to Austria. When they arrived in Austria, both women were exploited in prostitution. They had to surrender most of their income to the four human traffickers and two operators who had 'ordered' the women from the human traffickers. They were also encouraged to use drugs. After several weeks, M was able to escape. She fled to the police and made a complaint of human trafficking. The police started an investigation, but the four Romanian human traffickers were able to escape abroad and were consequently difficult to trace. The two operators were placed in custody because of their involvement in human trafficking, but were released by the judge for lack of evidence.

C was also arrested on the basis of M's statements. C was prosecuted for human trafficking.<sup>121</sup> She was given a prison sentence of 14 months (a large part of it conditional), slightly more than the minimum sentence of 12 months for the offence. In an interview, the public prosecutor said that the sentence was low by Austrian standards, partly due to the fact that C was herself a victim of human trafficking.

The irony of this case is that C, a victim of human trafficking, was the only person to be convicted. The four human traffickers and the two operators went free. The fact that C was a victim could not lead to the dismissal of the case or the application of the non-punishment principle in this case because of the application of the legality principle. As a victim, however, she did receive a far lower sentence than she normally would have. According to the public prosecutor in this case, a positive side effect of C's prosecution is that her conviction could have a preventive effect by sending a warning to future potential victims.

*Case of using a false passport*

A was in her early twenties when she was brought to Austria from Romania under false pretences and forced to work in prostitution. A was exploited, physically assaulted and raped. To escape from her traffickers, A tore up her (false) passport. During a control of prostitution, she was arrested because of her torn passport. A told her story when she arrived at the police station.

The police started an investigation into human trafficking. Despite her great fear of her exploiters, A made statements against them to the police and in court. The suspects were ultimately acquitted because of a lack of evidence. A was the only victim who dared to make a statement against them.

Several weeks later, A was summonsed for using a false passport. A told the judge that she had been forced to use the false passport. She was told that if she didn't use the passport 'she would regret it'. A told the court that she had deliberately torn up her passport in order to escape from her human traffickers by being arrested. The court, a different court to the one that heard the case against the human traffickers, did not accept A's defence. A was given a prison sentence of one month, suspended for three years.

Once again, the victim was the only person convicted and punished in this case. The human traffickers went free and the victim disappeared behind bars. Although the victim said she

<sup>121</sup> Section 217 *Strafgesetzbuch* states that anyone who brings another person into prostitution in another state is committing an offence. This is criminalised in Article 273f (2) (3) Dutch Criminal Code.



was forced to use the false passport, the public prosecution service and the court failed to apply the principles of *Rechtfertigende Notstand* and *Entschuldigender Notstand* and the victim was prosecuted in accordance with the legality principle. The fact that different courts heard her case and the human trafficking case had negative consequences for A. A's case shows many parallels with R v O in the United Kingdom, but the outcome was different. It is harsh that a victim was imprisoned for a relatively minor offence, which was committed under coercion and which came to light because she tried to escape from her exploiters.

Victims in Austria regularly destroy their false passport in the hope of escaping from their exploiters by being arrested.<sup>122</sup> There are indications that the police in Austria do not always report that the victim was using a false passport. When that fact does not appear in the official report, the victim is not prosecuted.

Apart from criminal prosecution, administrative sanctions are also sometimes used against victims of sexual exploitation. For example, every prostitute in Vienna is obliged to be registered. Any prostitute who is not registered may be fined. In principle, victims are not fined but those who carry out the controls of prostitution and impose the fines are not trained to identify human trafficking, so victims are regularly still fined, according to an Austrian NGO.<sup>123</sup>

#### 6.4.5 Italy

##### *Legal framework*

Italy signed the Council of Europe's Convention on 8 June 2005, but the Convention has not yet been ratified.<sup>124</sup> Italian legislation has no specific non-punishment principle for victims of human trafficking who have committed an offence.

According to the legality principle, the public prosecution service is obliged to investigate every criminal offence. In principle, there are no exceptions to this, even for victims of human trafficking who commit offences under coercion by their exploiter. However, if a person is coerced into committing an offence, it may constitute a case of *stato di necessità* pursuant to Article 54 of the Italian Criminal Code (*Codice Penale*). The *stato di necessità* is similar to the ground of justification of necessity in the Netherlands. This provision is not aimed specifically at victims of human trafficking, but may apply to them. When the criminal investigation shows that the victim was confronted with a *stato di necessità*, the public prosecutor may ask the court to dismiss the case against the victim. If the court honours this request, the victim is not prosecuted. If the victim is prosecuted, he or she may be acquitted if the *stato di necessità* is established during the trial.

122 Interview with the NGO, LEFÖ IBF, January 2009. For a parallel situation, see §6.4.2 on the United Kingdom, where victims sometimes commit thefts in order to escape the human trafficking situation by being arrested.

123 Interview with the NGO, LEFÖ IBF. This fact can be relevant for the Dutch bill to regulate prostitution. See §2.4 for a discussion of this bill.

124 23 July 2009.

Criminal exploitation falls within the scope of the definition of human trafficking in Articles 600 and 601 of the *Codice Penale*. Article 12 (3) of law 1998/286 also makes the employment of children in crime a punishable offence within the definition of human smuggling.<sup>125</sup>

*Prosecution and the non-punishment principle in practice*

As in other countries, offences committed by victims in Italy frequently fall under the category of migration-related crime, such as the use of false identity documents. Because there is often a clear connection between this offence and the human trafficking situation, these victims are generally not prosecuted because of the existence of a *stato di necessità*, or are acquitted. In July 2009, Italy's parliament approved a bill criminalising illegal entry and illegal residence. A large number of victims of human trafficking are living illegally in Italy and are punishable under the new law. This means that when the law enters into force there will be a substantial rise in the number of victims committing a criminal offence, which could create a problem in identifying victims. If they are initially regarded as suspects and immediately repatriated as prescribed by the law, there is a risk that they will already have been deported before it becomes clear that they are victims of human trafficking. According to several interviewees, it is therefore essential to be alert to possible signs of human trafficking in the implementation of the law.

As in other countries, there have also been cases in Italy of victims of sexual exploitation recruiting new victims or being involved in human trafficking in other ways. The following case illustrates this.

*Case of issuing instructions in prostitution*<sup>126</sup>

In this case in 2004, two 22-year-old Romanian women were exploited in prostitution in Italy. Their exploiter also forced them to issue instructions to younger prostitutes. This constituted an offence under Articles 3 and 4 of L 75/58 (pimping). The women also gave false identities to the police.

Because the public prosecutor felt that this case involved a *stato di necessità*, in view of the coercion to commit the offences, he asked the judge to dismiss the case. However, the court rejected this request. The public prosecutor consequently had to prosecute the women for the two offences, but the judge who heard their case found that they could not be convicted of the offence because, in his view, a *stato di necessità* did exist.

This case shows that if a prosecution of a victim is not dismissed, it is still possible not to convict the victim if there was coercion. Because of the legality principle, however, this decision always rests with the judge and not with the public prosecutor.

Another type of offence in which victims in Italy are regularly involved is theft, particularly pickpocketing. When victims are forced to commit theft, it is generally seen as human trafficking in the sense of exploitation in crime, and it is unusual for victims to be prosecuted

<sup>125</sup> Article 12, section 3, 3-bis, 3-ter and section 5 of 1998/286 of 25 July 1998.

<sup>126</sup> Tribunale Ordinario de Torino Terza Sezione Penale, N.3770, 28 September 2006.

for the thefts. The victims are frequently underage Roma children.<sup>127</sup> Children under the age of 14 cannot be prosecuted in Italy, while older victims can often successfully invoke *stato di necessità*, whereupon the case will be dismissed or there will be no conviction.

*Case of theft under coercion*

R, from Albania, was a minor when she was sold by her parents to C. R lived under slave-like conditions with C and was exploited by him in the household. C also forced her to commit several thefts.

R testified about the human trafficking in C's trial. C countered with the argument that R's testimony was not credible because she had committed thefts. He submitted a love letter as an exhibit. The love letter, written by R, said that she had committed the thefts voluntarily.

The judge did not believe C and found that the letter had been written by R under coercion by C. C had forced R to commit the thefts in order to undermine the credibility of her future testimony against him because of her criminal antecedents. C was convicted of human trafficking. R was not prosecuted because a *stato di necessità* was assumed to exist.

C appealed right up to the Supreme Court. Both the appeal court and the Supreme Court upheld the earlier judgment.

This case highlights an important problem relating to victims who are offenders. If a victim is or was a suspect, the victim's testimony against the human trafficker has less value<sup>128</sup> and additional evidence has to be provided. On the grounds of Article 192 in conjunction with Article 197bis of the *Codice Penale*, the public prosecutor must furnish additional evidence if the witness is (or was) a suspect in a criminal investigation. This rule applies even if was decided not to prosecute the victim. The possibility of successfully prosecuting a human trafficker declines if the victim is suspected of an offence. This could, in theory, encourage human traffickers to force their victims to commit crimes, but it is difficult to demonstrate whether this actually happens. One of the interviews revealed that in fact, despite the legality principle, a public prosecutor will in practice not order a criminal investigation into offences committed by a victim, which avoids potential problems with a witness.

At the time of writing, there was a bill before the Italian parliament to make it a criminal offence to sell and buy sexual services in public places. Under local regulations, prostitutes and clients can already receive an administrative fine in some cities. The interviewees did not expect any problems for victims of human trafficking if this bill is adopted since victims actually work at less visible locations, while the bill is specifically intended to address street prostitution.

## 6.5 Conclusions

The emphasis in this concluding section is on the issues and problems that have been highlighted in this chapter.

<sup>127</sup> This problem also arises in other countries, including the Netherlands.

<sup>128</sup> On the reliability of witness statements, see also §11.7.3.

International legislation devotes a lot of attention to the problems facing victims of human trafficking who have also committed, or are suspected of committing, offences – and the related principle that in certain circumstances they should not be prosecuted or punished (the non-punishment principle). At the same time, it is clear that the scope of this principle has not yet been fully defined, as is apparent from the varying definitions of the principle in the different international instruments. Non-punishment principles in international instruments relating solely to migration-related crime are very limited and do not cover the problems facing victims of human trafficking who are involved in various types of offences in a human trafficking situation, which is often the case, as shown by the cases studied in the Netherlands and several other countries.

The Netherlands has opted not to adopt a specific non-punishment provision for victims who are also suspects. However, there are various options available in the Netherlands for not prosecuting these victims, or not punishing them. When implementing the non-punishment principle in legal practice in the Netherlands, the interpretation of the principle in the various international legal instruments can be referred to. To avail of the options arising from the non-punishment principle, however, it is important that victims are also identified as such by all of the relevant agencies in the chain. In practice, it is difficult to identify individuals as victims of human trafficking, particularly in the case of victims who are initially suspected of an offence committed in the human trafficking situation. Furthermore, the risk of prosecution may cause victims who are suspected of an offence to see themselves more as an offender than as a victim and not to make a complaint. Even if a person is identified as a victim, the relevant actors are in practice not all aware of the legal possibilities not to punish or prosecute the victim. Awareness of the problem and knowledge of the legal possibilities are therefore important if the possibilities arising from the non-punishment principle for victims are to be applied in practice.

Exploitation in crime is a form of human trafficking that is not always recognised as such. BNRM is particularly aware of cases of exploitation in crime involving offences against the Opium Act committed under coercion or pressure by victims of human trafficking. For example, victims of loverboys and other human traffickers are sometimes forced to commit drug-related offences. Minors are particularly vulnerable to exploitation in crime; thefts and drug-related offences, in particular, seem to occur more often among this category of victims than other offences. This might be connected with the different system of sanctions for minors.

It is important to be aware that offences committed by victims are not always committed under coercion. A victim sometimes commits an offence, such as shoplifting, for example, precisely in order to escape from the human trafficker, as has occurred in the UK. There is also the case in Austria, in which a victim destroyed her passport for the same reason. How this problem should be dealt with is an issue that needs to be addressed.

Offences committed by victims in the human trafficking situation can have consequences not only under criminal law, but also under immigration law. For example, BNRM is aware

of a case of a convicted victim who was not granted B9 residence status even though she cooperated with the criminal investigation into her human traffickers, who were, in fact, also convicted.

Another problem is that victims who are also offenders, and have been convicted, face the risk of being declared undesirable aliens and consequently being placed in aliens' detention and deported. The possible consequences under immigration law for the residence status of victims who are also offenders are therefore another point of concern.

## **Administrative enforcement and the integrated approach to human trafficking (in the sex industry)**

### **7.1 Introduction**

There is a growing realisation that criminal law alone is not sufficient to tackle (organised) crime and that an administrative and integrated approach is essential. But what does this administrative approach entail with respect to human trafficking? What types of integrated approach are there? This question is discussed in further detail in this chapter. Human trafficking in this context concerns human trafficking in the sex industry, although this is not necessarily always the case in practice.

Since this chapter is primarily concerned with the sexual services industry, the developments in this industry will first be addressed. The administrative approach to organised crime (§7.3) and human trafficking (§7.4) is then discussed, followed by administrative enforcement in the licensed prostitution sector (§7.5). Finally, integrated approaches to human trafficking, specifically the programmatic approach (§7.6.1) and the chain approach (§7.6.2), are discussed.

### **7.2 Developments in the sexual services industry**

This section describes developments in the sexual services industry, which is defined as making oneself available to others for the performance of sexual acts in exchange for payment; in other words, prostitution.

The second evaluation of the lifting of the ban on brothels indicated that unlicensed (illegal) prostitution also occurs alongside licensed establishments and forms of prostitution for which no permit is required. Although the evaluation concluded that the legal prostitution sector is larger than the illegal sector,<sup>1</sup> in a Rotterdam study researchers reached the conclusion that the illegal prostitution sector was at least as large as the legal sector in that municipality.<sup>2</sup> Illegal prostitution takes place under the cover of other industries and in sectors that are difficult to monitor, such as massage parlours, beauty parlours, tanning salons, couples' clubs, saunas and erotic cafes. At the same time, the escort sector and the home-and hotel-based and online prostitution (webcam sex) industries are growing. A few new forms

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<sup>1</sup> Daalder (2007, pp. 73-74).

<sup>2</sup> Goderie & Boutelier (2006).

of sexual services are described in further detail below, followed by a description of activities initiated by the sector itself to combat human trafficking.

### *Thai massage parlours*

Prostitution in Thai massage parlours is nothing new: the NRM's fifth report also discussed this type of sex work. However, the enormous turnover in this area – in terms of the growth in the number of parlours and the rate at which they spring up and disappear again – is striking. Concrete data on these establishments and their employees are scarce, and because of this, a 2008 project conducted in these parlours by the Rode Draad (an organisation that advocates the rights of sex industry workers) deserves attention.

Prompted by the conspicuous number of Thai massage parlours and the conditions encountered in these parlours by its field workers, the Rode Draad visited 63 Thai massage parlours in the Netherlands. These visits yielded a great deal of information about the situation of the employees of these parlours. Of the 150 businesses of which the Rode Draad was aware, 62 had already shut down by the time the project was carried out,<sup>3</sup> which is indicative of their turnover rate. The Rode Draad's report of this project makes a distinction between traditional and erotic massage parlours. At traditional parlours, especially, field workers found it difficult to determine whether or not the parlours hosted prostitution, forced or otherwise. This was, firstly, because there are different views on what is considered sex and, therefore, prostitution. Customers, but also masseuses, often do not regard so-called 'happy endings' (manual stimulation to the point of orgasm) as sex. If sex acts (illegal or otherwise) are performed in a traditional massage parlour, it is often unclear whether the masseuses themselves choose to offer these services for the extra income. The field workers of the Rode Draad did detect a number of signs of abuses and exploitation, such as women who had immediately started work upon their arrival in the Netherlands and a woman with bruises on her arms. Some women admitted they had been brought to the Netherlands by human traffickers long ago. They often incur enormous debts in order to come to the Netherlands: amounts of €40,000 and fl.60,000 to fl.80,000 were mentioned in interviews with these employees. Rode Draad field workers regarded the position of many of the Thai women as bad: the women were under pressure from their families in their home country, were extremely loyal to the parlour owners, spoke hardly any Dutch and had no prospects for the future. Some women sought refuge in gambling and drugs (this was encountered in three parlours). Many of the women did have some knowledge of the human trafficking problems but talked about it as if it were something that happened elsewhere.

A journalist for the free weekly newspaper NL70 visited seven Thai massage parlours in The Hague and discovered that Thai massage parlours were indeed a cover for prostitution in many cases. He also detected signs that could indicate forced prostitution. For instance, a masseuse in one of the parlours thanked him for not requesting any sexual acts, unlike 'most

<sup>3</sup> The Rode Draad's list was compiled using websites, the organisation's own address database and newspaper reports. The Rode Draad does not guarantee the completeness of this list.



men'. In two other parlours, he was invited to choose from a number of masseuses, a few of whom seemed very fearful, the journalist said.<sup>4</sup>

In a response to written questions posed by councillors following this article (among other things), the municipal executive of The Hague stated that all of the massage parlours visited for the purposes of article were licensed sex establishments and that since the monitoring policy aimed at investigating every indication of illegal prostitution had been stepped up in March 2008, only one massage parlour (Chinese) had been found to be operating without the required permit. The municipal executive reported that the joint approach by the municipality of The Hague and the police helped track down approximately 70 cases of illegal prostitution each year.<sup>5</sup>

*Chinese massage parlours, beauty parlours and manicure salons*

Knotter, Korf and Lau published a study into illegal Chinese aliens in the Netherlands in February 2009. This study devoted considerable attention to aspects of exploitation, prostitution and crime, primarily in beauty and massage parlours. Of the 15 establishments investigated on suspicion of illegal practices, eight were incontestably shown to employ illegal aliens. Five others remained suspect but no evidence of illegal practices was found. The researchers found that a possible reason for the growing number of illegal Chinese in the beauty salon sector was the tightening up of checks in the hospitality industry. Many restaurant owners no longer dare hire illegal Chinese immigrants. In addition to legitimate business, the authors stated that forced and voluntary prostitution was also conducted in the dozens of nail salons and beauty and massage parlours found primarily in the large cities. Despite reports from neighbourhood residents and complaints of rape and exploitation from prostitutes, the police rarely investigate this sector. Interviews with police officers indicated that this was because these investigations are not a priority, the reports of human trafficking are not always credible and forced prostitution is not the primary activity of the suspects and the reports are therefore treated as tangential information.<sup>6</sup> It is striking that Chinese victims of a human trafficker ('the snakehead') do not see the trafficker as a criminal at all but more as a hero or someone to whom they owe a great deal. Illegal Chinese also seldom talk about exploitation, which, the authors state, is also due to the working conditions in China.<sup>7</sup>

Reports in the media created a commotion in The Hague. The newspaper *Trouw* devoted extensive coverage at the end of 2007 to Chinese women engaged in illegal prostitution in at least six Chinese beauty and massage parlours in The Hague. According to insiders, women regularly 'disappeared' from such parlours and new girls appeared almost weekly. The reticence of these women (prompted by the fear of deportation) has prevented social workers

4 Stam, 2009, pp. 20-23, available online at [www.mijn.nl](http://www.mijn.nl).

5 Answers to written questions from councillors Vos, Zandstra, Rietveld and Klein concerning illegal prostitution at beauty and massage parlours in The Hague, BSD/2009.968 – RIS 161025, 10 March 2009.

6 Tangential information is information that the police receive in the course of a criminal investigation but which is not relevant to the particular case being investigated.

7 Knotter et al. (2009).

from getting a grip on this group of prostitutes, although the report of human trafficking by one Chinese masseuse resulted in the arrest of the Dutch owner of a massage parlour on charges of sexual exploitation in February 2008. The masseuse claimed that she was pressured to perform sexual acts and to surrender half of her income. The fact that the owner in this case was a Caucasian Dutch person is a new development. Chinese women usually work in businesses with Chinese owners.<sup>8</sup> Non-sexual exploitation in Chinese massage and beauty parlours is discussed in Chapter 12.

*Bulgarian and Romanian hairdressers and beauticians:*

The research agency Ultrascan asserts that at least 80% of the Bulgarian and Romanian women registered with the Chamber of Commerce as hairdressers or beauticians work as prostitutes. The number of Bulgarian business starters recently increased seven-fold, to 1,600 in the space of a year, while the number of Romanians starting their own business tripled. Ultrascan says the Chamber of Commerce figures are wrongly regarded as an indicator of emancipation, because many of the women are coerced into the work they do.<sup>9</sup> The IND has also detected abuses among Bulgarians and Romanians who register with it as self-employed (see §8.3.1).

*Illegal prostitution in hotels*

Illegal prostitution in hotels seems to have increased since the ban on brothels was lifted, due to technological developments and other factors.<sup>10</sup> This kind of prostitution can take various forms. There are prostitutes who rent a hotel room and work from this location. Some pick up guests in hotel bars. Yet others are ordered by hotel guests. And there are organisations/brokers that rent hotel rooms and set up prostitutes there. This last form seems to occur primarily at chain hotels on major arterial roads and motorways where guests and other visitors are less conspicuous. The women who work or are put to work there are advertised via the internet, with a mobile phone number that can be called to make an appointment, and the customer visits the prostitute at the hotel. Sometimes a room is rented for a longer period of time. Prostitutes might be forced to prostitute themselves at these hotels. The question is to what extent hotel employees are aware of the prostitution or coercion and to what degree they are complicit by acting (in a paid capacity) as middlemen. The *Vereniging voor Exploitanten Relaxbedrijven* (VER) (the Dutch association of brothel owners) sent a letter to 273 hotels operated by 13 chains in March 2008 warning about the creation of a ‘business within your business’; in other words, the facilitation of commercial prostitution in hotel rooms.

8 Various articles on illegal prostitution in Chinese beauty and massage parlours in The Hague appeared in *Trouw* between 22 December 2007 and 8 July 2008. The fate of one Chinese woman in particular was the focus of these articles. In November 2008 four Chinese human traffickers in The Hague, Rotterdam and Delft were arrested for forcing women in massage parlours and nail salons into prostitution. (*Chinezen gepakt voor mensensmokkel*, *De Telegraaf* (Haaglanden), 5 November 2008).

9 Kapsalon dekmantel prostituees, *Het Parool*, 7 May 2008, p. 26; oral reports from Ultrascan, 20 April 2009.

10 Biesma et al. (2006).

The escort sector is difficult to regulate and monitor, in this form too. Nevertheless, it is important to gain control over this sector because underage prostitutes and victims of human trafficking can otherwise be put to work here unimpeded. A pilot project is being conducted (see §7.6.1) to combat illegal hotel prostitution. In addition to instituting criminal investigations, the aim is to make recommendations for a preventive, administrative, fiscal and civil-law approach. In the meantime, the hotels linked with these abuses have themselves also taken action to combat illegal prostitution and human trafficking: a protocol for hotel personnel is being developed with the goal of better and more rapid identification of human trafficking.<sup>11</sup>

### *Online prostitution*

The use of the internet for the provision of sexual services continues to grow and in its second evaluation of the lifting of the ban on brothels, the WODC mentioned it as one of the reasons for the declining number of licensed sex establishments.<sup>12</sup> The WODC also stated, however, that the spread of webcam sex is not a particularly Dutch development and has to be attributed to the increased possibilities offered by the internet rather than the lifting of the brothel ban.<sup>13</sup>

Two distinct uses of the internet in relation to sexual services can be identified: (1) prostitutes working from home or escorts using the internet to find customers, and (2) the performance of sexual acts in front of a webcam. While the latter (also called webcam sex) is not regarded as prostitution, it is regarded as sex work and often takes place without payment. Figures from the Rutgers Nisso group indicate that engaging in online sex is popular among both men and women.<sup>14</sup>

In their study into customers of prostitution, Zaitch and Staring distinguished between three types of prostitution-related websites. First they described (commercial) websites on which prostitution is offered, either by the women themselves or otherwise. A second category includes websites that give general information about prostitution. These websites serve to educate and support prostitutes and can be a source of information for others. The third category of websites consists of pages for customers of prostitutes, for reflection and information, such as [www.hoekers.nl](http://www.hoekers.nl) and [www.ijsbere.nl](http://www.ijsbere.nl).<sup>15</sup> The WODC's evaluation reports that this last category of websites is relatively new and the use of such websites has increased significantly.<sup>16</sup>

11 By the hotel industry (Koninklijke Horeca Nederland – KHN), the police (Korps Landelijke Politiediensten – KLPD), the industry association for sex businesses (Vereniging Exploitanten Relaxbedrijven – VER) and human trafficking experts (Expertise Centre on Human Trafficking and People Smuggling – EMM).

12 The WODC made a general comparison based on reports from municipalities and concluded that the number of sex establishments had declined by one-sixth between 2000 and 2006. The WODC says this conclusion is consistent with experiences reported by business operators and prostitutes, as well as with what is described in the report from the Rode Draad (Altink & Bokelman, 2006). Source: Daalder (2007).

13 Daalder (2007, p. 36).

14 Rutgers Nisso Group (2008, p. 11).

15 Zaitch & Staring (2009).

16 Daalder (2007, p. 34).

Prostitutes who find their customers via the internet and receive customers at home, a hotel or an apartment are not required to surrender money to brothel keepers and can therefore work more inexpensively than colleagues in other parts of the prostitution industry. Another advantage of working via the internet is anonymity, say prostitutes. Anonymity for those who work at brothels and clubs can no longer be guaranteed since many municipalities have now set up cameras in the vicinity of sex establishments. This anonymity also entails risks, however: social workers have hardly any access to these prostitutes and they are not known to the authorities.

#### *Turkish hospitality sector*

Prostitution in Turkish hospitality establishments, such as cafes and coffee houses, is a well-known phenomenon.<sup>NRM3</sup> Prostitution or the brokering of prostitution takes place at these establishments. Most of the prostitutes involved are from Bulgaria.

#### *Window prostitution*

An increasing number of municipalities (Amsterdam, Alkmaar, Arnhem) are curbing window prostitution, using the BIBOB Act (the Public Administration (Probity Screening) Act) to regulate window prostitution.<sup>17</sup> Prostitutes, owners of brothel windows and other parties involved in the industry are opposed to the planned closures. The Rode Draad says one of the most important criteria for prostitutes in choosing a work place is the degree of independence it offers and it is unrealistic to expect women to trade in their window for work at a club.<sup>18</sup> This picture is confirmed by the initial results of a study by Bureau Beke, which conducted an extensive survey of the prostitution sector in Amsterdam for the municipality of Amsterdam (Care and Community Services and the Public Order and Safety department). The initial results from the part of the study dealing with the effects on prostitutes of closing the windows were published in the report ‘Weg achter het raam’ in February 2009.<sup>19</sup> Based on interviews with experts, prostitutes and police representatives and observational investigation in Amsterdam, the authors formulated seven scenarios for the possible effects on prostitutes.

The authors concluded that women would not stop working when the windows were closed down. The majority of the women would rent a window from other sex business operators in Amsterdam, preferably in the same neighbourhood because of the atmosphere of the area, along with the independence and relatively good income. Only a small fraction would turn to the escort business or window brothels in other cities. These prostitutes are extremely unlikely to seek work at clubs due to the costs that must be paid to club owners and the rules these owners can impose. It is primarily the sex business operators who remain who would benefit from the closing of windows, since they would be able to demand more money and

<sup>17</sup> See §7.2.2. for more about the BIBOB Act.

<sup>18</sup> Oral reports from the Rode Draad, 25 May 2009.

<sup>19</sup> Van Wijk et.al. (2009).

would be assured of a higher rate of use. An operator would also have to make less of an effort to ensure the commitment of the women who rented windows. Prostitutes are feeling the effects of this, primarily because the quality of the rooms has declined and operators offer less protection. The prostitute's position has deteriorated as a result. The Rode Draad also reports that waiting lists for windows have risen as a result of the closures. Women with a 'protector' can reportedly pay to move up the waiting list faster.<sup>20</sup>

The fact that some prostitutes are leaving the industry is due to the fact that there are more programmes aimed at helping them do this, say the researchers, and not the result of the closing of windows, although the closures could give an extra push in that direction.

The researchers were unable to gain a clear impression of whether there has been a shift towards illegal/underground forms of prostitution. For the time being, no clear connection can be established between the closing of windows and any increase in alternative forms of prostitution.<sup>21</sup>

### *Streetwalker zones*

On the instruction of the municipality of Nijmegen, the firm of Oostveen Beleidsonderzoek en Advies evaluated the municipality's streetwalker zone but also included the developments in other municipalities in its study. This evaluation indicated that municipalities have different ways of dealing with streetwalker zones.<sup>22</sup> Between 2003 and 2006, the municipalities of Amsterdam,<sup>23</sup> The Hague, and Rotterdam shut down their streetwalker zones and Nijmegen has plans to do the same. The aim of these closures was to reduce the nuisance and crime and/or encourage prostitutes to seek assistance. The effects of closing the streetwalker zones in The Hague were monitored and evaluated during the first six months after they were closed. This evaluation showed a decline in the nuisance in and around the former streetwalker zones and an extremely limited movement of the street prostitutes to surrounding areas. Prostitutes from the streetwalker zone have made much use of the 24-hour assistance that was set up under the direction of the Stichting Hulpverlening Opvang Prostituees (SHOP), although the evaluation also indicated that the relief and assistance is not reaching all the women from the former streetwalker zone.<sup>24</sup> Interviews with prostitutes and the director of SHOP in The Hague's newspaper for the homeless, *Haags Straatnieuws*, confirmed that closing the streetwalker zone in The Hague had the effect of shifting the prostitutes to the

20 Oral reports from the Rode Draad, 25 May 2009.

21 Van Wijk et al. (2009).

22 Oostveen (2009).

23 The municipality of Amsterdam was not included in the evaluation by Oostveen Beleidsonderzoek en Advies. Information on the closure of the Amsterdam streetwalker zone comes from the municipal website: [www.eenveiligamsterdam.nl/inhoud/straatprostitution\\_in\\_amsterdam\\_\\_de\\_tippelzone\\_aan\\_/](http://www.eenveiligamsterdam.nl/inhoud/straatprostitution_in_amsterdam__de_tippelzone_aan_/).

24 42% of the women who previously worked the streetwalker zone have not been reached because the prostitutes have either departed to other cities or remain invisible in The Hague. Source: Letter from the mayor to the chairman of the Committees for Social Development and Safety, Administration and Finance, concerning the Evaluation of the effects of eliminating the Waldorpstraat streetwalker zone, BSD/2006.2544 – RIS 142002, 21 November 2006.

‘hustling circuit’. The women cannot work behind brothel windows because the rent is too expensive or the illegal status of the women makes this impossible.<sup>25</sup>

The Rotterdam streetwalker zone was characterised by a high percentage of addicts (90%). The municipality is trying to accommodate all these addicts in protected living projects and offer them work after they receive treatment at a clinic. Of the 270 women known to have worked the streetwalker zone, 11% were not receiving treatment or had dropped out of the picture entirely ten months after it was closed.<sup>26</sup> A far higher percentage of the non-addict street prostitutes from The Hague and Rotterdam (as compared to the addicts) have moved their activities to other municipalities.<sup>27</sup>

Eindhoven has opted for an approach based on ‘social design’, whereby students of the EindhovenDesignAcademy were asked to think of an alternative approach to street prostitution in the municipality. The municipality chose the ‘life-force’ approach from the plans proposed,<sup>28</sup> a customised approach in which women work to improve their position with the guidance of a personal coach. By participating in constructive and positive activities (for example coaching talks and workshops) the prostitutes earn credits that enable them to make purchases from the municipality. The ultimate goal of the project is to educate prostitutes and enable them to lead an independent life, preferably without drugs or prostitution, so that the streetwalker zone can be shut down in 2011.<sup>29</sup>

Other municipalities (such as Utrecht, Arnhem, Heerlen and Groningen) have no plans to close the streetwalker zones. Periodic evaluations indicate that the zones satisfy the goals (limiting nuisance and enabling better care and assistance for the prostitutes). With the exception of Groningen, all the zones require prostitutes to register and carry identification cards in order to reduce the influx from outside.<sup>30</sup>

### *Escorts*

Amsterdam commissioned its second study into the local escort industry in 2007,<sup>31</sup> which provides some insight into the development of the industry. A total of a hundred interviews were held with people from the industry itself (escort business operators, escorts, taxi drivers, lobby organisations) but also with professionals who have contact with the industry (investigative authorities, government, support workers and lobby organisations) and customers (both direct customers and indirect customers, such as hotel doormen). This study indicated that the expected growth in the industry has indeed taken place, even when the

25 *Prostitution waaiertuit*, AD/Haagsche Courant, 2 March 2007.

26 144 women were included in the assistance project; 96 are in a preliminary phase of the assistance programme.

27 Oostveen (2009).

28 The term ‘life-force approach’ used by the municipality of Eindhoven refers to a method that has still to be elaborated. For the time being it is a plan and a vision.

29 Van Heijningen (2009, p. 13); Invitation to mini-conference ‘Alternatieven voor de tippelzone’, organised by the municipality of Eindhoven, 25 June 2008; Bonuspunten voor prostituees, *Trouw*, 29 September 2008.

30 Oostveen (2009).

31 EysinkSmeets et al. (2007), available online at [www.hetccv.nl/dossiers/Administrative\\_handhaven/prostitutiebeleid/verschijningsvormen/Amsterdam---Escortbranche-revisited.html](http://www.hetccv.nl/dossiers/Administrative_handhaven/prostitutiebeleid/verschijningsvormen/Amsterdam---Escortbranche-revisited.html).

figures are corrected for the increased accessibility of the escorts due to the increase in internet use.

The report distinguishes four segments of the escort industry: two larger segments (the women-for-men segment and the men-for-men segment), and two small segments, consisting of transsexual escorts and gigolos (men-for-women). The study showed the structure of the market in each segment. Both the price category in which the escorts work (high – middle – low) and the way in which the escorts work (independently – via agencies – for a pimp) were examined.

Within the women-for-men segment, the main growth was in the cheaper end of the market, which is where signs of human trafficking are mainly found. Romanian women dominate the women-for-men market. It is mainly these women who tend to be victims of coercion in Amsterdam. The researchers were surprised at how many signs of involuntary prostitution were relatively easy to perceive in the field and the lack of regulation by or contact with investigative authorities. The study therefore recommended proactive inspections and more investigations. Escorts in closed circuits (usually ethnic catering establishments), which the researchers in this study could not gain access to, deserve special attention in order to prevent this from becoming a ‘new pipeline’ of the prostitution sector, the researchers said.<sup>32</sup> Human trafficking seems to occur rarely if at all in the men-for-men, transgender and gigolo segments.

The term ‘Amsterdam escort industry’ is, incidentally, extremely relative: some of the players active in Amsterdam are not established in Amsterdam at all. About half of the work that the Amsterdam agencies arrange takes place far outside Amsterdam. The study therefore emphasised the need to tackle the escort industry nationally. Because a licensing requirement for the agencies alone would cause a shift towards seemingly independent escorts, the regulation of independent operators (perhaps by means of an identification card system) is therefore also necessary in order to provide support.

### *Male prostitution*

Male prostitution differs from the female variety in a number of ways. A first difference is the double taboo that surrounds male prostitution, since it not only involves prostitution, but also homosexuality. Problems with drugs, health, education, work and the law or emotional problems often underlie work as a prostitute and can result in a third taboo. Because of these taboos, male prostitutes are even more concerned with anonymity than their female counterparts. It is impossible for them to work in areas where registration is required. Men even avoid streetwalker zones because of the risk of being recognised. They therefore work primarily via the internet. Club owners say many boys under the age of 18 can also be found online. During a conference of prostitution policy in The Hague in 2008,<sup>33</sup> it emerged that the customers of male prostitutes also suffer from taboos. People who attended this confer-

<sup>32</sup> Eysink Smeets & van Lier (2008, p. 28).

<sup>33</sup> Dated 7 February 2008.



ence said that customers of male prostitutes do not file a report if, for example, when (?) they are robbed by the prostitute (or one of the youths accompanying the prostitute).

Recent research into abuse and prostitution among youths indicates that contrary to expectations, few underage Moroccan youth work in prostitution. The distorted view seems primarily to have been created by the prostitutes themselves: they often pretend to be younger than they are and pass as ‘Moroccan’ since this is more in demand on the market. The youths interviewed had, incidentally all had experience with prostitution before they came of age.<sup>34</sup>

#### *Campaign against pimps*

In August 2007, the Rode Draad and Vakwerk started a campaign against pimps. Prostitutes were given stickers and posters to put on their windows telling pimps to get lost and pointing out that human trafficking is a criminal offence. Under the motto ‘pimp free zone, pimping is forbidden in the Netherlands’, the organisations and women hope to make the pimps nervous; they are under no illusion that the campaign will be enough to get rid of pimps.<sup>35</sup> According to a spokesperson for the Rode Draad, the campaign has had various effects, in addition to much media attention. The distribution of posters gave some indication of which women were being handled by pimps, since such women could or would not take the material. In addition, it served as certification for some customers who only wanted to frequent women who had a *pimp-freezone* sticker or poster in the window. Sister organisations in Poland had plans to adopt this sticker campaign although it is unclear whether this plan actually got off the ground. The posters and stickers are also used by schools in projects and informational efforts and they are seen as a cult item in American prisons.<sup>36</sup>

#### *No prostitutes under the age of 21*

Window-business operators in The Hague signed an agreement in 2008 that they would no longer allow girls younger than 21 to work the windows. This was an effort to prevent exploitation by pimps. Many prostitutes who are exploited by so-called ‘loverboys’ are between the ages of 18 and 21. From the age of 21 women are considered less vulnerable to loverboys. The initiative by the operators in The Hague was intended as a first move towards national legislation to ban prostitution under the age of 21. Opinions on this are divided however. Some municipalities and political parties champion such a measure, while opponents state that it will mainly drive prostitutes into illegal status.

34 Korf et al. (2009).

35 Report on the Rode Draad’s website ([www.rodedraad.nl/index.php?id=649](http://www.rodedraad.nl/index.php?id=649)) and in various media articles, including Actie van prostitutees tegen pooiers, *de Volkskrant*, 24 August 2007.

36 Verbal information from the Rode Draad, 25 May 2009.

## 7.3 Administrative approach to organised crime

### 7.3.1 Policy developments

The public prosecution service and the police are responsible for the penal approach to (organised) crime, but municipalities do have possibilities to frustrate crime using administrative measures – by creating or changing conditions so as to reduce the opportunities for organised crime or make it less appealing.<sup>37</sup> The preventive and administrative approach to organised crime, one of the pillars of the Programme to Strengthen the Approach to Combating Organised Crime,<sup>38</sup> is being given more concrete form in the Administrative Approach to Organised Crime programme.<sup>39</sup> The role of the local administration in fighting organised crime is central in this programme, along with cooperation and the exchange of information. The approach clusters problems and solutions into six categories: 1) the organisation of the administrative approach, 2) obtaining and using relevant information, 3) pilot projects for operational applications through the administrative approach, 4) international cooperation, 5) raising awareness and 6) safeguarding knowledge and expertise. A few measures from this programme are discussed below; others are addressed in other parts of this chapter, where relevant.

#### *Regional Information and Expertise Centres (RIECs)*

The Administrative Approach to Organised Crime programme provides for, among other things, the establishment of 10 regional information and expertise centres (RIECs) charged with supporting municipalities in preventing and reducing organised crime.<sup>40</sup> The RIECs constitute an information interchange where information from various enforcement and investigation services is compiled and analysed in order to get a picture of the local interaction between the underworld and legitimate society and to be able to advise on combating this. Municipalities are also supported in the use of BIBOB and instruments are developed for sectors and industries that fall outside the scope of the BIBOB Act. In fleshing out these tasks, the RIECs will work with relevant partners, including municipalities, the police, the public prosecution service, the tax authorities and the various investigative services. The RIECs will also contribute to fighting human trafficking. While all RIECs are scheduled to be operational in 2009,<sup>41</sup> how they will work exactly has not yet been determined, as the

37 Stol & van Wijk (2008).

38 Programme to Strengthen the Approach to Combating Organised Crime (annex to *Parliamentary Documents II 2007/08*, 29 911, no. 10).

39 Administrative Approach to Organised Crime programme (annex to *Parliamentary Documents II 2007/08*, 29 911, no. 11).

40 The regional centres are managed by a police force manager.

41 The progress report on the Human Trafficking Force's action plan shows that the RIECs are still busy starting up and there is still no question of an integrated local approach based on a platform function. The quick win that was formulated with respect to the 'link between RIEC and EMM' has also not progressed as far as expected. A pilot project relating to this quick win will start shortly in a number of RIECs. (Human Trafficking Task Force, 2009b).

centres are still being developed.<sup>42</sup> A national centre for information and expertise will also be set up.

#### *Model covenant*

In September 2008, the Administrative Agreement on an Integrated Local Approach to Organised Crime and corresponding model covenant were adopted to promote cooperation and the exchange of information between public authorities, the police, the public prosecution service, BODs, and the tax authorities. These documents provide a basis for information to be exchanged without objection from the Dutch Data Protection Authority. Experiences with the covenant will provide the basis for further investigation into whether other measures, such as amendments to legislation and regulation, are necessary.

#### *Administrative reports*

In addition to the RIECs, the Administrative Approach to Organised Crime programme proposes other measures to improve information available to the administration and the exchange of information with partners in the chain. One of these measures is the improvement of what are known as administrative reports. Investigations sometimes uncover information that is relevant for the administrative authorities, by creating a clearer picture of factors, individuals or agencies that encourage and/or facilitate crime, for example. An integrated approach requires that police and the public prosecution service inform the public administration about this. The administrative report was introduced for this reason. It is a written notification from the police to the municipal authority that in the course of their duties under criminal law the police have stumbled upon facts and circumstances relevant to the municipal administration. The municipal government can then, if necessary, take appropriate administrative measures. These reports are an important element of the integrated and/or administrative approach to organised crime and attention to this has therefore increased significantly. The police currently do not have sufficient capacity to prepare administrative reports and the quality of the reports needs to improve.<sup>43</sup> There are also signs that the municipal administration does not always respond to administrative reports, although this situation is getting better.<sup>44</sup>

<sup>42</sup> The expertise centres are expected to fulfil a supra-regional function and collect and share information at national level. At the same time, the expertise centres have to meet regional needs adequately. To maximise the match with the regional needs, it was decided not to prescribe a uniform embedding model, but to allow freedom in the structure of the RIECs. When the pilot phase is over, whether there is a need for uniform embedding will be reviewed again. Source: Administrative Approach to Organised Crime Programme (appendix to *Parliamentary Documents II* 2007/08, 29 911, no. 11), p. 5-7; verbal information from the project manager of the Administrative Approach to Organised Crime programme, 3 April 2009.

<sup>43</sup> Human Trafficking Task Force (2009a).

<sup>44</sup> Verbal information from National Expert Group on Human Trafficking (LEM); Police Force Monitor 2007. The progress report on the Human Trafficking Task Force's action plan Task Force states that RIECs can fulfill a monitoring and supporting role in the adoption and implementation of the recommendations in administrative reports. (Human Trafficking Task Force, 2009b).

A number of activities have been undertaken to resolve these and other bottlenecks. How administrative reports can be improved is being looked into,<sup>45</sup> a course is being developed to train police in preparing administrative reports, administrative reports are being drawn up more frequently (in the context of the programmatic approach) and financial resources for information officers at the public prosecution service and capacity in the police force are being made available to perform analyses with an administrative perspective.<sup>46</sup> The administrative reports that are drawn up by the police and the follow-up to them will also be investigated.<sup>47</sup> The intention is that from 1 January 2013, every situation in which there is a permanent risk of crime will be examined to see whether an administrative report is necessary, and if so they will actually be drawn up.<sup>48</sup> This is in addition to other initiatives that are being developed to improve the municipal government's position with regard to the information it possesses.<sup>49</sup>

#### *Preventive screening of potentially vulnerable sectors*

This screening is designed to map parts of the business sector that are susceptible to influence from organised crime and can be used to work out measures to reduce or eliminate any vulnerabilities. In recent years, the transport and cannabis sectors, among others, have been screened on behalf of the Ministry of Justice. There are also plans to screen policies, regulations and projects to analyse their susceptibility to abuse by organised crime.<sup>50</sup>

### **7.3.2 Administrative instruments**

Municipalities have various instruments under administrative law to counter criminal activities at local level. The BIBOB Act, for instance, applies to certain industries, including the sex industry. But there are other instruments as well, which are discussed in this section.<sup>51</sup>

45 One of the quick wins in the Human Trafficking Task Force's action plan was to establish criteria for an administrative report. The progress report on the action plan stated that the basic conditions for the instrument had been further elaborated and refined. Consideration is being given to aiming for a standard procedure in terms of their form and content. Source: Human Trafficking Task Force 2009b.

46 Human Trafficking Task Force (2009a).

47 Administrative Approach to Organised Crime Programme (appendix to *Parliamentary Documents II* 2007/08, 29 911, no. 11). The progress report on the Human Trafficking Task Force's action plan stated that the RIECs can fulfil a monitoring and supporting role in the adoption and implementation of administrative reports. With this in mind, the pilot project 'linking RIEC to EMM' will experiment with administrative reports. (Human Trafficking Task Force, 2009b).

48 Administrative Approach to Organised Crime Programme (appendix to *Parliamentary Documents II* 2007/08, 29 911, no. 11); Human Trafficking Task Force, 2009a.

49 Administrative Approach to Organised Crime Programme (bijlage bij *Parliamentary Documents II* 2007/08, 29 911, no. 11).

50 Programme to Strengthen the Approach to Combating Organised Crime (appendix to *Parliamentary Documents II* 2007/08, 29 911, no. 10).

51 The descriptions of these instruments is based in part on information from the website [www.administratievehandhaven.nl](http://www.administratievehandhaven.nl) of the Centre for Crime Prevention and Safety (CCV). On other instruments, see also Hart van Amsterdam. *Strategienota Coalitieproject 1012*, pp. 38-39.

*Bye-laws and permits*

On the local level, a municipality can make use of various permits and bye-laws to counter crime, including general municipal bye-laws.<sup>52</sup> The general bye-laws enable municipalities to require permits for certain industries, allowing the municipality to screen these industries and if necessary refuse or revoke a permit. Businesses may also be shut down on the basis of the nuisance bye-law.<sup>53</sup> An example of this is the Haarlem sex club, Esther, where the bodies of four murdered men were found, which was shut down by the city's mayor in 2000. From the perspective of nuisance, a removal order for a designated area may also be included in the general bye-laws. The possibility of preventive body searches and placement of cameras in prostitution zones – which a number of municipalities make use of – are set down in the general bye-laws.

*General bye-laws in Alkmaar*

The municipality of Alkmaar has used the general bye-laws to 'make it difficult for pimps and their accomplices'.<sup>54</sup> In order to prevent or limit the nuisance that accompanies window prostitution, and particularly the peripheral phenomena related to it,<sup>55</sup> Section 3.2.6, subsection 2 of the general bye-law prohibits anyone from 'involving one's self with a prostitute in a coercive manner in any way in a public place'.<sup>56</sup> The explanatory notes to the general bye-law states that "to involve oneself in a coercive manner" is defined as, among other things: 'escorting prostitutes more or less coercively to their work place, accepting money from prostitutes, providing a prostitute with alcohol or narcotics, acting aggressively towards a prostitute, etc.' According to the explanatory notes, this subsection therefore primarily addresses the behaviour of pimps, but of course applies to anyone who satisfies the description.<sup>57</sup> People who involve themselves with a prostitute in a coercive manner of this nature can be ordered by a police official to 'immediately remove themselves in a particular direction' according to subsection 5 of the same section.<sup>58</sup>

Municipalities can also adopt a planning policy in relation to certain activities (by means of the zoning plan). The zoning plans can be adjusted to move unwanted economic activities out of an area.

52 These bye-laws and permits are not all arranged in the same way in every municipality. And not every municipality uses all these permits and bye-laws. There is local autonomy in this area. On the grounds of Article 149 of the Municipalities Act, the municipal council issues those bye-laws it deems necessary in the interests of the municipality. This article, together with Article 108 of the Municipalities Act, provides the legal basis for the municipal autonomy to adopt rules in the interests of the management of the municipality. In adopting the rules, the maximum legal limits (superior legislation) and the minimum legal limits (the privacy of the citizen) must be taken into account.

53 This can be a separate bye-law or part of the general bye-laws.

54 Municipality of Alkmaar, Finance and Administration Committee, 2009. Memorandum on the Integrated Approach to Problems in Prostitution, Alkmaar 2009.

55 Municipality of Alkmaar, Explanatory notes to the individual articles of the General Municipal Bye-laws.

56 Article 3.2.6 (2) APV Alkmaar, no. 105.

57 Municipality of Alkmaar, Explanatory notes to the individual articles of the General Municipal Bye-laws.

58 Municipality of Alkmaar, APV Alkmaar, no. 105.

The government feels that scarce housing should be allocated in a balanced and equitable manner, which is why parliament passed the Housing Allocation Act in 1993, following earlier, similar, laws in this area. The point of departure for this law is the freedom of citizens to settle where they want. At the same time, the law enables municipalities to lay down rules for the allocation of housing. One of the instruments that municipalities can use for this purpose is the housing permit, which can, for instance, be revoked if illegal prostitution takes place in a home. A recent amendment to the Housing Allocation Act is discussed in Chapter 2.

With just a few exceptions, every municipality has laid down rules in its general bye-laws regarding prostitution and sex establishments, whether or not based on the model bye-law of the Association of Netherlands Municipalities (VNG). Requiring a permit for a sex establishment is a very common stipulation in the general bye-laws, as are the conditions under which operators can obtain a permit and conditions relating to the operation of the business. Most municipalities have also laid down rules governing the enforcement of the prostitution rules on regulations and the sanctions for violations in the general bye-laws, and it may stipulate a maximum number of permits that can be granted. Municipalities that strive for a zero-tolerance policy sometimes stipulate that no more than one permit will be granted, in order to discourage prostitution in the municipality.<sup>59</sup>

Permits may also therefore be refused on the grounds of local general bye-laws. The municipality of Nijmegen, for instance, refused to grant a permit for the operation of a window-prostitution business. The local general bye-laws stipulated that a permit could be refused if there were indications that the sex business involved persons in violation of Article 250a of the Dutch Criminal Code.<sup>60</sup> The municipality based its refusal in this case on police inspections that had ascertained violations of the Foreign Nationals (Employment) Act and the Aliens Act at the sex establishment in question. The manager's defence, that he could not be blamed because he was not present at the time of the inspections, was unsuccessful. The court ruled that the relevant general bye-laws established joint responsibility on the part of both the operator and the manager to set up operations in such a way as to permanently guarantee supervision of the state of affairs in the sex establishment.<sup>61</sup>

#### *Administrative fine*

The Public Nuisance (Administrative Fine) Act (the BBOOR Act)<sup>62</sup> and corresponding BBOOR Implementation Decree<sup>63</sup> took effect on 14 January 2009. The law, laid down in Articles 154b et seq. of the Municipalities Act, gives municipalities the independent author-

59 Francq et al. (2007, pp. 411-526).

60 Remarkably enough, the general bye-law (and the court) refer to Article 250a (old) Dutch Criminal Code (which had already lapsed at that time) and not to the applicable human rights article, Article 273f Dutch Criminal Code.

61 Arnhem District Court, 17 July 2008, LJN: BD8738.

62 *Bulletin of Acts, Orders and Decrees* 2008, 44.

63 *Bulletin of Acts, Orders and Decrees* 2008, 580.

ity to take action against common minor violations of the general bye-laws and the waste substances bye-law that cause a nuisance.<sup>64</sup>

The explanatory memorandum to the BBOOR Decree indicates that this power applies for violations of all provisions of the general bye-laws, with a few exceptions for more serious and dangerous actions, violations that fall under the powers of the police and actions that are closely related to criminal law. These exceptions, cited on a ‘negative list’ in Article 2 of the Decree, include violations of a prostitution bye-law adopted in accordance with Section 151a (1) of the Municipalities Act. With respect to prostitution, the negative list pertains exclusively to regulations concerning the exploitation of prostitution. Other municipal regulations concerning prostitution, such as a local streetwalking ban, do fall under the regime of the administrative fine.<sup>65</sup>

### *The BIBOB Act*

The Public Administration (Probity in Decision-Making) Act (the BIBOB Act) is an important administrative instrument for fighting crime, including organised crime. Screening in the context of the BIBOB Act is aimed at preventing municipalities from inadvertently facilitating or supporting criminal activities by means of permits and subsidies. The Berenschot consultancy firm evaluated the BIBOB Act three years after its introduction.<sup>66</sup> The municipality of Amsterdam also evaluated the BIBOB Act as it is was applied in that city.<sup>67</sup>

Berenschot’s research showed that 16% of the administrative bodies surveyed had experience with inadvertent criminal facilitation.<sup>68</sup> Although implementation of the BIBOB Act was slower than the legislature expected, the number of recommendations issued has increased over the past few years.<sup>69</sup> The law applies mainly to licensing and, more specifically, when municipalities grant permits to hospitality establishments, ‘coffee shops’ and establishments for prostitution. Of the 265 recommendations issued in 2008, 34 were related to sex establishments. It is unknown to what extent these cases involved a serious danger, or any danger at all.<sup>70</sup> Amsterdam, which makes some use of the Public Administration Probity Screening Agency (Bureau BIBOB), created 124 BIBOB files for prostitution-related busi-

64 Ministries of the Interior and Kingdom Relations and Justice, Bestuurlijke Boete Overlast in de Openbare Ruimte – Een Handreiking voor gemeenten, July 2009 (a brochure with guidelines for municipalities on the application of the administrative fine published by the ministries). [www.vng.nl/Documenten/Extranet/Municipalityrecht/2009/handr\\_best\\_boete\\_overlast.pdf](http://www.vng.nl/Documenten/Extranet/Municipalityrecht/2009/handr_best_boete_overlast.pdf).

65 BBOOR Decree, *Bulletin of Acts, Orders and Decrees* 2008, 580.

66 De Voogd et al. (2007).

67 Municipality of Amsterdam, Administration Department, Directorate for Public Order and Safety – Van Traa team/Bibob Coordination Office, *Vijf jaar Bibob in Amsterdam – Goede zaken, slechte zaken*, 12 May 2009.

68 50% of the administrative bodies and independent, semi-public executive bodies that can apply the BIBOB act when granting permits were surveyed.

69 Bureau BIBOB, 2009.

70 In a general sense, Bureau BIBOB observed in 2008 that in 179 cases there was some danger that a decision could be used to commit criminal offences. In 113 cases, it was a ‘serious danger’. The Bureau concluded in its annual report that municipalities were therefore well able to assess when they needed the advice of Bureau BIBOB.



nesses (window brothels, private clubs and sex establishments). Eighty-three of these files were submitted to the National Bureau BIBOB on the advice of the Coordination Office. In 74 of these cases, the National Bureau BIBOB issued a recommendation, and warned of ‘serious danger’ in 59 cases’. The recommendations from the National Bureau BIBOB were subsequently reviewed by the Amsterdam Coordination Office. In eight cases in which a recommendation was issued warning of some degree or a serious degree of danger, the recommendation was *not* followed up on.<sup>71</sup>

Berenschot’s research also showed that the law is used to a lesser extent to revoke permits already granted. One-fifth of the respondents said they felt the BIBOB Act had a preventive effect. Administrative bodies said it would be advisable to extend the BIBOB Act to cover call shops, employment agencies and the property sector.

Berenschot said that case law on the application of the BIBOB Act gives little reason to doubt the legal tenability of the law or the care with which screening takes place. Still the law has raised questions that were subsequently put before the court, with regard to the reliability of the information on which a BIBOB recommendation may be based, for example.

*Information from the Criminal Intelligence Unit*

The Council of State’s Administrative Law Division issued two rulings on 27 February 2009 on the use of information originating from the Criminal Intelligence Unit. One of these rulings concerned a case in which the appellant had been refused an operating permit for a prostitution establishment because of a serious risk that the permit would be used in the ‘trafficking of women.’ The Bureau BIBOB came to this conclusion on the basis of information from the Criminal Intelligence Unit, which in this could not verify the reliability of this information. Since the reliability of the information could not be verified, it had less significance than it would have had if its reliability could have been confirmed in some other way. This information could only be treated as substantial if it was combined with other, similar information that was clear and convincing and that could be directly traced back to the person concerned. The division found that was not the case in this situation.<sup>72</sup>

In the second ruling, the division saw no grounds for the court’s finding that information registered by the Criminal Intelligence Unit could only provide significant support for a serious suspicion (as referred to in Article 3 (2) BIBOB Act) if it was in connection with convictions or transactions or investigations and prosecutions in the same area. This kind of information only yields sufficient grounds for a serious suspicion in combination with other facts and circumstances that point in the same direction, since the reliability and relevance of the information from the register cannot be established with certainty. The weight attributed information registered by the Criminal Intelligence Unit can differ from one situation to another, depending on, among other things, the number of registered pieces of information, the assessment of the reliability of the source or sources, the specificity of the registered information, the date of the registered fact and anything else that is known about it. The division found that the Bureau BIBOB’s findings, on which the municipality’s decisions were based, did not sufficiently support

71 Municipality of Amsterdam, Administration Department, Directorate of Public Order and Safety – Van Traa team/BIBOB Coordination Office, *Vijf jaar Bibob in Amsterdam – Goede zaken, slechte zaken*, 12 May 2009.

72 Council of State, Administrative Law division, 27 February 2008, LJN: BC5265, under 2.6-2.9.

the conclusion that there was a serious danger that the permits would be abused. The decisions should therefore not have been based on the recommendations from the Bureau.<sup>73</sup>

With these rulings, the division significantly tightened the requirements for the use of information from the Criminal Intelligence Unit, by also requiring additional evidence (depending on the nature of the information). This additional evidence must be convincing, clear and directly traceable to the party or parties involved.

The municipality of Amsterdam often uses the BIBOB Act as an administrative instrument to reduce the organised crime behind sex businesses. The Administrative Law Division ruled in relation to the refusal of an operating permit for the sex business Yab Yum that unlike information from the Criminal Intelligence Unit's register for serious crime, the reliability of police updates and the significance that can be attributed to them is not deemed sufficient without underlying documents. The division ultimately concluded that the refusal of the permit was justified on other grounds.<sup>74</sup> After the business had been closed by the municipality, Yab Yum was able to continue as an escort business, since at the time escort businesses in Amsterdam were not required to have a permit.

Another ruling was made by the District Court of Alkmaar in a case in which the municipality of Den Helder refused a permit under the Licensing and Catering Act because of a recommendation from the Bureau BIBOB, which indicated a serious risk based on the very serious suspicion that the applicant (a window operator) had some relationship with human trafficking.<sup>75</sup> According to the recommendation, this extremely serious suspicion was based on, among other things,<sup>76</sup> the finding that the applicant for the permit was involved in hiring illegal prostitutes. The judge in interlocutory proceedings concluded that although the administrative fine on the grounds of a violation of the Foreign Nationals (Employment) Act is a punitive sanction, no criminal offence was involved. The court stated that such a violation does not pertain to the relationship between the applicant for the permit and his or her possible engagement in human trafficking.

There has been criticism of the BIBOB Act from various bodies. On the one hand, because of the serious consequences of the screening. Antecedents or business ties with criminal ele-

<sup>73</sup> Council of State, Administrative Law division, 27 February 2008, LJN: BC5259, under 2.2-2.6.

<sup>74</sup> Council of State, Administrative Law division, 8 July 2009, LJN: BJ1892. The division found that the acquisition of Yab Yum had taken place in the face of threats against and possible extortion of its former owner. The Administrative Law division found that there was a link between the Hells Angels and the threats and possible extortion under which the acquisition was made. This link between the Hells Angels and Yab Yum continued. According to the division, the municipality had sufficient evidence to 'reasonably suspect that the Hells Angels had been involved in the acquisition of Yab Yum, that with the acquisition Yab Yum had fallen under the influence of a criminal circuit of which the Hells Angels were part and that this was masked by the involvement of the current operator of Yab Yum'.

<sup>75</sup> Article 273f (3), (4) and (5) Dutch Criminal Code.

<sup>76</sup> The petitioner was also once heard as a witness in a human trafficking case, was registered in the register of robberies and was regarded as armed and dangerous.

ments is sufficient for a permit to be refused; it is not necessary to persuade and prove, as in a criminal case.<sup>77</sup> Professor of Constitutional and Administrative Law Overkleeft-Verburg argues that BIBOB, in fact, results in business and professional disqualifications, thereby putting the constitutional right to property and freedom of profession, service provision and entrepreneurship under pressure.<sup>78</sup>

On the other hand, the law reportedly has a limited effect in the fight against criminal activities like human trafficking. Experiences in Limburg and Amsterdam indicate a ‘waterbed effect’ when the BIBOB Act is applied: criminals shift investments to business premises for which no permit is necessary and to which BIBOB does not apply. The Van Traa team in Amsterdam also ascertained that abuses do not disappear with an administrative approach alone. A broader approach is necessary to prevent human trafficking and other abuses.<sup>79</sup> Municipalities have called for a central register (blacklist) of permits refused on the basis of BIBOB in order to prevent applicants from simply applying for a permit in a different municipality (the waterbed effect).

There is other criticism as well. For instance, an applicant who is refused a permit may only inspect the negative recommendation (and may not make copies or notes). No inspection of the underlying sources is permitted and the recommendation may not be submitted to the municipal complaints committee, which evaluates whether a permit has been rightly refused.<sup>80</sup> The BIBOB Act also increases the administrative burden for businesses and administrative bodies, the possibilities of updating a recommendation from the National Bureau BIBOB are limited and all sorts of business collaborations fall outside the scope of the BIBOB Act, meaning that no action can be taken against them.<sup>81</sup> The Administrative Approach to Organised Crime programme confirms that the use of this instrument needs to improve and that a number of activities are being deployed in this respect, including an investigation into the desirability of expanding the BIBOB Act to other industries and other powers of administrative bodies.

A recent survey conducted among all 441 municipalities in the Netherlands by *Trouw* and BinnenlandsBestuur, the platform for public administration, in cooperation with research agency UZ3 indicated that the majority (179) of the municipalities do nothing at all with the BIBOB Act. Small municipalities in particular find screening in the context of the BIBOB Act ‘too time consuming’, ‘too complicated’ or ‘unnecessary’. The mayor and aldermen of the municipality of Appingedam stated in the survey that they decided when the BIBOB Act took effect that the municipality would not implement it.<sup>82</sup>

77 It does have to be shown, with reasons, that there is a risk that the permit or subsidy will be abused.

78 *Binnenlandsbestuur*, 7 March 2008; *Blauwopsporing*, 21 June 2008, volume 4, number 13.

79 *Blauwopsporing*, 21 June 2008, volume 4, number 13.

80 Seminar on BIBOB Act, organised by the University of Amsterdam/Juritas, 19 September 2008.

81 Municipality of Amsterdam, Administration Department, Directorate of Public Order and Safety – Van Traa team/BIBOB Coordination Office, *Vijf jaar Bibob in Amsterdam – Goede zaken, slechte zaken*, 12 May 2009.

82 ‘Kleine gemeenten laten wet Bibob links liggen’, *Trouw*, 28 August 2009.

There are many explanations for the limited application of the law. First of all, municipalities see the BIBOB Act as too unwieldy: the municipalities have enough information to evaluate a permit application even without the screening. Municipalities also feel they do not have the requisite expertise. In addition to recognising suspicious situations, conducting a BIBOB screening requires the necessary knowledge and finances. The functioning of the National Bureau BIBOB and obtaining background information on business owners from abroad are other difficulties.<sup>83</sup>

Municipalities do recognise that the law has a preventative effect and that non-uniform application should be prevented from having a waterbed effect. Some municipalities indicate that business owners disappear after a confrontation with a BIBOB investigation. Other municipalities are in fact noticing permit applications from businesses that have been refused a permit in other municipalities.<sup>84</sup>

In response to the survey, the ministers of Home Affairs and Justice emphasised the importance of smaller municipalities also actively applying the law, and cited possible adjustments to the law to diminish bottlenecks in implementation. It has already been decided that the RIECs will be given an important task in supporting municipalities in implementing the BIBOB Act.<sup>85</sup>

### *Certificate of Good Conduct*

The Certificate of Good Conduct is a quick, inexpensive and easy instrument that municipalities can use to check whether the applicant for a permit has relevant criminal antecedents. The applicant (either a person or a business) receives this certificate if his behaviour presents no objection to a permit application. Such a certificate is mandatory for educators and taxi drivers, for instance. Municipalities can also decide to make the Certificate of Good Conduct mandatory for applications for permits in other sectors, such as operators and managers of businesses in the prostitution sector.

### *Local policy*

Besides using the general municipal bye-laws and permits, the local authority can also use a policy document to lay down regulations to tackle certain forms of crime. The local authority can also give its own interpretation to certain legal options. The mayor is authorised to determine local policy for specific local problem areas. In Amsterdam, policy aimed at the prostitution in the red light area is currently being formulated (see §7.6.3). The strategic acquisition of buildings from owners with suspected criminal ties is employed in Amsterdam, Maastricht, Venlo and Rotterdam in this context.<sup>86</sup>

Criminals are innovative, which is why it might be necessary to develop additional instruments. This will be investigated.<sup>87</sup> Measures become stronger when are used in combination,

83 'Kleine gemeenten laten wet Bibob links liggen', *Trouw*, 28 August 2009.

84 'Kleine gemeenten laten wet Bibob links liggen', *Trouw*, 28 August 2009.

85 'Ook de belwinkel moeten we screenen', *Trouw*, 29 August 2009.

86 *Blauwopsporing*, 21 June 2008, volume 4, number 13.

87 Administrative Approach to Organised Crime programme (appendix to *Parliamentary Documents II* 2007/08, 29 911, no. 11), §2.3.8 'Onderzoek volledigheid beschikbaar instrumentarium', p. 18.

so municipalities therefore have an important task in establishing cooperation and sharing information. This is discussed below.

*Van Traa team Amsterdam*

The Van Traa team concentrates on the administrative approach to organised crime.<sup>88</sup> Its projects focus on areas (such as the red light district), industries and the development and better utilisation of new legal and other instruments (such as the BIBOB Act, amendment of local municipal bye-laws and urging the amendment of national regulations). The establishment of a strong position with regard to information is important in this. The Van Traa team therefore has special access to information from police registers. The Van Traa team and its partners have already recorded a number of successes, such as the Doorzon project, which focused on the illegal use of homes. Investigation indicated that these homes were also being used for illegal prostitution and human trafficking.<sup>89</sup>

## 7.4 Administrative approach to human trafficking

This section describes the role of the municipal government in tackling human trafficking. Some municipalities, like Amsterdam, have been working on this for some time, so this municipality's approach and plans are further discussed in this section. This does not detract from the fact that many other municipalities are working intensively on this at the moment. This section first focuses on the so-called programmatic approach and the role of the municipal government in this approach.

*Programmatic approach – administrative approach*

The Sneep<sup>NRM5</sup> investigation involved an investigation into a human trafficking gang that exploited prostitutes in the legal prostitution sector (licensed window brothels) on a large scale for years and in an extremely violent and organised manner. The Sneep case was chosen as a pilot for the programmatic approach in which various partners, including the municipal government, cooperate. The WODC evaluated how the programmatic approach was shaped (see §7.6.1 for a description).<sup>90</sup> Here, we only discuss the role of the municipal government in this approach. After Sneep was chosen as a pilot for the programmatic approach, representatives from the public prosecution service approached three municipalities (Amsterdam, Utrecht and Alkmaar) where victims had been put to work, seeking their cooperation. During the meetings, the municipal government officials were confronted with the extremely violent practices of the human traffickers and even shown photos of mistreated victims. This ap-

88 The Van Traa team arose from the Wallen project, which was set up by the municipality of Amsterdam in 1997 in response to the report *Inzake Opsporing* of the parliamentary committee of enquiry into methods of investigation.

89 Including verbal information from the Van Traa team, 9 May 2008.

90 Van Gestel & Verhoeven (2009). The investigative strategies are described in Appendix 1 of that report.

proach certainly had an impact. The municipal authorities were shocked and motivated to do something about human trafficking. The public prosecution service advised them to cooperate closely and share information. The municipalities looked forward to the administrative report, which was still being prepared at the time of the meeting (the administrative report *Schone Schijn*).<sup>91</sup> When the report was finished, a presentation was given on the bottlenecks that had been revealed to the law enforcement triumvirates (the mayor, the chief constable and the chief public prosecutor) of the municipalities involved.<sup>92</sup> Local policy advisers also attended these meetings. The municipal officials indicated, among other things, that they had expected a different type of information than was included in the administrative report. They expected factual, concrete information, such as the names of deliberate and inadvertent facilitators like window operators, hospitality business operators and apartment landlords, that would allow them to take administrative action. Permits could be revoked if it emerged they were being used for criminal purposes (BIBOB Act). The report contained more general (policy) information, however, about the detection of human trafficking by municipalities and other relevant authorities, for instance. In addition, the municipalities were involved at too late a stage in the programmatic approach. For these reasons, the Sneep investigation did not result in administrative measures against facilitators or other parties, although this case did result in the problem being put on the agenda. The relevant municipalities are now working on structural policies to create obstacles to human trafficking. It also became clear to the ministries of Justice and Home Affairs and Kingdom Relations that municipalities can and must do something to fight human trafficking and it was decided to organise workshops for municipalities in order to raise their awareness of the seriousness of the problem and the possibilities of combating it. Discussions are still ongoing on how exactly this will be done.<sup>93</sup> An important question here is how this topic can be made a priority and put on the agenda in municipalities that are reticent about getting involved.

### *Amsterdam*

The Amsterdam prostitution policy consists of a three-part approach: perpetrator-based, victim-based and situational. These are elucidated in different memoranda<sup>94</sup> and are explained below.

The key to the ‘perpetrator-based approach’ is the barrier model, which is intended to discourage potential perpetrators of forced prostitution by creating barriers in seven areas.<sup>95</sup>

91 Van Hout & van der Laan (2008).

92 This is a local platform for consultation between representatives of the police, the public prosecution service and local government (for example, the mayor, the chief constable of the force or district and the public prosecutor).

93 With BNRM, among others.

94 Hart van Amsterdam. Strategienota Coalitieproject 1012 (version for consultation, 18 November 2008); Prostituee v/m Amsterdam (2008) and Oudberoep, nieuwbeleid. Memorandum on prostitution 2007-2010 (2007).

95 Barriers are created in the areas of 1) labour, 2) spatial and physical planning, 3) economy, 4) finance, 5) housing, 6) entry/identity, 7) culture/religion.

Instruments are being proposed for this, such as limiting prostitution offerings by reducing the number of windows and the zoning of prostitution areas, strengthening the position of prostitutes by offering defence courses and a health centre and combating the use of homes for criminal activities.<sup>96</sup> Other measures proposed to discourage perpetrators include area injunctions for pimps in prostitution zones and increasing the minimum age of prostitutes to 21. Perpetrators of Dutch background can be frustrated by reducing the financial advantages of human trafficking with the help of the tax authorities and the Department for Work and Income. For perpetrators with an Islamic background, informing the community about their involvement in prostitution can have a punitive effect.<sup>97</sup> For cross-border forced prostitution, identity checks of prostitutes can provide the opportunity to identify prostitutes working without a residence permit, or working with a false permit, and subject them to further investigation. A number of measures require either amendment of existing legislation or new legislation. At the time this report was written, there were a number of measures that had not proven feasible (see later on in this section).

In addition to creating barriers as discouragement, tackling perpetrators also focuses on perpetrator-based prevention, investigation and prosecution. Research indicates for instance that boys in the social environment of a known loverboys are more likely than other boys to engage in exploiting women themselves.<sup>98</sup> The municipality wants to explore the possibilities for prevention.

Victims' willingness to report incidents is important for investigation and prosecution. That is why the policy focuses on informing and educating prostitutes.<sup>99</sup> But prosecution without a report of a crime by a victim can also be successful. This requires chain partners to be able to exchange information.

The 'victim-based approach' focuses on strengthening the position of the voluntary prostitute and providing support to victims of forced prostitution. Eight concrete measures have been proposed for this.

First, the municipal aid, advice and health centre P&G292 has been given a pivotal function for prostitutes in Amsterdam. The employees are trained to detect abuses; they find the prostitutes and offer them information, courses and healthcare. In an effort to fight human trafficking, the Amsterdam Coordination Point for Human Trafficking offers a safe place for victims. In addition to accommodation, it focuses on support (legal and psychosocial) and providing worthwhile ways for the victims to occupy themselves (language and assimilation courses for instance). It also plays an important role in the integrated chain to tackle human trafficking, in which efforts are made in conjunction with various organisations to detect and

96 For which there is cooperation between the police, the municipal housing department, housing associations and the urban districts in the form of the 'Doorzon' covenant.

97 Some municipalities are exploring the possibilities of a preventive approach to offenders using imams.

98 Terpstra et al. interviewed loverboys, from which it emerged that young men often already knew someone who worked as a loverboy before they took the step themselves. Bovenkerk also refers to the inspirational effect of a loverboy in a social group. See: Terpstra et al. (2005) and Bovenkerk (2004), both in: Oudberoep, nieuwbeleid (2007).

99 For example, by placing stickers in brothels.



prevent sexual exploitation, to organise and coordinate care for victims and to support the investigation and prosecution of suspects (see also §7.6.2).

In order to stimulate independence, prostitutes are informed of the possibilities they have under labour law. Another measure involves expanding operating permits to include a social chapter, which would impose requirements for working conditions on the operator. Requirements for a permit are introduced in phases: every two years the feasibility of additional conditions is evaluated. The first phase, carried out in 2008 and due for evaluation in 2010, contains regulations that provide for a prostitute's freedom of choice with regard to her work clothing, conditions relating to medical assistance, her right to refuse certain customers or acts, and control over her own income. An intake interview between the operator and the prostitute is also required – to ensure that no human trafficking is involved. Obligations are imposed on an operator, prohibiting him from doing business with anyone representing a prostitute and requiring him to provide the prostitute with statements and overviews of her income and the agreements made.

To facilitate inspection and supervision of the legal prostitution industry, the municipality has earmarked funds for four extra municipal supervisors; consequently, all prostitution businesses with a fixed location can be inspected eight times a year, rather than the three to four inspections that currently take place each year. The municipality is exploring the possibilities of multidisciplinary inspections in order to inspect the illegal sector. In addition to this, the prostitution industry will be regarded as a serious partner and structural discussion will take place on how the prostitution sector can become a transparent industry in which there is no room for human trafficking.

Some ideas that were proposed in Amsterdam did not prove feasible. For instance, setting up an independent management organisation for the direct rental of rooms to prostitutes in buildings that are owned or will be owned by municipal partners in the Coalition project 1012 was investigated. In addition to renting rooms to prostitutes, the organisation would provide information on health, safety and working for one's self. The investigation concluded that the government must not play an active role in facilitating such an organisation because of the risk to integrity.<sup>100</sup>

The 'situational approach' involves eliminating the opportunities that create a sales market for criminal ties and all the abuses these entail. This centres mainly on restructuring measures that make a particular postal code area more attractive, such as the redevelopment of the Beursplein, the Oudekerksplein and the Fortis building and improvements to the public space of (among other places) the Damrak-Rokin intersection. The restructuring also aims

100 At the request of GroenLinks councillors, Amsterdam city council conducted research into the possibility of establishing a 'municipal brothel': a type of sex establishment where the housing association, as owner of a building, and the independent prostitutes form a foundation to organise the intake of the sex workers and manage the building. However, partners steadily withdrew from the project in the course of 2008. Because of the risks to the municipality's integrity or companies affiliated to it, in the Strategienota Coalitieproject 1012 the municipality announced that it would not actively facilitate the project (in terms of financing). In July 2008, the housing association Stadgoed NV withdrew, because the risk of exploitation of women could not be ruled out, however tight the supervision was.

to reduce activities with a low economic value that attract crime, such as ‘coffeeshops’, gaming halls and sex establishments in some specific streets.

## 7.5 Administrative enforcement in the prostitution sector

The general ban on brothels was lifted in 2000 and municipalities were given the authority to regulate the prostitution industry by means of a permit system. This section describes how the administrative enforcement is shaped in the prostitution sector (§7.5.1) and how administrative inspections take place in practice (§7.5.2).

### 7.5.1 Management and allocation of duties

The municipality is responsible for overseeing prostitution policy. It grants permits and assesses the terms of the permit in advance. The municipalities also have the duty to ensure the terms of the permit are adhered to. Most municipalities delegate the duty of monitoring illegality and underage/forced prostitution (human trafficking) to the police, in the assumption that what is involved here is serious crime that the police are better equipped to deal with. Nevertheless, municipalities are ultimately responsible and also required to supervise this. In practice, however, it emerges that municipalities still do not fulfil and manage this duty to a great enough extent.<sup>101</sup> It was agreed, for instance, in the context of the ‘Handhaven op Niveau’<sup>NRM5</sup> project that municipalities would make an inventory of the escort agencies operating within their boundaries and, where possible, compile relevant information.<sup>101</sup> The police perform this task in most municipalities, but only receive financial compensation from a few.<sup>102</sup> Sometimes the allocation of duties between the municipality and the police is unclear. The fact that municipalities themselves may determine their own prostitution policy means that different rules apply for the prostitution sector and the allocation of duties.<sup>103</sup>

A number of changes have taken place in an effort to put an end to this problem. The first is the so-called Regulation of Prostitution Act, which ‘forces’ municipalities to, among other things, operate more uniformly. This law is discussed in more detail in §2.4.

Second, more municipalities are taking a firmer hold of their management duties. Municipalities are increasingly aware that human trafficking can take place in any municipality and that it is important to take action against it. Some municipalities have already gone further in this respect. In the Rotterdam-Rijnmond region for instance, when the police were able to demonstrate that human trafficking was also taking place in smaller municipalities and administrators in those municipalities became extremely motivated to tackle the problem.

101 Also known as the ‘three first steps of HON’.

102 LEM; OOM; Police Force Monitor 2007.

103 There is in fact now a ‘Guide to Prostitution Policy’, to assist municipalities in developing or improving prostitution policy. See: [http://www.hetccv.nl/dossiers/Administrative\\_handhaven/prostitutionbeleid/](http://www.hetccv.nl/dossiers/Administrative_handhaven/prostitutionbeleid/). The CVV also wants to include information about preventive projects and the offender-oriented approach in the guide.

More municipalities are also more actively seeking cooperation with chain partners (see §7.6.2).

Third, the Human Trafficking Task Force proposed measures for improvements in this area in its action plan. It stated that the municipalities had to intensify their management role and that there must be a clear allocation of duties between the municipality and the police, and proposed a number of measures to achieve this. In the action plan, it cited the intention of having a vision document on the allocation of duties between municipalities and the police in place by 1 July 2009 as a quick win. The Human Trafficking Task Force's progress report states that an initial version of this vision document has been drafted and contains specific recommendations, primarily concerning the integrated inspection teams. Efforts are well underway to produce a protocol/manual for 'regulation of the licensed prostitution sector'.<sup>104</sup>

As stated above, in almost all municipalities supervision of the prostitution sector is exercised by the police, but there is a lack of uniformity in this area as well. The powers of supervision are allocated differently from one municipality to another and sometimes no powers are allocated at all.<sup>105</sup> The allocation of duties between municipalities and the police is therefore unclear and enforcement suffers as a result. This can lead to calculating behaviour and shifts in the prostitution sector. The various parties involved assert that agreements on the allocation of duties between municipalities and the police should be made by the 'local triumvirate' (the mayor, the chief constable and the chief public prosecutor). While it was hoped that the Regulation of Prostitution Act would provide clearer guidance and be more binding in this respect, in the draft version of the law it was decided not to do this, with the argument that it is better to tailor the allocation of tasks to local circumstances.<sup>106</sup> However, the draft legislative proposal stipulates that all sex businesses must have a permit (see §2.4), so the problem that some municipalities do and some do not grant permits for certain forms of prostitution, such as escort and home prostitution work, will be resolved with the Regulation of Prostitution Act.

### *Combating illegal prostitution*

It is important to combat illegal<sup>107</sup> prostitution because the risk of human trafficking sector seems to be greatest in this sector. It is primarily the responsibility of the police to tackle illegal prostitution, although municipalities, too, can play a role, for example, in the context of

<sup>104</sup> Human Trafficking Task Force (2009b).

<sup>105</sup> Police Force Monitor 2007, p. 72.

<sup>106</sup> In its reaction to the draft of the law, the NRM described the absence of certainty about the allocation of tasks as a serious gap (see §2.4 and Appendix 6).

<sup>107</sup> A distinction is made in the prostitution sector between the legal and the illegal sectors, with the former usually referring to the licensed sex establishments and the latter to unlicensed sex establishments that are required to have a permit. In fact, the legal sector also encompasses the unlicensed sex establishments that are not required to have a permit. They cannot be supervised by administrative means, nor can any action be taken against them on the grounds that they are illegal. The fact that municipalities are free not to grant permits to certain types of sex establishments has therefore created a grey area, where little supervision is possible. The Regulation of Prostitution Act is intended to end that situation, among other things.

the APV, in the event of nuisance, the use of homes for illegal activities and via the covenant on tolerance zones (see §7.6.3). These efforts should take advantage of the information that the various municipal services, organisations and professional groups have. Research indicates that they possess “a great deal of useful information”,<sup>108</sup> but that the information is difficult to find, often because people do not realise that it is relevant. The study calls for the establishment of a central repository for this information and for cooperation between the parties involved on the basis of a covenant. The police, too, call for a clearer allocation of duties with respect to combating illegal prostitution.<sup>109</sup> They say there should be a debate at national level in order to “put an end to the current fragmented interpretation and performance of this duty.”

Illegal prostitution is often difficult to ascertain since it can be difficult to prove that sexual acts with third parties are occurring in exchange for payment. Those directly involved, such as prostitutes, clients and business operators, do not readily make incriminating statements, which makes combating these practices very labour intensive. In general, the police mainly respond to reports of illegal prostitution (a reactive approach) rather than actively seeking it out (a proactive approach). In some municipalities, so-called ‘bait prostitutes’ (police officers disguised as prostitutes) are deployed to combat illegal street prostitution. A number of forces use cyber detectives to monitor the internet for advertisements offering unlicensed prostitution. “If you look for advertisements for sex establishments on the internet, before you know it you are monitoring the whole world,” said one municipal official.<sup>110</sup> It is frequently asked, therefore, whether such monitoring should take place at municipal or regional level. A national approach would be more logical.

It is important for the police that municipalities and other responsible parties (such as the fire brigade, tax authorities, Labour Inspectorate) perform their supervisory duties properly so that the police can devote more resources to tackling illegal prostitution. This is also important from the perspective of unfair competition: if the licensed – and bona fide – sector is subject to regulation and/or monitoring but illegal operators are allowed to operate relatively undisturbed, legitimate operators are at a disadvantage.

### 7.5.2 Monitoring adherence to permit conditions

The licensed prostitution sector is monitored, usually by the police, for signs of illegality and underage/forced prostitution (human trafficking). The norm is that prostitution businesses are inspected six times a year by certified<sup>111</sup> inspectors. It is difficult to ascertain exactly how often business are inspected in practice, but it can be concluded from the Police Force Monitor 2007 that this happens with a certain degree of regularity in most police regions. In some

108 Goderie & Boutelier (2006, p. 87).

109 Police Force Monitor (2007, p. 66).

110 At the conference ‘Prostitution policy 2008’, organised by the municipality of The Hague, 7 February 2008.

111 See also Chapter 8. Not all prostitution inspectors have a certificate, partly because there are too few places on training courses. Sources: Klein (2009); Van Hout & van der Laan (2008).

regions businesses at which abuses have never been ascertained are inspected less frequently, which leaves more capacity for inspecting suspected mala fide sex businesses.

The fact that it is inspected does not guarantee that the prostitution sector is free from abuses, however. That is not the case, as indicated by the Sneep police investigation and the administrative report following that investigation.<sup>112</sup> Many women were forced to work in licensed windows for years in many municipalities, indicating that inspections are not always conducted properly. The inspections largely consist of checking the ‘papers’ of prostitutes<sup>113</sup> and only limited time is devoted to these checks. Nor is the code of conduct<sup>114</sup> for inspectors always adhered to. Inspectors sometimes talk with pimps or have a cup of coffee with business operators. This could give victims the impression that the police are in cahoots with these individuals. An investigation by ROOD Utrecht quotes victims of human trafficking as saying that inspections are sporadic. Loverboys also simply take their girls elsewhere when the police show up.<sup>115</sup>

Inspections are nonetheless an important contact moment between the authorities and potential victims of human trafficking, and it is essential to detect signs of human trafficking at these moments, to whatever extent possible. But that is difficult. A prostitute who is under pressure to earn a lot of money will give an enthusiastic and cheerful impression in order to attract customers. In such cases the victims will in fact seem – paradoxically enough – to be ‘happy hookers’. Moreover, a victim is unlikely to give the game away during a brief inspection; after all, there is too great a risk (in her perception).<sup>116</sup> There are good reasons why the victims of human trafficking seldom file a report. Other factors may play a role as well, such as the fact that the victims do not perceive themselves to be victims. This plays a role among victims of loverboys but also occurs among victims from certain cultures (see §12.6.1). There will always be victims, therefore, who cannot be detected via inspections or will not be willing to cooperate with the police and public prosecution service under any circumstances and for whom other avenues and solutions must be sought. But inspections have also prompted a number of police investigations and they can have a preventive effect.

A relationship of trust must be created in order to persuade a victim to remove herself from the exploitative situation and/or to cooperate with a police investigation.<sup>117</sup> However, it is legitimate to ask whether the police force is the right authority to create the necessary relationship of trust. In Denmark, for instance, a cultural anthropologist often accompanies the

112 Van Hout & van der Laan (2008).

113 For example, they can ask for a passport, a tax and social insurance number or proof of registration with the Chamber of Commerce.

114 There are certain risks attached to maintaining contact with the prostitution sector, for example the risk of finding oneself in compromising, threatening or otherwise undesirable situations. To minimise this risk, the police have drawn up a code of conduct. Police officers who move in prostitution circles in the course of their duties must follow the code of conduct.

115 ROOD Utrecht (2009). Available online at [www.rood.utrecht.sp.nl](http://www.rood.utrecht.sp.nl).

116 Van Hout & van der Laan (2008, p. 101).

117 Reference Framework for Human Trafficking; Amsterdam Coordination Centre for Human Trafficking, Newsletter 35, January 2008, p. 4; LEM; OOM.

police to establish the initial contact with possible victims.<sup>118</sup> In Rotterdam, police considered engaging a Bulgarian social worker to approach the many Bulgarian street prostitutes. The possibility of using ‘cultural mediators’ or social workers has also arisen on other occasions.<sup>119</sup> Although the police undergo intensive training in order to be able to properly conduct inspections, the advantage of using support workers is that they have specific skills and are not working for the government. On the other hand, these situations involve a criminal offence, with all the dangers and requisite professionalism this entails, which is the reason the police were chosen for these tasks in the past.

There is the argument that support agencies already active in the field can detect victims and inform the police, although this does entail a number of dilemmas (see §8.3.1). Otherwise, the police say that working with a permanent prostitution inspection team has the advantage that a relationship of trust can be established. In order to avoid disturbing this relationship, it is important not to carry out the inspections with partners that intervene in a negative sense. For example, inspections with the tax authorities are not permitted.<sup>120</sup> In some regions, Rotterdam-Rijnmond for example, inspections in the prostitution sector are carried out by both the police and the municipality. The municipality (in the case of Rotterdam, the hospitality sector team) inspect the documents to ensure that prostitutes are not minors or illegal aliens. The police (the human trafficking team) only check for indications of human trafficking and are therefore in the best position to invest in establishing a relationship of trust with possible victims. They do not have to hold any discussion with the business operator and only talk to the prostitutes. The inspectors from the municipality are trained to recognise human trafficking and pass on any signs to the Rotterdam police. There are some bottlenecks, however, including the problem that not much time can be spent talking to the prostitutes and many prostitutes speak very poor or no Dutch or English, which makes the interviews difficult or necessitates the use of an interpreter. Cultural factors can also impede communication, along with the means of coercion that human traffickers employ. Repeated contacts – if possible – would seem necessary therefore.

The question is whether the fact that many victims of human trafficking evidently work in the licensed-window prostitution sector also means that many victims are working in other licensed prostitution sectors. The presence of staff and other prostitutes at brothels, private houses of prostitution, clubs etc. might have a protective effect. There is little known about home prostitution, although this form of prostitution lends itself to exploitation. There are also only a few known police investigations in which several women were forced to prostitute themselves at a single private address.

118 Verbal information during Europol’s Annual Experts Meeting on Trafficking in Human Beings, 10 September 2007.

119 Conference on Communication with Nigerian victims of human trafficking, organised by BLinN, 15 October 2009; NVK Marktdag 2007, organised by the Netherlands Association for Criminology (NVK), 14 June 2007.

120 LEM.



Prostitution inspectors often cannot identify the signs that women are working involuntarily in the prostitution industry, so criminal investigation does not occur. In view of this, it is important to invest in other approaches as well, such as prevention. ‘Soft’ signs of human trafficking such as bruises, tattoos and fearful or insecure behaviour may lead to more interviews with the prostitutes and even talks with possible pimps. This is what happens in Eindhoven for instance. If information about possible perpetrators is available when signs of human trafficking are detected – and prosecution is not yet possible – the police hold a ‘deterrent interview’ with these individuals (who are emphatically not regarded as suspects at this point). The interview takes place according to a fixed format and is treated as a ‘warning’. Eight such interviews had been held as of June 2008.<sup>121</sup>

*Using the hotel procedure to monitor escorts*

When the ban on brothels was lifted, a means of supervising the escort sector had to be found, so the hotel procedure was developed. This procedure involves the police posing as a customer, calling an escort and subsequently conducting an inspection.<sup>NRM5</sup> While this marked a breakthrough in monitoring the escort sector, it does require a lot of capacity. The inspection of one escort requires approximately four hours of work by four police personnel.<sup>122</sup> The hotel procedure has proven to have its shortcomings, however. Escort agencies often say now that they are unable to send a girl or do not answer the call. A possible explanation for this could be that the agency recognises the call from the police because of their ‘careful’ way of placing an order (which is constrained by rules), as well as caller identification (if the police call from a land line – most customers use a mobile phone). The hotel procedure can also be circumvented by sending an escort who is working legitimately when a call from a new customer is received. If the caller proves to be a real client, mala fide agencies will send other girls (underage girls, illegal aliens, human trafficking victims). Escort agencies might also pass information on to each other, which does not necessarily mean that these escort agencies have underage or illegal girls or victims of human trafficking on their books. They are concerned about the costs: the escort has to travel some distance (often with a driver) and earns nothing.

Supervising the escort sector is still complex because of the location-independent character of the sector. Agency operators and prostitutes can easily move beyond municipal, regional and even national borders (the waterbed effect). The use of mobile phones and email addresses as contact details, thus concealing the people behind these details, makes it even harder to get a grip on this sector.<sup>123</sup> Some municipalities require escort agencies to have a permanent address in order to obtain a permit.

121 Expert meeting on loverboys in Eindhoven, organised by the safety house in Eindhoven, 17 June 2008. See also the publication ‘Het is leedvoor het leven. Methodiek aanpak loverboys Eindhoven’.

122 LEM, 20 November 2006.

123 Sources include the conference on prostitution policy in 2008, organised by the municipality of The Hague in association with The Hague Prostitution Platform and management organisation consultancy De Beuk, 7 February 2008. Data come from the report of the conference, [www.prostitutionbeleid2008.nl](http://www.prostitutionbeleid2008.nl), *wat weten we, wat willen we, wat doen we?*.



*Supervision of home prostitution*

Many prostitutes like to work at home, not least because they do not need to hand over any income to a sex-business operator. In municipalities where home prostitution does not fall within the scope of the permit requirement, such prostitutes are not required to apply for a permit and are not inspected. Tackling abuses in home prostitution requires more regulation, and issuing identity cards for home workers is a possibility that is frequently discussed. In essence this would subject home prostitution to the permit system, which would at least enable inspections.

*Agreement on erotic advertisements*

Agreements between the Ministry of Justice, the Nederlandse Dagbladers (the association of Dutch newspaper publishers) and content distributor Wegener are aimed at ensuring that parties that place erotic advertisements report their permit or VAT number in the advertisement, making it clear to customers that the business is licensed (on the presumption that this will reduce the chance that they will be found to hire victims of human trafficking). The VER, the Dutch association of brothel owners, has voiced criticism of the effect of the agreement in its monthly magazine, *VER Bulletin*. In its current form, the agreement does not serve as a quality mark for sex businesses, which was the original intention of the Justice Ministry.<sup>124</sup> This is, first, because a permit number need only be reported for advertisements in newspapers (and not advertisements online, for instance) and only in some newspapers (those published by members of the Nederlandse Dagbladers or Wegener). In addition, prostitutes and sex-business operators who do not have a permit number (since they do not fall under the permit requirement) often report Chamber of Commerce numbers, in which case it is very easy to use old or non-existent numbers. The VER claims this lack of verification of the numbers used renders the agreement pointless.<sup>125</sup> There has been a more positive response to the insertion of information in erotic listings to raise customer awareness. Such texts are indeed placed and the Nederlandse Dagbladers contacts newspapers that it feels are not placing enough of them.

The VER has made two suggestions to improve regulation. On the one hand, the agreement should be extended to include multimedia, so that all forms of erotic advertising are subject to the same criteria, thus preventing the shift of advertisements from one medium to another to avoid the requirement. On the other, the definitive Regulation of Prostitution Act should introduce a uniform system of registration for sex businesses.<sup>126</sup>

124 Ministry of Justice press release, *Dagbladenhelpenbijbestrijdingmisstandenseksbedrijven*, 15 September 2005. Available online at [www.justitie.nl/actueel/persberichten/archief2005/Dagbladen-helpen-bij-bestrijding-misstanden-seksbedrijven.aspx](http://www.justitie.nl/actueel/persberichten/archief2005/Dagbladen-helpen-bij-bestrijding-misstanden-seksbedrijven.aspx).

125 VER bulletin, Volume 10 no. 4, April/May 2008, p. 20.

126 VER bulletin, Volume 10 no. 8, October 2008, p. 14.

## 7.6 Integrated approach to human trafficking

Cooperation and the exchange of information are crucial for tackling crime. Various integrated (chain) approaches and projects involve the exchange of information and the joint determination of an approach. This section describes the programmatic approach, the chain approach and other integrated approaches.

### *Human Trafficking Task Force's Action Plan on the exchange of information*

The Human Trafficking Task Force's action plan addresses ways of improving information exchange at and national level. The progress report on the action plan indicates that a number of quick wins have been realised with respect to information exchange. The first version of a toolkit for persons involved in the inspection, investigation and prosecution of human trafficking as well as shelter and care for victims has been produced. The toolkit contains information on how signs of human trafficking are registered and the conditions for exchanging information with other services. The National Police Intelligence Service (IPOL) of the National Police Services Agency (KLPD) also investigated the bottlenecks in the exchange of information between the Expertise Centre on Human Trafficking and People Smuggling (EMM) and the regional police forces and the Royal Netherlands Marechaussee. The results of that investigation are critical of the current information exchange between these authorities and the EMM's role in this regard. The recommendations from the study relate to improving computerisation, better allocation of duties and roles, specific agreements on targets for the quality of the information supplied and on feedback to the chain partners, improving the quality of the analysis process at EMM and strengthening cooperation with public administration.<sup>127</sup> For more information about the results of this investigation, see §8.3.

### 7.6.1 Programmatic approach

The Programme to Strengthen the Approach to Combating Organised Crime has formulated a 'programmatic approach' specifically for the topics 'human trafficking', 'organised cannabis cultivation' and 'abuse of property'.<sup>128</sup> This approach, or operational working method, is new and in being put into practice in 'laboratories' on each of those topics. The approach contains a number of elements that, in combination, are supposed to effectively combat organised crime. The approach entails the joint use of both administrative partners and partners in the criminal law system at local and national level, for both prevention and repression. This broad cooperation on different levels is aimed not only at prosecuting perpetrators and conscious facilitators, but also at gaining an impression of and tackling underlying structures that provide opportunities and structural factors that facilitate organised crime (whether deliberately or not). The method used is the barrier model, which involves

<sup>127</sup> De Kamps (2009); Human Trafficking Task Force (2009b).

<sup>128</sup> Programme to Strengthen the Approach to Combating Organised Crime (appendix to *Parliamentary Documents II* 2007/08, 29 911, no. 10), pp. 1, 5-9, 15-18; Kiemel & ten Kate (2007); Van Gestel & Verhoeven (2009).

identifying obstacles that can be placed in the way of perpetrators of criminal activities.<sup>129</sup> Financial investigation is also part of the approach. Internationally, efforts have been made to cooperate with neighbouring countries, countries where criminal networks operate that are also active in the Netherlands and – with regard to human trafficking – victims' countries of origin. In addition to bilateral cooperation, active efforts will also take place at EU level. The Human Trafficking Task Force that was appointed in 2008 focuses on strengthening supervision in the legal and illegal prostitution sectors, the perpetrator-based approach and the barrier model, among other things.<sup>130</sup> Information on the progress of the activities of the task force in these areas was provided earlier (see §7.3 and §7.5 above).

The programmatic approach was first carried out as a pilot in 2006 in the Sneep investigation into human trafficking, and was evaluated by the WODC.<sup>131</sup> The goal of the Sneep criminal investigation was to cooperate with other investigative<sup>132</sup> and administrative partners to gain an optimal view of the group of perpetrators and the way in which people, businesses and authorities – deliberately or inadvertently – facilitate human trafficking. During the investigation, the National Criminal Intelligence Service would prepare administrative reports that could provide the basis for administrative measures.

In order to involve the cooperating partners in the Sneep approach, the public prosecution service and the police used presentations and the media to provide insight into the magnitude and extremely violent nature of this human trafficking gang, which had freely gone about its business for years. This approach worked: after receiving information about Sneep, virtually all the partners agreed that this was a major social problem and they were prepared to cooperate in combating it. In practice, however, the cooperation of partner organisations did not always get off the ground, or not in the manner envisioned, and although municipalities where the human traffickers of Sneep operated were informed and involved – via consultation and the administrative report *Schone Schijn* (see §8.3.1) – it was at too late a stage. Consequently, little knowledge about businesses or authorities that inadvertently play a role in human trafficking came to light. This pilot project did not therefore effect administrative action or an exchange of operational information with the municipalities, but it did put the human trafficking problem on the agenda at municipalities and it prompted various efforts to tackle human trafficking (including the chain approaches, see §7.6.2; and more pilot projects, see below).<sup>133</sup> This initial pilot project made it clear that there is a definite need for

129 The five barriers in the barrier model are entry, housing, identity, work and finance. An integrated approach in which all five barriers are tackled is the most effective. The Human Trafficking Task Force's action plan (p. 15) states that the barrier model will be fleshed out for human trafficking. According to the progress report on the action plan, the barrier model is currently being tried out in all human trafficking 'laboratories' in order to gain experience for fleshing out the model. Source: Human Trafficking Task Force (2009b).

130 Directorate-General for the Administration of Justice and Law Enforcement – Safety Begins with Prevention project management, Progress report on Safety Begins with Prevention, Continuing Building a Safer Society, October 2008.

131 Van Gestel & Verhoeven (2009).

132 Such as the Royal Netherlands Marechaussee, the FIOD-ECD and the SIOD.

133 These efforts only began later and therefore fall outside the scope of the evaluation.

the programmatic approach but implementation needs to improve in order to achieve the ambitious results that are envisioned. The WODC's evaluation offers sufficient points of departure to realise this.

#### *Pilot projects*

Three official pilot projects in the area of human trafficking in the sex industry were started in 2008:<sup>134</sup>

- the 'Ablak' project, focusing on a group of Hungarian human traffickers operating in a number of towns and cities in the Netherlands;
- the 'human trafficking from Bulgaria' project, focusing on human trafficking from that country;
- the 'greenhouse' project, focusing on prostitution and human trafficking in the municipality of Utrecht (the Zandpad prostitution zone).

The results of these projects were not yet known when this report was written. Another four pilot projects were ready to start, including one concentrating on other forms of exploitation (discussed in Chapter 12). The pilot projects are subject to scientific evaluation and supervision by the WODC.

### **7.6.2 Chain approach to tackling human trafficking**

A growing number of municipalities are using the chain approach, also called the 'integrated approach' or 'integrated chain approach', to tackle human trafficking.<sup>135</sup> A chain approach involves a combination of a criminal law approach, an administrative approach and support and assistance/prevention, although there is no uniform definition and the existing chain approaches differ from each other. In some municipalities and regions, the chain approach focuses on human trafficking; in others, only on the problems surrounding loverboys (a specific form of human trafficking). Klein investigated how the chain approach works in five police regions<sup>136</sup> and what bottlenecks and success factors could be identified.<sup>137</sup> BNRM compiled additional information on chain approaches in other municipalities and regions.<sup>138</sup> This section summarises this information.<sup>139</sup>

134 There have also been several other initiatives in the country involving experiments with the programmatic approach. Sources: Written information from public prosecution service, 21 April 2009; Newsletter *Operatie Opsporing*, volume 2, number 1, February 2009, pp. 1-2.

135 There is no complete list of all municipalities with such an approach, but they include, in any case, the following: Amsterdam, Rotterdam, Eindhoven, The Hague and Zwolle.

136 Rotterdam-Rijnmond, Amsterdam-Amstelland, Kennemerland, IJsselland and Twente.

137 Klein (2009).

138 Including Eindhoven and The Hague.

139 For information about chain approaches in general, see [www.ketens-netwerken.nl](http://www.ketens-netwerken.nl) and the previously mentioned study by Klein.

*Chain partners*

Different partners are active in the current chain approaches. Klein arranges them into the following main categories:

- shelter (shelter institutions);
- government services (including municipalities, municipal services and the Labour Inspectorate);
- investigation services (including the police, the public prosecution service, the Royal Netherlands Marechaussee and the Social Security Information and Investigation Service (SIOD));
- assistance and service provision;
- health care services (including the municipal health services).

The tax authorities, legal profession, Central Agency for the Reception of Asylum Seekers (COA), and probation and after-care services can be involved in a chain approach to human trafficking. The School Attendance Office and Child Protection Council sometimes also play a role in the chain approaches directed at tackling the problem of loverboys. The tasks and responsibilities assumed by each organisation in the chain approach to human trafficking varies of course.

*Chain approach to human trafficking*

There are similarities and differences in the existing chain approaches to human trafficking in the Netherlands. The following elements can be found in the various chain approaches to human trafficking and loverboys that have been initiated in the Netherlands:

- a chain coordinator and/or one partner bears responsibility for managing the chain (often the municipality).<sup>140</sup> Sometimes partners are also appointed to manage the implementation in a sub-area;<sup>141</sup>
- agreements are laid down in covenants and/or protocols;<sup>142</sup>
- approaches combine criminal law, administrative law, prevention and the provision of aid;
- the partners hold structural consultations on objectives, policies and changes to the approach (in a steering committee or working group, for example);

140 The director coordinates the implementation of the approach, monitors progress with the implementation and makes agreements with partners on what they will do and on studies to be conducted.

141 In the areas of prevention, shelter, help and repression, for example.

142 The *UN Global Initiative to Fight Human Trafficking* published guiding principles in March 2009 for covenants (*Memorandums of Understanding*) providing for cooperation between stakeholders and officials responsible for law enforcement. This document stresses that cooperation is a central element of protection against human trafficking and recommends formalising cooperative structures so that joint goals can be formulated and potential conflicts can be avoided. The document regards covenants as the most common form of formalised cooperation. The document describes the benefits and drawbacks of covenants for different stakeholders in the fight against human trafficking, describes the components that a covenant should include and the stakeholders that could be involved. (Planitzer, 2009)

- there is a case review, where cases are discussed among the partners, signs and incidents of human trafficking are discussed, information is shared and interventions are coordinated;
- a centre is established for reporting indications of loverboys or human trafficking;<sup>143</sup>
- extra investments are made in relief, shelter and the care for victims;<sup>144</sup>
- supervision and enforcement are stepped up;
- information is exchanged between the partners;<sup>145</sup>
- problems are tackled pre-emptively thanks to better detection and supervision;<sup>146</sup>
- information for prevention is provided to (possible) victims, (possible) perpetrators and their parents, through schools and neighbourhood and community centres, for example;
- a facility is set up for prostitutes to help them improve their position and to detect abuses;
- advice is sought on how to identify and approach victims;
- agreements are made on communication with the media;
- lists of indications of human trafficking are used;<sup>147</sup>
- specific targets are formulated.<sup>148</sup>

The case review is an important ingredient in the chain approach.

In regions that do not use a chain approach – in the sense of organised collaboration – there is still contact among various chain partners, but usually on an ad-hoc basis in response to a specific case or incident. Sometimes there is also consultation with organisations dealing with youth prostitution in these cases. That is an area where there has been a tradition of chain approaches for some time.

143 For some years, there has been a reporting centre in Zwolle for victims and people close to them. Reports are passed on to a working group of aid workers for victims of human trafficking. Fifty percent of all reports that were discussed in the working group between 2003 and 2005 came from the reporting centre. Registration of reports by such a reporting centre contributes to the available information about victims of loverboys, since a reporting centre can not only filter and process reports on the basis of action by the police or social workers, but also register all ‘softer’ reports, such as concerns expressed by a teacher and runaway teenagers, in combination with debts, new friends and changes in behaviour. CoMensha registers ‘filtered’ reports, but there are far fewer than the total number of reports received by social service agencies.

144 CoMensha has developed a method, based on the chain approach in Amsterdam, to improve the cooperation in the areas of shelter and counselling for victims. This method is described in Van der Aa (2007).

145 The exchange of information is sometimes constrained by the privacy laws. There should be a balance between the need to share information in the interests of tackling human trafficking and the individual’s interest in the protection of his or her personal privacy.

146 In Eindhoven, for example, the police conduct interviews with (possible) loverboys (see §7.5.2).

147 On the basis of a list of indicators with a points system, situations that demand cooperation and interventions can be identified. This list of indicators used in Rotterdam makes a distinction between situations calling for special attention and situations demanding intervention.

148 In Rotterdam: 100 victims of sexual exploitation will be removed ‘from the human trafficking chain’ every year. Furthermore, every indication of human trafficking will be checked and the police will deliver 30 suspects of human trafficking to the public prosecution service, which will then prosecute them, every year. Source: Safety Directorate, Municipality of Rotterdam, 2007, Public Integrity Action Programme, pp. 23-24. Figures for 2008 show that these targets were not all met (see later in this section).

In regions that do not adopt a chain approach (sometimes despite the desire for such an approach), the bottleneck tends to be that the partners do not perceive human trafficking to be a problem and are therefore not willing to invest in a joint approach. Incidentally this bottleneck also occurs in regions where a chain approach is in place. Not all the partners – even if they participate – see human trafficking as a problem in their region or they are not aware of the role that their own organisation can play in tackling it. Klein explicitly cites municipalities and the VNG as examples. Other bottlenecks that Klein identified are the failure to recognise indications of human trafficking, problems faced by organisations in terms of capacity, poor accessibility to assistance and the shortage of places in shelters for victims of human trafficking. A care coordinator for human trafficking<sup>149</sup> is sorely needed in a number of regions.

It is difficult to measure the effectiveness of the chain approaches, and some have been started too recently to be able to do so. A few results from the chain approach in Rotterdam are given below for the sake of illustration.

*Results of the chain approach in Rotterdam<sup>150</sup>*

In 2008 an information-exchange system was developed between parties in care (municipal health services, prostitution social work) and repression (police and the public prosecution service) in order to facilitate the smooth running of case reviews, “thus making the chain approach a comprehensive one. A new covenant was also drawn up for the exchange of information. In May 2008, the regionalisation of the Rotterdam approach to human trafficking was started. In 2008, 246 indications of human trafficking were checked and dealt with;<sup>151</sup> 139 new potential victims of human trafficking were traced; prostitution social work counselled 50 new potential victims of human trafficking; eight criminal investigations into human trafficking were launched, in which 45 individuals were designated as suspects (13 were suspected of human trafficking, 21 of sexual abuse of an underage victim and the remaining 11 of trading in narcotics and fraud). It was concluded from this that broader criminal networks are often involved in human trafficking. Of the 26 suspects of human trafficking that the public prosecution service registered in 2008, four had been taken to court and sentenced to custodial sentences by the time the annual report was written.

### 7.6.3 Other integrated approaches

A number of other integrated approaches currently pursued in the Netherlands are described below.

- 149 Several years ago networks for victims of human trafficking were set up in various regions, in which agencies that provide help and services for the victims cooperate in providing shelter and counselling for victims of human trafficking. These networks are coordinated by a so-called care coordinator for human trafficking. See also NRM3.
- 150 Municipal Executive of Rotterdam, Annual Report on Public Integrity 2008, 31 March 2009. Available online at [www.rotterdam.nl](http://www.rotterdam.nl).
- 151 The chain approach to youth prostitution was largely integrated into chain approach to human trafficking in 2008. The information from both chains is entered in a central register.



*Project Emergo*

Amsterdam has started the project Emergo, a pilot project of the ministries of Home Affairs and Kingdom Relations, Justice and Finance, the municipality of Amsterdam, the public prosecution service, the police and the tax authorities, which has the aim of tackling concentrations of criminal power and ad hoc structures in the 1012 postal code area (the red light district).<sup>152</sup> A legal framework for information exchange has been developed and teams are working to analyse relevant information. The analyses are intended to culminate in coordinated actions by the relevant enforcement agencies. Human trafficking is one of the focal areas of the project. A final report from the project will be published in 2011.<sup>153</sup>

*Safety houses*

Safety houses (*veiligheidshuizen*) are locations where organisations such as the police, the public prosecution service, the Child Protection Board, the municipality and youth care institutions work together to tackle youth crime and recidivism. Some safety houses, such as those in Rotterdam and Eindhoven, also address human trafficking. This cooperation produces a wealth of information on youth and their environment, which enables the partners to quickly construct a personalised approach. There are currently more than 25 safety houses in the Netherlands and new ones are being added all the time. In the course of 2009, there should be a network of 40 safety houses throughout the country.

*Tolerance zones*

So-called ‘tolerance zones’ (*vrijplaatsen*) are areas where the government does not adequately enforce regulations and laws.<sup>154</sup> These zones may concern a specific theme or a specific area, for example, trailer parks, illegal casinos, callshops, ‘coffeeshops’ and the prostitution sector. The existence of tolerance zones is no longer considered acceptable and municipalities are taking more action against them. Since enforcement in tolerance zones often embraces a number of different policy areas, this problem is also being tackled in an integrated fashion (under the municipality’s direction). In these cases, a so-called ‘covenant on tolerance zones’ is concluded to detail the allocation of duties and the exchange of information.

## 7.7 Conclusions

This section indicates the problems in the topics discussed in this chapter and what topics demand particular attention.

152 The cooperation was effected by a covenant signed by all the partners on 11 July 2007.

153 Sources include: Programme to Strengthen the Approach to Combating Organised Crime (appendix to *Parliamentary Documents II* 2007/08, 29 911, no. 10).

154 Tolerance zones are also defined as “place where enforcement is seriously deficient and where the government fails to act against or respond adequately to threats.

A number of positive changes have been set in motion. In the context of the measures proposed by the Human Trafficking Task Force aimed at strengthening supervision in the prostitution sector, a protocol/manual for 'supervision in the licensed prostitution sector' is being drafted in consultation with the Ministry of Home Affairs and Kingdom Relations and municipalities.

#### *Prostitution sector*

Three sectors have arisen since the legalisation of prostitution: the illegal, the legal licensed and the legal unlicensed. The idea that has been put forward of curtailing the licensed sector is in itself, in other words without additional measures, an ineffective way of preventing human trafficking and abuses, since it could cause a shift to illegal forms of prostitution, which are more difficult to monitor and regulate through policy.

Prostitution, legal and illegal, takes many forms and developments in the sector follow in rapid succession. To deal effectively with the effects of this in the form of human trafficking, an integrated approach incorporating administrative measures as well as criminal sanctions is required. One aspect that shows the need for this is the fact that in many places exploitation in (illegal) prostitution is sometimes unconsciously facilitated, for example by hotels. New measures could be taken to address this, although experience shows that when one form of prostitution is cracked down on the activities almost immediately shift to other segments of the prostitution sector.

It is generally accepted that one of the aims of the policy should be to provide prostitutes with greater possibilities to control their own lives so that they are less likely to become victims of human trafficking. However, it has to be noted in that context that this scarcely follows in those cases where human traffickers use severe means of coercion.

A point that needs to be considered for any approach that is taken is that many prostitutes do not speak Dutch.

#### *Prostitution policy and administrative enforcement*

The aforementioned effect that dealing with forms of exploitation in prostitution quickly leads to the relocation of illegal activities is reinforced by the fact that municipalities are allowed to formulate their own policy on prostitution. Consequently, there is no uniform policy towards the prostitution sector. For example, certain forms of prostitution are licensed in one municipality but not in another. Many municipalities also fail to properly formulate and manage the prostitution policy and its administrative enforcement. This is not helped by the hands-off approach of the Association of Netherlands Municipalities (VNG). Smaller local authorities in particular are sometimes reluctant to tackle human trafficking, either because they do not realise the urgency of the problem or because they do not feel they have sufficient powers.

The municipalities are responsible for pursuing an adequate prostitution policy. The police play an important role in this with respect to the supervision and prevention of illegal prostitution. In this respect, the division of tasks between the local authority and the police is

unclear in many municipalities. The powers to exercise supervision can differ from one local authority to another, and in some cases no powers have been delegated at all. This encourages human traffickers to be calculating.

Other agencies also have a role in supervision. Besides the municipalities themselves, these can include the fire brigade, the tax authorities and the Labour Inspectorate. There are some signs that not all of them perform their supervisory duties in the prostitution sector properly. These additional ‘eyes and ears’ are sorely missed, which is regrettable in a sector that is very sensitive to human trafficking, which can only be dealt with effectively by reading the signs. Illegal prostitution is often difficult to identify simply because it is difficult to prove that sexual acts are being performed with third parties for payment.

(Administrative) control is particularly difficult in the case of forms of prostitution that occur outside clubs, such as escort services and prostitution offered on the Internet. The effectiveness of the labour-intensive ‘hotel procedure’ seems to have declined in efforts to control escort services, perhaps because the method has become too well known. The question is whether it is possible to control the escort services industry at all. The control of licensed prostitution businesses does not in fact guarantee that human trafficking can be eradicated from it. Nor are the administrative controls in the prostitution sector always carried out properly. Superficial inspections of a prostitute’s papers, for example, will not expose exploitation. That requires interviews in a safe setting.

The Covenant on Erotic Advertisements, under which those who place advertisements for erotic services give their licence or VAT number in the advertisement, has scarcely any effect in curbing exploitation since its scope is too narrow (it only covers some printed media) and because the numbers are not checked.

#### *Administrative approach to organised crime and human trafficking*

The instrument of the administrative report, in other words the written notification from the police to the executive of a municipality that in the course of their duties they have discovered facts and circumstances relevant for the municipality’s enforcement of human trafficking policy, does not work properly. The police do not seem to have sufficient capacity to write good reports. The reports usually contain no information on which the municipalities can base specific action. For their part, municipalities also sometimes fail to pass on useful information to the police.

#### *Integrated approach*

The programmatic approach, which involves systematic cooperation with chain partners is useful and necessary, but during a number of projects known as ‘laboratories’, it emerged that its implementation needs to improve. In practice, the partner organisations do not cooperate or at least not in the envisaged manner. Organisations are often unclear about what precisely is required of them or what they are expected to do is not one of its priorities. Consequently, scarcely any information has emerged about companies or agencies that unconsciously play a role in human trafficking. The integrated approach to human trafficking is not universally

followed, partly because the partners concerned do not perceive human trafficking to be a problem and are therefore not willing to invest in a joint approach. Even where the integrated approach is adopted, partners are sometimes cautious. There is in fact no overview of how widely the integrated approach is followed; it is not known how many municipalities have adopted a chain approach to human trafficking, what similarities and differences there are between them are and how effective they are.

A care coordinator for human trafficking is badly missed in various police regions.



## 8.1 Introduction

There are some specific features of human trafficking that can make it a difficult offence to investigate. For example, it is difficult to get victims to come forward and, if they do, to secure their cooperation in the investigation and prosecution of human traffickers. There are also various manifestations of human trafficking (sexual exploitation, non-sexual exploitation, the loverboy problem), each of which has to be investigated, at least partially, with a different approach. Transnational human trafficking requires international cooperation, which is often time-consuming, and the legislation is complex. In short, investigating human trafficking is not always straightforward, but it is, nevertheless, essential. This chapter describes how human trafficking is investigated in the Netherlands. Relevant national policy developments are discussed in §8.2 and the process of identifying the offence is described in §8.3. Section 8.3.3 describes how information is processed; how the police deal with indications of human trafficking. The actual investigation of human trafficking is discussed in §8.4. Specific problems surrounding the phenomenon of ‘shelved cases’ are reviewed in §8.5. The chapter ends with an assessment of international developments in the field of investigation (§8.6).

## 8.2 National policy developments and initiatives

Safety Begins with Prevention is a project that started in 2007.<sup>1</sup> It concentrates on tackling crime (including organised crime) in six areas, including human trafficking.<sup>2</sup> Built on an integrated approach, the project adopts a combination of prevention, enforcement through administrative and criminal law, and after-care. This means that there is a role in the process not only for the public prosecution service and the police, but also for administrative authorities and civil organisations, such as housing associations, labour market organisations and educational and care institutions. The government also wants to actively involve members of the public, particularly in preventing crime, public nuisance and degeneration.<sup>3</sup> A special programme has been developed to tackle organised crime (see below).

- <sup>1</sup> The aim is to reduce crime and nuisance by 25% compared with 2002 by the end of this government’s term in office. The project builds on the results of the Safety Programme (2002-2007).
- <sup>2</sup> The six themes are (1) tackling aggression and violence, (2) tackling theft, (3) tackling crime against businesses, (4) tackling anti-social behaviour and local degeneration, (5) an individualised strategy for youths at risk and repeat offenders, and (6) tackling serious and less visible forms of crime, such as cyber-crime, financial and economic crime and organised crime.
- <sup>3</sup> Via the Safety Monitor (central government) and the Business Crime Monitor.

*Programme to Strengthen the Approach to Combating Organised Crime*

This aim of this programme is to intensify efforts to fight organised crime in the Netherlands by strengthening enforcement under criminal and administrative law<sup>4</sup> in combination with an international approach to organised crime. The programme addresses the following specific themes:

- human trafficking;
- organised cannabis growing;
- real estate;
- the Emergo project (targeted at the red light district in Amsterdam).<sup>5</sup>

The ‘National priorities for the police for 2008-2011’ (which were adopted by the Ministers of the Interior and Justice in consultation with the police) state that the police will play their part in this programme.<sup>6</sup>

*Reference Framework for Human Trafficking (2008)*

To improve and harmonise the approach to human trafficking by the police, the National Expert Group on Human Trafficking (LEM)<sup>NRM5</sup> drafted the Reference Framework for Human Trafficking (2008), which sets out a framework for how the Dutch police should organise their efforts to tackle human trafficking. Among other things, it calls for a regional chain approach that allows human trafficking to be addressed proactively, as well as through prevention and repression. The reference model includes the following standards for investigation and enforcement:

- Every force must deploy sufficient capacity to carry out investigations into human trafficking, to reflect the high priority assigned to the offence.<sup>7</sup>
- Every force must formulate an approach to human trafficking.<sup>8</sup>
- Teams investigating human trafficking should, in principle, be multidisciplinary.<sup>9</sup>

4 See also Chapter 7.

5 See also Chapter 7.

6 The amended Police Act (2007) provides that the Ministers of the Interior and Kingdom Relations and Justice will formulate the main points of policy concerning the performance of police tasks at least once every four years. The main points of this policy, or national priorities, replace the former *National Framework for the Dutch Police*. The priorities set out in the *Joint national priorities for the police 2008-2011 cover the themes of violence, safe neighbourhoods, youth crime and youths at risk and the quantity and quality of investigations*. The national objectives at regional level are monitored every year. The monitoring process includes annual meetings to discuss progress between representatives of the forces and officials of the ministries of the Interior and Kingdom Relations and Justice. A force that meets the targets qualifies for performance-related financing.

7 The Investigations Board agreed at a meeting in January 2009 that performance would be assessed on the basis of results achieved rather than setting a standard for the deployment of capacity. The standard adopted was that the police forces would report the number of investigations planned and carried out to the LEM. The question is, however, whether this is the most appropriate measure. Forces are not in fact allowed to ‘shelve’ any human trafficking cases and the number of shelved cases would be a better measure (see also §8.5).

8 In any case, including Intelligence Led Policing (see §8.3.3) and supervision and investigation in the licensed and non-licensed prostitution sector (see Chapter 7).

9 With expertise in immigration crime, vice and serious crime as needed.



- No policy relating to the volume of cases should be applied in the area of human trafficking.<sup>10</sup>
- Financial investigations should be conducted in every investigation of human trafficking.<sup>11</sup>
- The emphasis during administrative checks should be on detecting illegal prostitution (including underage prostitutes) and victims of human trafficking.<sup>12</sup>
- All relevant police officers should be informed about the characteristics, indications and manifestations of illegal prostitution and human trafficking (including its victims).
- Specific information needs to be collected about human trafficking so that it can, if necessary, be prosecuted even without reporting human trafficking. Every police region should therefore be organised in such a way that there is a central location where every indication of human trafficking is collected, analysed, upgraded and collated.
- The police force should constantly consult and analyse information from public sources.<sup>13</sup>
- When a suspect emerges, facts and circumstances should be accumulated.<sup>NRM5</sup> Facts and circumstances giving rise to a reasonable suspicion of guilt of human trafficking should be included in a ‘table 27 construction’.<sup>14</sup>
- To tackle human trafficking effectively, it is important that the various organisations share information.<sup>15</sup> Agreements must be concluded to this effect.
- Police forces should take the initiative to establish a chain approach to human trafficking in their region.
- Police forces should actively pursue international cooperation.
- The police force should produce a roadmap for dealing with indications and/or victims of human trafficking and police officers who are likely to come in contact with victims of human trafficking in the performance of their duties should be acquainted with it.
- The police force should appoint a ‘B9’ contact person to guarantee the proper and effective implementation of the B9 regulation.<sup>16</sup>
- The regional force should take specific action to implement any improvements identified in the Police Force Monitors.

10 In other words, a maximum number of human trafficking investigations to be conducted is specified.

11 Not only with a view to confiscation, but also as an instrument to find out more about criminal networks.

12 See §7.5.

13 The chamber of commerce, for example.

14 A ‘Table 27 construction’ is a document containing a record of all the facts and circumstances underpinning a suspicion of human trafficking. See also NRM5.

15 Van der Lugt & Zoetekouw, (2003, p. 8).

16 For more information about the B9 regulation, see Chapter 5.

The Reference Framework for Human Trafficking contains very clear guidelines on how the police can intensify efforts to tackle human trafficking. However, it is unclear how the police can be obliged to follow them. The Police Force Monitor on Human Trafficking (further referred to as the Police Force Monitor) (see below) may devote attention to this.

#### *Police Force Monitor*

Ever since the abolition of the ban on brothels, the police have monitored the efforts and performances of individual forces in the area of prostitution and human trafficking.<sup>17</sup> Following an interval, the most recent Police Force Monitor on Prostitution and Human Trafficking was published in 2007.<sup>18</sup> The results in the Police Force Monitor were national news even before they were published, partly because of the high number of ‘shelved cases’ (human trafficking cases that were not dealt with) reported in it (see §8.5 on the NRM study into shelved cases). It also emerged that many police forces were underperforming. This prompted many forces to make improvements, including the formation of ‘human trafficking teams’.<sup>19</sup> Specific results are discussed in this and other chapters, where relevant. One of the standards laid down in the Reference Framework for Human Trafficking is that a Police Force Monitor should be produced every two years, under the auspices of the national coordinator for human trafficking. The next Police Force Monitor will be published in 2009.<sup>20</sup>

#### *Flexible Intelligence and Expertise Team (FIET)*

The National Criminal Intelligence Service is planning to establish a Flexible Intelligence and Expertise Team (FIET) for human trafficking and migrant smuggling. The team will gather and analyse so-called ‘level 3(+)’ information about international organised human trafficking, in association with the EMM, among others. The EMM will remain the central collection point for receiving and processing indications of human trafficking and distributing information derived from these data, and will pass on level 3(+) information it receives to the FIET. The EMM will also receive information from the FIET (reports of human trafficking and so-called residual and incidental information). The ultimate aim is that the National Criminal Intelligence Service will be able to use the information from the FIET to tackle human trafficking and migrant smuggling effectively and efficiently. It is also the task of the FIET to devise innovative strategies for tackling human trafficking. A relevant aspect in that context is a recommendation made in a study carried out for the Human Trafficking Task Force that the Netherlands Police Agency (KLPD) should make clear, binding agreements

17 In other words, the supervision of the licensed prostitution sector and efforts to tackle illegal prostitution and human trafficking.

18 Further referred to as the ‘Police Force Monitor 2007’.

19 Other names are sometimes used. The tasks of these teams also vary (see §8.5); they are sometimes also concerned with crimes other than human trafficking, such as child pornography and migrant smuggling.

20 Letter from the member of the Council of Police Superintendents responsible for the human trafficking and migrant smuggling portfolio to the human trafficking exports of the police forces, 16 May 2009.

on the number of level 3 and 4 investigations by the FIET. The stakeholders in the EMM should also be consulted.<sup>21</sup>

#### *National Expert Group on Human Trafficking*

The National Expert Group on Human Trafficking (LEM) is a consultative body in which police forces share information about strategies and policies.<sup>NRM5</sup> Since 2007, meetings of the LEM have only been attended by experts from selected forces (rather than from all of them) and, alternately, with or without external partners. The experts who do attend maintain contact with the other forces through working groups. Once a year there is a two-day meeting that is attended by the experts from all the forces. When all the forces were directly represented in it, one of the LEM's functions was to spur on and motivate forces that were lagging behind in the priority they gave to addressing human trafficking. The new, decentralised structure of the meetings seems to be at the expense of this function.

#### *National Threat Assessment 2008*

The second National Threat Assessment (NTA) appeared in October 2008.<sup>22</sup> It provided an analysis of organised crime in the Netherlands highlighting existing and future threats to Dutch society. The NTA also addressed human trafficking, specifically the scale of the problem (the rise in the number of serious indications),<sup>23</sup> the criminal organisations involved<sup>24</sup> and crime-related factors.<sup>25</sup> It also referred to the fact that stricter measures against Roma in Belgium could possibly lead to more exploitation of Roma children in the Netherlands (more information about Roma and human trafficking can be found in §4.2.5).

Given the serious consequences of sexual exploitation for the personal lives of the victims and the fact that the scale of the problem is unlikely to decline under the current circumstances, the NTA described human trafficking as a threat to Dutch society. Exploitation in other economic sectors is described as a 'blank spot' in the threat assessment; in other words, it is a phenomenon about which there is too little information to give a clear qualification. Both the scale of the phenomenon and the consequences for society are difficult to estimate, according to the National Threat Assessment.<sup>26</sup>

21 De Kamps (2009); KLPD's Police Intelligence Service (IPOL); Human Trafficking Task Force (2009b).

22 The first National Threat Assessment appeared in 2004.

23 In 2005, police forces received more than 700 serious indications of human trafficking (in relation to prostitution). In the first three quarters of 2006, there were more than 1,100 indications. However, the number and type of indications cannot be interpreted uniformly and consistently and, consequently, are never included in the BNRM reports (see NRM5). One of the explanations given in the NTA for the increased number of indications is the greater awareness of human trafficking among citizens and the police. As regards cases of other forms of exploitation, the NTA says that investigating officers still know little about the scale of the problem. The National Threat Assessment then refers to research and figures published in the fifth report of the NRM.

24 Twenty-three investigations of human trafficking (18 cases of exploitation in prostitution and five cases of exploitation in other sectors) show that the ethnic make-up of suspects is homogenous. Other offences that frequently occur in the course of human trafficking are drug dealing, assault and battery, rape and intimidation.

25 The NTA regards government policy and its regulation as the most decisive crime-related factors. In the case of human trafficking, the abolition of the ban on brothels is mentioned.

26 Boerman et al. (2008, pp. 69-75).

*Police system*

The plans for a ‘national police force’ are not going ahead.<sup>NRM5</sup> In December 2008, the government sent a new bill to parliament under which the decentralised police system would remain intact but the government would tighten its oversight. The bill provides that police forces must coordinate more of their affairs, such as procurement of materials and personnel policy.<sup>27</sup> Even these plans were criticised by the police and the Association of Netherlands Municipalities (VNG).<sup>28</sup> The chief constables want to strengthen the unity of the police organisation at national level within the contours of the current system and with retention of decentralised management. At the time this report was written, the bill still had to be passed by both houses of parliament.

### 8.3 Identifying situations of human trafficking

#### 8.3.1 Identifying human trafficking

Various indications can point to human trafficking. Briefly, these can be dependency (on the employer), severe restriction of the basic freedoms of the individuals concerned, working under very poor conditions and violation of physical integrity.<sup>29</sup> Employees of organisations that might be confronted with victims of human trafficking should ideally be aware of these signs and know where they should take such information. The Human Trafficking Task Force’s action plan includes a measure designed to promote this. Meanwhile, some progress has already been made in increasing awareness of indications of human trafficking throughout the chain.<sup>30</sup> This section discusses the identification of human trafficking by the police and other agencies (social services, members of the public, clients of prostitutes, operators of sex establishments, the IND, the Royal Netherlands Marechaussee, the tax authorities, municipalities and

27 The police forces also made agreements on this in 2005, which led to the establishment of the Facility for Police Cooperation (VtSPN). The new bill will advance the cooperation a stage further.

28 Letter from the Council of Police Superintendents to the Minister of Home Affairs and Kingdom Relations, 16 January 2009; [www.vng.nl](http://www.vng.nl).

29 For a complete list, see the Instruction on Human Trafficking.

30 For example, in February 2009 the Ministry of Social Affairs and Employment published a fact sheet for victims, in association with CoMensha and BLinN, entitled ‘Exploitation at the workplace’ in 12 languages. In association with the ministries of Education, Culture and Science and Health, Welfare and Sport, the ministry also includes information for prostitutes and social workers about indications of human trafficking in the prostitution sector, organisations that provide help and the rights of victims in publicity materials. In December 2008, the Labour Inspectorate trained 24 new inspectors in how to identify signs of work-related exploitation and in the summer of 2009, the SIOD started an internal programme to strengthen efforts to combat human trafficking. In addition, an instructional film was produced (by the ministries of Justice, Social Affairs and Employment and the Interior and Kingdom Relations) for the police, the Royal Netherlands Marechaussee, the Labour Inspectorate and the SIOD to make them more alert to human trafficking. The Ministry of Social Affairs and Employment and the Ministry of Justice both provided subsidies to BLinN for the project ‘Identifying and informing hard-to-reach victims’, the aim of which is to increase the expertise of relevant actors and their access to victims. A standard list of indicators is also being drawn up for officers of the Royal Netherlands Marechaussee who work on the border and in the mobile immigration supervision teams. See Human Trafficking Task Force (2009b).

chambers of commerce). The importance of their identifying the offence lies in the fact that, for various reasons, victims cannot or will not go to the police.

### *Police*

Information about human trafficking reaches the police in various ways, for example as a result of the supervision of the prostitution sector, through often anonymous reports or because the police discover indications of human trafficking themselves.<sup>31</sup> Among those who could report human trafficking to the police are the parents or friends of victims or other prostitutes, operators of sex establishments, neighbours or clients who suspect abuses, but also sources of an entirely different nature, such as abortion doctors (see box).

#### *Abortion doctors*

In the Sneep investigation,<sup>NRM5</sup> human traffickers forced their victims to have abortions. As a result of these practices, the BNRM arranged a meeting between the Dutch Society of Abortion Doctors and the Dutch police's Expertise Centre on Human Trafficking and Migrant Smuggling to discuss indications that could suggest human trafficking. During the intake interview, in particular, when the doctor determines whether the woman wants an abortion, there are opportunities for a risk analysis of human trafficking. The plan is therefore to draw up a protocol setting out how abortion doctors can recognise human trafficking and what action they should take if they suspect coercion. Minister of Justice Hirsch Ballin has also said in parliament that medical operations undergone under coercion can be addressed through criminal law and medical disciplinary procedures.<sup>32</sup>

Police officers can encounter human trafficking during regular inspections (outside risk sectors, such as the prostitution sector). For example, during a traffic check, a police officer stopped a car with a Bulgarian driver carrying three Bulgarian women as passengers. The driver had the women's passports in his pocket and the women appeared extremely scared. A situation like this can suggest human trafficking. To be able to recognise this it is important for police officers to be informed about indications of human trafficking. In some police regions they are, but not in all.

#### *Fact sheet on indications of human trafficking/migrant smuggling for the police*

All police officers recently received a convenient fact sheet with a list of indicators of migrant smuggling or human trafficking that they should look out for during routine checks. The list includes characteristics of human traffickers and smugglers, as well as of victims.<sup>33</sup> The fact sheet instructs officers who encounter any of the indicators to contact the regional department of the aliens police.

<sup>31</sup> For example, through indications of illegal (unlicensed) prostitution involving victims of human trafficking.

<sup>32</sup> Letter from the Minister and State Secretary of Justice to the Lower House of Parliament, 8 June 2009 (*Parliamentary Documents II* 2008/09, 28 638, no. 42). See also §9.4.4.

<sup>33</sup> The leaflet was presented during the national meeting of all holders of the human trafficking and migrant smuggling portfolio, 11 September 2009.

The Police Force Monitor 2007 and the Reference Framework for Human Trafficking both call for information to be provided to all police officers working on the street. It is also important that police officers make a record of this information, which could ultimately provide a missing piece in a puzzle or together, which together with others, expose an offence. This is particularly important in the case of offences like human trafficking, where the willingness to make a report is low.<sup>34</sup>

The records should preferably use the term ‘human trafficking’ explicitly, so that the information can be easily traced. But information can also be collected in other ways (see box).

*Recognising (potential) victims of exploitation in prostitution*

The analysis department of the Hollands Midden police force has developed an extensive search formula with which it can detect (potential) victims of certain forms of human trafficking in police registration systems. It has two aims: first, it makes it easier to determine whether vague reports do actually concern exploitation in prostitution; second, it helps in prevention. By recognising potential victims in time they can be helped before they end up in prostitution. On the basis of literature and police information, a set of characteristics of Dutch victims of forced prostitution was collected. The indicators include the use of illegal substances, debts, antecedents, mental retardation, sexually excessive behaviour, domestic violence, running away, removal from home, contact with the social services, cultural background of boyfriend, use of free time, etc. The lists contains a wide range of characteristics categorised in the domains ‘individual’, ‘family’, ‘contemporaries and free time situation’ and ‘school and work’. For the purposes of searching, the indicators are formulated as much as possible in ordinary speech (as an officer would enter it in the BPS/BVH). With the help of this indicator analysis,<sup>35</sup> the police in Hollands Midden have found more victims and potential victims of exploitation in prostitution. But the model has far more uses. When community police officers, youth coordinators and juvenile and vice detectives know these indicators, they are better able to identify and monitor potential victims, record relevant information and, where possible, take preventive action. The Youth Prevention Team<sup>36</sup> (JPT) and the aliens police (the department that deals with human trafficking) cooperate and share information. For example, they consult on what the social services and the investigators can do for an underage girl who might be a victim of exploitation. Analysts from the Hollands Midden police can, if necessary, also make a so-called ‘exploitation analysis’ in the event of an indication of human trafficking. The document contains a summary of all the information available to the police about suspects and/or victims and an estimate of the chance that it is a human trafficking situation. This estimate is made on the basis of a model in which scores are assigned to indicators closely related to human trafficking, such as contacts in the sex industry, negative aspects in a person’s life history, etc. On the basis of this exploitation analysis, tactical choices can be made before starting an investigation.

34 Sources include *Blauw Opsporing*, volume 4, number 4; *Recherche Vakbeurs*, 13 June 2008.

35 The program *Brains* (Basic Investigation and Analysis Instrument) is used for the analysis.

36 There is a Youth Prevention Team (YPT) for each district in the Hollands Midden region, which is a partnership between the police and the Youth Care Agency. It offers preventive help to young people up to the age of 18 who have been in trouble with the police. These are not only young people who commit offences, but also young people who display warning signs, such as truancy or running away from home.

The Criminal Intelligence Unit (*Criminele Inlichtingeneenheid – CIE*)<sup>37</sup> also plays a role in identifying human trafficking.<sup>NRM5</sup> Although the CIE's methods in this area are not known, the CIE's attention to human trafficking does seem to be increasing. Various forces have provided information or training for the CIE. Some forces have said they have received many indications of human trafficking from the CIE. The CIE is informed of potential sources by police officers who are involved in supervising prostitution, for example. There is currently a discussion underway about the possibility of recruiting informants in the legitimate world to learn more about the involvement of legitimate business in organised crime.<sup>38</sup> However, the complexity of human trafficking investigations also has consequences for CIE informants. The CIE often operates on the 'no cure, no pay' principle, so if a tip does not lead to an arrest or a case – which can happen when victims of human trafficking do not cooperate with the investigation – no reward is paid.<sup>39</sup>

The identification of other forms of exploitation is primarily the responsibility of the aliens police, mainly because of their involvement in inspections of companies to search for illegal aliens, for example in sectors where there is a risk of human trafficking, such as the hospitality industry and agriculture and horticulture. The aliens police are increasingly aware of the possibility that there may be victims of human trafficking among illegal immigrants. This is apparent, for example, from the Agreement on the Performance of Police Aliens Tasks 2009-2011 [*Convenant Uitvoering Politiele Vreemdelingentaak 2009-2011*], in which identifying human trafficking and providing help for victims of human trafficking was made a policy priority. A new course on migration-related crime is also being developed for the aliens police. One of the aims of the course is to help officers to identify victims of other forms of exploitation and to respond adequately.<sup>40</sup> The survey of shelved cases and the Police Force Monitor, among other things, also show that there is room for improvement in the recognition of other forms of exploitation and many police forces are still searching for the right approach to this form of human trafficking. This is one reason why some situations of exploitation are probably unknown. The detection of exploitation outside the sex industry must be improved and intensified to reduce the scale of human trafficking in the Netherlands. To achieve this, illegal aliens who are arrested and who might be victims of human trafficking could be questioned about it, for example. This does not always happen, although this is partly due to practical circumstances.<sup>41</sup> In practice, it is also unclear when – in the case of illegal workers – there is the 'slightest indication' of human trafficking and they should be

37 The CIE's task is to collect, register and analyse information about criminal offences and suspects. It is the only police division that is allowed to use informants who provide information anonymously. Information from the CIE therefore cannot be used as evidence in a trial, but it can help to create a suspicion on the grounds of which an investigation can begin.

38 Kop et al. (2007).

39 Verbal information from a public prosecutor, 18 February 2008.

40 To recognise and interview victims of sexual exploitation, an officer must have taken a special course on sexual exploitation.

41 For example, aliens are quickly deported or placed in aliens detention and it is then more difficult to arrange an interview or to create a relationship of trust so that a victim is willing to tell more.



offered the period of reflection (see also Chapter 12). The identification of other forms of exploitation by special investigation services and inspectorates is discussed in §12.2.

### *Help*

For various reasons, victims of human trafficking are not always prepared to cooperate with the investigation and prosecution of offenders.<sup>NRM5</sup> Furthermore, foreign victims, in particular, do not always know how to approach the police. For these and other reasons, social services may be aware of more or different victims than the police and the public prosecution service. Social-service agencies can also report suspicions of human trafficking to the police. The Amsterdam Human Trafficking Coordination Point (ACM), for example, published a brochure for chain partners explaining how to identify human trafficking and where to report it. In principle, a case is reported to the ACM, which then notifies the police. The brochure also mentions the possibility of reporting information to the CIE. Nevertheless, the social services face a dilemma in passing on information. The question is whether reporting human trafficking or the investigation of a human trafficking case is always in the best interests of the client, in terms of their protection, for example. Social workers also feel they have a duty of confidentiality towards their clients to a certain extent. The Programme to Strengthen the Approach to Combating Organised Crime in fact states that a study will be carried out to explore how information from social workers can be used for the investigation and prosecution of human trafficking without harming their relationship with victims or worsening the situation of victims.<sup>42</sup> This is an issue that is also being considered in the so-called chain approaches to human trafficking that are being developed in various cities (see §7.6.2).

### *Private citizens/clients of prostitutes*

Reports from members of the public contribute to the information possessed by the police and is therefore very important. This applies to a large extent to human trafficking as well, where there is little willingness to make a complaint. One specific group of citizens who are able to identify human trafficking are clients of prostitutes. The follow-up to the campaign *Schijn bedriegt* [Appearances are deceptive] run by the foundation Report Crime Anonymously [*Stichting Meld Misdaad Anoniem (M)*]<sup>NRM5</sup> was launched in 2008. Its aim is to teach clients of prostitutes to recognise the signs of coerced prostitution and to encourage them to report information about it to the police or, anonymously, to M.<sup>43</sup> The campaign uses

42 Programme to Strengthen Approach to Organised Crime (annex to *Parliamentary Documents II 2007/08*, 29 911, no. 10), p. 17. This point is also referred to in the Human Trafficking Task Force's Action Plan, July 2009, p. 12. Meanwhile, there is now a *toolkit for anyone working in places such as shelters for victims of human trafficking*. At the time this report was written, the *toolkit was scheduled to be launched during the Human Trafficking Conference on 29 October 2009*. The *toolkit consists of a package of instruments and documents that can be used by every service or agency that encounters indications of human trafficking, explaining how indications of human trafficking should be registered and when and under what conditions signs can be exchanged with other services*. See Human Trafficking Task Force (2009b).

43 Press release by the Report Crime Anonymously foundation, 8 January 2008 ([www.meldcrimeanoniem.nl](http://www.meldcrimeanoniem.nl)).

leaflets, advertisements and posters. Short films are posted on erotic internet sites, in which clients are first seduced with titillating images, but then presented with steadily more confrontational indications of coercion in prostitution. The films end with an appeal to pass on information to the police. Zaitch and Staring<sup>44</sup> conclude, in a study of prostitutes' clients, that, even if they are aware of indicators of human trafficking, clients generally disregard that knowledge as soon as they are face to face with the prostitute of their choice. They put having a good time with a prostitute first and close their eyes to information they might not want to know. Accordingly, clients of window prostitutes in Amsterdam say that they almost never observe signs of human trafficking.<sup>45</sup> The question is whether clients would take action if they recognised abuses. It seems that this is true only to a limited extent. Operators/managers of sex establishments might also be in a position to warn of human trafficking (see below).

Like the earlier campaign two years ago, the new campaign by the M foundation led to more anonymous reports of coerced prostitution (147 in 2008), which prompted a number of police investigations, five of which have since been successfully completed.<sup>46</sup> There are some critical reservations to be made about the M line, however. There is a risk that false information will be given, intentionally or otherwise, for example. It is therefore important for information from the M line to be confirmed by further investigation by the police and the public prosecution service.<sup>47</sup> In a general sense, it is important that citizens are informed what had been done with their report, since this will increase the willingness to report. Generally speaking, this is not done enough in practice.<sup>48</sup> Report Crime Anonymously is trying to improve the feedback,<sup>49</sup> but it is also difficult to receive feedback from the police about what has been done with reports.<sup>50</sup>

#### *Operators of sex establishments*

*Schone Schijn* discussed the capacity of operators and managers of sex establishments to identify human trafficking.<sup>51</sup> These people have regular contact with the prostitutes working for them and can therefore recognise abuses. According to the report, operators/managers do report abuses, but it appears – given the scale of the Sneep case, for example – that they either observe very little or display little willingness to report abuses. The latter might perhaps be because it could damage their financial interests or because of risks to their own safety (human traffickers can be very violent). On the other hand, they might be complicit in human trafficking. For example, *Schone Schijn* showed that some operators of windows

44 Zaitch & Staring (2009).

45 Flight & Hulshof (2009).

46 See [www.meldcrimeanoniem.nl/Article.aspx?id=520](http://www.meldcrimeanoniem.nl/Article.aspx?id=520), consulted on 2 June 2009.

47 Brinkhoff (2008, pp. 1224-1228).

48 Public Order and Safety Inspectorate (2007).

49 The director of Report Crime Anonymously foundation in an interview with Opportuun, April 2009.

50 This is due to the police systems, on the one hand, and a lack of motivation and capacity to provide feedback, on the other. Verbal information from the Report Crime Anonymously foundation, 19 October 2007.

51 Van Hout & Van der Laan (2008).

also provide accommodation for prostitutes at exorbitant rents and maintain contact and do business with pimps. Earlier research by the BNRM<sup>NRM3</sup> also shows that police officers believe that while many operators might not be guilty of human trafficking, they are aware of it.

### IND

Officials of the Immigration and Naturalisation Service (IND) can also identify situations of human trafficking. The IND has issued working instructions for identifying victims and potential victims of human trafficking during the asylum procedure. The IND has said,<sup>52</sup> among other things, that evident victims are only occasionally identified. In many cases, the individuals are identified as possible victims. These indications are not registered in the IND's information systems, but are recorded manually. Consequently, it is impossible to give a precise and reliable overview of the number of identifications, according to the IND. Sometimes it is evident that a person is a victim, but in most cases the IND only has a suspicion that something is wrong. In other words, it may encounter a serious indication, a suspicion, a false alarm or an incredible story. This means that the number of registered indications must not be confused with the number of victims discovered during the asylum procedure. According to the IND, the latter figure cannot be established. As an indication, the IND said that around 100 indications of human trafficking were registered in the asylum procedure up to the middle of August 2009.

The IND also observed that many Bulgarians and Romanians report to the IND as self-employed persons. The IND officials do find indications of human trafficking among them, and they are reported to the EMM.<sup>53</sup> It might be necessary to review, revise and guarantee the current agreements on the exchange of information between the EMM and the IND.<sup>54</sup>

### *Schiphol/Royal Netherlands Marechaussee*

Some victims of human trafficking arrive in the Netherlands at Schiphol.<sup>NRM3/5</sup> The Royal Netherlands Marechaussee<sup>55</sup> is responsible for anyone who is stopped or refused entry at Schiphol and who displays signs of human trafficking. After 2006, the Marechaussee encountered a remarkable number of underage Nigerian girls without valid travel documents who requested asylum at Schiphol. These unaccompanied underage asylum seekers<sup>56</sup> then disappeared almost immediately after their arrival in the asylum centres. Some of them were later found working as prostitutes in the Netherlands and Belgium. This created the suspicion that they were victims of human trafficking and led to a number of investigations, with varying degrees of success.<sup>NRM5</sup> Another phenomenon was that unaccompanied underage

52 Verbal information from the IND, 11 September 2009.

53 Verbal information from the IND to the LEM, 14 May 2008.

54 This is one of the recommendations in De Kamps (2009).

55 The Sluis team and the Youth and Vice Squad of the Royal Netherlands Marechaussee are responsible for investigating human trafficking and for the shelter and proper treatment of victims respectively.

56 Referred to in Dutch by the abbreviation UMAs.

asylum seekers arriving at Schiphol would claim that they were victims of human trafficking, be allowed to stay on the grounds of the B9 regulation and then contact their traffickers, who would then collect them and force them into prostitution. The precise methods they used and the police investigations into them are described in §9.5. In any case, this also led to questions about Schiphol's role as a 'nodal orientation point'<sup>57</sup> in human trafficking, questions that culminated in a conference,<sup>58</sup> an internal research report and an action plan. There are distinct times when indications of human trafficking can be discerned at Schiphol.<sup>59</sup> During the gate checks for risk flights<sup>60</sup> officers also look out for signs of passengers who are or could be involved in human trafficking.<sup>61</sup> Persons who are refused entry at the border can request asylum. They are brought to the IND's reporting centre and interviewed and a suspicion of human trafficking may emerge during that interview. Persons who request asylum are appointed a lawyer, who might also find that the individual could be a victim of human trafficking. Persons who do not report human trafficking and whose asylum request is denied are placed in aliens detention, where they can still be recognised as victims of human trafficking by the Repatriation and Departure Service (DT&V) (see §8.3.2). Since 1 January 2009, (possible) victims of human trafficking who enter the country through Schiphol can also be granted a reflection period (see §2.3). This happened twice during the first five months of 2009.<sup>62</sup>

The Marechaussee has taken various measures to improve the recognition of victims. For example, victim profiles have been drawn up, which are used by the rapid action teams (see §8.6). The escort agencies that use hotels at Schiphol are also inspected as part of the supervision of the licensed prostitution sector.<sup>63</sup> Since (possible) victims of human trafficking are also offered the reflection period at Schiphol, the Marechaussee, IND and DT&V are drafting a protocol setting out who is responsible for these victims, and when. As part of an action plan drawn up by the Marechaussee for the Human Trafficking Task Force, an effort will be made to raise awareness among all Marechaussee officers. The Marechaussee have also set up a working group to implement the action plan.<sup>64</sup>

57 This is a reference to the 'nodal police' concept, where monitoring and checks are targeted at nodes in the infrastructure. See Bekkers et al. (2006; 2007, pp. 12-16); *Vision Document Police in Development*, 2005.

58 On 24 October 2007, the Youth and Vice Squad of the Intelligence & Information Brigade of the Royal Netherlands Marechaussee at Schiphol organised a conference on the theme of 'Human trafficking at Schiphol?.'

59 Jansen (2007, unpublished).

60 These checks are instituted to prevent passengers disposing of travel documents before passing through passport control.

61 *Parliamentary Documents II* 2007/08, 19 637, no. 1207.

62 Letter from the Minister and State Secretary of Justice to the Lower House of Parliament, 8 June 2009 (*Parliamentary Documents II* 2008/09, 28 638, no. 42).

63 This led to an investigation of an escort agency where Romanian victims were exploited (one victim made statements and started the case rolling).

64 The working group is responsible, among other things, for implementing the action plan, identifying and solving problems, monitoring the activities of the Royal Netherlands Marechaussee relating to human trafficking, sharing *best practices* and discussing the latest developments in the field of human trafficking and migration crime. The working group has also decided to start a *pilot project to implement and test some of the measures in the Human Trafficking Action Plan* on a trial basis. See Human Trafficking Task Force (2009b).

*Tax authorities*

The tax authorities carry out regular audits in the prostitution sector.<sup>65</sup> The tax inspectors are issued with lists of indicators of human trafficking and take those lists with them during the audits. They do sometimes find indications of human trafficking and pass them on to the police. The tax authorities can also encounter human trafficking when issuing tax and social security (Sofi) numbers to prostitutes. The relevant employees have not followed a special course to recognise indications of human trafficking. The aim is to issue a tax and social security number as soon as possible.<sup>66</sup> Nevertheless, they do sometimes recognise signs and report them to the police. For example, at the beginning of 2009 several women called to the tax authorities to apply for a tax and social security number. The women were clearly scared and nervous and did not have their own passports with them (they were in the possession of another person who had accompanied them). The official reported this to the police. In another case, an employee reported that a woman had a false passport (according to her passport, she was 25, but this seemed highly unlikely). This girl, who proved to be 15, was then identified by the police as a victim of human trafficking. The suspects were arrested and tried.

From 1 January 2009 the people who let windows to prostitutes are covered by the turnover tax legislation and have to keep accounts. In principle, therefore, the tax authorities will be aware of every prostitute working behind the windows. That information could probably be shared in some way with the police.

*Municipalities and chambers of commerce*

The report *Schone Schijn* discussed the capacity of various institutions, including municipalities and chambers of commerce, to identify human trafficking.<sup>67</sup> These organisations feel they have few possibilities to do so. Municipalities encounter victims of human trafficking when they register in the Municipal Basic Registration of Population Data (GBA), when they have to identify themselves and give an address, but if a victim registers with the correct papers, there is very little chance of identifying them as a victim of human trafficking. Chambers of commerce have a similar problem. The police therefore plan to train employees of chambers of commerce to recognise victims who want to register with them.<sup>68</sup> There are other municipal agencies that could come across indications of human trafficking, such as the building inspection department. It is important for this information to be shared with the police

65 The aim is to identify illegal and undocumented workers, to establish the employment relationships and the accuracy of the accounts. Source: Van Hout & Van der Laan (2008).

66 Van Hout & Van der Laan ((2008, p. 63).

67 Van Hout & Van der Laan (2008).

68 Operational Consultation Group on Trafficking in Human Beings, 12 May 2009.

*Identification of human trafficking by the municipality*

Perhaps lessons could be drawn from a project in which municipalities shared information with the police about radicalisation. This project took place in the province of Zeeland in 2007/2008. Set up in the context of counter-terrorism, its objective was to increase awareness among municipal employees of signs of radicalisation that they might come across during their work and to encourage them to report their findings to the police. The municipalities in Zeeland were not all enthusiastic about taking part in the project. Many municipalities initially argued that radicalisation was not a problem for them. However, this position was untenable since a terrorist group known as the Hofstad Group also had a branch in Zeeland. The system of identification was arranged as follows: every participating municipality appointed a contact person for 'radicalisation', to whom officials could report indications of radicalisation. The contact person then passed the reports (without identifying the subjects) to the police, which had established a reporting centre in the Regional Intelligence Service. The contact persons followed a short course to learn to recognise signs of radicalisation on the basis of a list of indicators.

Feedback is important. In projects of this type, a common complaint is that 'I did report, but never heard anything more about it'. That is demotivating. It was therefore decided that feedback would be given on every report (how valuable the report was, whether anything was already known about the suspects, etc.). The project ultimately generated 17 reports in all, all based on a person's gut feeling. Other, more specific indications were perhaps reported through regular channels.<sup>69</sup>

### 8.3.2 Identification during the repatriation process or in aliens detention

An alien who is not living legally in the Netherlands must leave the country voluntarily and may, if necessary, be deported. In January 2007, a separate organisation, the Repatriation and Departure Service (DT&V), was established to arrange the repatriation of aliens.<sup>70</sup> DT&V encourages aliens who do not qualify for a residence permit to depart voluntarily by holding a series of interviews with them, all conducted by the same departure supervisor.<sup>71</sup> On the basis of the interviews, a departure plan is drawn up by the regional offices for repatriation facilitation, in consultation with the alien.

An alien can enter the DT&V programme at two different times: (1) after a request for asylum in the Netherlands has been rejected, (2) after being placed in aliens detention. Because their clients could include victims of human trafficking, DT&V drew up the Procedural protocol for victims of human trafficking at the beginning of 2008. The protocol gives a step-by-step description of what a departure supervisor should do if a person might be a victim of human trafficking. When the service identifies victims of human trafficking, it reports them to the police or the Marechaussee, which then interview the alien and may record the

69 Report of Recherche Vakbeurs, 13 June 2008.

70 *Parliamentary Documents II* 2005/06, 30 240, no. 4. All of the tasks of the Immigration and Naturalisation Service (IND) and the Aliens Police, and some of the tasks of the Royal Netherlands Marechaussee, relating to repatriation are delegated to this department.

71 This is an attempt to ensure an individual approach. It can also help to create a relationship of trust with aliens by making them familiar with a particular individual and knowing who they should go to with any questions or problems.



victim's report human trafficking or offer the reflection period.<sup>72</sup> In those cases, the DT&V's responsibility is then at an end. If the victim does not report (or otherwise provide cooperation) and is not offered or does not accept the offer of a reflection period,<sup>73</sup> the repatriation process resumes.

The BNRM investigated how many victims of human trafficking had been identified by DT&V during the return and departure process.<sup>74</sup> There had been 16 from the time the service was established in January 2007 until September 2008, according to its registration system. There may have been more since the registration of victims of human trafficking is not optimal.<sup>75</sup> All 16 victims who were identified were women. Eight came from China and five from Nigeria. The other three victims came from Armenia, Ghana and Sierra Leone.

An important question is whether it would have been possible to identify these victims before they entered the repatriation and departure process. Information about this was available for 12 of the 16 victims,<sup>76</sup> showing that eight were detained in connection with illegal residence in the Netherlands or abroad.<sup>77</sup> In that context, they had been in contact with the aliens police or the Marechaussee. In four of those cases, indications of human trafficking had been recognised or the victim had reported. This led in each of these cases – although not always directly – to an investigation into human trafficking. Three victims were initially placed in detention but later released or transferred to suitable shelter. The fourth victim was not detained, but did have a departure interview with DT&V. The result was that they were registered by DT&V, but DT&V actually played no role in recognising the human trafficking.

In other words, four of the victims who were detained for living here illegally were not recognised as victims by the aliens police or the Marechaussee. In three of these cases, the victims did provide indications of human trafficking during an interview. For example, two women said that they had to work in prostitution abroad, and one said that she had to work for three years in the Netherlands in exchange for the journey. The women were not further questioned about these claims. All four women were placed in detention. There were two victims who were then identified by their lawyer, one who was identified by BLinN and one by DT&V.

72 When the alien is in aliens detention and will not make a complaint, the police and public prosecution service decide whether he or she will be offered a period of reflection (see also Chapter 5).

73 If necessary, after the reflection period has been used.

74 This study was carried out by M. Vons, during an internship with the BNRM.

75 The DT&V is currently trying to improve the registration of victims of human trafficking.

76 See Annex 2 (Explanation of research).

77 The victims who were arrested abroad (four in Germany, one in Italy) were transported to the Netherlands under the Dublin claim.



*Case of Nigerian women*

Two Nigerian women entering the Netherlands through Schiphol matched an established risk profile: young Nigerian women who did not know what country they had been brought to, seemed bewildered, claimed not to know what they would be doing in the Netherlands, had not organised the journey themselves and had also not paid for the trip. The women therefore had an intake interview as possible victims of human trafficking but they denied being victims (possibly because they had not yet worked in prostitution). Consequently, both women entered an asylum procedure. The women were later collected from the asylum centre by their exploiters and brought to another country, where they were exploited until they were arrested by the foreign authorities. Both women then returned to the Netherlands (on the basis of the Dublin claim). Once back in the Netherlands, 'case 1' was properly dealt with by the various agencies, but 'case 2' was not. As has already been mentioned, it was not clear to everyone that she was a victim of human trafficking. Consequently, the victim in 'case 2' was placed in aliens detention, where she was treated as an alien who would be deported from the country. It was more than four months before she was interviewed and her complaint was recorded. The reason for this was that the suspects were members of an organised network that was the subject of an international investigation. The authorities wanted to wait until the 'international action day', when all the suspects around the world would be arrested (see §9.5).

In 10 cases an investigation was conducted into human trafficking. (In these cases the victims also made a complaint.) In some cases, this probably led to a decision not to prosecute;<sup>78</sup> in others, suspects were arrested and, in one instance, the case had already gone to trial.<sup>79</sup> In a few cases, it is not yet clear how the investigation will end.

*Case of general amnesty*

Two Chinese women went to Ter Apel to apply for asylum following rumours in the Chinese community in the Netherlands that a general amnesty was being granted for illegal aliens. They were detained and interviewed by the IND. The lawyer of one of the women alerted the IND to the fact that she was a victim of human trafficking. She was said to have been smuggled into the Netherlands and in return had to clean a massage parlour (she refused to give erotic massages). But the public prosecutor found that it was not a case of human trafficking and that there were no leads, and abandoned the investigation on those grounds. The woman is still in detention. The other woman stated that she had been raped during the trip to the Netherlands. This was seen as a possible indication of human trafficking and the Marechaussee conducted an intake interview with the woman, from which it emerged that there was no question of human trafficking. No investigation of human trafficking was started. This woman is also still in aliens detention.

To sum up, in one case the DT&V recognised a victim in aliens detention without possessing any information in advance of that possibility. In the other cases, the victims had been recognised by other agencies, but nevertheless placed in aliens detention or in a repatriation programme and, as a result, ultimately registered by the DT&V as victims. In some cases this happened because the victim denied being a victim. Two of the victims finally said that

78 Because there are few leads for an investigation and/or the facts took place a long time before, which complicates the investigation.

79 This is the Koolvis case, see §9.5.5.

they were victims and reported human trafficking during the departure interview. On the other hand, it is unclear how often the DT&V fails to recognise victims of human trafficking. The departure supervisor interviews aliens to arrange their repatriation. During these interviews, the supervisor should also analyse whether the individual concerned is a victim of human trafficking. BNRM's research shows, however, that the average departure interview lasts 20 minutes, which does not leave enough time to thoroughly investigate whether a person actually is a victim of human trafficking.

In contrast to the IND, the departure supervisor has no questionnaire that can be used to assess whether a case involves human trafficking. If the victim does not tell her own story during the interview, it is almost impossible for the supervisor to recognise a (possible) victim of human trafficking.

According to the procedural protocol for victims of human trafficking, the DT&V's task is limited: it reports any victims of human trafficking that it encounters in detention to the police or the Marechaussee. Its formal responsibility ends there. If the police do not conduct an intake interview or record a complaint after a report from the DT&V, the deportation process proceeds.

Four of the 12 victims had, in fact, recently had dealings with the IND. In three of these cases, the IND identified indications of human trafficking during the interview and contacted the police or the Marechaussee, requesting them to conduct an intake interview with the individual concerned to ascertain whether it was a genuine case of human trafficking. In the fourth case, the individual was already known to be a victim of human trafficking. However, it is also not known how often the IND fails to identify indications of human trafficking, since those cases are difficult or impossible to trace. Some of the individuals had in fact previously had contact with the IND in connection with an asylum application. It is not known how the IND responded at that time.

In the cases investigated the relevant agencies were not always alert enough to spot indications of human trafficking, but it also emerged that the victims themselves did not always disclose the fact. Also, some talked about their experiences to one agency, but not to another. The reasons for the victim's reluctance to talk about their experiences were examined in earlier reports of the NRM (voodoo, debts, shame, fear, trauma, mistrust of government agencies, danger in the event of their return to their country of origin). On the other hand, there might also be reasons why they would make a claim of human trafficking (see §5.3 on 'abuse' of the B9 regulation). What emerged during this study was that the interviewees had doubts about the authenticity of the victims' claims of human trafficking. There was also some uncertainty about how exploitation should be defined. For example, there were two cases where a person worked as a cleaner for a number of years in exchange for the trip to the Netherlands; in one case the public prosecution service regarded it as human trafficking; in the other, it did not.

BLinN provides support for victims of human trafficking in aliens detention and has published reports of its experiences and the problems it has encountered (see also Chapter 4).

The police must always record reports of human trafficking, even when the complainants are in detention. Nevertheless, the police “did not act or acted too late on the majority of BLinN’s requests on behalf of victims in detention who wanted to make a complaint, left victims waiting in detention for weeks or even longer for an intake interview, or afterwards would not offer a reflection period or record an official complaint”.<sup>80</sup> According to BLinN, the same applies for the Royal Netherlands Marechaussee. One of the reasons for this is that there are not enough detectives certified to handle human trafficking cases available to record complaints.<sup>81</sup> Furthermore, the police do not always believe claims of human trafficking, according to BLinN, and arresting illegal aliens sometimes takes priority.

Victims are not recognised by the police or Royal Netherlands Marechaussee before they are placed in aliens detention. BLinN agrees that it is not always possible, but there have been cases where indications have been missed.<sup>82</sup> Victims of other forms of exploitation are more difficult to recognise than victims of sexual exploitation. One reason for this is that the definition of ‘other forms of exploitation’ is unclear, but the police and Marechaussee also seem to focus mainly on sexual exploitation. However, BLinN has observed a positive trend: there have been improvements in the recognition of human trafficking, intakes and complaints are recorded sooner and reflection periods are offered more often. BLinN praises the approach taken by the Rotterdam-Rijnmond police force, which interviews all undocumented women who are arrested to discover whether they may be victims.<sup>83</sup>

### 8.3.3 Information and follow-up

The police wants to be an ‘intelligence organisation’: in other words, an organisation that it is driven by the information it gathers and analyses.<sup>84</sup> To this end, the Police Data Act has been amended (see §2.5) and the National Intelligence Model (NIM) has been developed<sup>85</sup> to bolster the concept of Intelligence Led Policing (ILP).<sup>NRM5</sup> Intelligence Led Policing plays a role at the policy level<sup>86</sup> and in investigations.<sup>87</sup>

80 Boermans (2009, p. 29).

81 Boermans (2009, p. 35).

82 For example, BLinN came across more than 20 migrants in border detention who gave the same story in applying for asylum. This is an indication of human trafficking. BLinN also mentions four victims who went to the police to make a complaint but were not recognised as victims and were placed in aliens detention (Boermans, 2009, p. 30).

83 The Rotterdam-Rijnmond police force has also developed instruments that can be used during these interviews.

84 See also the recently published Doctrine of Intelligence Led Policing (Police Academy (2009, p. 9), which gives the following definition of intelligence: Intelligence is analysed information and knowledge on the grounds of which decisions are made about the performance of police duties.

85 The NIM is a guiding police-wide vision of how the police are guided by information and how the police manage on the basis of the information processes. Source: *Nieuwsbrief Operatie opsporing*, volume 1, number 2.

86 For example, by choosing priorities on the basis of information.

87 The detectives of the Zuid-Holland-Zuid police force, for example, use Brains for analysis. Source: Kruyer (2008, pp. 22-25).

The sharing of information between police forces has been another problematic area for years.<sup>88</sup> There are currently a number of developments underway in this area<sup>89</sup> and some results have already been achieved. For example, some of the information available to the police can be shared with ‘Blueview’.<sup>90</sup> Intelligence can also be shared via the so-called NIK-RIK line.<sup>91</sup> In this context, it is important that all the facilities that have been developed are actually used which often calls mainly for a change in terms of behaviour.<sup>92</sup> There are also specific bodies that provide the police with information about human trafficking: the Centre of Expertise in Human Trafficking and Migrant Smuggling (see below) and the Operational Consultation Group on Trafficking in Human Beings,<sup>NRMs</sup> in which regional police forces exchange operational information on human trafficking.

#### *Centre of Expertise on Human Trafficking and Human Smuggling*

The Centre of Expertise on Human Trafficking and Migrant Smuggling (EMM) is the national collection centre for the police for information about human trafficking for the police.<sup>NRMs</sup> The information is supplied to the EMM by agencies concerned with human trafficking in a supervisory, monitoring or investigative capacity or in providing assistance.<sup>93</sup> The police are actually obliged to supply the information.<sup>94</sup> EMM analyses this and other<sup>95</sup> information and incorporates it in proposals for investigations, administrative reports, crime analyses, newsletters and other products and services for the police and other relevant organisations. So-called level-3 information (concerning serious and organised human trafficking) is passed on to the FIET (see §8.2).

There has been criticism of how the EMM functions.<sup>96</sup> It does not receive information from all police forces and other agencies and there is too little analysis of the information

88 The Netherlands Court of Audit has found shortcomings in the exchange of information between the national and regional police forces in various reports. The Public Order and Safety Inspectorate then ordered an investigation, the results of which were published at the end of 2004. (Public Order and Safety Inspectorate, 2006; Replies to Questions from Algra MP, 1 May 2006 (*Schedule to Parliamentary Proceedings II* 2005/06, no. 1346); Report of the Advisory Committee on Security Information Flows, 2007).

89 The Basic Enforcement Facility (BVH), the Basic Investigation Facility (BVO) and the Basic Information Facility (BVI) are in development. These are at various stages of development or implementation. (See, for example, the report of the Public Order and Safety Inspectorate, 2008).

90 All records of complaints, interviews, official reports, file, reports and documents about goods that have been confiscated in the last five years in the Netherlands can be found and searched with Blueview (Police Academy, 2009, p. 47).

91 A National Information Node (NIK) has been established at the National Criminal Intelligence Department (dNRI). Each force has a Regional Information Node (RIK). Information is exchanged through this channel.

92 Public Order and Safety Inspectorate, 2008.

93 The EMM is part of the National Criminal Intelligence Service (dNR) of the National Police Agency (KLDP). It is in partnership with the National Criminal Intelligence Service (dNRI), the Royal Netherlands Marechaussee (KMar), the Immigration and Naturalisation Service (IND) and the Social Intelligence and Investigation Service (SIOD). The Task Organisation for Alien Care (TOV) also recently became a partner in EMM.

94 The Council of Procurators-General’s Instruction on human trafficking.

95 For example, EMM has a subscription to Blueview on the term human trafficking. Information about countries and other relevant information (for example, from foreign police forces) is also collected.

96 Police Force Monitor 2007; interviews with SIOD, police forces, EMM; study of shelved cases; Klein (2009, p. 68); De Kamps (2009); Human Trafficking Task Force (2009b).

that the EMM does possess.<sup>97</sup> Almost everyone agrees that an institution like the EMM is needed and is useful, but its disappointing output makes its customers and partners sceptical. The EMM therefore intended to conduct a strategic reorientation in the course of 2009.<sup>98</sup>

*A study into information exchange in relation to combating human trafficking and human smuggling*

The above findings are in line with the results of a study into the exchange of information in relation to combating human trafficking and migrant smuggling conducted by the KLPD's International Police Intelligence Service (IPOL).<sup>99</sup> The study, which was carried out for the Human Trafficking Task Force, concluded that the EMM struggles with the allocation of resources to its various tasks and has concentrated mainly on collecting and processing all indications of human trafficking in recent years. However, sharing the information with the regional forces seems fairly inefficient and there are a number of gaps. For example, the study found that the EMM does not process all of the indications it receives. The police regions also do not all share the indications of human trafficking with the EMM, partly because they feel the feedback from the EMM is inadequate. Both the Marechaussee and the police regions say that the EMM needs to perform its role as chain director more robustly. The recommendations made in the study relate to improvements in automation, a better division of tasks and roles, specific binding agreements on the quality of the information provided and the feedback to the chain partners, improvement in the quality of the analysis by the EMM and closer cooperation with the administrative authorities.

It is particularly important to make use of information available from other partners in the chain for investigations into human trafficking. Because of the unwillingness of victims to cooperate with investigations, accumulating information from different sources is very important for putting a case together.<sup>NRM5</sup> Possible partners mentioned in the Reference Model include administrative supervisory authorities, the Labour Inspectorate, the tax authorities, embassies, the IND, chambers of commerce, MOT/BLOM, BIBOB, social investigation departments of municipalities, housing associations, the UWV, SVB and various social-service and health-care agencies. The WODC conducted a study<sup>100</sup> into four police investigations of human trafficking, in which it also investigated how information was shared. It found that the exchange of information was normal during the investigation, both within the organisation itself and with external parties, as well as with international investigative agencies. Information was also shared with administrative bodies. However, the exchange of information with chain partners left something to be desired.<sup>101</sup> In practice, sharing information is often a time-consuming and difficult process. One of the reasons for this is uncertainty and confusion about the possibilities and conditions for sharing information. To remove these

97 EMM says it has a shortage of capacity.

98 *EMM Newsletter extra edition*, 26 February 2009.

99 De Kamps (2009); Human Trafficking Task Force (2009b).

100 Van Gestel & Verhoeven (2009). The investigation strategies are described in appendix 1 of that publication.

101 Human Trafficking Task Force (2009a, p. 10).

doubts, five ministers<sup>102</sup> concluded an administrative agreement on the exchange of information: the National Agreement on a ‘Decentralised Approach to Organised Crime’.<sup>103</sup> In its action plan, the Human Trafficking Task Force mentioned further actions and *quick wins with which the problem is being addressed*. One was the development of a toolkit of instruments and documents that can be used to enquire how indications of human trafficking can be recorded and exchanged.

*Collecting, analysing and following up information*

The study into the causes of shelved cases (see §8.5) explored how indications of human trafficking reached the police and how they were dealt with. In all of the regions studied, police databases were scanned for possible information about human trafficking on a daily or weekly basis. Information that the police deem ‘worthy of investigation’, sometimes after upgrading, is always discussed with the public prosecutor. But what are cases ‘worthy of investigation’? Who decides which are, and when? The initial decision on which cases are worth investigating is made by the police themselves, who then submit them to the public prosecutor. If there are indications of human trafficking calling for a prompt response, there is immediate telephone contact with the public prosecutor responsible for human trafficking cases and an investigation can start immediately. In less urgent situations, the police wait until the periodic ‘preliminary review’, at which the cases worthy of investigation are discussed and it is decided whether more information needs to be collected or whether an investigation can start. Cases sometimes have to be submitted to a regional ‘review committee’ before an investigation can start. This is not usually necessary for small investigations, which a human trafficking team can carry out itself, for example, but this procedure is often followed in the case of larger investigations or if there is no human trafficking team.

In practice, the police receive a very large number of indications of human trafficking. In accordance with the Instruction on Human Trafficking, these indications must all be investigated and, if possible, prosecuted. According to some respondents, this is impossible in practice and gradations are applied: some indications are investigated administratively and/or tactically, others are not. This causes dilemmas, although the respondents were unanimous that an investigation will always start immediately in certain cases, if there is a possibility that a minor is involved or a victim is being held captive, for example.

<sup>102</sup> The ministers of Home Affairs and Kingdom Relations, Justice and Defence, the State Secretaries for Finance and Social Affairs and Employment, the chairman of the Association of Netherlands Municipalities (VNG) and the chairman of the Council of Procurators-General.

<sup>103</sup> Human Trafficking Task Force (2009a).



*Collecting, analysing and upgrading information in eight police forces*

There is no uniform method used in the eight forces investigated.<sup>104</sup> Records are kept of all information that the police receive or collect themselves,<sup>105</sup> which are then registered in Xpol/BPS.<sup>106</sup> Every record is assigned a specific incident code.<sup>107</sup> Because a single record can contain information about different types of crime and often only one incident code is assigned to it, it is possible that all the information about human trafficking is not actually registered under the incident code for human trafficking or white slavery. This is why all police information has to be analysed for possible evidence of human trafficking. In all of the police regions investigated, police files are scanned for possible information about human trafficking on a daily or weekly basis.<sup>108</sup> In seven of the eight police regions, this process is automated:<sup>109</sup> a software program is used to search databases on certain words – such as ‘coercion’, ‘prostitution’ and ‘loverboy’ (although the search words used differ from one region to another) – and/or incident codes.<sup>110</sup> The information that is selected in this way is then read by one or more persons<sup>111</sup> to determine<sup>112</sup> whether the information does actually concern (and therefore contain indications of) human trafficking. The information about human trafficking distilled from Xpol/BPS with these forms of analysis is saved electronically or in a folder.

The information is then ‘upgraded’, in police jargon, which means that more information is collected about an indication, for example by checking whether more information can be found about the suspect or the victim. The police might also talk to the individuals concerned or drive by a certain address. By extension, information is ‘aggregated’ in order to gather sufficient evidence – if possible – for a criminal case without a complaint by a victim.<sup>NRM5</sup>

The next question is: What will the police do with all the information? There is a risk that the police will increasingly be faced with the dilemma of being aware of more crimes but having to tolerate them because of a shortage of capacity.<sup>113</sup> The ban on not dealing with cases<sup>NRM5</sup> is intended to protect victims of human trafficking against this eventuality.

*Treatment of victims*

The police also have a task with respect to victims they encounter. For example, victims must be informed of the possibilities of receiving practical, emotional and legal support, of claiming damages and of filing an objection if a decision is taken not to prosecute. Employees who

104 The terminology also differs from one regional force to another. In this document, the most common terms are always used.

105 Indications/reports are recorded on paper by the police (records). These records can then be registered in the police computer system.

106 Xpol and the Basis Process System (BPS) are the police’s computer systems where, in the police regions investigated, all records are registered. The system that is used depends on the police region.

107 Incident codes are numbers that indicate the subject matter of a record. Examples are 344 (human trafficking), 29 (special attention) and 801 (prostitution control).

108 The number of records involved differs by day and by region. No estimate can be made from the information acquired in the study of shelved cases.

109 In one region, it is the task of the human trafficking team to manually scan the daily records.

110 In six of the seven regions where scanning is automated, records are scanned on a combination of search words and incident codes. In one region, records are scanned only on the incident codes.

111 In one region this is done by the force’s expert, in one region by the Vice Squad’s process coordinator, in three regions by permanent employees of the Information Desk and in three regions by various detectives.

112 This is done on the basis of the knowledge, instinct and experience of these persons.

113 Miltenburg & Bakker (2007, p. 28).



conduct the ‘intake interview’<sup>114</sup> with the victim, who record the complaint or who interrogate victims must be qualified.<sup>115</sup> Victims who are living illegally in the Netherlands must be given the opportunity to apply for the B9 regulation.<sup>116</sup> The police attach great importance to the treatment of victims, as is apparent from the fact that forces can only receive a positive rating (‘green’) in the Police Force Monitor if their rating on the dimension ‘treatment of victims’ is ‘green’. With two exceptions, every force met this standard in 2006. The police themselves also say that “from the perspective of the interests of the victims of human trafficking, any departure from the standard is one too many [...]”.<sup>117</sup> The fact that the correct procedures are not always followed is also apparent from other information and reports, particularly from institutions that provide help for and represent the interests of victims (see also Chapter 4).

#### *Shelter for victims*

The police and the Royal Netherlands Marechaussee at Schiphol still often encounter problems in arranging shelter for victims. The main bottlenecks are the limited accessibility (by telephone) of CoMensha and other aid agencies and the shortage of suitable shelters. The pilot project with categorical shelter may provide a solution for this (see §4.6.2).

The time spent by the police transporting victims between shelters and to and from court has been a problem for years; however, an agreement has been concluded with the Ministry of Justice’s Transport and Support Service (DV&O), which has assumed this task from the police.<sup>118</sup>

## 8.4 Investigation of human trafficking

While the police and public prosecution service give priority to human trafficking,<sup>119</sup> it is only one of their many priorities. Furthermore, the police are permanently faced with more crime than they can deal with. In practice, therefore, police forces have to juggle their resources and human trafficking does not always receive the attention it should (and in some forces, none at all).<sup>120</sup> Even the Police Force Monitor 2007 stated that “despite this high priority [...] individual forces can apparently exercise a large degree of policy freedom.” (p. 67). The fi-

114 This is an informal interview that takes place before a complaint might be made.

115 These employees must have a certificate for handling human trafficking cases. Some police forces, but also other agencies (such as the Royal Netherlands Marechaussee and SIOD) have a shortage of ‘certified’ staff.

116 This accords with the Instruction on Human Trafficking.

117 Police Force Monitor (2007, p. 67).

118 DV&O is a national service of the Custodial Institutions Service (DJI), which arranges the transport of arrested persons, prisoners, aliens and goods and prison files for the Ministry of Justice.

119 For example, human trafficking is mentioned in the Joint National Priorities of the Police 2008-2011 (1 June 2007). In speeches to the police superintendents of the Amsterdam-Amstelland region and the KLPD, human trafficking was also mentioned as a priority (23 May 2008 and 5 January 2009 respectively). See also *Convenant Uitvoering Politie Vreemdelingentaak 2009–2011*.

120 A team of detectives that has already been formed may sometimes have to give up resources because of events that have priority and require a lot of capacity, such as a murder.

nal reference in the Reference Framework for Human Trafficking relates to the allocation of resources. It states that “such a priority [deserves] a specific allocation of resources subject to an absolute full-time minimum” (p. 22). The indicated standard is that “every force should deploy sufficient capacity to carry out investigations into human trafficking [...]” (p. 22). However, there does not seem to be a clear obligation to achieve results.<sup>121</sup> That choices can be made is apparent from the fact that there are some police forces that are capable of deploying the necessary capacity for human trafficking.

### *Aliens police*

The investigation of human trafficking is increasingly delegated to the aliens police (under the title ‘migration-related crime’).<sup>122</sup> Those involved say that the aliens police sometimes devote too little attention to human trafficking. They formerly focused on tackling illegal immigration, leaving little room for the detection of victims. Their thinking and attitude in that regard needs to change, which is indeed happening in a growing number of forces. The agreement on police immigration tasks for 2009-2011 also addresses the issue of human trafficking and its victims.

### *Community police*<sup>123</sup>

While human trafficking often has an international component, it is equally a local phenomenon and locally embedded. The activities of prostitutes and human traffickers are often concentrated in certain districts, neighbourhoods and streets or prostitution zones. Victims who work in window or street prostitution spend a large part of the day on or close to the street, where they are visible to and have contact with people on the street. This integration of human trafficking in the locality means there are possibilities for the use of the community police in investigations. The community police operate at local level and are the eyes and ears of the police on the street. Community officers can collect information by observing what is going on and through their direct and regular contact with people on the street and in the neighbourhood. Consequently, the community police can build up a relationship of trust with people in the neighbourhood, usually more quickly than other divisions of the force. The community police also patrol in areas with window prostitution and therefore often know the women who are working there. Accordingly, they can identify signs of abuse, exploitation and human trafficking. They can also serve as contact persons for the women if they have problems. As research by the WODC has shown, the active involvement of community police in human trafficking cases seems to have a positive effect on the evidence collected.<sup>124</sup>

121 However, the specified standard is the ratio between the number of investigations planned and carried out, but it would seem more appropriate to look at the number of indications/complaints with leads that have been received and/or have been dealt with (or a force should not have any shelved cases). That is easier to monitor if – Reference Framework p. 12 – “there is a central location where all indications are collected, analysed, upgraded and collated.”

122 The Police Force Monitor 2007 refers to this as a possible reason why not all forces use multidisciplinary teams in investigations into human trafficking.

123 This section is taken almost verbatim from the study by Van Gestel & Verhoeven (2009).

124 Van Gestel & Verhoeven (2009).

*National and Supra-Regional Crime Squads*

The National and Supra-Regional criminal squads also carry out investigations into human trafficking. The Sneep<sup>NRM5</sup> and Koolvis cases (see §9.5.5) were just two of the investigations the National Crime Squad was involved in the last few years. In 2008, the Supra-Regional Crime Squad conducted two human trafficking investigations.<sup>125</sup> However, the national and supra-regional crime squads also lack sufficient capacity, although an investigation involving a number of regions does not necessarily have to be conducted by the national or supra-regional crime squad. It is possible for a number of regional forces to conduct an investigation and simply divide the tasks.

*Strategies in investigations into human trafficking*

A study carried out by WODC also explored strategies adopted in human trafficking investigations.<sup>126</sup> Four human-trafficking cases were studied in depth. All of the cases involved suspects who used violence and intimidation to coerce women into working in window prostitution. Different strategies were employed in the four investigations, according to the circumstances, the background, the information available at the start of the investigation and the objective of the investigation. A distinction was made between investigations based on a report of the crime, public order, the criminal organisation and the offence.

The complaint-driven investigation was characterised by a focus on securing reports and statements from victims of human trafficking. To achieve this, the investigating team made an effort to win the trust of victims and secure their active cooperation. One way they tried to do this was by actively involving the community police in the investigation. The vice squad and other persons in their network that the victims could trust (such as interpreters, social workers or religious figures) were also used to promote communication with the victims. The investigators then secured complaints, which contained a lot of information and leads for the investigation (as well as leading to other victims). In a complaint-driven investigation of this type, there is a chance that victims will make complaints and so provide more information about the methods and organisation of human traffickers. However, one of the risks in this method is that a lot is invested in contact with the victim, who might eventually not make a complaint or a statement.

In the investigation based on ‘public order’, the police were not only investigating human trafficking but also wanted to end a situation that was causing a public nuisance (arguments, fights and intimidation) on the street. To tackle the nuisance, the investigators collaborated with the municipality and exchanged information. The municipality used this information to revoke the licences of premises that served as meeting places for the human traffickers and so curbed the physical presence of the human traffickers who were causing the nuisance. This latter aspect was an added bonus: the human traffickers were driven out and the situation where the municipality was unconsciously facilitating human trafficking was avoided.

125 Also two in 2007 and one in 2006. Source: *Bovenregionaal Recherche Overleg*, annual reports 2007 and 2008.

126 Van Gestel & Verhoeven (2009). The investigation strategies are described in annex 1 of that publication.

However, the risk of focusing on public nuisance is that the gathering of evidence of human trafficking could be hampered.

In the organisation-driven strategy, the emphasis was on identifying the members of the criminal organisation. The Sneep case is a good example of such an investigation. In addition to the investigation of human trafficking, the aim was to capture the entire organisation, including facilitators.<sup>127</sup> The investigation therefore focused more on suspects (and accumulating information) than on approaching victims, which exemplifies the risk of this strategy: if the police wait until the last moment to contact the victims there is the possibility that they will not cooperate with the investigation or cannot be found. The ban on not dealing with cases can also mean that the police have to intervene before they are ready to, without having gathered all the necessary evidence.

A feature of the offence-driven strategy is the so-called ‘article-27 aggregation’,<sup>128</sup> which involves the systematic gathering and collation of information that suggests that prostitutes are not working voluntarily or that there is a human trafficking situation. With this method, the police can focus on collecting missing information they still need for proper evidence. The police are also less dependent on the cooperation of victims for the investigation. In fact, almost all the victims were willing to make a complaint or a statement precisely because it became clear during the interviews how much the police already knew. Because of the structured organisation of the case and the accompanying construction of evidence, the investigation could be completed in a relatively short space of time and there seemed to be few risks attached to it.

### *Financial investigations*

The police have not automatically conducted financial investigations in the context of human trafficking.<sup>129</sup> However, greater attention is being devoted to financial investigations,<sup>130</sup> not only in connection with the confiscation of criminal earnings but also for the purpose of gathering evidence. One police force was able to identify the suspects in a human trafficking investigation by exposing the flows of criminal funds.<sup>131</sup> This underlines the importance of

127 And thus demonstrate the existence of a criminal organisation as well as human trafficking (Article 140 of the Dutch Criminal Code).

128 ‘Article 27 aggregation’ is a term derived from Article 27 of the Dutch Code of Criminal Procedure, which states that a person can be regarded as a suspect if the facts and circumstances give rise to a reasonable suspicion of guilt of an offence. These facts and circumstances are assembled with this aggregation. See also NRM5.

129 *Police Force Monitor 2007*, p. 67; Kruyer (2007, pp. 6-8); Programme to Strengthen the Approach to Combating Organised Crime (annex to *Parliamentary Documents II 2007/08*, 29 911, no. 10).

130 See also the Programme to Strengthen the Approach to Combating Organised Crime (schedule to *Parliamentary Documents II 2007/08*, 29 911, no. 10) and the Programme for Financial and Economic Crime (FinEC). One of the aims of the latter programme is to help improve the investigation of financial crime by the Dutch police. Financial investigations and confiscation are also elements of the programmatic approach (see §7.4). Speech by Mr. H. Bolhaar, CIROC seminar on Human Trafficking: approach and background, 31 October 2007.

131 Information from OOM.

financial investigations in human trafficking cases, especially in view of victims' reluctance to press charges.<sup>NRM5</sup>

There are problems confiscating criminal earnings, and recovering the proceeds of crime can prove particularly difficult.<sup>132</sup> Criminal earnings can also be taxed, but there are advantage and drawbacks to this too.<sup>NRM5</sup> In fact, the collection of tax by the tax authorities in other countries seems just as difficult as international cooperation in confiscation cases,<sup>133</sup> although the possibilities are often greater than believed.<sup>134</sup> Changes in the law on confiscation are pending (see §2.6).

### *Investigation techniques*

The investigation of human trafficking is not always straightforward. A more general problem is that telephone taps are producing fewer and fewer results because criminals expect their calls to be intercepted.<sup>135</sup> They often make calls via the internet, which are more difficult to tap. It is therefore important to look for alternatives, with respect to both crime in general and human trafficking. One instrument that has been used several times in recent years in investigations of human trafficking is the television programme *Opsporing Verzocht*. While it has not yet led to the resolution of any cases as far as is known, it has produced tips. There has also been one known case of a 'pseudo purchase'. An operator of a brothel informed the police that some Romanians wanted to sell women to him to work in prostitution. By setting up a pseudo purchase, the suspects could be arrested. The police are of course constantly anticipating developments in the criminal sector in a general sense,<sup>136</sup> which leads to new methods and techniques that can also enhance efforts to combat human trafficking. For example, more undercover officers who can be used for more straightforward operations are being trained; as bartenders in bars frequented by suspected criminals, for instance.<sup>137</sup> They could possibly also be used in the prostitution sector (if this is not already done).

### *Report of human trafficking*

Another question that has to be addressed is what is needed to improve the quality of reports of human trafficking, in terms of the information they provide. Among other things, this calls for good, persistent questioning by the police and for every case to be treated seriously.

132 BOOM now has asset tracers who track down hidden assets. See also *Opportuun*, volume 2008, number 3, pp. 14-15. Nevertheless, BOOM's director calls for more far-reaching measures. He feels, among other things, that the police forces should collect far more information about the income earned from criminal offences and what happens to the money. (BOOM's director in *Het Financieele Dagblad*, 24 January 2009).

133 Moors & Borgers (2006); verbal information from FIOD/ECD Amsterdam, 10 March 2008.

134 In various treaties and EU framework decisions regulating the freezing and confiscation of criminal earnings abroad (sometimes in the context of fighting terrorism). Source: BOOM Study Day, *Waar is de Buit*, 29 November 2007.

135 This is in fact said to apply less for *first offenders* or the 'periphery' of suspects because they usually take no account whatever of the possibility that they could be tapped. Source: *Recherche* magazine, December 2004.

136 Through the 'Strengthening Investigation and Prosecution' programme, for example.

137 *Nederlands Dagblad*, 4 April 2008.

But perhaps there are other factors that could persuade victims to provide more information. Victims are not always immediately able to tell their story in a clear, coherent and consistent fashion and do not always behave in the way a victim is expected to behave. Nonetheless, it is the task of the police to complete the story of human trafficking and to find the evidence to substantiate the story. It might be possible to use information possessed by the social services or representatives of victims for this purpose, information that could relate to the offence, as well as the physical and psychological condition of the victim (see also §5.3).

#### *Other forms of exploitation*

As mentioned in earlier reports, the entry into force of the expanded definition of the offence of human trafficking on 1 January 2005 prompted a discussion about the scope of the term ‘exploitation’ in relation to work and services in sectors other than sex industry. The fact that the term needed to be further refined in legal practice made it difficult, at that time, for investigative services and the public prosecution service to gauge what situations the courts would regard as exploitation. Nevertheless, there have been investigations and prosecutions for human trafficking in response to abuses found in employment situations (see Chapter 12). However, there is no comprehensive list of all the investigations of other forms of exploitation carried out by the various police forces.

## 8.5 Shelved cases

For years there have been reports of human trafficking cases that have not been dealt with by police, known as ‘shelved cases’. The existence of ‘shelved human trafficking cases’ bears no relation to the priority given by the government, police, public prosecution service to human trafficking and the ban on not dealing with cases, which is one reason why the National Rapporteur on Trafficking in Human Beings has researched the subject further.

At the same time, there is no clear and precise definition of shelved cases, which complicates any discussion of the subject.<sup>138</sup> For this study, therefore, we returned to the phase before a case is shelved, the stage when the police acquire information about human trafficking. We investigated how this information is dealt with, when an investigation comes to a halt (when the case is shelved) and why. We investigated whether there were any ‘shelved cases’ at the time of the study (the middle of 2008) and what types of cases they were. We also explored the organisation and implementation of efforts to combat human trafficking in the police regions. For practical reasons, eight police forces were selected for this study to reflect the variety of features and circumstances in different police regions (see the description of the study in Annex 2).

<sup>138</sup> The Police Force Monitor 2007 reported 80 to 100 shelved cases in one police force, for example. This caused public uproar. Further enquiry showed that they were indications of human trafficking and not shelved cases as usually defined.

*Types of shelved cases*

The term ‘shelved cases’ generally refers to cases where there are indications that provide sufficient leads for an investigation but do not lead to any action or an actual investigation.<sup>139</sup> Shelved cases can arise at various times in the investigative process. In this study, the following classification of shelved cases was made, from an organisational perspective, on the basis of the research material:

1. Indications or complaints where it was decided (after consideration) that an investigation would start, but for which there was no capacity;
2. Indications where it was decided that they should be sent to the regional ‘review committee’, but where the case was put aside for some time before being sent there;
3. Indications that could be investigated without the intervention of a regional review committee (usually smaller cases), but where the case was left lying for some time before it was dealt with.

*Existence of shelved cases*

We investigated the extent to which the eight selected police regions had shelved cases in the above categories. At the time of the study, there were shelved cases of all three types in one police region; in two police regions there were none; in the other police regions, there were one or two types. This was a snapshot. The situation could be different at other times; respondents in some regions said that there were currently no shelved cases of a particular type but that at other times there were. The opposite situation also occurs.

An attempt was made to discover precisely how many shelved cases there were, but this proved impossible. Particularly where there were a number of shelved cases, it was not easy to discover how many there were. This study is therefore mainly concerned with the reasons why cases are shelved.

*Reasons for shelving cases*

The reason that cases are shelved is that they are not given priority and, hence, the resources to follow them up. Many respondents in the study said that, all things considered, the available capacity for investigating human trafficking is not in proportion to the priority given to it. This leads to cases being shelved at various levels in the police organisation. An unknown number of shelved cases are eventually abandoned because the offences cannot be prosecuted due to lapse of time.

Human trafficking is not the only offence that is a priority for the police and public prosecution service, which are constantly confronted with more offences than they can deal with. Choices therefore have to be made. Although the police are immediately required to investigate every indication of human trafficking, in practice a human trafficking case may have to be dropped – at the review stage, for example – in favour of other priority cases (such as serious vice crimes or major drug cases) or it might take some time for a human trafficking

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<sup>139</sup> Landman et al. (2007).



investigation to start. One reason for this delay is that human trafficking cases have to be assigned to a team or department. Depending on the police force and the nature and scale of the investigation, human trafficking investigations are carried out by the district crime squad, the vice squad, the aliens police or the regional crime squad. Investigations can also be offered to the Supra-Regional or National Crime Squad. It takes some time to transfer an investigation, and meanwhile nothing is being done with the case.

When a human trafficking investigation is conducted by a different department (the district crime squad for example), that department might not possess sufficient knowledge and expertise in the field of human trafficking to recognise the importance of the investigation, and consequently, human trafficking investigations are sometimes given a lower priority than other investigations. The relevant departments sometimes also have problems with capacity. For example, it was said that there actually is not sufficient capacity to pursue human trafficking cases in the districts.

In some regions, resources are reserved for human trafficking, usually in the form of a human trafficking team. Depending on the team's size, staffing and tasks, this has a number of advantages. The team can collect, upgrade and analyse information about human trafficking, which can lead to an investigation. These tasks do not necessarily have to be carried out by a human trafficking team in order to tackle human trafficking adequately, although the study shows that in regions without such a team, information about human trafficking is not always collected properly and it is, in practice, more difficult to run human trafficking investigations.

On the other hand, the existence of a human trafficking team provides no guarantee that an investigation will proceed smoothly. The team must have sufficient resources to perform both its administrative and tactical tasks (unless the administrative or tactical tasks are assigned elsewhere in the force). Furthermore, detectives are sometimes removed from an investigation (to deal with serious offences or major public events, for example),<sup>140</sup> which can be at the expense of human trafficking investigations.

Five of the eight police regions indicated that a lot of resources are devoted to investigating cases with practically no leads. In that context, they specifically refer to cases to which the B9 regulation applies. These involve individuals who are living illegally in the Netherlands and say they are victims of human trafficking. In many of these cases an extensive investigation is carried out even though there are almost no leads. These investigations ultimately lead nowhere and the cases are abandoned.

In some police regions, information about other forms of exploitation is handled by a separate part of the organisation. In other regions, a single department handles information about both sexual and other forms of exploitation. In the study, it was not possible in either case to discover what specific shelved cases there were in the area of other forms of exploita-

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140 Murders and football matches are mentioned in this context.

tion. The study showed that police efforts to deal with other forms of exploitation are still evolving, and the absence of shelved cases does not necessarily mean that the force has its affairs in order.

A police force does not decide to shelve a case when there are gaps in the collection and analysis of information about human trafficking. In most of the police regions that were investigated – including those with shelved cases – the information side of things was, in any case, well organised.

## 8.6 International developments

Police cooperation with forces in other countries is becoming increasingly important.<sup>141</sup> Not much is known about this subject, however; little scientific research has been done on it.<sup>142</sup> There are also several problems, such as differences in legal systems and interests. This discussion of international cooperation focuses on investigations led by international intelligence, improvements in the exchange of information<sup>143</sup> and operational cooperation, in the form, for example, of *Joint Investigation Teams* (JIT).<sup>144</sup> This section outlines some developments in the cooperation between police forces in human trafficking cases.

### *Operational cooperation*

A number of larger Dutch investigations of human trafficking involved substantial operational cooperation between countries, but the Koolvis investigation crowns them all. In that investigation, the Dutch police cooperated not only with other European countries and the United States, but also with the traffickers' and victims' country of origin, Nigeria.<sup>145</sup> The operation culminated in arrests in the Netherlands, Belgium, Great Britain, Spain, France, Germany, Italy, the United States and in Nigeria itself. Building on this, preparations were made for a bilateral project to provide assistance to the Nigerian agency for combating human trafficking (NAPTIP), which is regarded as a reliable partner in a country where there

141 In 2007, for example, the police formulated a number of important aims in terms of further professionalising and intensifying international cooperation. These ambitions are laid down in the document 'De normaalste zaak van de wereld. Visie op de internationalisering van de Nederlandse politie'. *The formation of the International Police Cooperation Service* (Dinpol) by the National Police Agency (KLPD) also makes clear the police's international ambitions. See also the Programme to Strengthen the Approach to Combating Organised Crime (annex to *Parliamentary Documents II 2007/08*, 29 911, no. 10). The Reference Framework for Human Trafficking calls for forces to actively seek international cooperation.

142 Meeusen & Straetmans (2007).

143 Closing declaration of the conference Capital Policing Europe (CPE); KLPD/DINPOL Seminar on Human trafficking and information exchange, 21 February 2008.

144 *Joint Investigation Teams* (JIT) are made up of members from two or more EU member states and who conduct criminal investigations in one or more of the member states. Preparations were made earlier to form a JIT for human trafficking, but it never started (see NRM5). A JIT for human trafficking did operate in the Meuse-Rhine Euroregion (see later in this section). The current JITs focus mainly on terrorism and drug trafficking. (Source: Gualtieri, 2007). See also Rijken (2006, pp. 99-118).

145 With the *National Agency for Prohibition of Traffic in Persons and Other related Matters* (NAPTIP) in Nigeria.

is a lot of corruption<sup>146</sup> and to strengthen the investigation and prosecution of human trafficking in Nigeria. Following lengthy preparations, the project started on 1 July 2009 and will involve a series of intensive training courses for NAPTIP staff and employees of a number of other Nigerian agencies (particularly the *Nigeria Immigration Service*).<sup>147</sup>

There has also been investment in cooperation with Romania and Bulgaria, two other important countries of origin of victims of human trafficking.<sup>148</sup> Assistance has been provided to ANITP, the Romanian anti-human trafficking agency. Such investments are partly intended to improve the supply of information to the Netherlands. The Dutch embassy in Romania is also supporting a project to promote the prevention of human trafficking through educational theatre. In Bulgaria, a *National Referral Mechanism* for the protection and support of victims of human trafficking is being developed and a specialist unit (also known as the 'Bulgarian EMM') is also being set up with Dutch support within the Bulgarian Ministry of Home Affairs, which will focus on tackling human trafficking. In addition, the Netherlands is supporting a publicity campaign in secondary schools and the establishment of new shelters for victims. The police forces in Groningen and Friesland are running a pilot project targeted at human trafficking from Bulgaria (see §7.6.1), which will involve exchanges of Bulgarian and Dutch police officers.

There are also partnerships, in place or planned, with Hungary, India, China, Ukraine and the Netherlands Antilles and Aruba (see also Chapter 1 for the last two countries) that encompass human trafficking. *Memorandums of Understanding* have been concluded with several of these countries.

#### *Rapid Action Teams*

As a pilot project, so-called rapid action teams were formed in Nigeria in the first quarter of 2008. These teams, consisting of officers from the Royal Netherlands Marechaussee and the IND, check whether passengers travelling to the Netherlands might be victims of human trafficking. Although the teams discovered no possible victims on the flights inspected during the pilot project, the evaluation of the project concluded that the teams seemed to have had a preventive effect (although it cannot be ruled out that this effect is attributable to the elimination of a Nigerian human trafficking network just before the pilot project started (in the Koolvis case, see §9.5.5). On the basis of the evaluation, it was decided that the rapid action teams would, in future, be used if migration problems gave cause to do so.<sup>149</sup> There are no plans to deploy rapid action teams for the time being. Social workers are less happy with the approach, partly because it does not provide a structural solution and victims could be transported at later time or by another route.<sup>150</sup>

146 Human Trafficking Task Force (2009a, pp. 32-33).

147 Human Trafficking Task Force (2009b).

148 There are MATRA projects in the field of human trafficking in both Bulgaria and Romania. Human Trafficking Task Force (2009b).

149 *Parliamentary Documents II* 2007/08, 27 062, no. 62.

150 NRC-Handelsblad, 21 March 2009.

*Europol*

Every year Europol<sup>151</sup> publishes the annual *EU Organised Crime Threat Assessment* (OCTA), in which it outlines the current and anticipated future developments in organised crime in the European Union. Among other things, the OCTA serves as a basis for establishing the EU's priorities for action against organised crime. The OCTA and Europol's other reports also review developments with respect to human trafficking (see §9.4). The Netherlands is concerned about the quality of the OCTA:<sup>152</sup> there is room for improvement in the analyses provided by the member states, for example.

Europol has also created *Analytical Work Files* (AWFs) for the purposes of information exchange, and an AWF has been opened for human trafficking.<sup>153</sup> The United Kingdom and Romania have formed a Joint Investigation Team (JIT) for human trafficking. The Netherlands and Germany might also establish one.

It is not necessary for all 25 EU member states to be involved in European police cooperation. The *Comprehensive Operational Strategic Plan for Police* (COSPOL) programme is an example of cooperation involving only those countries that have a specific interest in it. Member states can sign up for different domains (related to offences or groups of offenders), which produces combinations of countries that are struggling with the same problem and therefore have a specific interest in cooperation. These groups receive support from analysts and other experts at Europol. There is currently a COSPOL project for human trafficking, led by Austria and Romania. Austria, the *driver of this* cluster, has meanwhile officially ended the cluster in its current form.<sup>154</sup>

Because Europol's initiatives to promote cooperation have traditionally suffered badly from the lack of trust between the member states, the sharing of information through Europol is not optimal. The member states will have to serve Europol better in the coming period, so that it can meet expectations.<sup>155</sup> The Netherlands has said that it wants to make more intensive use of the opportunities offered by Europol.

*Cross-border police cooperation in the Meuse-Rhine Euroregion*

The police forces of the Netherlands, Belgium and Germany have been cooperating in the Meuse-Rhine Euroregion since 1969.<sup>156</sup> In 2008, the partnership made human trafficking one of its three priorities.<sup>157</sup> This led to the sharing of information and the formation of a JIT with Belgium. The JIT investigated a case in which women from Kyrgyzstan were trans-

151 Europol does not have authority for its own investigations, but helps member states to share information and can provide experts and technical resources for international teams of investigators.

152 *Parliamentary Documents II* 2008/09, 23 490, no. 527.

153 The content is confidential and is therefore not discussed here.

154 Austria suggested setting up a new cluster dedicated to human trafficking and migrant smuggling in Europol. There was little enthusiasm for this. Human Trafficking Task Force (2009b).

155 KLPD/DINPOL, date unknown.

156 In the 'NebedeagPol' partnership (Nederlands-Belgisch-Deutsche-Arbeits-Gemeinschaft der Polizei im Rhein-Maas Gebiet). See NRM5.

157 The other priorities are burglaries and illegal trafficking in narcotics.

ported to the Netherlands and Belgium to work in prostitution there. The JIT was successful: the perpetrators were arrested and convicted. Human trafficking was no longer a priority for the region in 2009, but information is still exchanged about common problems in the area of human trafficking.

The Euroregional Police Information Cooperation Centre (EPICC) was established in 2005 for the purposes of sharing information. Police officers from the three countries work together at the centre and have access to information about investigations in their own countries. The information can therefore be shared very quickly.<sup>158</sup> There is one person in EPICC whose main focus area is human trafficking and migrant smuggling, and this person also maintains contact with EMM.<sup>159</sup>

### *Capital Policing Europe*

At the annual meeting of the chief constables of the European capitals (*Capital Policing Europe*) in 2008, subjects discussed included developments that undermine political, social and economic order and integrity, as well as the importance of analysing and exchanging information in tackling these issues. The closing declaration expressly mentioned human trafficking as an important aspect of that “undermining” and stated that a more adequate exchange of information about human trafficking, for example, would have substantial benefits.<sup>160</sup> The agenda for the next meeting in 2009 included ‘intelligence led policing and the sharing of information with other agencies in tackling crime, such as human trafficking’.<sup>161</sup>

## 8.7 Conclusions

This section contains an overview of the problems and points requiring attention in the investigation of human trafficking as discussed in this chapter and that also emerged from information presented earlier.

### *Policy and organisation*

In practice, police forces do not all give the necessary priority to human trafficking. The Reference Framework on Human Trafficking (2008) published by the police’s National Human Trafficking Expert Group (LEM) contains useful guidelines for the police in how to handle human-trafficking cases and it is highly recommended that all forces adopt these guidelines. However, it is unclear whether and how the forces can be obliged to do so. This subject may be addressed in the next Police Force Monitor on Prostitution and Trafficking in Human Beings (2009/2010).

158 The necessary information is always given immediately. In certain cases they are later advised to submit a request for legal assistance.

159 Vanmullen (2007, pp. 22-24); Dutch Police, NIK Day Intelligence Led Policing, 23 April 2009; Smits (2007).

160 Joint statement at CPE 2008 Amsterdam, 23 May 2008.

161 The results were not known at the time this report was written.

The various forces share information about their strategies and policies in the LEM, but since 2007, meetings of the LEM have not been attended by experts from all the forces; only by a select few have attended, and this alternately with and without external partners. As a result, the LEM is in danger of losing its usefulness in prompting and motivating police forces.

### *Identification and investigation*

It is often difficult to identify victims of human trafficking *per se*. It is, in any case, important for any visible signs of human trafficking to be spotted. While it is quite possible that this does not always happen, it is unclear on what scale. To identify signs of human trafficking properly it is important that both members of the public and employees in every level of organisations that might be confronted with human trafficking (including the police) know what it involves, can recognise victims and know how to act on a suspicion of human trafficking. That situation has not yet been reached. There is still room for improvement in the capacity of various agencies, including municipalities, the IND, chambers of commerce, the police, doctors, operators of sex establishments, social workers and others to identify signs of human trafficking.

There are many different manifestations of human trafficking (including sexual exploitation, non-sexual exploitation and the loverboy problem). Each of them requires, partially at least, a different approach. Efforts to address human trafficking outside the sex industry in particular are still in their infancy and call, in some cases, for a change of attitude on the part of the relevant organisations (aliens police, the IND and the Ministry of Justice's Repatriation and Departure Service (DT&V)). It is still not universally accepted that very serious forms of human trafficking can also occur in sectors outside the sex industry and that just as much priority should be devoted to identifying and investigating them. The police forces constantly have to make choices in establishing priorities. The decision on where to deploy capacity is not always made in favour of tackling human trafficking. The administrative supervision of the prostitution industry also requires manpower and is not always – as has been agreed – facilitated by municipalities. The result is that some warnings of human trafficking are not investigated and investigations are dropped.

Many police forces have formed specialist teams to investigate human trafficking, but other divisions (such as the regional criminal investigation teams) also conduct investigations. It is evident that they sometimes lack knowledge and expertise of human trafficking. In regions without a specialist human-trafficking team, information about human trafficking is not always gathered properly and investigations seem to be more difficult to conduct. Detectives trained in dealing with human-trafficking cases are not always available to hear complaints. It is not only identifying victims of human trafficking that is difficult, but also securing their cooperation with investigations and prosecutions. Victims are unwilling to report offences and their reports sometimes contain very few leads for an investigation. For successful investigations it is also important to use alternative solutions and strategies, such as accumulating evidence from other sources. As stated in the Instructions on Human Trafficking, all investigating teams should include detectives specialising in financial crime.

Human trafficking is always a local phenomenon but is frequently organised by international gangs. Cooperation with the police in other countries is therefore vital but little is known about this. There are also problems with international cooperation, for example because of differences in legal systems and interests. International cooperation is also very time-consuming.

#### *Information and follow up*

It is important for the investigation of human trafficking to make use of information available to other partners in the chain, although naturally the provisions of the Personal Data Protection Act have to be observed. Nevertheless, the sharing of information seems to raise various obstacles for investigations into human trafficking. Some of these barriers are technical in nature and relate, for example, to computer systems. But others can be traced to attitudes. These obstacles must be removed as far as possible in view of the importance of the information and the need to share it.

The EMM acts as the national repository of information about human trafficking provided by all of the agencies involved in the supervision, control and investigation of human trafficking and in providing assistance to victims, but it does not function satisfactorily. On the one hand, not all of the information is supplied, and on the other, the information that is available is not properly analysed and processed. The disappointing output then undermines any motivation to provide information. The Human Trafficking Task Force commissioned a study into the exchange of information between police forces and the EMM. The resulting report, 'Trade; you'll pay for this', led to the decision to start a pilot project with the Regional Information and Expertise Centres (RIECs) in Rotterdam and Groningen designed to improve the flow of information between the RIECs and the EMM.

The importance of the exchange of information between international police forces is growing all the time. By merging and analysing operational information from different countries it is possible to learn more about the methods used by human traffickers and how they can be tackled. In the EU this is a task for Europol but the exchange of information through Europol is not optimal. The Netherlands can play its part by adhering to the agreements on the provision of information to Europol.

#### *Victims*

The police naturally have a duty of care towards any victims of human trafficking they encounter during investigations. The victims must be given shelter, but a practical problem facing the police is the shortage of places in suitable shelters and the occasional difficulty in reaching the relevant aid agencies. The police are also required to clearly inform victims of their options and their rights and to give them the opportunity to report an offence. There are quite a few indications that victims who wish to report an offence are not always given the opportunity to do so by the police and that victims are not kept properly informed of progress with the police investigation.





## 9 Suspects and offenders

### 9.1 Introduction

This chapter contains statistics about suspects – persons whose case is registered with the public prosecution service (PPS) – and persons convicted for human trafficking in first instance. The chapter opens with data from the PPS about the age, country of origin and gender of offenders over the period 2003-2007 (§9.2). The following section (§9.3) presents some of the findings from the BNRM's study into human-trafficking case law in 2007. Section §9.4 then discusses the methods used by human traffickers, with §9.5 focusing specifically on the Nigerian method, including a discussion of the Koolvis Case.

The individual sections of this chapter do not all relate to the same forms of exploitation. The statistics in the study of case law in Chapter 11, for example, only cover cases of sexual exploitation, and sections 9.4 and 9.5 are also primarily about the methods used by human traffickers involved in sexual exploitation. However, the PPS's data contain information about exploitation outside the sex industry ('other forms of exploitation') as well as sexual exploitation.

Because, for practical reasons,<sup>1</sup> no detailed figures are available for 2008, Table 9.1 presents a summary of key data for 2008, supplemented with data from previous years. The numbers and percentages in Table 9.1 differ slightly from the data in the other tables in this chapter. In so far as the information in the other tables is also taken from PPS data, this difference is explained mainly by the dynamic nature of the PPS's database and the different reference dates used in Table 9.1 and in the other tables in §9.2. The differences between the PPS's data and the statistics from the BNRM's survey of case law in Chapter 11 are explained by differences in the selection criteria on which the analyses are based.

Although the data are presented jointly in Table 9.1, it is not a cohort analysis.

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1 More extensive details for 2008 will be published on the BNRM website as soon as the data are available.

Table 9.1 Key data on suspects and convicted persons

	2004	2005	2006	2007	2008
	N	N	N	N	N
<b>Registered criminal cases</b>					
Number of human trafficking cases registered by the PPS	220	138	199 <sup>2</sup>	281 <sup>3</sup>	215
– with minors as suspects	4	4	11	7	12
<b>Convictions in first instance</b>					
Number of persons convicted of human trafficking in first instance	116	84	70	73	79
– with minors as convicted persons	2	1	4	3	5

Table 9.1 shows that the absolute number of convictions for human trafficking in first instance rose from 73 in 2007 to 79 in 2008. It also shows that fewer human trafficking cases were registered by the PPS in 2008 compared with the record year of 2007 (215 compared with 281). These data (the number of registered cases in one year and the number of convictions in that same year) can not show a possible relative (in terms of percentage) development in regard to the number of convictions. This because a judgement in first instance usually does not pass in the same year as that the case was registered by the PPS. Also, not all the registered cases eventually will pass a judgement in first instance. Some cases are dealt with by the public prosecution in an other way (like an unconditional decision not to prosecute etc.). Twelve minors were suspects in 2008. This figure was higher than in previous years, as was the number of minors (4) who were convicted offenders. This increase must be monitored, since a different preventive approach may be needed if it represents a trend.

## 9.2 Information from public prosecution service data

This section provides statistics about specific features (age, gender and country of origin) of suspects and persons convicted of human trafficking. The information in the tables is taken from PPS data and encompasses cases of both sexual exploitation and other forms of exploitation.

### 9.2.1 Age

#### *Age of suspects*

Table 9.2 presents an overview of the ages of suspects registered by the PPS, broken down by age group.

- 2 These are two cases fewer than reported in NRM6. These are two offences committed in 2005, which were originally but are now no longer registered as human trafficking cases.
- 3 This figure differs from the other tables in this chapter. This is probably connected with corrections made to the PPS's data between the different reference dates. Table 9.1 contains more recent data.

Table 9.2 Age of suspects, by year of registration

Age	2003		2004		2005		2006		2007	
	N	%	N	%	N	%	N	%	N	%
Younger than 18	7	4%	4	2%	4	3%	11	5%	7	2%
18 to 25	29	19%	79	36%	58	42%	62	31%	110	40%
26 to 30	29	19%	35	16%	23	17%	27	14%	54	20%
31 to 40	60	38%	59	27%	21	15%	50	25%	58	21%
41 to 50	19	12%	24	11%	20	14%	32	16%	37	13%
51 to 60	8	5%	15	7%	10	7%	11	5%	8	3%
61 to 70	3	2%	2	1%	–	–	3	1%	–	–
71 and older	–	–	–	–	–	–	–	–	5	2%
n.a. (legal entity)	1	1%	1	0%	–	–	1	0%	–	–
unknown	–	–	1	0%	2	1%	2	1%	1	0%
<i>Total</i>	156	100%	220	100%	138	100% <sup>4</sup>	199 <sup>5</sup>	100% <sup>6</sup>	280	100% <sup>7</sup>

In more than 80% of the cases registered in 2007, the age of the suspects at the time of the first human trafficking offence<sup>8</sup> was between 18 and 41. The average age was 31<sup>9</sup> and seven minors were suspects (2%), which is fewer than in 2006.

Over the entire period from 2003 to 2007, the average age of the suspects was 32<sup>10</sup> (the average age was 32 for men<sup>11</sup> and 31 for women<sup>12</sup>).

4 This is not equal to the sum of the individual percentages in this column, because the individual percentages were rounded off.

5 There are two fewer cases than mentioned in the sixth report of the NRM. These are two offences committed in 2005, which were originally but are now no longer registered as human trafficking cases.

6 This is not equal to the sum of the individual percentages in this column, because the individual percentages have been rounded off.

7 This is not equal to the sum of the individual percentages in this column, because the individual percentages have been rounded off.

8 The same person can be charged with multiple human trafficking offences.

9 Standard deviation (SD) = 13.5. Standard deviations give an impression of the extent of the range between the data (here: the ages) on which the average is calculated. The higher the SD, the greater the range. For a more detailed explanation, see Annex 3.

10 SD = 11.8.

11 SD = 11.5.

12 SD = 12.9.

*Age of convicted offenders*

Table 9.3 contains similar information about the age at the time of the offence, of offenders convicted of human trafficking in first instance in the period between 2003 and 2007. It is important to note here that the year of registration by the PPS is not always the year in which the court rendered judgment. The lists for each year therefore do not contain precisely the same registered persons as convicted persons.

Table 9.3 *Age of offenders convicted of human trafficking, by year of conviction*<sup>13</sup>

Age	2003		2004		2005		2006		2007	
	N	%	N	%	N	%	N	%	N	%
younger than 18	–	–	2	2%	1	1%	4	6%	34%	
18 to 25	15	19%	35	30%	32	39%	29	38%	28	38%
26 to 30	23	29%	19	16%	14	17%	11	17%	15	20%
31 to 40	23	29%	40	34%	23	28%	17	28%	16	22%
41 to 50	11	14%	12	10%	8	10%	5	10%	10	14%
51 to 60	5	6%	6	5%	3	4%	2	4%	1	1%
61 to 70	2	2%	2	2%	–	–	1	–	–	–
Unknown	–	–	–	–	1	1%	1	1%	–	–
<i>Total</i>	79	100% <sup>14</sup>	116	100% <sup>15</sup>	82	100%	70	100% <sup>16</sup>	73	100% <sup>17</sup>

As in the previous year, around 80% of the offenders convicted of human trafficking in 2007 were aged between 18 and 41 at the time of the first human trafficking offence. The average age was 29.<sup>18</sup> In 2007, three of the convicted offenders (4%) were minors at the time of the offence.<sup>19</sup> Over the entire period from 2003 to 2007, the average age of the convicted offenders (at the time of the first human trafficking offence in the relevant case) was 31.<sup>20</sup>

13 There are again minor differences between the numbers mentioned in this report and those in previous reports, probably due to corrections made in the PPS's data after the reference dates used in the earlier reports. Because the differences are small, they are not discussed here in further detail.

14 This is not equal to the sum of the individual percentages in this column, because the individual percentages are rounded off.

15 This is not equal to the sum of the individual percentages in this column, because the individual percentages are rounded off.

16 This is not equal to the sum of the individual percentages in this column, because the individual percentages are rounded off.

17 This is not equal to the sum of the individual percentages in this column, because the individual percentages are rounded off.

18 SD = 8.8.

19 Two of them were also still minors at the time of the judgment (in first instance).

20 SD = 10.

### 9.2.2 Country of origin

#### *Country of origin of suspects*

Suspects came from 59 different countries over the period from 2003 to 2007, and in each year during that period, there were suspects from between 20 and more than 30 different countries. The largest number of different countries of origin of suspects in a single year was 35 in 2007.

Table 9.4 ranks the five most common countries of birth of suspects in each year.<sup>21</sup> An ‘apostrophe’ shows that more than one country shares that place in the rankings.

Table 9.4 *Rankings of country of birth of suspects, by year of registration*

Country	2003	2004	2005	2006	2007
	Ranking	Ranking	Ranking	Ranking	Ranking
Netherlands	1	1	1	1	1
Turkey	4	2	3	2	2
Bulgaria	3	4		4'	3
Nigeria					4
Romania	2	3	4'	3	5
Morocco		5'	2	4'	
Hungary			4'		
Surinam		5'	4'		
(former) Soviet Union	5				

The tables shows that, as in previous years, the Netherlands ranks first as country of birth, and that Turkey and Romania have been a stable presence in the top five. Nigeria is a new-comer to the list.

Table 9.5 contains a list of the main countries of origin of suspects in alphabetical order.<sup>22</sup> See Annex 4 (Table B5) for a complete list.

<sup>21</sup> The most recent year (2007) determines the order in which the countries are listed.

<sup>22</sup> The criterion for inclusion in this table is that at least five suspect in any one year, or at least ten over the entire period from 2003 to 2007, came from the country concerned.

Table 9.5 Countries of birth of suspects, by year of registration

Country of birth	2003	2004	2005	2006	2007
	N	N	N	N	N
Albania	5	–	–	–	5
Bulgaria	19	14	4	13	23
(former) Czechoslovakia	–	2	5	3	1
Germany	1	5	1	–	9
Hungary	–	–	6	1	2
India	–	–	–	7	1
Morocco	3	9	17	13	12
Netherlands	46	91	54	74 <sup>23</sup>	95
Netherlands Antilles	2	7	3	4	12
Nigeria	5	4	–	2	19
Poland	–	3	3	3	7
Romania	22	23	6	14	15
Sierra Leone	1	–	–	1	5
(former) Soviet Union	11	8	2	7	1
Surinam	10	9	6	11	12
Turkey	16	24	15	18	29
(former) Yugoslavia	3	3	4	6	1
Unknown	2	2	–	1	5
Other <sup>24</sup>	10	14	12	21	26
<i>Total</i>	<i>156</i>	<i>220</i>	<i>138</i>	<i>199</i>	<i>280</i>

As in previous years, the Netherlands was the most common country of birth of suspects registered by the PPS in 2007.<sup>25</sup> The increase in the number and proportion of suspects from Bulgaria, Nigeria, Turkey and the Netherlands Antilles is also noteworthy. Although Table 9.4 shows that the position of several countries in the top five was relatively stable, there are also striking differences in the frequency with which some countries of origin appear in each

23 The suspects of the two offences committed in 2005 – mentioned in an earlier footnote – which originally were but now are not registered as human trafficking offences, were born in the Netherlands. This is why the number of Dutch suspects in 2006 is two less than reported in NRM6.

24 Three cases (one in 2003, one in 2004 and one in 2006) involved legal entities.

25 Ethnic background is not registered.



year's list. Whereas the sixth report of the NRM said that Albania's significance seemed to have disappeared in this respect and Nigeria's seemed to be declining, there were still five suspects from Albania in 2007 and the proportion of Nigerian suspects grew strongly in 2007.<sup>26</sup>

#### *Country of origin of convicted offenders*

The previous table was concerned with the countries of birth of suspects of human trafficking registered by the PPS. Table 9.6 ranks the five most common countries of birth of persons *convicted* of human trafficking in each of the years from 2003 to 2007.<sup>27</sup>

*Table 9.6 Ranking of countries of birth of convicted offenders, per year of conviction*

Country	2003	2004	2005	2006	2007
	Ranking	Ranking	Ranking	Ranking	Ranking
Netherlands	1	1	1	1	1
Romania	4'	2			2
Turkey	4'	3	2	3'	3
Bulgaria	2	4	5	4'	4'
Surinam		5'	3		4'
Netherlands Antilles					4'
Morocco		5'		2	
(former) Czechoslovakia				3'	
Hungary				4'	
(former) Soviet Union		5'	4		
Albania	3				

The list shows that the Netherlands was persistently ranked first and that Turkey and Bulgaria consistently occupied a position in the top five.

Table 9.7 presents the most common countries of birth of offenders convicted of human trafficking.<sup>28</sup> Table B6 in Annex 4 contains a complete list.

26 See the reports about arrests of Nigerian suspects in human trafficking cases at the end of 2007. See also NRM6.

27 The countries are listed in the order they were ranked in the most recent year (2007). An apostrophe shows that the position is shared by more than one country.

28 The 15 countries of birth that occurred only once in these years are not included in the table. They are Sudan (2004), Colombia, Korea, the US and Zaire (in 2005), Angola, Ghana, Great Britain, Iraq, Cape Verde, Kuwait and Sierra Leone (2006) and Brazil, Ivory Coast and Pakistan (2007).

Table 9.7 Countries of birth of convicted offenders, by year of conviction

Country of birth	2003	2004	2005	2006	2007
	N	N	N	N	N
Albania	9	2	–	–	–
Belgium	2	1	2	–	–
Bulgaria	15	11	4	4	4
(former) Czechoslovakia	–	–	–	6	3
Germany	–	1	1	–	–
Greece	1	–	–	1	–
Hungary	–	–	2	4	1
India	–	–	–	–	2
Indonesia	1	–	1	–	–
Iran	–	–	1	–	2
Lithuania	–	1	–	1	–
Morocco	2	7	3	13	2
Netherlands	26	37	36	21	24
Netherlands Antilles	–	2	3	–	4
Nigeria	–	5	–	–	–
Poland	1	–	–	1	2
Romania	7	18	3	3	13
(former) Soviet Union	5	7	5	–	1
Surinam	1	7	8	1	4
Thailand	1	1	–	1	–
Turkey	7	14	9	6	5
(former) Yugoslavia	–	1	–	1	2
Unknown	1	–	–	1	–
Other	–	1	4	7	3
<i>Total</i>	<i>79</i>	<i>116</i>	<i>82</i>	<i>70</i>	<i>73</i>

As in previous years, the Netherlands was the most common country of birth of offenders convicted of human trafficking in 2007.<sup>29</sup> As in the case of the registered suspects, despite

<sup>29</sup> Ethnic background is not registered.

the stable position of several countries in the top five, there are some striking differences in terms of the number of convicted offenders from some countries of origin in each year. Whereas the sixth report of the NRM said that the number of Bulgarians, Romanians and Turks that were convicted seemed to be falling, a substantial proportion of offenders convicted in 2007 (18%) came from Romania, and that percentage was higher than in the two previous years.

### 9.2.3 Gender

#### *Gender of suspects*

Most suspects are men: 82% in 2007. The 46 female suspects registered by the PPS in that year came from the Netherlands (13), Nigeria (8), Bulgaria (7), Poland (4), Thailand (3), Romania (2) and France, Ghana, Cameroon, Morocco, Netherlands Antilles, Somalia and Turkey (one each). The country of origin of two female suspects is not known.

There are significant differences between the countries of origin in this regard. Referring only to Table 9.4, with the rankings of the most common countries of origin of suspects, it is noticeable that there are few women (3%) among the Turkish suspects and many among the Nigerian (42%) and Bulgarian (30%) suspects. The Netherlands (14%) and Romania (13%) fall between those two extremes.

#### *Gender of convicted offenders*

Looking at convictions for human trafficking, 12 of the 73 persons convicted (in first instance) in 2009 were women, representing 16%.<sup>30</sup> They came from the Netherlands (4), Romania (3) and Brazil, Hungary, India, Lithuania and (former) Czechoslovakia (one each).

## 9.3 Information from the BNRM's investigation of case law

The BNRM studied the case law on exploitation in the sex industry in the Netherlands and analysed all the judgments in first instance in 2007. The study covered a total of 108 judgments in 65 separate human trafficking cases involving a minimum of one and a maximum of seven suspects and a total of 108 defendants. In contrast to the data from the PPS, the study only covered cases involving human trafficking for sexual exploitation; it ignored cases involving others forms of exploitation.<sup>31</sup> This section describes a number of the findings made with regard to suspects and convicted offenders from the judgments investigated in this study.

30 The gender of one convicted person is not known. The number of convictions of women for human trafficking was 13 in 2003 (16%), 21 in 2004 (18%), 10 in 2005 (12%) and 13 in 2006 (19%).

31 See §11.2 for an explanation of the methodology of this study and a further explanation of the very minor differences between the figures in this study and the PPS's figures. See Annex 2 for an explanation of the study. For the study of the case law on other forms of exploitation, see § 12.6.

### 9.3.1 Personal characteristics

Table 9.8 briefly describes some of the personal characteristics of the suspects<sup>32</sup> and convicted persons<sup>33</sup> in the cases studied.

Table 9.8 Personal characteristics

		Suspects <sup>34</sup>		Convicted offenders <sup>35</sup>	
		N	%	N%	%
Gender	Male	93	86%	62	84%
	Female	15	14%	12	16%
Age	Minor	2	2%	1	1%
	Adult	106	98%	73	99%
Country of birth	Netherlands	35	32%	21	28%
	Other	73	67%	87	72%

Most suspects and convicted offenders are men and almost all suspects and convicted offenders are adults. Roughly two-thirds of the suspects were not born in the Netherlands; the percentage is slightly higher for convicted offenders. It should be noted here that the Netherlands is, nevertheless, the most common country of birth of both suspects and convicted offenders.

### 9.3.2 Specific characteristics

Table 9.9 shows whether the suspects and convicted offenders were in detention at the time of the trial, whether they had confessed or made a partial confession to the human trafficking offences they were charged with and whether they knew any of their victims prior to the human trafficking offences they (were alleged to have) committed.

<sup>32</sup> The suspects only include the persons in whose human trafficking cases a judgment was rendered in 2007 (conviction or acquittal), and therefore do not include everyone whose case was registered by the PPS in 2007.

<sup>33</sup> The convicted offenders only include those persons who were at least convicted of human trafficking in 2007. Accordingly, the persons who were acquitted of human trafficking, but at the same time convicted of another offence, are not covered.

<sup>34</sup> N = 108.

<sup>35</sup> N = 74.

Table 9.9 *Specific characteristics*

		Suspects <sup>36</sup>		Convicted offenders <sup>37</sup>	
		N	%	N	%
Detained <sup>38</sup>	Yes	76	70%	53	72%
	No	32	30%	21	28%
(Partial) confession	Yes	17	16%	17	23%
	No/unknown	91	84%	57	77%
Relationship with victim	Yes	24	22%	14	19%
	No/unknown	84	78%	60	81%

The majority of the suspects were in custody at the time of their trial in the Netherlands. However, it is noteworthy that more than a third was not in detention, despite being suspected of the serious offence of human trafficking. In other words, almost a third of the convicted offenders were not in custody, although they were ultimately convicted and almost always sentenced to unconditional prison sentences<sup>39</sup> for offences including human trafficking. For example, in one case, the sentence demanded and handed down was 12 years in prison for offences including human trafficking, while the suspect was not in detention at the time of the trial.<sup>40</sup> Insofar as it is specifically reported in the judgments, the suspects and convicted offenders rarely made a (partial) confession. The suspects usually admitted performing certain actions that are essential for the offence of human trafficking, such as transporting victims to and from the workplace, but denied that the victims had acted involuntarily. An example of a partial confession by a suspect illustrates this.

36 N = 108.

37 N = 74.

38 Table 10.6 contains data about preventive detention taken from the PPS's database. However, the figures in the two tables cannot be compared because the BNRM's study of the case law is based on cases of sexual exploitation in which judgement was rendered in first instance in 2007, while Table 10.6 includes all human trafficking cases (including cases of other forms of exploitation) that were registered by the PPS in 2007. It is not known how many of these registered cases were also handled by the courts in 2007. Furthermore, Table 10.6 covers cases in which there was preventive custody, whereas the BNRM case-law study was concerned with whether the suspects were still in conditional detention at the time of the trial, since in some cases custody is lifted before the first day of the trial so that the suspect is no longer in detention at the time of the trial. The consequence of this is that these suspects are registered in the public prosecution's data under the heading 'preventive custody' and in the BNRM's case-law study under 'not detained at the time of the trial'.

39 See §11.9.

40 Utrecht District Court, 25 July 2007, LJN: BB0450. Suspect was sentenced on appeal to a prison term of six years and 11 months by the Arnhem appeal court (judgment not published).

‘The suspect also admitted that he had repeatedly arranged for women to come from Brazil to work for him by providing money and/or tickets and that, when these women arrived in the Netherlands and were working for the suspect, he adopted certain rules restricting their freedom, which these women had to follow. They included confiscating and/or withholding their passports, requiring them to work seven days a week, forbidding them to have mobile telephones, forbidding them to go out unaccompanied and forbidding them to form friendships.’<sup>41</sup>

Almost a quarter of the suspects and a fifth of the convicted offenders knew at least one of their victims before the human trafficking offence they (were alleged to have) committed. These were often family members, but also friends or even current or former partners.

### 9.3.3 Role of convicted offenders

Table 9.10 shows the role of the convicted offenders in the human trafficking process. The various categories are not mutually exclusive, since offenders regularly perform various roles.

Table 9.10 Role of convicted offenders<sup>42</sup>

	Role of convicted offenders	
	N	%
Pimp <sup>43</sup>	53	72%
Recruiter <sup>44</sup>	37	50%
Escort to country of destination <sup>45</sup>	26	35%
Bodyguard <sup>46</sup>	18	24%
Transporter <sup>47</sup>	13	18%
Exploiter <sup>48</sup>	4	5%

41 Groningen District Court, 6 November 2007, LJN: BB7186.

42 N = 74.

43 The person for whom a victim works or by whom she is actually exploited.

44 The person who hires the new victims.

45 The person who brings a victim from the country of origin to the country of destination after she has been recruited, in this case usually from another country to the Netherlands.

46 The person who guards or controls a victim while she is being exploited.

47 The person who transports a victim to and from the workplace while she is being exploited. The transport of victims with a view to exploitation in fact constitutes the full offence of human trafficking (in accordance with Article 273f section 1 under 1 of the Dutch Criminal Code.). However, in practice, judges regularly treat it as ‘being an accessory to human trafficking’. See §11.6.2.

48 The person who owns a sex business in which a victim works during her exploitation.

Almost three-quarters of the convicted offenders performed the role of pimp. Half were involved in recruiting victims and 35% brought victims to the Netherlands from another country. Roughly a quarter had to guard the victims and slightly less than a fifth were responsible for transporting victims to and from the workplace. A minority of the convicted persons (5%) were operators of a sex business, but it is unknown whether those sex businesses were licensed, unlicensed or illegal.

## 9.4 Human traffickers and their methods

Although countries of origin and other aspects of the backgrounds of suspects and victims vary, there are similarities in the methods used by different human trafficking organisations. This section explains the methods used by human traffickers involved in the sexual exploitation of women, including (1) the different stages of the human trafficking process, (2) the organisational structure of human trafficking groups and (3) the methods used by different human traffickers. The section then discusses how the legitimate world is interwoven with the criminal milieu and describes the role of the internet and of female offenders.

### 9.4.1 A human trafficking process

#### *Recruitment*

The human trafficking process almost always starts with recruitment, also regarded as the press-ganging, hiring or kidnapping of victims.<sup>49</sup> According to Spapens and Fijnaut, there are, in practice, four distinct types of recruitment. A first variant involves women who voluntarily come to Western Europe to earn money in prostitution, without any question of being deceived or coerced. Even in these situations, however, the recruiter is guilty of an offence since the text of Article 273, section 1 under 3 of the Dutch Criminal Code states that recruiting a person with the intention of bringing them into prostitution in another country is an offence, even without coercion or evidence that the method of recruitment curtailed the victim's freedom of choice.<sup>50</sup>

In a second variant, women are recruited under false pretences. They do not know that they will have to work in prostitution and, in fact, believe they will be working as dancers, domestic servants, nannies or in the hospitality industry, for example. On arrival the women are forced into prostitution with threats or claims of so-called debts.

The third variant differs from the second in that not only threats, but also physical violence, rape and drugs are used to force the woman into prostitution. The last distinct category is the classical loverboy method, as described in detail in NRM3.<sup>51</sup>

<sup>49</sup> NRM3.

<sup>50</sup> Cleiren & Nijboer (2008, p. 1185). See also Chapter 11, §11.4.

<sup>51</sup> For more information about the loverboy method, see §9.4.3.



*Transport*

The women who are recruited make the journey to the country of destination in various ways, including by train, international bus service or plane. There are also indications that taxi drivers are used to transport women to the country of destination by car.<sup>52</sup> Victims are often advanced the travel costs by the trafficker, so that on arrival in the country of destination they have a debt, which can be used to put pressure on them to work as prostitutes. Victims who need a visa to travel to Western Europe use false visas and travel documents. Companies established in a Schengen country, for which the women are told they will be working, are often used for the purposes of visa fraud.<sup>53</sup>

*Accommodation*

Victims of transnational human trafficking must be taken somewhere to stay on their arrival in the country of destination. Leman & Janssens investigated the use of safe houses<sup>54</sup> by eight large human trafficking and human smuggling networks on the basis of cases in the period from 1995 to 2005.<sup>55</sup> These networks were engaged in human trafficking and smuggling from Eastern Europe to the Netherlands and Belgium.

The use of safe houses is particularly common among Chinese smuggling networks, but in contrast to criminal organisations that engage in human smuggling, networks of human traffickers use houses as permanent accommodation. Leman & Janssens' investigation revealed that networks engaged in human trafficking for sexual exploitation use houses not only in the country of destination, but also have places where they can keep victims during the journey – or even for use as assembly points in the country of origin prior to transport. In the country of destination women remain under the control of the traffickers, either because they live with a trafficker or a female accomplice or because the dwelling is in the immediate vicinity of the workplace (sex establishment). The accommodation is often designed to restrict their freedom of movement. Traffickers control the women by forbidding them to leave the house or even locking them up.<sup>56</sup>

*Putting women to work in prostitution*

On arrival in the country of destination a human trafficker will persuade or compel the victim to become a prostitute. A human trafficker can use various means of coercion and victims can also be forced to work in different sectors of prostitution.<sup>NRM<sub>3</sub></sup> On the basis of information from the German police, Spapens and Fijnaut concluded that there had been a shift from prostitution in windows and clubs to less visible venues such as hotels, private homes

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52 Brummelkamp (2008).

53 Spapens & Fijnaut (2005, pp. 196-197).

54 The term safe house has a totally different connotation here to when it is used in the Dutch policy context. By safe house here is meant a dwelling used to house and control victims. The other meaning of safe house is a location where various agencies cooperate in effort to tackle crime and nuisance (Government Policy Programme, 2008; Ministry of Justice et al., 2008).

55 Leman & Janssens (2007).

56 Leman & Janssens (2007).

and escort services, where criminals can maintain even tighter control over the women.<sup>57</sup> For more information on the shifts occurring in the prostitution sector, see Chapter 7.

### 9.4.2 Human traffickers and organisational structures

Human traffickers are difficult to categorise. They range from diplomats and employees of multinationals to large criminal organisations dedicated to human trafficking.<sup>58</sup> Human trafficking is committed by individual criminals as well as by groups.

Human traffickers also differ in terms of their ethnic and religious background and often collaborate in different continents, even in combinations that would seldom occur in legitimate companies.<sup>59</sup>

The personality of a human trafficker is seldom investigated. The only research in this field is a recent study carried out at the EMM for a thesis. This study explored some features of the personalities of nine suspects in investigations that were used in the Human Trafficking chapter of the Crime Analysis (CBA) 2007. Victims, detectives and an independent researcher evaluated the personalities of the nine suspects using the Five Factor Personality Inventory (FFPI) and Psychopathy Checklist Revised (PCL-R). The study concluded that the suspects they studied scored poorly on altruism and orderliness, but differed little from the non-criminal population in terms of extraversion, neuroticism and openness. It is noteworthy that a relatively high percentage (33%) of the offenders could be described as psychopaths, compared with 1% of the non-criminal population, according to the study. No general conclusions about the personality of human traffickers can be drawn from this study, since the research group was very small and there are re-servations about how representative it was.<sup>60</sup>

There are three types of organisational structures in human trafficking.<sup>NRM3</sup> Besides individuals who operate independently (sometimes with an associate) and isolated criminal gangs with between two and five members who run the entire human trafficking operation, the third report of the NRM described the *criminal network*, which usually consists of far more than six persons. These networks are often made up of separate clusters, linked by intermediaries.<sup>NRM3</sup> A distinction can be made in the category of organised groups between traditional criminal organisations, such as the Italian mafia or the Japanese yakuza, criminal groups that are involved in a wide range of activities and organisations whose members have ethnic links and businesses, such as transport companies and travel agencies, that are run by criminals.<sup>61</sup>

Although criminal organisations are often thought to have a hierarchical structure, there is a growing realisation that many criminal gangs form networks, with small groups cooperating

57 Spapens & Fijnaut (2005, p. 198).

58 Shelley (2007, pp. 120-121).

59 Shelley (2007, pp. 120-121).

60 Hooigeboom (2009).

61 Williams (2008).

with each other in a flexible manner. Every link in the network can also be easily replaced, so crime consortia are dynamic in nature and encounter few problems if individual links are removed.<sup>62</sup> According to Williams, a network is more concerned with achieving its goals quickly and efficiently than with its organisational structure.

Earlier Organised Crime Monitors<sup>63</sup> showed that criminal partnerships are usually formed through social relationships, such as family ties and friendships. These relationships not only constitute the cement binding the members of the criminal organisation together, they also form a bridge between criminal groups in different countries. Staring studied four human trafficking cases and also observed a strong social bond between the key members of crime consortia engaged in human trafficking. His study provided indications that the key members of the network were not only connected through family ties, but usually also had the same country of origin. Both social and geographical proximity seem decisive for the creation of alliances between human traffickers.<sup>64</sup>

Staring also assessed the relationships within criminal organisations engaged in human trafficking on the basis of the dimensions of coordination and dominance. *Coordination* refers to the horizontal differentiation within the organisation, one indication of which is the extent to which tasks are divided among the members. *Dominance* refers to the vertical differentiation in criminal gangs, such as the division of power among the members of the group, as well as the use of power against victims.<sup>65</sup> In contrast to the conclusion of the Organised Crime Monitor, Staring found that there is a certain degree of hierarchy in criminal organisations engaged in human trafficking. They are, in any case, more hierarchical than networks of human smugglers.<sup>66</sup> According to Europol, the criminal organisations and networks involved in human trafficking include hierarchical networks as well as groups and individuals that work on the basis of personal contacts and small groups with a specific assignment.<sup>67</sup>

### 9.4.3 Methods

Human traffickers employ various methods to force women into prostitution. Authors use typical idealised models of human trafficking networks to describe the methods of different groups of human traffickers. Although such a classification can be used to categorise trafficking in human beings, it does not apply to every criminal group. This section describes the methods and types of human traffickers on the basis of a number of these models: Shelley's classification in terms of business models<sup>68</sup> and the reference models of traffickers produced by Becucci on the basis of a study of the situation in Italy.<sup>69</sup>

62 Kleemans et al. (2002).

63 Kleemans et al. (1998).

64 Staring (2007).

65 The dimensions of dominance and coordination are taken from DiMaggio (2001).

66 Staring (2007).

67 Europol (2008).

68 Shelley (2003).

69 Becucci (2008).

Based on the principal countries of origin of victims, suspects and convicted persons, the East European models, the Chinese and the Nigerian model are particularly relevant for the Dutch situation. Also, the loverboy method is often mentioned in the context of human trafficking in the Netherlands. The methods used by these specific human trafficking organisations are explained below.

One problem in describing their methods is that human traffickers are quick to change the way they operate. A method is often outdated by the time it is discovered. The method used by loverboys is a particularly good example of that.

An understanding of the changes in the methods used is, however, very important in order to respond in the measures taken to tackle human trafficking. Police investigations are an important source of information about the methods of human traffickers. Until 2005, the BNRM kept a record of the number of successful investigations in the preceding year and reported on features of these cases every year. Because the police themselves were instructed to produce a Crime Monitoring Analysis (CBA) for the six priority areas in organised crime (including human trafficking), the BNRM decided to stop doing this.<sup>NRM5</sup> It is now clear that in a number of aspects that are important for BNRM the information in the CBAs differ from the information yielded by its own surveys. For instance, a CBA does not cover every investigation of human trafficking but is based on a selection of investigations in a particular period. CBAs are also not public information and the NRM's reports therefore cannot refer to information in them. Complete and detailed information from the investigations is sorely lacking. The BNRM therefore intends to resume these studies next year.

### *The loverboy method*

Loverboys<sup>70</sup> are human traffickers. The term loverboys is traditionally used to refer to young men who use seduction techniques to charm young Dutch girls with the ultimate aim of exploiting them in prostitution. Characteristic elements of many of the descriptions of the loverboy method are the use of seduction techniques and the fact that loverboys operate alone.<sup>NRM3</sup> Bovenkerk et al. describe loverboys as “an exceptional form of pimping: they use their love affair with a woman to bring her into prostitution and exploit her”.<sup>71</sup>

Because of the rapid changes in the techniques used and the type of person that applies the loverboy method, descriptions of a loverboy or the loverboy method are quickly outdated. Classical features of loverboys and the loverboy method, such as the use of seduction, on young women or girls, by young men, and to exploit them in prostitution, seem increasingly not to be entirely accurate. What makes a human trafficker a loverboy, or precisely what the loverboy method involves, is therefore not easy to define.

<sup>70</sup> The same phenomenon is also referred to by the term ‘pimp boys’.

<sup>71</sup> Bovenkerk et al. (2006).

*Humanitas PMW on the methods of loverboys*

The annual report of Humanitas Prostitutie Maatschappelijk Werk<sup>72</sup> in 2008 showed that the methods of many loverboys have changed in recent years. Whereas in the past a lot of time and attention was devoted to so-called grooming, nowadays violence and blackmail are quickly used to force girls to work. Loverboys are not averse to using any method to recruit a girl for prostitution, according to Humanitas PMW. The use of (sometimes excessive) violence, rape, deflowering and blackmail with photographs or video recordings are all methods that have been used, although, according to Humanitas PMW, the use of violence or the threat of it is the most effective means. Violence or the threat of it, rather than seduction might also make it easier to separate these girls from the offenders, since there is less chance of ‘addiction to the loverboy’. Loverboys also use physical violence to guarantee the organisation’s income.<sup>73</sup> Humanitas PMW reports that almost all of the victims of loverboys that they counsel have suffered serious physical violence.<sup>74</sup> Besides active forms of recruiting, there can also be passive recruitment. Young men who are known for their lifestyle attract girls who want to be with them or belong to a group.

Humanitas PMW also observes that loverboys can operate in a small network, in which several victims are created by several offenders with links to each other. So loverboys do not always work alone, but rather in ad hoc or permanent networks that seem less organised than international human trafficking gangs.<sup>75</sup>

Victims are not always recruited by the loverboy himself, but sometimes by acquaintances, friends or family members.<sup>76</sup> One method in which victims are recruited indirectly is that of the ‘guardian angel’, which is described in the case below.

*The ‘guardian angel’*

The victim (A), an 18-year-old girl from a small town, met a loverboy (O) there and was then forced into prostitution by a group (D), which was associated with O, by means of violence, threats and blackmail. S., the actual human trafficker, who was a friend of group D, ‘rescued’ A from the group, only to exploit her himself.<sup>77</sup>

*Victims of loverboys*

The third report of the NRM stated that the victims of loverboys are not all underage Dutch girls, but that the method is also used on adult women and in transnational human trafficking.<sup>NRM3</sup> As regards the type of victim who is the target of loverboys, it now appears that

72 Humanitas PMW (2008).

73 Terpstra & Van Dijke (2007), pp. 387-388; Humanitas PMW (2008, p. 5).

74 Humanitas PMW (2008).

75 Humanitas PMW (2008).

76 Terpstra, L. & A. van Dijke (2007, p. 386).

77 D. Woei-a-Tsoi, Presentation at the time of the submission (of beter: presentation?) of the Human Trafficking Task Force’s Action Plan to the Minister of Justice, 1 July 2009.

they are certainly not always girls or young women from a difficult background; even better-educated women from properly functioning families can be victims of a loverboy.

#### *Loverboy/lovergirl*

It is not just young men who can be described as loverboys. There are also women who employ the loverboy method to exploit other girls. This type of exploitation by women, who are also known as *lovergirls*, has not yet been scientifically investigated, but did receive public attention following an article in the free newspaper *Metro*.<sup>78</sup> Various organisations say they feel that these lovergirls might themselves be victims of a loverboy.<sup>79</sup> In that case, using a victim to recruit new girls could be seen as a new method of recruitment. There are also indications that the loverboy method has been adopted by other organised human traffickers. For example, the method is said to have been used by a group of Bulgarian human traffickers.

#### *The aim of the exploitation by loverboys*

The third report of the NRM also referred to loverboys who exploited their victims for purposes other than prostitution alone.<sup>NRM3</sup> For example, there have been cases where victims were forced to borrow money or open accounts and surrender the money to the so-called *moneyboy*. In a letter to parliament in June 2008, the Minister of Justice said he was aware of this variant of the loverboy, but had no information to suggest that the problem was common or increasing.<sup>80</sup> Some victims are also coerced by a loverboy into smuggling drugs. Two such cases are described in Chapter 6.

#### *Locations of recruitment by loverboys*

The locations used by loverboys to meet potential victims also seem to change constantly. Besides traditional locations, such as discotheques and in and around schools, there are signs that recruitment increasingly takes place via the internet. Loverboys reportedly seek contact with potential victims mainly on social networking sites. There are no actual figures for the extent to which loverboys use the internet, but the police in the Rotterdam-Rijnmond region conducted a study into the use of the internet by loverboys. The findings of that study were not yet known at the time this report was written.

78 Meiden vaker in ban lovergirls, *Metro*, 3 May 2007.

79 On behalf of the ChristenUnie political party, students of the Gereformeerde Hogeschool Zwolle (niet naar Engels vertalen?) devoted their graduation project in Social Pedagogical Assistance to the subject of lovergirls. One part of the project was a survey of the demand for information about lovergirls from organisations like Pretty Woman, BLinN, The Youth Care Agency, Asja, the Domestic Violence Advice and Support Centre and several individual stakeholders (Van Eckeveld et al., 2008).

80 Letter from the Minister of Justice to the Lower House of Parliament, 17 June 2008 (*Parliamentary Documents II 2007/08*, 28 638, no. 35).

Various victims, aid organisations and investigative agencies are aware of these new methods of recruitment by loverboys. However, it is not clear whether these signs indicate a shift in the methods they use or to what extent such a shift is actually occurring.<sup>81</sup>

All in all, many elements of the traditional image of a loverboy no longer seem to apply, and may even be outdated. At the same time, the loverboy method is increasingly referred to in the context of a situation of exploitation. Consequently, it has become unclear what the terms loverboy and the loverboy method actually involve. It seems almost impossible to give a definition that encompasses every variant of the loverboy method and at the same time indicates the extent to which the loverboy method differs from other methods used by human traffickers. The description of loverboys used by the Minister of Justice in a letter to the Lower House of Parliament, “boys who bring girls into prostitution against their free will”,<sup>82</sup> is an example of a definition that is so broad as to have almost no distinctive character.

The fact that the loverboy method quickly adapts and that new variants and methods are constantly emerging does not necessarily mean that the classical loverboy method is no longer used.

To respond effectively to the new methods, however, it is essential to closely monitor the changes that do occur. Humanitas PMW observes that the outdated view of the loverboy problem means that in projects designed to combat loverboys, a lot of emphasis is wrongly placed on increasing the ability of the girls to resist them.<sup>83</sup> A better insight into the constantly changing methods used by loverboys would facilitate more specific prevention methods.

#### *Eastern European models*

Within groups of human traffickers from Eastern Europe, Shelley<sup>84</sup> makes a distinction between the Albanian or Balkan Model and the Post-Soviet Model. Becucci<sup>85</sup> only refers to the Albanian model.

The Albanian or Balkan Model consists of small groups of individuals, each of whom ‘manages’ two or three prostitutes. Members of the organisation were born in the same village or have family ties. A Balkan network therefore rarely operates transnationally. The trafficker for whom a woman works has exclusive rights over her. Decisions with respect to the woman can therefore only be taken with the permission of the trafficker/pimp. The existence of a criminal group is apparent mainly from the collective legal support for members of the group when they are arrested and the ‘shelter’ provided to the women by other members of the organisation when a trafficker is temporarily absent.

81 Verbal information from Humanitas PMW, 22 June 2009; *Meid, één aangifte is al voldoende*, Metro, 23 June 2009. Humanitas PMW’s report on the results of the chain approach to youth prostitution in 2008 states that loverboys do not shun any method to force girls into prostitution (Humanitas PMW, 2008).

82 Letter from the Minister of Justice to the Lower House of Parliament, 17 June 2008 (*Parliamentary Documents II* 2007/08, 28 638, no. 35).

83 Humanitas PMW (2008).

84 Shelley (2007, p. 120).

85 Becucci (2008).



Victims of this type of trafficker are almost all women from Balkan countries or women who were bought by the Balkan traffickers from Eastern European traffickers. The criminal group controls the victims from the moment that they come into contact with the traffickers in the country of origin up to and including their exploitation in the sex industry in Western Europe. The most striking feature of the Balkan model is the extreme violence used against the female victims. Shelley accordingly describes this type of human trafficking as the *violent entrepreneur's model*. The degree of control exercised by Balkan human traffickers over the women is striking. The women have absolutely no autonomy: they are under continuous observation because the pimps accompany them everywhere. Becucci describes how the pimp exercises control by calling the victim every five minutes at a prearranged location that can be monitored. A trend has recently been observed where Albanian exploiters use less violence and imposes less strict constraints on victims. Instead of the trafficker exercising control, another prostitute or a girlfriend of the human trafficker assumes the task of managing a group of women. Reference was made earlier to the reports that Bulgarian traffickers also employ loverboy methods.

Shelley describes the Post-Soviet model as the *natural resource model*. The traffickers who employ this model differ from the Albanian and Balkan traffickers in that the Post-Soviet traffickers limit themselves to recruiting and selling women to other traffickers, such as Albanian and Balkan traffickers. The aim of these traffickers is to make a quick profit and not exploit the women over a longer period. Becucci interprets this repeated selling of women as fragmentation of criminal activity, since an organisation that arranges the entire human trafficking process is guaranteed greater profits.

Leman & Janssens observed that a number of Albanian, Bulgarian, Hungarian and Russian gangs they investigated constituted networks, consisting of small, flexible and replaceable organisations that uses easily available personnel who can be quickly replaced. Each individual organisation is then part of a well-organised network spanning several continents. Although each unit follows its own rules, the cooperation between the units is based on contracts.<sup>86</sup>

#### *The Chinese Model*

Knowledge about the methods used by Chinese human traffickers involved in prostitution is limited. The field research by Knotter, Korf and Ying Lau showed beyond doubt that there is an overlap between the Chinese beauty sector and prostitution and that there are also Chinese sex houses, brothels and escort companies operating in the Netherlands. However, Chinese prostitutes operate mainly in their own community and behind closed doors, in apartments or in massage parlours. Consequently, little is known about the extent to which the prostitution is coerced. However, the women often see prostitution as the only alterna-

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86 Leman & Janssens (2007).

tive to hard work and low wages in their own country. They usually come from areas that were suddenly confronted with poverty.<sup>87</sup>

#### *The Nigerian Model*

The Nigerian model, finally, is discussed at length in §9.5. The key aspects of this model are female madams, coercion through voodoo and the ‘victim-becomes-perpetrator’ process.

#### **9.4.4 The interface between the illegal and legal sectors**

The Programme to Strengthen the Approach to Combating Organised Crime reports that when legal and illegal markets are closely entangled there can be a very thin line between using and abusing services and facilities. This can constitute a direct threat to the social environment of ordinary citizens.<sup>88</sup> The illegal activities of criminals, including human trafficking, can become entangled with legal activities and markets in various ways and to different extents. Criminals use legitimate services and facilities in the course of their criminal activities. Third parties that provide these services or facilities can be regarded as conscious or unconscious facilitators of criminal activities. The entanglement of legal and illegal activities can also arise when criminals themselves practice a legitimate profession.

#### *Local embedding*

In the third report of its Organised Crime Monitor, the WODC looked at the extent to which criminal organisations use local facilities in pursuing criminal activities.<sup>89</sup> This report was based on an analysis of 120 completed investigations, only a small number (15) of which involved human trafficking. Because the monitor makes no distinction according to the type of offence, it is not possible to report only on the cases of human trafficking that were investigated.

The degree to which criminals are locally integrated has consequences for the activities of both the criminals and the investigators. It is very difficult for criminals to operate successfully without local embedding. It is less easy for criminal organisations to secure the necessary facilities if they have only limited local connections. On the other hand, criminals with few local ties can disappear more easily if the risk of discovery becomes too great.<sup>90</sup>

In this context, Van de Bunt and Kleemans discuss a human trafficking case in which Albanian human traffickers in Amsterdam forced women into prostitution. The group operated to a large extent without local connections and, for example, only used cars with German registration plates which made the members of the group easily recognisable. Because they had scarcely any local contacts, the traffickers had difficulty securing access to windows for

87 Knotter et al. (2009).

88 Programme to Strengthen the Approach to Combating Organised Crime (vergelijk met andere hoofdstukken) (annex to *Parliamentary Documents II* 2007/08, 29 911, no. 10).

89 Bunt & Kleemans (2007).

90 Bunt & Kleemans (2007).

prostitutes in the red light district. On the other hand, when the police launched raids on the premises used by the offenders, other members of the group were able to quickly escape without leaving any traces.

However, the WODC monitor<sup>91</sup> shows that the majority of the offenders operate in an environment they are familiar with. It therefore seems to be a misconception to think that transnational organised crime has no local embedding. Offenders integrated in a local community have many existing relationships with the legitimate sector as well as potential offenders. These 'local heroes' scarcely operate beyond the local level, unless they are able to join international criminal organisations via international 'bridge builders' or at rendezvous points.<sup>92</sup>

### *Labour*

The third report of the Organised Crime Monitor also discussed the extent to which members of criminal organisations practice legal professions. A strikingly large number of the suspects referred to in the monitor had no work. The type of work performed by suspects that did have a profession initially seems highly diverse. Nevertheless, there are some common features. For example, a relatively large number works in professions connected in some way with mobility, transport or logistics (the employees have a considerable degree of independence in how they do their job or the type of work they do). Also professions with a social character, involving contact with other people are over-represented.<sup>93</sup>

### *Facilitators*

Criminal organisations need the legitimate world to be able to pursue their criminal activities. Actors in the legitimate world can either consciously assist a criminal organisation in its activities or unconsciously facilitate crime.

The administrative report of the Sneep investigation (*Schone Schijn*) describes a number of facilitators who helped the human traffickers with their activities. The first category was private institutions or individuals. For example, a consultancy firm handled the group's administrative affairs and a real estate firm arranged practical matters, such as cars, mobile phones and accommodation. In the Sneep case, there were also doctors involved, who carried out breast enlargements and a number of abortions for the women in the group. Tattoo artists tattooed the women concerned.<sup>94</sup>

Taxi drivers play a role in human trafficking by transporting victims of forced prostitution. The link between the taxi sector and prostitution is by no means always criminal in nature, but sometimes taxi drivers do facilitate criminal activities. Several criminal investigations into taxi drivers have shown this to be the case. In 2006 a taxi driver was convicted of hu-

91 Bunt & Kleemans (2007).

92 Bunt & Kleemans (2007).

93 Bunt & Kleemans (2007).

94 Van Hout & Van der Laan (2008). See also §8.3.1.

man trafficking because he drove women from the Czech Republic to the red light district in Groningen. It is not clear whether he made these international journeys as a taxi driver, in the sense of using a car with a taxi permit.<sup>95</sup>

Other professional groups that can be involved in organised crime are lawyers and civil-law notaries.<sup>96</sup> Culpable involvement in the narrow sense of intentional behaviour rarely occurs. As far as criminal lawyers are concerned, the most common form of culpable involvement is influencing and putting pressure on witnesses, according to investigating officers and public prosecutors.<sup>97</sup> Situations in which lawyers and, to a lesser extent civil-law notaries, fail to observe the standard of care required of them (culpable involvement in the wider sense) do seem to occur regularly.<sup>98</sup> Possible explanations for the attraction of these professional groups for organised crime include the duty of confidentiality, attorney-client privilege, their independence and the individual nature of the work performed by lawyers and civil-law notaries.<sup>99</sup> The Council of Europe also refers to builders of websites as possible facilitators of human trafficking.<sup>100</sup>

Besides these private individuals who facilitate the work of human traffickers, the report *Schone Schijn* examines the role of social workers and various public institutions, such as local authorities, Chambers of Commerce, the IND, the Labour Inspectorate, the tax authorities and the police. Some of these agencies can be said to facilitate human trafficking in a reactive manner, for example, by allowing companies to be entered in the Trade Register without restriction. As far as transnational human trafficking is concerned, the offence might also be facilitated by weak governments in the countries of origin and widespread cooperation by parents, travel agents and hotel owners, for example.<sup>101</sup>

The government devotes a lot of attention to the role of facilitators and this entanglement of legitimate and illegal activities. A parliamentary working group studied the matter<sup>102</sup> and the Minister of Justice wrote to the Lower House of Parliament in June 2009 that “it is not only necessary to tackle human trafficking in its primary form, but also everything going on around it”.<sup>103</sup>

95 Brummelkamp (2008).

96 Lankhorst & Nelen (2004).

97 Lankhorst & Nelen (2004, pp. 95-96).

98 Culpable involvement exists in both a narrow and a broad sense. In the narrow sense, the professional is criminally involved in the criminal conduct. In the case of culpable behaviour in a broad sense, the professional has not consciously or intentionally cooperated with the criminal actions, but can be blamed for failing to observe the necessary care to avoid abuse of his services for criminal purposes. Involvement can also be active or reactive. The active variant involves an act on the part of the service provider, whereas in the reactive form he or she has failed to act or has allowed an abuse to occur.

99 Joldersma et al. (2008).

100 Sykiotou (2007).

101 Williams (2008).

102 Joldersma et al. (2008).

103 Letter from the Minister and State Secretary for Justice to the Lower House of Parliament, 8 June 2009 (*Parliamentary Documents II* 2008/09, 28 638, no. 42).

In response to the report *Schone Schijn*, at the request of the Lower House of Parliament,<sup>104</sup> the Ministry of Justice also started an investigation into the performance of medical surgery without the personal agreement of a client.

In addition to the criminal law, facilitators in many professional groups can also be dealt with through disciplinary procedures. In response to the practices uncovered in the Sneep investigation,<sup>NRM5</sup> BNRM arranged a meeting between the Dutch Society of Abortion Doctors and the Dutch police's Centre of Expertise on Human Trafficking and Migrant Smuggling to discuss signs that could indicate human trafficking. The plan is to draw up a protocol setting out how human trafficking can be recognised and actions that abortion doctors can take if they suspect coercion. Minister of Justice Ernst Hirsch Ballin has also informed the Lower House of Parliament that medical operations performed under coercion can be dealt with via criminal law and the medical profession's disciplinary procedures.<sup>105</sup> There are no plans to draft a similar protocol for other professional groups, such as plastic surgeons, for example.

#### 9.4.5 Use of the internet and other technologies

Human traffickers use various new technologies in different ways. While new technologies are not in themselves a cause of new forms of crime, they do add a new dimension to traditional forms of crime.<sup>106</sup> One of the most important new technologies is the internet. One of the advantages of using the internet for criminal groups is the large degree of anonymity it offers and the ease with which crimes can be committed. Communication by internet is also cheap and difficult to trace.<sup>107</sup>

The Council of Europe distinguishes three categories of users of new technology in relation to human trafficking: traffickers, clients and possible victims.<sup>108</sup>

Traffickers use new technologies, first and foremost, to communicate with each other. The Council of Europe's report mentions various methods that are used to prevent their communication being traced, such as communicating in e-mail chains through different countries and different time zones or using telephones and internet connections that transmit false identifying details. Another familiar method is the use of prepaid mobile telephones that are then immediately thrown away.

Human traffickers also use the internet to recruit victims. The most important method of recruitment on the internet involves advertising for work or mediation in forming relationships on a website. Traffickers can easily, and usually anonymously, contact potential victims

104 Motion by de Pater-Van der Meer MP, 20 November 2008 (*Parliamentary Documents II* 2008/09, 28 638, no. 37).

105 Letter from the Minister and State Secretary for Justice to the Lower House of Parliament, 8 June 2009 (*Parliamentary Documents II* 2008/09, 28 638, no. 42).

106 Sykiotou (2007, p. 18).

107 Sykiotou (2007, p. 22).

108 Sykiotou (2007, p. 25).

via online work, dating and marriage-mediation agencies.<sup>109</sup> Maltzahn suggests that specific links between recruitment via the internet and human trafficking are not clear but acknowledges the ease with which it can happen.<sup>110</sup> The Council of Europe's report also stresses that it is often unclear whether a website is genuinely offering jobs or a dating service or is trying to recruit victims for human trafficking.<sup>111</sup> According to that report, however, websites that are used to recruit victims for sexual exploitation display a certain consistency. Such websites often advertise domestic work or work as an au pair, work in a bar or restaurant staff, work in construction, manufacturing, agriculture or tourism, as well as work as a model, dancer or sex worker, as a cover for international human trafficking.<sup>112</sup> This method of recruitment actually differs little from traditional recruitment methods via advertisements in newspapers. It is, however, possible that the type of victim who looks for a job on the internet differs from the type of victim who is recruited through newspapers.

In addition to advertising jobs, a second method of recruitment through the internet seems to be emerging. Human traffickers can easily come in contact with potential victims via chat sites and websites like MSN Live Messenger, Hyves and Sugarbabes, using a false identify or otherwise.<sup>113</sup> Indications that loverboys already use this method were already mentioned in §9.4.3.

Traffickers use the internet to exploit victims as well as to recruit them. Victims can be forced to perform sexual acts on the internet (webcam sex), and there are also indications that victims are persuaded to perform sexual acts in front of a camera, with the images then being used as means of coercion.

Traffickers also use the internet to recruit clients. There are even indications that a woman will only be transported to the country of destination if enough clients have responded to advertisements for her on internet.<sup>114</sup> There are international differences in terms of the criminalisation of sexual advertisements on the internet. As a result, websites with sexual advertisements are produced in countries where legislation has not banned them, including the Netherlands. In one case, a criminal organisation in Estonia took advantage of the Dutch legislation by advertising trafficked women in Scandinavia on a website with a Dutch server.<sup>115</sup> Since escorts and prostitutes who work voluntarily also try to reach clients via internet, it is not easy to trace victims of human trafficking.

*Internet and clients, victims, NGOs and policymakers*

Clients of prostitutes often seek contact with other clients on the internet to share or describe their experiences.

109 Sykiotou, (2007, p. 21); Maltzahn (2005, p. 5).

110 Maltzahn (2005, p. 5).

111 Sykiotou (2007, p. 33).

112 Sykiotou (2007, p. 31).

113 Sykiotou (2007, p. 27).

114 Maltzahn (2005, p. 5).

115 Sykiotou (2007, p. 35).

For victims, the internet can be a useful tool for finding agencies to help them. The Rode Draad reports an increase in the number of victims that have found the organisation via the internet, in both the Netherlands and other countries.

NGOs and policymakers concerned with human trafficking can benefit from the internet for the distribution of educational materials and information about human trafficking.<sup>116</sup> Finally, the internet could also conceivably be used for (police or criminal) investigations.

#### 9.4.6 The female human trafficker

Various authors have reported that human trafficking is not solely a male business, but that women also operate as human traffickers. One of the conclusions of the UNODC report on human trafficking in February 2009 was that female offenders in fact play a more prominent role in human trafficking than in any other form of crime.<sup>117</sup> Shelley states that human trafficking is the only form of international crime in which women play a leading role, but that women are also to be found in the lowest echelons of human trafficking organisations.<sup>118</sup> According to Europol, the number of female offenders is significant and growing. Women seem to be engaged particularly in the recruitment phase, but are also said to be increasingly involved in organising and controlling the victims.<sup>119</sup> A study by Siegel and de Blank of 10 cases of convicted female human traffickers in the Netherlands showed that these women had played an important role in criminal organisations engaged in human trafficking in the Netherlands.<sup>120</sup> Although most female human traffickers are from other countries and work in large transnational organisations, Siegel and de Blank also discovered Dutch offenders and a number of women who operated alone.<sup>121</sup>

According to Siegel and de Blank, the roles performed by female offenders can be divided into three categories: the executors, the partners-in-crime and the self-employed. Executors are often compelled to carry out specific tasks, such as controlling other women and collecting their earnings. The boundary between offender and victim is very vague in this category. One reason why women perform the tasks may be loyalty to the trafficker, although loyalty is a stronger motive among women in the partners-in-crime category. The extent to which female offenders are themselves victims of human trafficking and are forced to perform criminal activities is also described in Chapter 6 of this report. Women who cooperate with the organisation as a partner-in-crime usually have close ties with the male trafficker. They are often either relatives of the trafficker or victims who have risen in the organisation by cooperating. Women in these positions are roughly equivalent to the men and share in the

116 Maltzahn (2005, p. 5).

117 UNODC (2009).

118 Shelley (2007, p. 120).

119 Europol (2008).

120 Siegel & De Blank (2008).

121 Siegel & De Blank (2008).



duties and the earnings. The majority of the women who work independently are African (Ghanaian and Nigerian).<sup>122</sup>

## 9.5 Nigerian human trafficking in the Netherlands

Since the early 1990s, the Netherlands has been familiar with the phenomenon of unaccompanied underage asylum seekers from Nigeria disappearing from reception centres; some of them have later been discovered working as prostitutes in the Netherlands or elsewhere in Europe. In 1999, the Nigerian Association in the Netherlands published a study into the trafficking of girls from Nigeria for exploitation in prostitution in the Netherlands. This report divided these Nigerian girls into three distinct categories: girls who came to the Netherlands for political or humanitarian reasons and were later taken from asylum centres by human traffickers and ended up in prostitution; girls who were brought to the Netherlands under false pretences about the type of work they would be doing and were eventually forced to work as prostitutes; and finally girls who consciously came to the Netherlands with the intention of working as prostitutes.<sup>123</sup>

Nigeria has meanwhile become one of the leading countries of origin of victims of human trafficking in the Netherlands, having been ranked in the top five since 2005.<sup>124</sup> However, the Netherlands is not the only country of destination for the victims of Nigerian human traffickers. Other Western European countries (particularly Italy) and the United States are also popular destinations.<sup>125</sup> This trend in Nigerian human trafficking arises from the desire among Nigerians to emigrate to the West and the limited possibilities they have to do so, which gives human traffickers a free hand.<sup>126</sup>

### 9.5.1 Pull and push factors

Nigeria became a British colony in 1914. The country's borders were drawn without taking account of cultural boundaries: very different groups of people with different cultural backgrounds suddenly belonged to the same nation. Seven years after the country attained independence in 1960, a civil war broke out which lasted three years. From 1970 until 1998 various dictators held power in Nigeria, but even after free elections were held in 1999, everyday life has not improved for most Nigerians because of poor governance and corruption. Consequently, poverty and violence have been a feature of daily life for most Nigerians for decades.<sup>127</sup>

122 For the methods employed (of beter applied/used) by these madams, see §9.5.

123 Oviawe & Iyare (1999)

124 See Table 4.1

125 It should be noted here that Nigeria is a country of origin, a transit country and a country of destination for human trafficking. There is also human trafficking from Nigeria to other countries in Africa, where victims are mainly exploited in domestic service (NAPTIP, 2005).

126 Carling (2005).

127 Carling (2006); van Heelsum & Hessels (2004).

When unemployment and the accompanying poverty increased in the 1980s, families came to depend on women for their survival. The first women arrived in Europe to perform unskilled (non-sexual) work around this time, broke the traditional pattern of male migration.<sup>128</sup>

It was quickly discovered that there was a demand for African prostitutes in Europe, a pull factor that soon drew large numbers of independent Nigerian prostitutes to Europe.<sup>129</sup> These prostitutes in turn brought other Nigerian women to the Netherlands to work for them in prostitution and so became the first Nigerian madams in the Netherlands. However, it became more difficult for adult Nigerian women to secure a residence permit in the Netherlands when Nigeria came to be regarded as a 'safe' country in the 1990s (even though the conditions under which Nigerians lived in their own country had not improved, even after democracy was established in 1999), and the desire to escape the poverty remained. Since the 1990s, madams have arranged for more and more underage Nigerian girls to come to the Netherlands, since unaccompanied underage aliens will not immediately be returned to their own country but will be placed in care.<sup>130</sup>

For most Nigerian women and girls, working in the West seems to be the best strategy for escaping from their lives of poverty and helping their families.<sup>131</sup> The visible signs of success (nice homes, cars and clothing) and the associated status of the wealthy madams who return to Nigeria confirm this impression and make the dream seem realistic and achievable.<sup>132</sup> These push factors are strongest in the province of Edo and several other areas in the southern, Christian part of Nigeria,<sup>133</sup> which is also where both the victims and perpetrators<sup>134</sup> of Nigerian human trafficking predominantly come from.

Another important push factor, apart from escaping poverty and the desire for status, is the glorification of the West.<sup>135</sup> The West is attractive to a lot of people, including girls from wealthier Nigerian families.<sup>136</sup>

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128 Adepoju (2004).

129 Siegel (2007); Carling (2005).

130 Bovenkerk (2001, pp. 154-159). The former policy on asylum and unaccompanied underage aliens was relaxed at this time and aimed mainly at integration (NRM3, 2004). The current, stricter policy, aimed at repatriation, has in fact not had any influence on the influx of unaccompanied underage aliens from Nigeria.

131 Carling (2005). It should be noted here that some girls are consciously 'sacrificed' by their families. They know what awaits their daughter in the West, but attach more importance to the wealth they will acquire (Adepoju, 2005); Dubois, W. (Director). (2007). *Grace: a slave on the streets*. Galaxy Productions; *Alles Beter dan Benin City*, Trouw, 13 March 2009).

132 Carling (2005).

133 Siegel (2007); Carling (2005).

134 Boerman et al. (2008, p. 70-71); Becucci (2008).

135 C. Ngaduba, Lecture at Ministry of Foreign Affairs, 19 May 2009; NAPTIP (2005).

136 Siegel (2007).

### 9.5.2 Nigerian human traffickers and organisational structure

West African (including Nigerian) criminal networks consist of individual cells composed of replaceable individuals. The networks are consequently flexible and difficult to oversee.<sup>137</sup> Nigerians have a worldwide reputation for their fraudulent practices, many organised from the Bijlmer district of Amsterdam, also known as the ‘419 fraud’. The money earned from these activities is often invested in other criminal activities, such as drug dealing and human trafficking.<sup>138</sup>

In the Netherlands, Nigerian human trafficking activities are carried out both by individuals and by criminal organisations. The gangs can range in size from a small group of two or three individuals to large international criminal networks made up of dozens of people with different roles.<sup>139</sup> The Nigerian organisations are involved in the entire chain of human trafficking activities, from recruiting victims in their own country to exploiting them in the sex industry in Europe.<sup>140</sup> A remarkable feature is the role that women often play in the human trafficking organisations.<sup>141</sup> For example, there are madams in Nigeria who recruit victims and bind them to a ‘debt-repayment contract’ using voodoo. Sponsors are also needed in the country of origin (both men and women, and sometimes even the madam herself), to advance the money for the trip and provide false papers for the victim. During the trip to Europe, the victims are sometimes accompanied by ‘trolleys’, who are usually men. And then there are madams in the country of destination (sometimes the person who recruited the victim in Nigeria; otherwise, a person closely related to the madam in Nigeria), with or without a male partner, for whom the victims have to work and to whom they surrender the money they earn until they have paid the debt incurred in Nigeria. These madams will sometimes have former prostitutes working for them in the country of destination. These ‘controllers’ or ‘supervisors’ collect the money from the working prostitutes or perform other supervisory tasks for the madam.<sup>142</sup>

### 9.5.3 The method

The victim in Nigeria is usually first approached by an acquaintance,<sup>143</sup> who then introduces her to a madam and a sponsor (if that is a different person). The victim is told an impressive story about the ‘golden opportunity’ for her to go to Europe and work. She is told she will quickly earn a lot of money to support her family and will eventually return to Nigeria as a wealthy woman and start her own business. Some victims do not know they will end up in prostitution in Europe and are deceived with stories about other types of work, in health care,

137 Boerman et al. (2008, p. 232-234).

138 Seminar on ‘Nigerian criminal networks’, Police Academy, 12 May 2009; Boerman et al. (2008, pp. 232-234).

139 Siegel (2007).

140 Becucci (2008).

141 Siegel & De Blank (2008).

142 Becucci (2008); Carling (2005); Siegel (2007); Carling (2006).

143 Carling (2005); Boerman et al. (2008, pp. 70-71).

for example. Other victims do know that they will be working in prostitution in Europe, but are not aware of the conditions under which they will have to work.<sup>144</sup> Although prostitutes are social outcasts in some parts of Nigeria, including Edo,<sup>145</sup> many choose prostitution in preference to a life of poverty that offers them no dignity at all.<sup>146</sup> Once the victim (and/or her family) has been persuaded, she has to sign a contract with the ‘madam’ (and the ‘sponsor’) promising to repay the costs incurred for her trip to Europe (the costs of travel and false papers). This contract is usually made binding by a priest in a religious ceremony.<sup>147</sup> Using voodoo, packages are made up of materials from the victim’s body (nails, hair, blood, etc.) and kept by the priest. The victim is threatened that if she breaks the contract or fails to honour it completely, she will be punished by the priest. Nigerians attach great importance to this traditional voodoo, which has been integrated into the Christian culture (in the south of Nigeria) and the Islamic culture (in the north). In addition to this religious ‘pact’, the victim’s family often also concludes another formal contract, offering family possessions as security.<sup>148</sup> The victim, now in possession of false identity papers, then travels to Europe. She makes the trip either by plane or by land across the Sahara, sometimes accompanied by a ‘trolley’.<sup>149</sup> The Netherlands is frequently the country of destination or a transit country to other European countries for Nigerian human traffickers, who often use the Dutch reception procedure for unaccompanied underage aliens. In that case, on their arrival in the Netherlands the victims are placed in shelters or asylum centres<sup>150</sup> and, as soon as they arrive there, they call a number they were given in Nigeria. Not long after this telephone call, the victim is collected by one of the human traffickers and disappears ‘to an unknown destination’ as far as the Dutch authorities are concerned.<sup>151</sup> In reality, from that time on the victims are forced to work in prostitution and to surrender almost all the money they earn to the madam in the Netherlands or elsewhere in Europe. The working conditions and the wage do not correspond with what the victims who knew they would be working in prostitution were told in Nigeria. Furthermore, they are charged interest on the debt and have to pay for board and lodging, the rent for a window (if they are working in window prostitution), lingerie, contraceptives and other necessities.<sup>152</sup> Sometimes the debt is also increased as a punishment, for example if a payment is late.<sup>153</sup> On average, it takes one to three years to repay the entire debt to the madam.<sup>154</sup>

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144 Siegel (2007).

145 It should be noted here that prostitution is accepted in some parts of Nigeria and that even in Edo the perception of prostitution is changing (Siegel, 2007).

146 C. Ngaduba, Lecture at Ministry of Foreign Affairs, 19 May 2009; NAPTIP (2005).

147 Or *ohen* – a Nigerian priest who performs voodoo rituals. NB: in some cases, this is the madam herself.

148 Siegel (2007); Carling (2005); Bovenkerk (2001, pp. 154-159); Becucci (2008).

149 Carling (2005); NB: during the trip the escorts (trolleys) often use sexual violence. Verbal information from EMM, 28 July 2009; Dubois, W. (Director). (2007). *Grace: a slave on the streets*. Galaxy Productions.

150 Boerman et al. (2008, pp. 70-71).

151 Bovenkerk (2001).

152 Becucci (2008); Catherina (2003).

153 Carling (2005); Catherina (2003).

154 Carling (2005).

Victims do not dare to escape during the period of their sexual exploitation, mainly because of the fear instilled in them by the voodoo ritual they went through. They believe that they will go crazy or die if they do not repay the debt and so fail to honour the contract.<sup>155</sup>

It should be noted here that voodoo rituals are a very common and accepted practice in Nigerian culture and are not generally regarded as threatening or used as an instrument of compulsion. The sense of intimidation is created by the human traffickers, who use the traditional rituals to manipulate the girls and make them fearful.<sup>156</sup> Consequently, the coerced prostitution of Nigerians is too often associated with voodoo in Europe, particularly by the media, although it has very little to do with traditional Nigerian voodoo<sup>157</sup>.

Besides the fear of reprisals connected with the voodoo ritual, the victims often also face enormous social pressure that prevents them from rebelling against their exploitation. They dare not to return to Nigeria without any money, because their families have often vested all their hopes of a better future in them.<sup>158</sup> The stigma of ‘failure’ is attached to anyone who returns to Nigeria without a story of success in the West (in other words with money).<sup>159</sup> At the same time, the victims and their families in Nigeria are often threatened if the victim does not perform her work properly and family members run the risk of losing all of the possessions they offered as security for the contract.<sup>160</sup>

The psychological weapons described above – voodoo and social pressure – as well as the prospect that the exploitation will eventually end, prompt victims to honour the contract. Once they have bought their freedom, they can start earning money for themselves by working as an independent prostitute or as a controller or supervisor, and they can eventually even become a successful madam.<sup>161</sup> These factors make it difficult to combat the Nigerian form of human trafficking, since many victims do not want to be ‘saved’ but want to complete their contract and become successful themselves.<sup>162</sup>

There are three factors that are unique to Nigerian human trafficking. The first is that the perpetrators are very frequently women and the second is the psychological weapon of voodoo, which is used instead of physical force to exploit victims in prostitution. The third, and possibly most characteristic, factor is that victims can buy themselves out of their situation, plus the associated possibility to make a career and ultimately become madams themselves.

155 Becucci (2008).

156 Van Dijk et al. (2000); Carling (2006). It is not only human traffickers that abuse the voodoo rituals. The victims can use the fear of the ‘voodoo curse’ to justify their illegal residence and their involvement in an immoral profession (Bovenkerk, 2001, pp. 154-159).

157 Bovenkerk (2001, pp. 154-159).

158 Siegel (2007); Carling (2005).

159 Adepaju (2005).

160 These psychological instruments of coercion largely eliminate the need to use physical force, so Nigerian human trafficking is often less violent than other types of human trafficking (Becucci, 2008; Carling, 2005). However, sexual violence is used relatively often (Verbal information from EMM., 28 July 2009).

161 Carling (2005).

162 Carling (2005).

This ‘victim-becomes-perpetrator’ process ensures that the Nigerian human trafficking structure keeps replicating itself.<sup>163</sup>

#### 9.5.4 The Nigerian response to human trafficking

Until recently, victims of human trafficking were regarded as prostitutes in Nigeria. Human trafficking only became a political issue in Nigeria after warnings from NGOs at the end of the 1990s, which led to Nigeria’s signing the UN’s Palermo Protocol in 2000 and ratifying it in 2001. This international protocol was transposed into national legislation in 2003 with the adoption of Nigeria’s *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act*, which provides, among other things, that human trafficking in Nigeria is punishable by a prison sentence ranging from a minimum of 12 months up to life. The act also created the *National Agency for the Prohibition of Traffic in Persons and Other Related Matters* (NAPTIP) as the central Nigerian authority for combating human trafficking. NAPTIP is responsible for coordinating all the activities relating to human trafficking in Nigeria.<sup>164</sup> It carries out research into the nature and scale of human trafficking in the country, helps with investigations and prosecutions of human trafficking and provides shelter for victims of human trafficking in safe houses and rehabilitation centres.<sup>165</sup>

NAPTIP has encountered a number of problems in the performance of its tasks. Some are general and are inherent to the nature of the offence, such as the international and covert character of human trafficking. But there are other problems that are specific to efforts to tackle human trafficking in Nigeria, such as NAPTIP’s limited resources; corruption among police officers, staff of Nigerian embassies and officials who issue visas; a lack of active political cooperation; overpopulation; unemployment and poverty; the desire of potential victims to acquire wealth and status; and the unwillingness of victims to testify against offenders (especially because of the voodoo pact they made).<sup>166</sup>

NAPTIP attaches great importance to international cooperation, especially with regard to the prosecution of perpetrators, particularly the principal leaders of the human trafficking organisations. Close cooperation between NAPTIP, Interpol, Europol and the countries of destination is therefore very important. In that regard, both parties, the Netherlands as country of destination and transit and NAPTIP, consider their first joint investigation (with the code name Koolvis) to have been a success.<sup>167</sup>

163 Siegel (2007); Carling (2005).

164 Which led to the report *The dynamics and contexts of trafficking in persons: a national perspective* in 2005.

165 C. Ngaduba, Lecture at Ministry of Foreign Affairs, 19 May 2009; NAPTIP (2005); the Danish Immigration Service (2005). One of the most recent developments, which occurred this year, is the establishment of the victim trust fund for Nigerian victims of human trafficking. Money for the fund comes from assets and money confiscated from convicted human traffickers.

166 C. Ngaduba, Lecture at Ministry of Foreign Affairs, 19 May 2009; NAPTIP (2005).

167 C. Ngaduba, Lecture at Ministry of Foreign Affairs, 19 May 2009; NAPTIP (2005); Verbal information from EMM, 28 July 2009; Torremans (2009 unpublished).

### 9.5.5 The mega case: Koolvis

In May 2006, the Centre of Expertise on Human Trafficking and Migrant Smuggling (EMM) received a report from a lawyer who suspected that her Nigerian client was a victim of human trafficking.<sup>168</sup> An analysis of flights at Schiphol Airport, carried out in response to this report, showed that a relatively large number of unaccompanied underage aliens from Nigeria had entered the country in the period from October 2005 to May 2006. It was also observed that after October 2005, more unaccompanied underage Nigerians had disappeared without a trace from shelters and safe houses for victims of human trafficking throughout the Netherlands. More than 30 incidents similar to the original notification were identified. This prompted the launch of the Pekari project, designed to gather intelligence and then investigate incidents involving Nigerians. The project was later continued as the Koolvis investigation<sup>169</sup>.

The Pekari analysis showed that the Netherlands was again being used by Nigerian criminal organisations as a transit country in human trafficking. It was being used as the port of entry to the Schengen area through the misuse of the asylum procedure or, in some cases, the B9 regulation for victims of human trafficking, and the associated shelter.<sup>170</sup> The final destination was usually Italy or Spain, where the unaccompanied underage Nigerians were then exploited by being forced to work as prostitutes<sup>171</sup>.

The methods used by the Nigerian human trafficking organisation exposed in the Pekari/Koolvis investigation largely corresponded with the methods described above.<sup>172</sup> For example, the Nigerian girls and young women were approached by a recruiter in Nigeria, usually through their family or friends. Some were told that they would be expected to work in prostitution in Europe and others were not. They then had to swear an oath before a voodoo priest<sup>173</sup> that they would repay a sum of money (between 30,000 and 50,000 euro) in

168 Hofstra (2006, unpublished); Torremans (2009, unpublished); Operatie Koolvis, *NRC Handelsblad*, 14 March 2009; Verbal information from EMM, 28 July 2009

169 J. Hendriks, Seminar on ‘Nigerian criminal networks’, Police Academy, 12 May 2009; Hofstra (2006, unpublished); Torremans (2009, unpublished); Verbal information from EMM, 28 July 2009

170 In the Netherlands unaccompanied underage aliens are guaranteed entry (as in most other European countries). The Netherlands does not send them back to their country of origin, but initially always places them in an open shelter system, whose addresses are widely known. Other likely factors in the choice of the Netherlands as a transit country are that there are direct flights from Nigeria to Schiphol and good connections from the Netherlands to other European countries (Operatie Koolvis, *NRC Handelsblad*, 14 March 2009; Torremans (2009, unpublished); Verbal information from EMM, 28 July 2009).

171 Hofstra, (2006, unpublished); Torremans (2009, unpublished); J. Hendriks, Seminar on ‘Nigerian criminal networks’, Police Academy, 12 May 2009

172 This method is therefore not new. The first investigations into Nigerian human trafficking in the Netherlands had already been conducted in the 1990s, when it had become apparent that Nigerian human trafficking organisations abused the Dutch asylum procedure. Since then, more or less the same method has been observed every time. Other European countries have had similar experiences (Operatie Koolvis, *NRC Handelsblad*, 14 March 2009; Verbal information from EMM, 28 July 2009).

173 The ‘voodoo’ priest, working for the human trafficking organisation is usually a pastor and not a real priest. In contrast to a priest, anyone can be a pastor since no theological study is required. What is remarkable is that the ‘voodoo’ priests who worked for the human trafficking organisation in this case were not prosecuted, even though their role had a huge influence. After all, they were responsible for the principal psychological instrument of coercion used to exploit Nigerian victims.



exchange for the necessary papers<sup>174</sup> and the trip to the country of destination. The girls all came to the Netherlands by plane, with or without an escort.

On their arrival, they followed the procedure that had been explained to them beforehand. They first disposed of all their travel documents and identity papers so that their journey could not be easily traced. They then reported to the authorities at Schiphol and applied for asylum in order to secure a temporary residence permit. At this point, on the instructions of their traffickers, some claimed protection under the B9 regulation for victims of human trafficking.<sup>175</sup> They all told the authorities the same carefully prepared story, explaining why they were seeking asylum or protection as a victim. Many of the girls were also in possession of the same telephone numbers or letters of introduction from Nigerian aid organisations or religious institutions. Once they had been placed in the asylum centre or a safe house for victims of human trafficking they called the telephone number they had been given in Nigeria. Very soon they were collected from the centre and forced into prostitution under the supervision of a madam in the Netherlands or another European country (mainly Italy and Spain) by the human trafficking organisation. The girls forced into prostitution by this human trafficking organisation also had the possibility of eventually buying off their contract and making a career<sup>176</sup>.

As with the Sneep investigation (in 2006), in the Koolvis investigation the programmatic approach to tackling organised crime was also adopted. In this approach, various agencies (including some not involved in criminal investigations) cooperated on the basis of the so-called barrier model. They included the EMM, the National Criminal Intelligence Service (DNR), the Royal Dutch Marechaussee (including the *Sluis* team at Schiphol airport), the Immigration and Naturalisation Service (IND) and the Social Intelligence and Investigation Service (SIOD).<sup>177</sup> On the initiative of the Pekari project, for the first time there was also large-scale international cooperation with Europol, Interpol and the police forces of the various countries (Nigeria-NAPTIP, the Netherlands, Belgium, Germany, France, Spain, Italy, the United Kingdom and the United States) in which the human trafficking organisation operated in the Koolvis investigation.<sup>178</sup>

The focus during the project was on three priority areas: first, preventing the influx of unaccompanied underage aliens, in this case from Nigeria, by organising rapid action teams (SATs) to conduct pre-boarding inspections at the airports in the countries of origin in an

174 Repeated use is made of the same false source- and travel documents to transport the victims to the Netherlands.

175 This shows that the human trafficking organisation was very familiar with the prevailing immigration law in the Netherlands (Verbal information from EMM, 28 July 2009).

176 Hofstra (2006, unpublished); Torremans (2009, unpublished); J. Hendriks, Seminar on 'Nigerian criminal networks', Police Academy, 12 May 2009

177 Various regional police forces, the national office of the public prosecution service, the Central Agency for the Reception of Asylum Seekers (COA), security services, Nidos (the national agency for the guardianship of refugees and asylum seekers), the Human Trafficking Coordination Centre (CoMensha) and airlines were also involved in this investigation.

178 Hofstra (2006, unpublished); Torremans (2009, unpublished); Seminar on 'Nigerian criminal networks', Police Academy, 12 May 2009; Verbal information from EMM, 28 July 2009

effort to stop them from leaving;<sup>179</sup> second, preventing the disappearance of unaccompanied underage Nigerian aliens from Dutch shelters by means of the pilot scheme with closed shelters;<sup>180</sup> third, tracing unaccompanied underage aliens who had ‘disappeared’.

At the same time, a protocol for the detection of potential victims, which was very similar to the list of indicators in the Instruction on Human Trafficking, was drawn up in an attempt to prevent as many potential victims as possible from leaving Nigeria and to find as many of the victims who had ‘disappeared’ in the Netherlands as possible.<sup>181</sup>

Thanks to the cooperation and the focus on the three priorities, the entire criminal organisation and more than 140 victims were ultimately identified. This led to coordinated international raids in October 2007 (and in January 2008 in Italy) and the successful arrest of dozens of suspects, including ‘fixers’ who arranged accommodation and connecting travel in the Netherlands, and madams in Italy who had ‘ordered’ the victims, etc. The four primary suspects included the main sponsor (who had his own travel agency in Nigeria and who arranged the false documents) and three leaders of the organisation in Great Britain, Ireland and the United States.<sup>182</sup> Some of the suspects had remarkable police records, which showed that some of them had repeatedly been arrested over the years for practices related to human trafficking.<sup>183</sup>

Thanks to the effective international cooperation and the programmatic approach, the Koolvis investigation probably broke up the entire human trafficking organisation.<sup>184</sup> How-

179 However, according to BlinN this does not combat human trafficking and victims are not protected. The intervention occurs during the human trafficking process (after recruitment and during transport) instead of when it is assumed to start. The likely effect is that the pre-boarding control will cause the route to be changed, which will lead to additional costs, which will ultimately be demanded from the victims, so the intervention is counter-productive (Press release from BLinN: *Straffen daders enige effectieve middel om daders te bestrijden*, 2 April 2009, published on blinn.nl).

180 It should in fact be taken into account that the victims themselves often do not regard the shelter and the control within it as ‘helpful’. In their view, it actually puts them and their families at risk since they are then unable to perform their contract with the traffickers. For more information on the ‘closed shelter’ pilot project (vergelijk met andere hoofdstukken: pilot beschermde opvang), see Chapter 4.

181 Hofstra (2006, unpublished); Torremans (2009, unpublished). The main aim of the study as originally designed was to operate proactively so that Nigerian human trafficking could be tackled structurally. The objective was revised, mainly because of insufficient resources and the regional organisation of the police in the Netherlands that sometimes made cooperation at national level difficult. Ultimately, the operation was solely reactive (Verbal information from EMM, 28 July 2009).

182 Hofstra (2006 unpublished); Torremans (2009 unpublished); Seminar on ‘Nigerian criminal networks’, Police Academy 12 May 2009; Verbal information from EMM, 28 July 2009.

183 J. Hendriks, Seminar on Nigerian Criminal Networks, Police Academy, 12 May 2009. An article recently appeared in the newspaper about a human trafficking organisation that operated in Italy, among other places, which had been rolled up. Those arrested included Dutch suspects and a number of Nigerians who had been involved two years earlier in the Koolvis operation in the Netherlands (Heering, 25 June 2009). As already mentioned, this shows that the Nigerian human trafficking organisations are flexible. In other words, it is not only possible to replace a single person if he or she disappears from the criminal organisation, but that even when the entire criminal organisation around an individual disappears (is rolled up), that person can easily join another organisation.

184 Up to then, national or regional police investigations had only rendered parts of human trafficking organisation harmless (rendered harmless? is dat onschadelijk maken?). This part was then quickly replaced, so that the human trafficking could simply proceed.

ever, after the gang members were rounded up and some of the victims had been found, the victims initially refused to report crimes or make incriminating statements. They refused to talk for fear of the police, deportation and, particularly, the consequences of breaking the voodoo pact they had made. The police eventually sought the help of a hands on expert (a former Nigerian victim of human trafficking) and a Nigerian priest. They were able to win the trust of some of the victims, remove their fear of the police (and of the voodoo curse), and convince them to report the crime. This creative method led to dozens of reported crimes<sup>185</sup> but also to criticism, for example from the suspects' lawyers, who argued that the priest had 'put words into the mouths' of the alleged victims and that they had been manipulated by being offered a residence permit in exchange for making an incriminating statement.<sup>186</sup> Only Nigeria, Italy and the Netherlands are prosecuting the suspects; the other countries involved have extradited the suspects they arrested. Eleven are currently facing trial in the Netherlands. The first day of the actual proceedings was in March 2009; the 'hands-on' expert and the priest appeared as witnesses in May. The case was adjourned until the end of the summer in 2009 because some aspects of the investigation had still to be completed<sup>187</sup>. Since October 2007, the month in which the human trafficking organisation was rounded up, the stream of unaccompanied underage Nigerian aliens arriving at Schiphol has almost dried up.<sup>188</sup> However, in view of the flexibility of the organisation behind human trafficking in Nigeria, it is impossible to conclude from this that human trafficking in Nigeria has declined. When circumstances change (in terms of such aspects as legislation, security, care, the elimination of part of the organisation etc.), destinations, transport routes and/or methods are also changed. This leads to the relocation of human trafficking activities, or the 'waterbed effect'. One interesting development that has been observed in this context is an increase in the influx of unaccompanied underage Nigerian aliens to Switzerland since September 2008<sup>189</sup>.

## 9.6 Conclusions

This section highlights problems that have arisen and issues that deserve special attention in relation to the topics discussed in this chapter.

185 Hofstra (2006 unpublished); Torremans (2009 unpublished); Seminar on 'Nigerian criminal networks', Police Academy, 12 May 2009; *Predikant 'bevrijdde' seks slavinnen*, NRC Handelsblad, 14 March 2009; *Megaproces vrouwenhandel begint in Zwolle*, Trouw, 16 March 2009.

186 *Predikant 'bevrijdde' seks slavinnen*, NRC Handelsblad, 14 March 2009; *Megaproces vrouwenhandel begint in Zwolle*, Trouw, 16 March 2009.

187 Official report of the public hearing (unpublished), Zwolle-Lelystad District Court, 11 May 2000.

188 Seminar on Nigerian criminal networks, Police Academy, 12 May 2009; Verbal information from EMM, 28 July 2009.

189 Seminar on Nigerian criminal networks, Police Academy, 12 May 2009; Verbal information from EMM, 28 July 2009.

*Noteworthy statistics*

Dutch people constituted the largest group of suspects in 2007 (95 out of a total of 280) and the largest group of convicted persons (24 out of 73). This once again illustrates that there is not necessarily an international dimension to human trafficking.

It is striking that 30% of the suspects and 28% of the convicted persons were not in detention at the time of their trial.

*Loverboy method*

Human traffickers quickly adapt their methods to changing circumstances or in response to tougher measures by the government. The loverboy method is an example of this. The popular image of a young man seducing vulnerable young Dutch girls into forming such a deep commitment that he can then get them to work in prostitution for him is no longer so clear cut. The practice is no longer confined to young men, nor exclusively to vulnerable young girls, nor even only to seduction techniques; the methods are also used in transnational human trafficking and in exploitation outside the sex industry. The adaptability of human trafficking practices calls for an awareness of the changes that can occur in the group of victims. It is regrettable that it is not possible to derive sufficient information from the PPS's data about the extent to which loverboy methods are used.

*Facilitators*

Efforts to tackle human trafficking do not depend only on receiving signals from individuals and agencies that are, coincidentally or otherwise, confronted with human trafficking. Another important factor is that numerous individuals and institutions consciously or unconsciously assist human trafficking by facilitating it – either directly or indirectly. As noted above, in the well-known Sneep case, a 'consultancy firm' handled the defendants' administrative affairs and a real estate company organised cars, mobile phones and accommodation. Doctors performed breast enlargements and abortions. Tattooists applied tattoos to the women involved.

Professional groups that might become entangled with organised crime include taxi drivers, lawyers, civil-law notaries, employees of travel agencies and hotels and builders of websites. Culpable involvement in the narrow sense (intentional) occurs rarely, in contrast to the failure to observe standards of care (culpable involvement in the wider sense). Besides these private parties, employees of social services, municipalities, chambers of commerce, the IND, the Labour Inspectorate, the tax authorities and the police can also play a role.

The so-called barrier model could be used to explore ways of removing the basic conditions for human trafficking, while at the same time identifying the conscious and unconscious facilitators.

*Internet*

A special effort is needed to devise methods of preventing the many possibilities that the internet affords to human traffickers to commit their offences while easily avoiding detection.

*Pekari and Koolvis*

The Pekari project and the ensuing Koolvis case were innovative in several respects. For example, the scale of the international cooperation was unprecedented and for the first time there was successful cooperation with the country of origin of the perpetrators and the victims (through the organisation NAPTIP). This contributed in identifying probably the entire criminal organisation rather than just a part that could have been easily replaced. Furthermore, the cultural context in which human trafficking in Nigeria occurs was anticipated by employing the services of a Nigerian priest. However, the 'waterbed effect' remains a persistent problem in human trafficking, in Nigeria and elsewhere. Human trafficking organisations do not recognise borders, so cross-border cooperation is essential if they are to be tackled effectively.



## The Public Prosecution Service and prosecution

### 10.1 Introduction

This chapter contains an overview of relevant policy developments relating to the public prosecution service (PPS) in the effort to combat human trafficking and the results of (secondary) analyses of the human trafficking cases in the PPS's data over the period from 2003 to 2007.<sup>1</sup> The national developments (in policy) are discussed in §10.2, and the findings from the research are covered in §§ 10.3 and 10.4. Section 10.3 contains a review of the number of cases registered with the PPS and handled by the PPS or by the courts each year. Section §10.4 covers appeals: how many cases were appealed and what were the judgments on appeal? International developments are then discussed in §10.5. The chapter concludes with a list of issues and problems that need to be addressed (§10.6).

### 10.2 Policy developments

#### 10.2.1 Embedding of human trafficking in policy and organisation

*Memorandum on Strengthening the approach to combat human trafficking and migrant smuggling*

At policy level, the PPS's efforts to combat human trafficking are as intensive as ever. At the beginning of 2008, the PPS published a memorandum on Strengthening the approach to combat human trafficking and migrant smuggling, which contained proposals and guidelines for intensifying the effort to tackle human trafficking and migrant smuggling. The Council of the Procurators General regards the fight against human trafficking and migrant smuggling as an area of specialisation, which is delegated to the regional offices. This development coincides with a number of general changes in the PPS, including the division of the PPS into eleven regional offices.<sup>2</sup>

From 1 July 2009, all eleven regional offices were to have a regional prosecutor for human trafficking and migrant smuggling<sup>3</sup> with responsibility for processing human trafficking cases throughout the region and handling the major human trafficking cases. They can de-

1 The analyses for this report were again carried out by WODC's Statistical Information and Policy Analysis department (SiBA).

2 See also 'De OM verandert, de basis', adopted by the Council of Procurators General (verg. met and. hfd.) on 26 January 2005.

3 At the time of the kick-off, that was the case in nine offices. The first meeting of the regional prosecutors took place on 11 September 2009. The position had not yet been filled in the Arnhem/Zutphen and Breda/Middelburg offices.



vote fifty percent of their time to these cases. At their first meeting, the recently-appointed regional prosecutors said they also had a major role to play in securing cases.<sup>4</sup> Money has been earmarked to provide support for the regional prosecutors, as well as for the performance of their own work. The regional prosecutors are all senior public prosecutors and have undergone a rigorous selection procedure. During that first meeting, it was reported that a senior prosecutor had also been appointed for human trafficking and migrant smuggling in the National Public Prosecutor's Office for Financial, Economic and Environmental Offences and that an advocate-general has also been appointed to handle appeals in human trafficking cases. The major human trafficking cases will be handled by the senior public prosecutors responsible for human trafficking, but smaller cases will be handled by other public prosecutors. The prosecutors who handle those smaller cases will therefore also need to know about human trafficking.

Police forces have said that the designation of a single prosecutor weakens human trafficking portfolio,<sup>5</sup> particularly in the large cities. They have said that expertise needs to be divided among several prosecutors. At the same time, police forces have called for a single, permanent contact person since switching prosecutors does not benefit continuity or the retention of expertise. Using alternate prosecutors also makes it impossible to establish good working relationships and methods. It is therefore evident that the Programme to strengthen the approach to combating human trafficking is an attempt to embed the theme of human trafficking at various levels of the organisation, while recognising the importance of support. The Reference Framework on Human Trafficking produced by the National Expert Group on Human Trafficking (LEM)<sup>NRM5</sup> for the police, contains important provisions that are also relevant for the further implementation of the approach to human trafficking in the PPS.<sup>6</sup>

#### *Acquiring and processing cases*

Overall responsibility for acquiring cases rests with the local chief public prosecutor. The policy paper on Strengthening the approach to combat human trafficking and migrant smuggling recommended that the portfolio holder for human trafficking should play a role in that, together with the regional office's information officer and policy assistant/criminologist. The role of the portfolio holder, or regional prosecutor for human trafficking, is to initiate and organise prosecutions. However, acquiring cases also depends on having the knowledge and expertise needed to set priorities. That calls for the police and the PPS to have the necessary capacity and expertise.<sup>7</sup>

4 The first meeting took place on 11 September 2009.

5 Police Force Monitor 2006, 2007.

6 On this point, see §8.2.

7 According to the criminologist, Natalie Scholten, in general priorities are ultimately a subjective choice. "Despite this qualification, the choices made for investigation and prosecution could improve. The usual practice is to deal with what comes in", see *Opportuun* no. 7, 2008, 'Goede cases zoeken', an interview with Natalie Scholten, criminologist. She also noted that every force has its own analysts and there is no uniformity. Furthermore, the question posed by the leadership of the police or PPS is not always clear and the analysis therefore does not properly match to what is actually needed. It is important that the Crime Monitoring

There is a portfolio holder in each region who handles all the cases in that area of expertise. In that context, the prosecutors of cases and the portfolio holders should always operate in consultation with each other. This is also important for safeguarding knowledge and expertise.

It is in fact possible that cases are left lying not only by the police but also by the PPS ('shelved cases'). It is then difficult to explain, particularly to victims, why it has taken the PPS so long to deal with a case that was sent to it.

The actual nature and scale of this problem is not known and it is perhaps advisable to conduct further research into it.

#### *Safeguarding knowledge and expertise*

Safeguarding knowledge and expertise is an important subject in the Memo on Strengthening the approach to combat human trafficking and migrant smuggling. In this context, the national meeting of holders of the human trafficking portfolio decided in 2008 to produce a manual to provide guidelines for public prosecutors, advocates general and the police in assessing a human trafficking case and how to handle it at the hearing. The 'Manual on the approach to human trafficking' was presented during the first meeting of the regional prosecutors with the human trafficking portfolio on 11 September 2009.<sup>8</sup> The Training and Study Centre for the Judiciary (SSR) is also developing a course on human trafficking for members of the public prosecution service and the judiciary. The number of participants following courses on human trafficking is rising.

In 2008, the LEM produced a number of standard documents for the police, including a model official report that also provides background information about human trafficking. This document not only contains guidelines for the police and PPS, but can also help to increase the judiciary's insight into certain problems relating to human trafficking.

#### *Programme to strengthen the approach to combat organised crime (PVGAM)*

The programme to strengthen the approach to combat organised crime is intended to intensify the battle against organised crime in the Netherlands by strengthening the criminal law, administrative law and international instruments for tackling organised crime. Human trafficking is one of the four specific themes addressed in the programme, which is discussed in more detail in §8.2.

#### *Pilot projects*

The PPS has earmarked money for innovative methods of fighting crimes that fall within the priority categories (including human trafficking). Offices can apply to organise a pilot project. The pilot projects in the field of human trafficking are discussed in §7.6.1.

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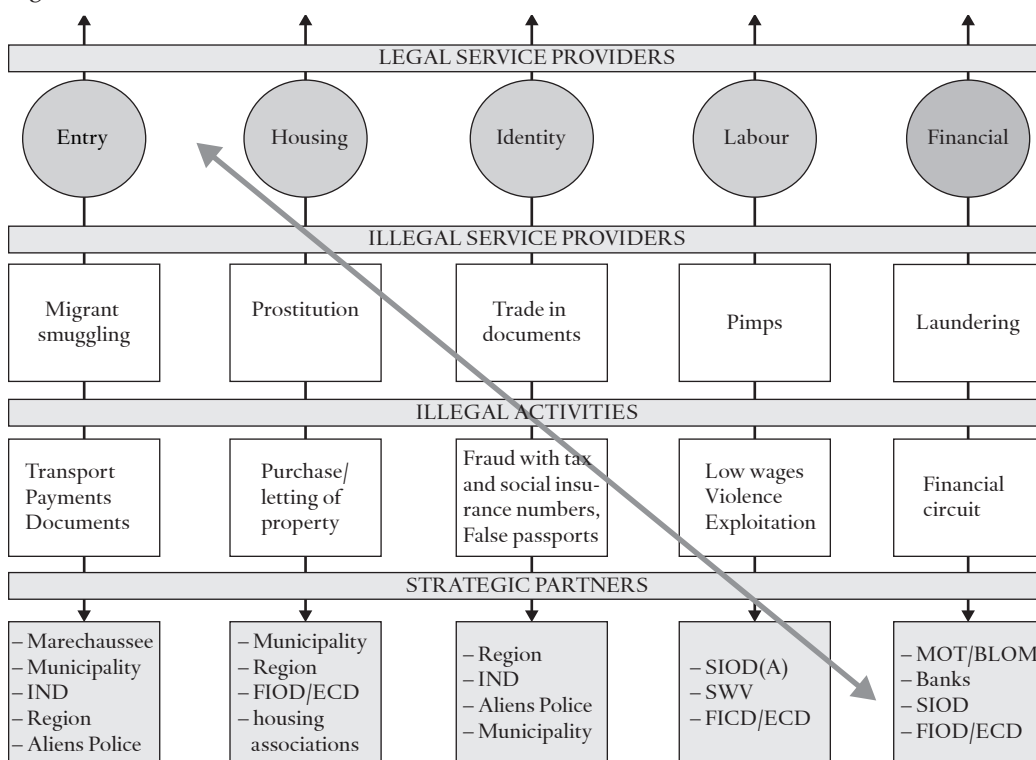
Analysis (CBA) (zie hfd. 9) has a clear position in the policy cycle. The first steps of acquiring a case (including preparing a CBA, drawn up by police under the auspices of the PPS) are now delegated to the regional offices.

8 Public Prosecution Service, 2009.

*Barrier model*

One element of the programmatic approach<sup>9</sup> is the so-called barrier model.<sup>NRM5</sup> This model was developed by the SIOD and applied in the Sneep investigation into human trafficking and coerced prostitution in Amsterdam, Alkmaar and Utrecht. The model is designed to disrupt the ‘business processes’ that are needed to commit crime and spend the profits from it. The figure below shows the barriers identified for human trafficking (and migrant smuggling)<sup>10</sup> as well as the organisations that can provide relevant information about offenders, facilitators and victims. One of the measures proposed by the Human Trafficking Task Force (measure 3) is the further elaboration and implementation of the barrier model.<sup>11</sup>

Figure 10.1 Barrier model



9 See Chapter 8.

10 Human Trafficking Task Force (2009a).

11 In these projects human trafficking is dealt with on the basis of the barrier model. In the last year the number of approved projects on human trafficking/migrant smuggling has been expanded to seven. See Human Trafficking Task Force, 2009b.

### 10.2.2 Practical manuals

#### *Instruction on human trafficking*

The Instruction on Human Trafficking summarises the key points of the efforts to tackle human trafficking. The Instruction sets out how human trafficking should be investigated and prosecuted. Indications of human trafficking must be dealt with and relevant leads must be investigated and, if possible, lead to a prosecution.<sup>12</sup> International cooperation must be actively sought in cases involving transnational human trafficking. The investigation of human trafficking must include a financial investigation and an enquiry into the possibility of deprivation of illegally obtained profits.

The Instruction includes an appendix containing a list of indicators that officers in the field can use to identify human trafficking. The Instruction also provides guidelines on how to deal with victims and witnesses and their reported crimes or statements. In another appendix, a section is devoted to the treatment of victims, which is based on the principles set out in the Instruction on care of victims.<sup>13</sup>

The Instruction on Human Trafficking was amended on 1 January 2009<sup>14</sup> and now specifically mentions the Human Trafficking Task Force as one of the agencies engaged in tackling human trafficking. Established by the Minister of Justice in February 2008,<sup>15</sup> the Task Force is responsible for identifying obstacles to tackle human trafficking and for proposing solutions for them. The Task Force will support the programmatic approach and disseminate best practices by monitoring pilot projects. The heading ‘Pre-investigation, supervision and enforcement’ in the Instruction applies to the organisation of the supervision and enforcement of the rules governing both the prostitution sector and other coerced labour or services (‘other forms of exploitation’). The new Instruction makes it clear that, with respect to both forms of human trafficking, the plans for actions in the context of the supervision of aliens and the plans for inspections and preventive controls must invariably state that possible victims of human trafficking are to be given the opportunity to report the crime or otherwise cooperate with an investigation and prosecution. With reference to the B9 regulation, the Instruction explicitly states that where there is even the *slightest* indication of human trafficking the individuals must be made aware of the possibility of claiming B9 status and must be informed that they are entitled to a period of up to three months to reflect on whether they wish to report the crime or cooperate in some other way

12 The Instruction on human trafficking (*Government Gazette* 2008, 235) states that, as soon as a serious indication of human trafficking is discovered during a check, investigation or other activity, the agency concerned must inform the competent public prosecutor. In addition, it must be reported to the Centre of Expertise on Migrant smuggling and Human Trafficking (EMM) of the National Criminal Intelligence Service. If the EMM has additional indications from other agencies, it gathers these leads and sends them to the competent public prosecutor (chapter II Criminal Law Approach to Human Trafficking). The Instruction also states that information may be provided to the EMM by the agencies that are involved in the supervision, control, investigation and help for human trafficking (§2.4). Obviously, this should also happen.

13 Instruction on victim care, *Government Gazette* 2009, 97.

14 Instruction on human trafficking, *Government Gazette* 2008, 253.

15 *Government Gazette* 2008, 47.

with the investigation and/or prosecution. As regards the intake interview, the current Instruction once again highlights the fact that the B9 regulation applies both to investigations into exploitation in the sex industry and investigations into other forms of coerced labour or services ('other forms of exploitation').

The new Instruction explains that human trafficking can be prosecuted *ex officio* and that a report of crime is not necessary to investigate and prosecute a case. Although a report of crime may be 'withdrawn', that does not have any legal consequence since, according to the Instruction, human trafficking is not an offence that can only be prosecuted after a report of crime. The report of crime is recorded by the regional force that conducted the intake interview. If the offences occurred in another region, the human trafficking expert of the other region will be contacted to decide how the case will be handled.

Finally, the Instruction also contains more details on the information to be provided between the PPS and IND, particularly about continued residence after the B9 status ends. It is also important that these agencies share information in situations where the PPS declines to prosecute but where there is a victim.<sup>16</sup>

The PPS has also issued other relevant instructions in addition to the Instruction on Human Trafficking and the previously mentioned Instruction on the Care of Victims. They include the Instruction on the investigation and prosecution of sexual abuse,<sup>17</sup> the Instruction on confiscation<sup>18</sup> and the Instruction on joint international investigation teams.<sup>19</sup>

### 10.3 Statistics on cases dealt with by the PPS and courts

This section provides statistics on the prosecution of human trafficking cases by the PPS and the decisions rendered by the courts. The tables show how many cases were registered by the PPS and dealt with by the PPS or by the courts in each year. In other words, no cohort is followed.<sup>20</sup> The research method is explained in Annex 2.

For practical reasons, there are no detailed figures available for 2008. Table 10.1 does give a number of key data for 2008 and similar data for previous years. The figures in the rest of this chapter relate to the period from 2003 to 2007.

16 On this point, see also Chapter 5.

17 *Government Gazette* 2008, 253.

18 *Government Gazette* 2009, 40.

19 *Government Gazette* 2008, 45.

20 In other words, they are not always precisely the same cases because cases are not all registered and dealt with by PPS and decided by the court in the same year.

Table 10.1 Key figures on cases handled by the PPS and the courts

	2004	2005	2006	2007	2008
	N	N	N	N	N
<b>Registered criminal cases</b>					
Number of cases of human trafficking registered by PPS	220	138	119 <sup>21</sup>	281	215
– with underage victims	32 (15%)	36 (26%)	25 (13%)	56 <sup>22</sup> (20%)	27 (13%)
<b>Convictions in first instance</b>					
Number of convictions for human trafficking in first instance	116	82	70	73	79
– with underage suspects	2 (1%)	1 (1%)	4 (6%)	3 (4%)	5 (6%)
Number of custodial sentences imposed in first instance	103 (89%)	76 (93%)	63 (90%)	69 (95%)	74 (94%)
Number of community service orders imposed in first instance	8 (7%)	4 (5%)	6 (9%)	2 (3%)	3 (4%)

As already observed in §9.1, the number of convictions for human trafficking in 2008 was higher than in 2007 in absolute terms (at this point nothing can be said about a possible growth of convictions in relative terms since the number of cases handled in first instance by a court in 2008 is not yet available). In 2008, more minors were also convicted than in earlier years. However, the number of underage victims in human trafficking cases registered by the PPS in 2008 was substantially lower than in 2007 (27 compared with 56). The percentage of cases with underage victims fluctuated during the period from 2004 to 2008.

As with the statistics on suspects and offenders in Chapter 9, the reference date for the key figures in the table above is later than for the figures presented in the rest of this chapter. The minor variations in figures that appear in the different tables are probably the result of changes made in the PPS data between the reference dates.

With the entry into force of Article 273a Dutch Criminal Code on 1 January 2005 – renumbered as Article 273f in the middle of 2006 without substantive amendment<sup>23</sup> – exploitation in sectors other than the sex industry and certain activities relating to the removal of organs were also criminalised under the title ‘human trafficking’. Unfortunately, the text of the article makes it impossible to break down the PPS data according to the nature of the exploitation (in the sex industry, in other economic sectors or in relation to the removal of organs) on

21 This is two fewer cases than were mentioned in the sixth report of the NRM. The two cases involved offences that were committed in 2005 and were originally but are no longer registered as human trafficking.

22 Later in this chapter, 58 cases involving minors as victims are mentioned. The probable explanation for this discrepancy is the difference in the reference dates used for the key data and for the more detailed data in the other tables.

23 *Bulletin of Acts, Orders and Decrees* 2006, 300.

the basis of the individual sections and subsections. What is known, however, is that all cases up to 2005 were related to exploitation in the sex industry and that some cases in 2006 and 2007 involved exploitation in other sectors. None of the cases were related to the removal of organs.

### 10.3.1 Human trafficking cases registered by the public prosecution service

In 2007, the PPS registered 280 criminal cases involving a suspicion of human trafficking (alone or together with other offences),<sup>24</sup> which represented a sharp increase compared with the two preceding years.<sup>25</sup> In this context, a *criminal case* refers to the prosecution of a single suspect.

Table 10.2 shows the number of cases and, as far as it is known, how many of these cases involved underage victims.<sup>26</sup>

Table 10.2 Number of cases registered, including cases that involved underage victims, by year

Year	Registered cases	Cases that involved underage victims	
	N	N	%
2003	156	41	26%
2004	220	32	15%
2005	138	36	26%
2006	199 <sup>27</sup>	25	13%
2007	280	58 <sup>28</sup>	21%

The number of registered cases fluctuates: the small number of cases recorded in 2003 and 2005 was followed by high numbers in 2004 and 2006, with a record number of 280 cases registered in 2007. The number of cases involving underage victims also fluctuates: the number fell in 2004 and 2006 and rose in 2005 and 2007, both in absolute and relative terms.

24 Article 250ter (old), Article 250a (old), Article 273a (old) or Article 273f of the Dutch Criminal Code.

25 Including cases that the PPS later decided not to prosecute or in which the indictment ultimately did not include human trafficking.

26 Criterion: registration under sections and subsections of the article that imply that the victims were minors. In Article 250 of the Dutch Criminal Code, those are section 1, subsection 3 and section 2, subsection 2. In Article 250a of the Dutch Criminal Code, they are section 1, subsections 3 and 5 and section 2, subsection 2. In Articles 273a and 273f of the Dutch Criminal Code, they are section 1, subsections 2, 5 and 8, section 3, subsection 2 and section 4.

27 This is two fewer cases than were mentioned in the sixth report of the NRM. Groen (SiBa) observed that these are two cases in which two offences committed in 2005 and originally registered as human trafficking are now registered as employers' fraud.

28 Table 10.1 mentions 56 cases involving underage victims. A probable explanation for this discrepancy is the difference in the reference dates used for the key figures in Table 10.1 and the more detailed statistics in this and other tables.



Over the entire period from 2003 to 2007, at least<sup>29</sup> 19% of all cases also or only involved underage victims. This says nothing about the total *number* of underage victims, since there could have been more than one in each case.

Table 10.3 shows which court district the cases were registered in and the rankings of the districts in terms of the number of registered cases. In the latter case, only the five highest-ranking districts are mentioned. An apostrophe indicates that the district shares that position in the ranking.

Table 10.3 Number of cases per district and ranking of districts, by year of registration<sup>30</sup>

Office	2003		2004		2005		2006		2007	
	N	R	N	R	N	R	N	R	N	R
Alkmaar	13	4	3		5		11		19	
Almelo	5		11		15	3	9		14	
Amsterdam	25	1	25	3'	11	5'	24	3'	37	1
Arnhem	3		15		6		12		11	
Assen	2		8		–		1		–	
Breda	11	5	4		1		–		4	
Den Bosch	20	2	25	3'	19	2	14	4	10	
Dordrecht	3		1		1		–		3	
Groningen	7		11		11	5'	10		22	4
Haarlem	6		8		6		7		14	
Leeuwarden	7		27	2	13	4	7		12	
Maastricht	3		1		2		5		10	
Middelburg	–		–		–		4		4	
Roermond	1		6		–		1		2	
Rotterdam	5		11		22	1	33	1	28	3
The Hague	18	3	28	1	9		24	3'	30	2'
Utrecht	9		6		8		6		20	5
Zutphen	10		9		4		4		10	
Zwolle	8		21	4	5		27	2	30	2'
Total	156		220		138		199		280	

29 Underage victims can also be involved in cases registered under sections and subsections other than those mentioned in an earlier footnote.

30 In this report there are again minor discrepancies with the numbers mentioned in previous reports, probably as a result of corrections in PPS data after the reference date used in the earlier analyses. Because the discrepancies are minor they are not discussed individually.

In 2007, the largest number of cases was registered by the office in Amsterdam. The Hague and Zwolle shared second place, closely followed by Rotterdam in third place. Groningen is fourth, closely followed by Utrecht. Although some offices generally have few human trafficking cases (Assen, Dordrecht, Middelburg, Roermond) and others regularly have a large number (Amsterdam, Den Bosch and The Hague are almost always in the top five), the number of cases registered in each office fluctuates sharply over time. Over the entire period from 2003 to 2007, Amsterdam had the largest number of cases, followed by The Hague, Rotterdam and Den Bosch.<sup>31</sup> As previously reported,<sup>NRM6</sup> the effort made by an office is not judged solely by the number of cases it has registered.

### 10.3.2 The ‘nature’ of the cases

Table 10.4 presents the human trafficking cases registered by the PPS according to the different sections of the human trafficking provisions of the Dutch Criminal Code<sup>32</sup>.

Table 10.4 ‘Type’ of human trafficking, by year of registration<sup>33</sup>

‘Type’ of human trafficking	2003		2004		2005		2006		2007	
	N	%	N	%	N	%	N	%	N	%
250/a, section 1	31	20%	60	27%	22	16%	4	2%	3	1%
250/a, section 2	123	79%	160	73%	41	30%	27	14%	19	7%
273a/f, section 1	n.a.	n.a.	n.a.	n.a.	25	18%	59	30%	99	35%
273a/f, section 3	2	1%	n.a.	n.a.	46	33%	106	53%	148	53%
273a/f, section 4	n.a.	n.a.	n.a.	n.a.	4	3%	1	0%	8	3%
273f, section 5	n.a.	n.a.	n.a.	n.a.	–	–	2	1%	3	1%
Total	156	100%	220	100%	138	100%	199	100%	280	100%

Most human trafficking cases in the period 2003 to 2007 involved *aggravated* human trafficking: cases in which two or more persons acted in concert, in which there was a victim who was younger than 16 years *or* in which serious physical injury was caused. Cases of non-aggravated human trafficking also occurred fairly frequently in that period. In 2007, eight cases were registered under 273a/f, section 4 (human trafficking committed in concert *and* in which a victim younger than 16 was involved), and three cases registered in 2007 concerned Article 273f, section 5 (human trafficking leading to serious physical injury). In the rest of this

31 The number of cases in Den Bosch has declined every year since 2004.

32 Perhaps unnecessarily: registration, a summons or a conviction under Article 250ter/a, section 2 or Article 273f, section 3, 4, 5 or 6 of the Dutch Criminal Code involves the aggravating circumstances under which human trafficking is committed.

33 Article 250ter/a, section 3, Article 273a, section 5 and Article 273a/f, section 6 of the Dutch Criminal Code are not mentioned in the table because no offences against them occurred in the relevant period.

chapter, the only distinction made in the tables is between non-aggravated human trafficking (human trafficking without aggravating circumstances) and aggravated human trafficking. No reference is made to specific provisions of the Dutch Criminal Code.

Human trafficking is often committed in combination with other offences,<sup>34</sup> meaning that a case can then involve multiple offences. Table 10.5 provides a list of the most serious registered offences in each case involving human trafficking.<sup>35</sup> The ‘most serious offence’ is the offence with the heaviest potential sentence; it is not intended to imply a qualitative assessment of the offence.

Table 10.5 Most serious registered offence, by year of registration

Most serious registered offence in each case involving human trafficking	2003		2004		2005		2006		2007	
	N	%	N	%	N	%	N	%	N	%
Sexual violence	14	9%	26	12%	16	12%	36	18%	36	13%
Other violence	2	1%	13	6%	7	5%	3	1%	12	4%
Non-aggravated human trafficking	23	15%	43	20%	37	27%	45	23%	70	25%
Aggravated human trafficking	109	70%	131	60%	76	55%	110	55%	151	54%
Other offences <sup>36</sup>	8	5%	7	2%	2	1%	5	2%	11	4%
Total	156	100%	220	100%	138	100%	199	100% <sup>37</sup>	280	100%

In around 80% of the cases in recent years, human trafficking was the only or the most serious registered offence. In cases that involved another, more serious offence in addition to human trafficking, that offence was usually a form of sexual violence. In 2007, sexual violence was the most serious registered offence in 13% of human trafficking cases.

There was a gradual decline in the number of registered cases of human trafficking in combination with ‘participation in a criminal organisation’ (Article 140 of the Dutch Criminal

34 Such as migrant smuggling, rape or attempted rape (or complicity therein), possession or use of weapons, intentional deprivation of liberty, attempted or otherwise (or complicity therein), drug-related offences, the production and use of false travel documents and assault and intimidation. See NRM3 and NRM5.

35 The classification used by the CBS (behoeft dit vertaling?), in which the offence with the heaviest potential sentence ‘prevails’ in each case, has been adapted by creating a separate category for human trafficking. Where there are combinations of offences with the same potential sentence, human trafficking is included in the table as the most serious offence. If there are then still several offences with the same potential sentence, an offence committed earlier prevails.

36 These are human trafficking in combination with crimes against property, destruction/disturbance of the peace, fraud, bribing a public official, making false statements, bigamy, conveying a minor while drunk or removing a minor from parental authority, for example. See also NRM3.

37 This is not the same as the sum of the individual percentages in this column because the individual percentages have been rounded off.

Code), until there were none at all in 2005, but that combination did occur again in 2006 (29 times) and in 2007 (65 times), representing 14% and 23% of all cases respectively. This seems to confirm the conclusion in the sixth report of the NRM that resources are not being devoted solely to cases designed to deliver a ‘short, sharp blow’ or involving perpetrators operating alone.

### 10.3.3 Cases dealt with by the public prosecution service

Table 10.6 presents the number of cases registered by the PPS in which the suspect was remanded in custody, by year of registration.

Table 10.6 *Remand in custody, by year of registration*<sup>38</sup>

Remanded in custody	2003		2004		2005		2006		2007	
	N	%	N	%	N	%	N	%	N	%
Yes	130	83%	161	73%	102	74%	151	76%	236	84%
No	26	17%	59	27%	36	26%	48	24%	44	16%
Total	156	100%	220	100%	138	100%	199	100%	280	100%

In 2007, 84% of the suspects were initially on remand.<sup>39</sup> This percentage has risen slightly every year since 2004.

The information in the previous sections was only concerned with criminal cases *registered* by the PPS. Table 10.7 covers cases *dealt with* by the PPS in the same years.<sup>40</sup>

Even more than in previous years, issuing a summons was by far the most common method by which cases were dealt with in 2007 (85% of cases). In the majority of cases (81%), summonses were issued jointly or solely for human trafficking. In 4% of cases, no summonses were issued for human trafficking, only for other offences. The number of cases in which an unconditional decision was taken not to prosecute fell quite sharply, to 12% of cases in 2007. These cases were abandoned mainly for technical reasons.

Conditional decisions not to prosecute were taken more often in cases where non-aggravated human trafficking was suspected than in cases where there were aggravating circumstances.

<sup>38</sup> Here too there are minor discrepancies compared with the figures that were presented in the previous report.

<sup>39</sup> Table 9.9 contains information about detention taken from the BNRM’s study of case law. However, the figures in the two tables cannot be compared because the study of case law is based on cases of sexual exploitation in which the court of first instance ruled in 2007, while Table 10.6 includes all human trafficking cases (including cases of other forms of exploitation) that were registered by the PPS in 2007. It is not known how many of these registered cases were also dealt with by the courts in 2007.

<sup>40</sup> It may seem strange that the PPS dealt with more cases in 2006 than were registered, but this is due to the fact that no cohort was followed and the PPS does not always make a decision on whether to prosecute in the same year as a case is registered. In fact, there are also minor differences between this table and the figures presented in earlier reports.

Table 10.7 Cases dealt with by the PPS, by the year they were dealt with

Disposition of the case	2003		2004		2005		2006		2007	
	N	%	N	%	N	%	N	%	N	%
Summons for human trafficking <sup>41</sup>	116	66%	175	71%	95	71%	154	74%	180	81%
Unconditional decision not to prosecute <sup>42</sup>	42	24%	61	25%	28	21%	41	20%	27	12%
Summons for other offences <sup>43</sup>	11	6%	4	2%	2	1%	10	5%	8	4%
Transfer of jurisdiction <sup>44</sup>	2	1%	2	1%	1	1%	1	0%	4	2%
Joinder <sup>45</sup>	4	2%	1	0%	2	1%	1	0%	1	1%
Conditional decision not to prosecute <sup>46</sup>	–	–	2	1%	4	3%	–	–	–	–
Out-of-court settlement <sup>47</sup>	–	–	1	0%	2	1%	–	–	1	1%
Total	175	100%	246	100%	134	100% <sup>48</sup>	207	100% <sup>49</sup>	221	100%

The PPS's data provide no insight into the type of joinder involved. The OM can join cases 'ad informandum' or 'for trial'. The type of joinder has consequences for how the offence that is joined is dealt with. A joinder for trial means that a summons is issued for the offence on a single indictment with another offence (under a different cause-list number). A joinder for trial is therefore a settlement of the case by summons. Where an offence is joined *ad informandum* no charges are brought, but it is joined with another case to allow the judge to take it into account in determining the sentence. The judge can only do so if the suspect admits the offence. Since joinder for trial means a summons is issued for the joined offence and no sum-

41 This refers to a summons solely or jointly for human trafficking.

42 In Dutch called: 'sepot'.

43 These are cases where, despite an earlier suspicion of and registration under human trafficking, a person is not charged with human trafficking but is charged with one or more other offences.

44 To a different district or to another country.

45 *Joinder* is the joining of different offences into a single case.

46 A conditional decision not to prosecute occurs when the PPS provisionally postpones the decision to prosecute.

47 An out-of-court settlement involves the (voluntary) payment of a sum of money to the PPS, whereupon the PPS abstains from prosecuting (in Dutch called: 'transactie').

48 This is not the same as the sum of the individual percentages in this column because the individual percentages have been rounded off.

49 This is not the same as the sum of the individual percentages in this column because the individual percentages have been rounded off.

mons is issued for an offence joined *ad informandum*, it would be relevant to know whether a joinder was for trial or *ad informandum*.

#### 10.3.4 Disposition by the court

To recapitulate, in 2007 the PPS registered 280 cases involving a suspicion of human trafficking. In the same year, the PPS handled 221 cases, 180 of them by issuing a summons.

Table 10.8 gives an overview of judicial decisions, by the year in which the case was decided. The table shows that in 2007 the courts of first instance dealt with 120 cases in which the charges included human trafficking. This number does not seem to correspond with the number of cases (108) covered by the BNRM's study of the case law. There are various reasons for this, the main one being that the survey of case law focused exclusively on cases of sexual exploitation, while the PPS data also cover cases involving exploitation in other sectors ('other forms of exploitation'). For more detailed information about this reason, and other explanations, and the results of the BNRM's study of the case law, see Chapter 11.

Table 10.8 Disposition in first instance, by year of disposition

Settlement	2003		2004		2005		2006		2007	
	N	%	N	%	N	%	N	%	N	%
Conviction – including human trafficking	79	69%	116	77%	82	71%	70	70%	73	61%
– only for other offences	25	22%	19	13%	17	15%	20	20%	24	20%
<i>Total</i>	104	90% <sup>50</sup>	135	89% <sup>51</sup>	99	86%	90	90%	97	81%
Acquittal	5	4%	11	7%	12	11%	9	9%	14	12%
Discharge from further prosecution	–	–	1	1%	–	–	–	–	–	–
Court has no jurisdiction	–	–	–	–	–	–	–	–	2	2%
Prosecution declared inadmissible	1	1%	–	–	–	–	–	–	1	1%
Cases joined at hearing	5	4%	4	3%	3	3%	–	–	4	3%
Other decisions	–	–	–	–	–	–	1	1%	2	2%
<i>Total</i>	115	100%	151	100% <sup>52</sup>	115	100%	100	100%	120	100% <sup>53</sup>

50 This is not the same as the sum of the individual percentages in this column because the individual percentages have been rounded off.

51 This is not the same as the sum of the individual percentages in this column because the individual percentages have been rounded off.

52 This is not the same as the sum of the individual percentages in this column because the individual percentages have been rounded off.

53 This is not the same as the sum of the individual percentages in this column because the individual percentages have been rounded off.

In 2007, the district court in Almelo declared that it had no jurisdiction in the Sneep case<sup>NRM5,54</sup> In that case, the decision led to the lifting of provisional custody. The six defendants ultimately stood trial in June 2008 before the district court in Almelo and were all convicted of human trafficking. The judgments are not yet final and irrevocable. The appeals were not expected to be heard before the autumn of 2009.

In 2007, almost a third of the suspects (32%) were acquitted of human trafficking. These cases consisted of a full acquittal (12%) and cases where suspects were convicted of other offences, such as sexual and other forms of violence (20%). In all of these cases, the defendants were acquitted of human trafficking. As in previous years, however, a large majority of the cases in 2007 resulted in a conviction (81%), although this percentage is lower than in previous years. For BNRM, the total number of convictions is less relevant than the number of convictions for human trafficking, since the total number also includes convictions solely for other offences. As already mentioned, 20% of the suspects in 2007 were only convicted of offences other than human trafficking, which means that there was only a conviction for human trafficking in 61% of the cases. The other outcomes occurred sporadically in 2007. In this survey, 'joined at trial' actually says nothing about the actual settlement of the case as it refers only to a procedural aspect.

### 10.3.5 Sentences imposed for the most serious offence

Table 10.9 gives an overview of the sentence imposed in first instance for the most serious offence in the charges.<sup>55</sup>

Table 10.9 Settlement in first instance according to most serious offence, by year of settlement

Most serious offence in the charges	Decision	2003	2004	2005	2006	2007
Non-aggravated human trafficking	Conviction	10 (91%)	21 (87%)	22 (85%)	12 (80%)	15 (60%)
	Acquittal	1	2	2	3	4
	Discharge from further prosecution	–	1	–	–	–
	Court has no jurisdiction					1
	Cases joined at hearing	–	–	2	–	3
	Other decisions*					1
	<i>Total</i>		11	24	26	15

54 On 25 May 2007, the District Court in Almelo declared that it had no jurisdiction; the court was acting as an adjunct to another district court but the PPS had summonsed the defendant before the court in Almelo. The suspect appealed against this decision to the appeal court in Arnhem. No decision had been made on this appeal on 11 June 2007, the date on which the PPS brought the case before the district court in Utrecht (sitting in Almelo). On 11 June, the district court in Utrecht therefore ruled the PPS' prosecution inadmissible.

55 Percentages are only given in cells with larger numbers (10 or more).



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Most serious offence in the charges	Decision	2003	2004	2005	2006	2007
Aggravated human trafficking	Conviction	80 (89%)	95 (91%)	53 (82%)	58 (91%)	60 (85%)
	Acquittal	4	6	11 (17%)	5	10 (14%)
	Prosecution declared inadmissible	1	–	–	–	–
	Cases joined at hearing	5	3	1	–	1
	Other decisions*	–	–	–	–	1
	<i>Total</i>	90	104	65	64	71
Sexual violence	Conviction	9	8	17 (100%)	12 (92%)	17 (100%)
	Acquittal	–	2	–	1	–
	Prosecution declared inadmissible	–	–	–	–	–
	Cases joined at hearing	–	1	–	–	–
	<i>Total</i>	9	11	17	13	17
Other violence	Conviction	2	3	6	6	5
	Acquittal	–	1	–	–	1
	Court has no jurisdiction	–	–	–	–	1
	<i>Total</i>	2	4	6	6	7
Other	Conviction	3	8	1	2	–
	<i>Total</i>	3	8	1	2	–
<i>Total</i>	Conviction	104 (90%)	135 (89%)	99 (86%)	90 (90%)	97 (81%)
	Acquittal	5	11 (7%)	13 (11%)	9	14 (12%)
	Discharge from further prosecution	–	1	–	–	–
	Prosecution declared inadmissible	1	–	–	–	1
	Summons is null and void	–	–	–	–	–
	Cases joined at hearing	5	4	3	–	4
	Court has no jurisdiction	–	–	–	–	2
	Other decisions	–	–	–	1	2
	<i>Total</i>	115	151	115	100	120

\* A case in 2006 was registered as 'case declared over'. The two cases in 2007 have since been converted into cases in which a sentence was imposed.

### 10.3.6 Convictions for human trafficking

#### *Sentences imposed*

Table 10.10 contains an overview of the nature of the sentences imposed in those cases where suspects were convicted of human trafficking. Unlike Table 10.9, the table does not contain a break-down according to the most serious offence in the charges, but is based on the number of cases in which there was a conviction for human trafficking. Because human trafficking was not the most serious offence in every case, the number of principal sentences cannot be compared with the number of convictions in Table 10.9. Cases in which a summons was issued for human trafficking but where there was no conviction for human trafficking are ignored here.

Table 10.10 *Sentences imposed, by year*<sup>56</sup>

Convicted of	Principal sentence <sup>57</sup>	2003	2004	2005	2006	2007
Non-aggravated human trafficking	No principal sentence <sup>58</sup>	–	–	–	–	–
	Only conditional principal sentence	1	–	2	1	–
	Custodial sentence <sup>59</sup>	12 (67%)	20 (87%)	26 (87%)	18 (95%)	15 (94%)
	Community service <sup>60</sup>	3	3	2	–	1
	Fine <sup>61</sup>	2	–	–	–	–
	<i>Total</i>		18	23	30	19

56 This table also contains discrepancies with data presented in earlier reports. They are in some respects substantial.

57 These are *unconditional* sentences, unless stated otherwise.

58 An additional sentence can be imposed (for example, deprivation of illegally obtained profits) or an order made (for example, detention under a hospital order). Contrary to what the term implies, the court can also impose an 'additional' sentence alone (Article 9, section 5 of the Dutch Criminal Code). Sentences including an order for detention under a hospital order are not registered separately in the data the BNRM received from the PPS.

59 In this table, combinations of a custodial sentence and a fine or a community-service order are included in the category 'custodial sentence'.

60 Combinations of a community-service order with a custodial sentence are included in this table in the category 'custodial sentence'. The combination of a community-service order and a fine are included in this table in the category 'community service'.

61 In this table, combinations of a custodial sentence with a fine are included in the category 'custodial sentence'.

Convicted of	Principal sentence <sup>57</sup>	2003	2004	2005	2006	2007
Aggravated human trafficking	No principal sentence	1	–	–	–	–
	Only conditional principal sentence	2	3	–	–	2
	Custodial sentence	52 (85%)	83 (89%)	50 (96%)	45 (88%)	54 (96%)
	Community service	4	5	2	6	1
	Fine	2	2	–	–	–
	<i>Total</i>	61	93	52	51	57
<i>Total convictions</i>	No principal sentence	1	–	–	–	–
	Only conditional principal sentence	3	3	2	1	2
	Custodial sentence	64 (81%)	103 (89%)	76 (93%)	63 (90%)	69 (95%)
	Community service	7	8	4	6	2
	Fine	4	2	–	–	–
	<i>Total</i>	79	116	82	70	73

### *Custodial sentences*

In 2007, unconditional custodial sentences were imposed in 69 (95%) of the 73 cases in which defendants were convicted of human trafficking. Accordingly, as in previous years, a custodial sentence was the most common principal sentence. An unconditional custodial sentence was combined with an unconditional community-service order seven times, and with a fine once. The combination of a fine and community service did not occur in 2007. In the period from 2002 to 2006, custodial sentences were imposed in combination with an (unconditional) community service order 15 times. During that period, a custodial sentence was combined with an (unconditional) fine eight times, and a combination of a fine and community service was imposed twice. Other principal sentences, such as only community service or a fine, were imposed seldom if at all in 2007. The average length of the custodial sentence in that year was just over 19 months (592 days) for persons convicted of non-aggravated human trafficking and roughly 21 months (642 days) in the case of convictions for human trafficking with aggravating circumstances.

Perhaps more revealing is the overview in Table 10.11, which breaks down the custodial sentences according to the term of the sentence.

Table 10.11 Terms of custodial sentences imposed, by year

Convicted of	Term of custodial sentence	2003	2004	2005	2006	2007
Non-aggravated human trafficking	Up to 1 year	6 (50%)	9 (45%)	10 (38%)	12 (67%)	7 (47%)
	1 to 4 years	6 (50%)	10 (50%)	15 (58%)	4 (22%)	8 (53%)
	More than 4 years	–	1 (5%)	1 (4%)	2 (11%)	–
	<i>Total</i>	12	20	26	18	15
Aggravated human trafficking	Up to 1 year	19 (36%)	34 (41%)	20 (40%)	19 (42%)	16 (30%)
	1 to 4 years	25 (48%)	41 (49%)	20 (40%)	23 (51%)	35 (65%)
	More than 4 years	8 (15%)	8 (10%)	10 (20%)	3 (7%)	3 (6%)
	<i>Total</i>	52	83	50	45	54
<i>Total</i>	Up to 1 year	25 (38%)	43 (42%)	30 (40%)	31 (49%)	23 (33%)
	1 to 4 years	31 (48%)	51 (50%)	35 (45%)	27 (43%)	43 (62%)
	More than 4 years	8 (12%)	9 (9%)	11 (15%)	5 (8%)	3 (5%)
	<i>Total</i>	64 (100%)	103 (100%)	76 (100%)	63 (100%)	69 (100%)

In 2007, one-third of the custodial sentences imposed in first instance were for a period of up to one year. That is fewer than in 2006, while the proportion of sentences with terms of one to four years increased (62% in 2007 compared with 43% in 2006).

There seems to be a downward trend in the severest category (prison sentences of more than four years).

This table relates to convictions for human trafficking. Looking at the most serious offence for which a person was convicted in a human trafficking case, the highest average custodial sentence in 2007 was imposed for sexual violence: 1284 days (SD: 1790), or more than 42 months (three and a half years).<sup>62</sup> In previous years, the highest average prison sentence was imposed where violence was the most serious offence.

#### 10.4 Statistics on appeals

The PPS data only contain information about the settlement of cases in first instance. The BNRM received information from the WODC's SiBA department on the settlement of human trafficking cases on appeal during the period from 1997 to 2007 and a number of key figures for 2008 (see Table 10.12). The information comes from the Judicial Documentation Research and Policy Database (OBJD), which is used for research purposes and to assist in formulating and monitoring policy. The database is regularly supplemented with information from the Judicial Documentation System (JDS).

<sup>62</sup> There was a total of five cases.

Table 10.12 Key figures on appeals

Criminal cases appealed	2004	2005	2006	2007	2008
Number of cases settled on appeal	19	35	40 <sup>63</sup>	22 <sup>64</sup>	9
Number of convictions on appeal	16	34	36	19	9
Number of unconditional custodial sentences imposed on appeal	15	29	32	17	9
Number of community-service orders imposed on appeal	1	4	0	0	0

Source: OBDJ.

The table shows an enormous drop in the number of cases settled on appeal in 2008 compared with previous years. However, these figures are somewhat misleading, since there is a significant delay before appeal cases are registered in the database; the figures for 2008 are therefore incomplete and the data for 2007 will probably be corrected in the future. The figures in the rest of this section are for the period up to and including 2007.

The PPS data do provide information about whether an appeal was filed in a case, and if so by whom. Table 10.13 provides an overview.<sup>65</sup>

Table 10.13 Appeals filed, by year of settlement (in first instance)

Appeals filed	2003		2004		2005		2006		2007	
	N	%	N	%	N	%	N	%	N	%
None	68	59%	91	60%	60	52%	57	57%	66	55%
Only by public prosecutor	6	5%	6	4%	11	10%	6	6%	14	12%
Only by suspect	28	24%	46	30%	26	23%	26	26%	32	27%
By both parties	13	11%	8	5%	18	16%	11	11%	8	7%
<i>Total</i>	<i>115</i>	<i>100%<sup>66</sup></i>	<i>151</i>	<i>100%<sup>67</sup></i>	<i>115</i>	<i>100%<sup>68</sup></i>	<i>100</i>	<i>100%</i>	<i>120</i>	<i>100%<sup>69</sup></i>

Source: PPS data.

63 Later in this section, 39 decisions on appeal are mentioned. A likely explanation for this discrepancy is the difference in the reference dates used for the key figures and the other tables in this chapter.

64 Later in this section, 15 decisions on appeal are mentioned. A likely explanation for this discrepancy is the different reference dates that were used for the key figures and the other tables in this chapter.

65 Here too, there are minor discrepancies with figures in the previous reports.

66 This is not equal to the sum of the individual percentages in this column because the individual percentages have been rounded off.

67 This is not equal to the sum of the individual percentages in this column because the individual percentages have been rounded off.

68 This is not equal to the sum of the individual percentages in this column because the individual percentages have been rounded off.

69 This is not equal to the sum of the individual percentages in this column because the individual percentages are rounded off.

The table shows that appeals were filed in 46% of cases in 2007, most often by the suspect. The percentage fluctuates slightly over the years.

In the 11-year period reviewed, the OBJD records show that 267 cases involving one or more human trafficking offences were dealt with on appeal. Two cases in which the judgment was missing were deleted. Table 10.14 shows the years in which the remaining 265 cases were heard.

Table 10.14 Number of cases settled on appeal, by year of decision

Year	N	%
1997	21	8%
1998	24	9%
1999	14	5%
2000	22	8%
2001	23	9%
2002	23	9%
2003	30	11%
2004	19	7%
2005	35	13%
2006	39	15%
2007	15	6%
Total	265	100%

Source: OBJD.

Because the numbers in each year are small, Table 10.15 shows the outcome of the cases for two periods: 1997 to 2002 (127 cases) and 2003 to 2007 (138 cases).

Table 10.15 Decision on appeal, by period of decision

Decision	1997 to 2002		2003 to 2007		Total	
	N	%	N	%	N	%
Conviction	118	93%	119	86%	237	90%
Acquittal	7	5%	15	11%	22	8%
PPS inadmissible	2	2%	4	3%	6	2%
Total	127	100%	138	100%	265	100%

Source: OBJD.

The table shows that around 90% of the cases resulted in a conviction, with acquittals in 8% of the cases. In 2% of the cases, the prosecution was declared inadmissible.

Table 10.16 gives a breakdown of the appeal cases according to the most serious offence for which an appeal was filed and on which the appeal court ruled.<sup>70</sup>

Table 10.16 *Most serious offence in appeal cases, by period of decision*

Most serious offence	1997 to 2002		2003 to 2007		Total	
	N	%	N	%	N	%
Non-aggravated human trafficking	74	58%	72	52%	146	55%
Aggravated human trafficking	19	15%	30	22%	49	18%
Sexual violence	20	16%	13	9%	33	12%
Other violence	2	2%	6	4%	8	3%
Other offences	12	9%	17	12%	29	11%
<i>Total</i>	<i>127</i>	<i>100%</i>	<i>138</i>	<i>100%</i> <sup>71</sup>	<i>265</i>	<i>100%</i> <sup>72</sup>

Source: OJD.

Human trafficking was the most serious offence in almost three-quarters of the cases heard on appeal. In roughly a quarter of the cases, the most serious offence was not human trafficking. Non-aggravated human trafficking was the most serious offence dealt with on appeal far more often than aggravated human trafficking.

Table 10.17 gives an overview of the decisions on appeal according to the most serious offence for which an appeal was filed and on which the appeal court ruled. Percentages are only given in the cells with larger numbers.<sup>73</sup>

70 Here too, the offence of human trafficking has been chosen in the case of offences of 'equal seriousness' (according to the CBS classification). For other types of offence with equal degrees of seriousness, WODC/SiBa gives priority to sexual and other forms of violence over other offences.

71 This is not equal to the sum of the individual percentages in this column because the individual percentages are rounded off.

72 This is not equal to the sum of the individual percentages in this column because the individual percentages are rounded off.

73 Criterion: more than ten.



Table 10.17 Decision on appeal according to the most serious offence, by period of decision

Most serious offence		1997 to 2002	2003 to 2007	Total
Non-aggravated human trafficking	Conviction	71 (96%)	67 (93%)	138 (95%)
	Acquittal	3	3	6
	PPS inadmissible	0	2	2
	<i>Total</i>	74	72	146
Aggravated human trafficking	Conviction	18 (95%)	18 (60%)	36 (73%)
	Acquittal	1	10	11 (22%)
	PPS inadmissible	–	2	2
	<i>Total</i>	19	30	49
Sexual violence	Conviction	19 (95%)	12 (92%)	31 (94%)
	Acquittal	–	1	1
	PPS inadmissible	1	–	1
	<i>Total</i>	20	13	33
Other violence	Conviction	2	6	8
	<i>Total</i>	2	6	8
Other offences	Conviction	8	16 (94%)	24 (83%)
	Acquittal	3	1	4
	PPS inadmissible	1	–	1
	<i>Total</i>	12	17	29
<i>Total</i>	Conviction	118	119	237
	Acquittal	7	15	22
	PPS inadmissible	2	4	6
	<i>Total</i>	127 (100%)	138 (100%)	265 (100%)

Source: OBJD

A conviction is by far the most common decision in human trafficking cases on appeal (237 times). Acquittals occur most frequently in appeal cases where aggravated human trafficking is the most serious offence (11 times), although this applies mainly for the period 2003 to 2007.

Table 10.18 shows the nature of the sentences imposed in the 237 appeal cases in which there was a conviction for human trafficking, alone or together with other offences. These are unconditional sentences, except in the category ‘only conditional’.<sup>74</sup>

Table 10.18 *Sentences imposed on appeal, by period of decision*

Type of sentence	1997 to 2002		2003 to 2007		Total	
	N	%	N	%	N	%
Only conditional	2	2%	4	3%	6	3%
Custodial sentence	104	88%	105	88%	209	88%
Community service	9	8%	7	6%	16	7%
Fine	3	3%	3	3%	6	3%
<i>Total</i>	<i>118</i>	<i>100%<sup>75</sup></i>	<i>119</i>	<i>100%</i>	<i>237</i>	<i>100%<sup>76</sup></i>

Source: OBJD.

Over the entire period, an unconditional custodial sentence was imposed in 88% of the appeal cases in which a defendant was convicted of human trafficking. In 7% of the cases the heaviest sentence imposed was community service. A conditional sentence or a fine was imposed occasionally.

Table 10.19 *Terms of custodial sentence imposed on appeal, by period*

Term of custodial sentence	1997 to 2002		2003 to 2007		Total	
	N	%	N	%	N	%
Up to 1 year	25	24%	40	38%	65	31%
1 to 4 years	59	57%	45	43%	104	50%
More than 4 years	20	19%	20	19%	40	19%
<i>Total</i>	<i>104</i>	<i>100%</i>	<i>105</i>	<i>100%</i>	<i>209</i>	<i>100%</i>

Over the entire period, custodial sentences of less than one year were imposed in almost a third of the cases, of one to four years in half the cases and of more than four years in 19% of the cases.

74 ‘Unconditional sentences’ in this table are either unconditional or partially unconditional. Combinations of unconditional custodial sentences with other sentences are included in the category ‘custodial sentence’. Combinations of unconditional community service and a fine or a conditional custodial sentence are included under ‘community service’. Unconditional fines in combination with conditional custodial sentences are included under ‘fines’.

75 This is not equal to the sum of the individual percentages in this column because the individual percentages have been rounded off.

76 This is not equal to the sum of the individual percentages in this column because the individual percentages have been rounded off.

## 10.5 Concentration of the handling of human trafficking cases

In June 2008, the Allocation of Cases Committee (the Van Dijk Committee) published a report for the Council for the Judiciary on the question of whether, from the perspective of quality and efficiency, cases should be concentrated in particular courts.<sup>77</sup> According to the Council for the Judiciary, the court system needs to be adapted to respond to developments such as the growing complexity of cases, increasing specialisation in the PPS and legal practice and growing demands on the quality of the administration of justice.<sup>78</sup>

The Council of Procurators General responded positively to the Van Dijk Committee's report, saying that it was concentrating on four areas of specialisation at regional level, including human trafficking.<sup>79</sup> The NRM said in a response to the report that standard human trafficking cases could be allocated according to the system of regional offices of the PPS, but mega cases should be concentrated in a small number of district and appeal courts.<sup>80</sup> However, the National Coordination Centre for Mega Cases was not immediately willing to assign human trafficking cases to a small number of courts in the Netherlands. It was agreed with a representative of the National Public Prosecutor's Office that the PPS will press for the concentration of human trafficking cases in a smaller number of courts when the occasion calls for it.<sup>81</sup>

In its fifth report, the NRM recommended consideration of whether there should be specialisation in human trafficking in the judiciary. Specialisation in and concentration of human trafficking cases would certainly improve the quality of the administration of justice since human trafficking is a complex offence that demands that knowledge and expertise be accumulated and safeguarded.<sup>82</sup> An important aspect in this regard is that a basic and an advanced course in human trafficking have been developed for SSR.<sup>83</sup>

Contrary to the advice of the Van Dijk Committee, the NRM feels that a strict separation between the National Public Prosecutor's Office and the Office for Economic and Environmental Offences for human trafficking cases is inadvisable, given that human trafficking cases are brought by both offices.<sup>84</sup>

77 Committee on Allocation of Cases (2008).

78 Council for the Judiciary, Letter to the Minister of Justice – Advice on redrawing of the judicial map, 2008. The Hague: Council for the Judiciary.

79 Council of Procurators General, Letter to the Council for the Judiciary – Report on the Allocation of Cases, 2008.

80 National Rapporteur on Trafficking in Human Beings, Letter to the Council for the Judiciary, 9 February 2009.

81 Human Trafficking Task Force (2009b). Another reason for this is the redrawing of the judicial map of the Netherlands.

82 National Rapporteur on Trafficking in Human Beings, Letter to the Council for the Judiciary, 9 February 2009.

83 Human Trafficking Task Force (2009b).

84 National Rapporteur on Trafficking in Human Beings, Letter to the Council for the Judiciary, 9 February 2009.

## 10.6 International developments – Eurojust

Bilateral and multilateral cooperation in criminal cases is very important for tackling human trafficking. Relevant developments in the Netherlands in this context are described in Chapter 8. This section discusses developments relating to Eurojust, the agency established to promote cooperation in law enforcement between the authorities of the member states of the European Union.

Eurojust is an EU agency that was founded in 2002 to promote coordination between the competent judicial authorities in the EU member states in investigating and prosecuting serious forms of transnational and organised crime. Another of its aims is to improve cooperation between the competent authorities, particularly by facilitating the execution of European arrest warrants through international legal assistance. By its nature, Eurojust's tasks cover cases in which at least two European countries are involved.

The number of cases referred to Eurojust by various countries is still rising. The number of cases in 2006 (771) rose by 31% compared to the number in 2005 (588). The number rose by a further 41% to 1,085<sup>85</sup> in 2007 and to 1,193 in 2008. The number of requests made by the Netherlands to Eurojust has also risen steadily – from 21 in 2005, to 31 in 2006, to 70 in 2007 and to 104 in 2008. The number of requests made to the Netherlands has also increased – from 95 in 2005, to 131 in 2006, to 162 in 2007. There were 161 requests to the Netherlands in 2008. These requests concerned a range of offences and not just human trafficking.

The number of cases handled by Eurojust in which Europol was involved increased almost four-fold from 2006 (7) to 2007 (25). In 2008, there were 30 cases. The number of cases involving non-EU member states also rose substantially, particularly with Norway, Switzerland and, most especially, the US, where the number of cases went from 6 in 2006 to 30 in 2007. In 2007, there was an increase in the number of cases involving Liechtenstein, Turkey, the Russian Federation or Ukraine, and in 2008, there were 27 cases involving states outside the EU.

The number of human trafficking and migrant smuggling cases referred to Eurojust was 33 in 2005<sup>86</sup> and was roughly the same in 2006. Eight of the 30 operational cases in that year concerned exploitation in the sex industry and three cases involved other forms of exploitation.<sup>87</sup>

85 In its Annual Report 2006 (Eurojust, 2007), Eurojust noted that the number of cases sent by some countries had been increasing significantly, particularly from states that joined the EU in 2004, which referred an above-average number of cases.

86 While the text of the Annual Report 2005 only refers to human trafficking cases, the tables with statistical information show that these are both human trafficking and migrant smuggling cases, no further classification is made. The statistical information in the Annual Report 2006 shows the number represents indeed 33 human trafficking cases referred to Eurojust in 2005, not migrant smuggling cases.

87 Annual Report 2006 (Eurojust, 2007).

In subsequent years the majority of the cases referred to Eurojust involved exploitation in the sex industry.<sup>88</sup>

In 2007, there were 71 human trafficking cases referred to Eurojust, an increase of almost 150% compared with 2006.<sup>89</sup> The number rose again in 2008 to 83.

Eurojust also organises so-called coordination meetings, which are meant to facilitate and coordinate action in specific cases. There were 91 such meetings in 2006, 25% more than in 2005. Seven of them were related to human trafficking. The same number of coordination meetings was held in 2007, five of which were related to 'human trafficking or migrant smuggling'. There were eight in 2008.

In May 2008, Eurojust organised a strategic meeting on human trafficking or migrant smuggling and witness protection in Portorož in Slovenia with the support of the Slovenian EU Presidency. The aim of this meeting was to gain an insight into general criminal phenomena and the special mechanisms, standards and best practices that can or should be adopted and implemented to protect victims of human trafficking or smuggling during an investigation and prosecution.<sup>90</sup>

Eurojust has said it wants to establish a centre of expertise on 'human trafficking and smuggling' and related subjects, which could provide analyses of cases, share information, organise strategic and tactical meetings, establish a central contact point for missing persons, create a legal database with an overview of available legal instruments related to human trafficking and improve cooperation with other European and international crime-fighting organisations engaged in tackling human trafficking.<sup>91</sup>

## 10.7 Conclusions

In recent years, the public prosecution service has been very ambitious in its use of criminal law to tackle human trafficking. However, human trafficking cases do not automatically reach the public prosecution service. To realise its ambitions, the public prosecution service must actively pursue cases. This is why human trafficking is one of the areas in which the public prosecution service has decided to intensify its policy. In the new regions established by the public prosecution service prosecutors have been appointed who can devote 50% of their time to human trafficking cases. These regional officers will also have a role in securing human trafficking cases. The Office for Financial, Economic and Environmental Offences recently assigned the human trafficking portfolio to a prosecutor and an advocate-general

88 The annual reports of Eurojust for 2007 and 2008 do not make a clear distinction between exploitation in the sex industry and exploitation in other sectors.

89 The Annual Report 2007 (Eurojust, 2008) refers in this context to human trafficking or smuggling (in the English version of the annual report: Trafficking in human beings), as well as a category 'smuggling of illegal migrants'.

90 Eurojust Annual Report, 2008, p. 25.

91 Eurojust Annual Report, 2007.

has also been assigned the human trafficking portfolio. Coordination on cases in the public prosecution service takes place in the ‘portfolio owners meeting’.

Areas that demand attention are the need to safeguard continuity in the public prosecution service, especially where there is a rapid turnover among the specialist officers, and to ensure that there is sufficient capacity. There still seems to be too little time in terms of practical implementation. It is important that there is sufficient expertise and capacity at the local level to support the regional officers.

The Instructions on Human Trafficking were amended and clarified on several points on 1 January 2009.

Since 2005, exploitation in sectors other than the sex industry and certain activities relating to the removal of organs have also been made criminal offences under the heading of ‘human trafficking’. It has therefore become relevant to gather statistics on the appearance/prevalence of these forms of offences. The text of article 273f of the Dutch Criminal Code makes it impossible to distil this information from the PPS data on the individual sections and subsections of that article. What is known is that several cases in 2006 and 2007 involved exploitation in sectors other than the sex industry and that no cases involving the removal of organs have yet been brought.

In 2007, 61% of the prosecutions for human trafficking led to a conviction. Between 2003 and 2007, there was a noticeable downward trend in the number of unconditional prison sentences of more than four years. This trend seems to contradict the growing political awareness of the seriousness of human trafficking, which led among other things to the increase in the sentences from 1 July 2009.

For the first time, this report presents the data on appeals. Of the 265 appeals heard in cases involving human trafficking between 1997 and 2007, the defendants were convicted wholly or partially of human trafficking in 237 cases (89%). Over the entire period, a prison sentence of more than four years was imposed in 19% of the appeals. In 5% of the cases in first instance in 2007, prison sentences of more than four years were imposed.

The figures presented in this chapter relate to the public prosecution service’s performance in a particular period (2003-2007). A constraint of this system is that it provides no insight into how cases were handled from beginning to end. A cohort analysis should therefore be conducted to provide this information.

The Council for the Judiciary is considering the question of whether cases of a particular type should be concentrated in specific courts. Human trafficking is one of the areas mentioned in this context.

## II Case law on exploitation in the sex industry

### II.1 Introduction

One way of tackling human trafficking is by investigating and prosecuting the offenders. The criminal courts ultimately render judgment and rule on the offences the suspects are charged with. Up to now, research has focused mainly on the methods employed by the police and the public prosecution service: the process before the case comes to court. The final outcome, in the form of judicial rulings, has never been systematically analysed, but it is important to understand how the courts deal with human trafficking cases, since that is also an important factor in successfully combating the offence.

BNRM has studied recent case law in the Netherlands concerning human trafficking in the sex industry. This review does not cover jurisprudence in the field of exploitation in other sectors ('other forms of exploitation').<sup>1</sup>

With both a qualitative and a quantitative element,<sup>2</sup> the aim of the research was to gain a more complete picture of recent case law. In the quantitative section of the study, the questions included the following: What types of human trafficking cases are generally brought before the courts? Do the cases mainly involve human trafficking in the Netherlands or transnational activities? Are the victims mainly Dutch or of other nationalities? Is it mainly pimps who are tried, or also recruiters or transporters? Are these cases mainly those in which victims have reported the crime? And what is the effect in terms of the evidence if no crime is reported? The following sections answer these questions and present the quantitative findings from the study.

In the qualitative part of the study, attention was devoted to types of charges that are brought, forms of participation, the attempted form of the offence, aggravating circumstances and the interpretation by the courts of the various elements of Article 273f of the Dutch Criminal Code.<sup>3</sup> The decisions reached by the courts on the possibilities for victims to make a free choice and their possible alternatives, and the role these factors play in the courts' findings of whether the charges have been proved or not, are all considered in this chapter. A number of aspects are reviewed in more detail, including the assessment by the courts of the reliability of statements made by victims, the grounds given for sentences, the sentences themselves, claims for compensation made by victims and the compensation awarded.

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1 On this point, see §12.6.

2 The explanation of the research methods used is in Appendix 2.

3 A number of these subjects are also discussed in Chapter 12, in connection with exploitation in sectors other than the sex industry.



The findings from this study are intended as a guide for the legal practice<sup>4</sup> and to serve as an instrument to promote consistency in the application of the law.

The quantitative section covers 108 judgments rendered in first instance in 2007,<sup>5</sup> involving 65 different human trafficking cases with at least one and a maximum of seven suspects, and encompassing a total of 108 suspects. With the cooperation of the LOVS, BNRM received all of the judgments in 2007, in anonymous form.<sup>6</sup>

The qualitative part of the study also covers all the judgments rendered since 2007 that have been published on [www.rechtspraak.nl](http://www.rechtspraak.nl).<sup>7</sup>

To start with, §11.2 presents some statistics on acquittals and convictions and the particulars of human trafficking offences and other offences that were charged in addition to human trafficking and declared proven in 2007. (Data on suspects and convicted offenders are presented in Chapter 9).

Section 11.3 discusses the content of Article 273f Dutch Criminal Code, including a brief overview of the international background to that article. Section 11.4 illustrates the application of the human trafficking provision in criminal-law practice with a number of examples. Section 11.5 looks at aggravating circumstances in more detail, and §11.6 discusses attempt and complicity. The problems with evidence are discussed in §11.7. In §11.8, data about victims are presented. The grounds for sentencing are discussed in §11.9. Details of claims for and the awarding of compensation are included in §11.10, which also discusses how a link can be made with the confiscation of illegally obtained gains for the purposes of providing compensation for victims. The chapter ends with a number of conclusions in §11.11.

## 11.2 Statistics

### 11.2.1 Acquittals and convictions

Of the 108 cases in 2007 that were studied, 74 (69%) ended in a complete or partial conviction for human trafficking and 34 (31%) in a full acquittal for human trafficking. In 65 cases (60%), defendants were acquitted of at least one of the human trafficking offences they were charged with.

The percentage of full acquittals for human trafficking (31%) is relatively high in comparison with the percentage of acquittals for the offence of rape,<sup>8</sup> for example. The percentage of

4 Wherever possible, the legal terms used are clarified with examples to make the contents of this chapter also comprehensible to readers working outside the legal practice.

5 In 105 cases, these were judgments of the district court; three were judgments of the police court. Given the seriousness of this offence, the choice of the latter forum is remarkable.

6 Insofar as the judgments discussed were also published on [www.rechtspraak.nl](http://www.rechtspraak.nl), the LJN number is also given in this chapter.

7 Naturally, in the context of earlier case law.

8 The comparison is made with this offence because rape is also often difficult to prove. In rape cases, the statements of suspects and (presumed) victims are also regularly contradictory.

acquittals on rape charges varied during the period 1995 to 2007, with 13% in 1995 and 2001, for instance, but it was never higher than 23% (in 2007).

Table 11.1 Number of convictions and acquittals for human trafficking

	Convictions for human trafficking		Acquittals for human trafficking	
	N	%	N	%
Full <sup>9</sup>	43	40%	34	31%
Partial <sup>10</sup>	31	29%	31	29%
Total	74	69%	65	60%

N=108=100%

Because the public prosecution service registers data<sup>11</sup> differently from the method used by BNRM in this chapter, the figures differ in terms of the number of convictions and acquittals, for example. BNRM has only studied human trafficking cases in relation to exploitation in the sex industry, while the data from the public prosecution service also include cases relating to exploitation in other sectors. In the public prosecution service's data, one case is also registered as an acquittal, although in reality there was, at least, a conviction for human trafficking in that case. This explains the discrepancy between the figures of the public prosecution service (73) and the BNRM study (74) for convictions for human trafficking in 2007. In the public prosecution service's data, acquittals refer to full acquittals on *all offences charged*, while the acquittals in the BNRM's study are based on full acquittals for *human trafficking*. These are the main reasons for the discrepancies in the data, which are shown in Table 11.2.

Table 11.2 Discrepancies between the data of the public prosecution service and BNRM for 2007<sup>12</sup>

Disposition	Public Prosecution Service		BNRM	
	N	%	N	%
Conviction	97	81%		
– including human trafficking	73	61%	74	69%
– only for other offences	24	20%		
Acquittal	14	12%	34	31%
Discharge from further prosecution	–	–	–	–
Court had no jurisdiction	2	2%	–	–
Prosecution declared inadmissible	1	1%	–	–

9 With respect to all human trafficking offences charged.

10 With respect to at least one of the human trafficking offences charged, but not all.

11 The public prosecution service's data are developed by the PPS General Office with the aim of quickly supplying administrative information at central level and to provide a basic database for research and analysis. See also Chapters 9 and 10.

12 See also Table 10.8.

Disposition	Public Prosecution Service		BNRM	
	N	%	N	%
Cases joined at hearing	4	3%	–	–
Other decisions	2	2%	–	–
<i>Total</i>	<i>120</i>	<i>100%</i>	<i>108</i>	<i>100%</i>

Unfortunately, the public prosecution service’s data do not record whether a case involved human trafficking in the sex industry, exploitation or intended exploitation in another sector or human trafficking for the purpose of organ removal.

In a case, further discussed in §12.6.2, Bulgarian workers were put to work in cannabis plantations. Some female workers were also said to have been sexually abused. Seven suspects faced trial. In addition to human trafficking, they were also charged with rape,<sup>13</sup> people smuggling, growing and preparing cannabis and participation in a criminal organisation.<sup>14</sup> The charges of human trafficking related to both sexual and other forms of exploitation. The sexual exploitation charges related to the systematic rape of one of the female employees. In cases like this, the public prosecution service’s data do not clearly show whether the charges concerned a suspicion of sexual exploitation or of other forced work or services, or both.

## II.2.2 Particulars of human trafficking offences

In the judgments that were studied, we also investigated how the courts had qualified the 74 convictions in human trafficking cases in 2007. Those convictions were for 143 proven human trafficking offences out of a total of 228 human trafficking offences charged. The percentage of acquittals in relation to the number of human trafficking offences charged (37%) was higher than in relation to the number of human trafficking cases (31%). The 143 offences declared proven were qualified by the courts as follows:

Table II.3 Qualifications of human trafficking offences declared proven

Qualification	N	%
Human trafficking	30	21%
Human trafficking, in concert	55	39%
Human trafficking, multiple offences	15	10%
Human trafficking, in concert, multiple offences	30	21%
Other	13	9%
<i>Total</i>	<i>143</i>	<i>100%</i>

<sup>13</sup> Three suspects were charged with rape.

<sup>14</sup> Rotterdam District Court, 5 July 2007, unpublished. Rotterdam District Court convicted the suspects of the last three offences, but declared rape and human trafficking unproven.

The category ‘Other’ consists of ‘attempted human trafficking’ (whether or not ‘in concert’), ‘continued trafficking in human trafficking, multiple offences’, ‘complicity in human trafficking’ (whether or not ‘in concert’) and ‘human trafficking, with respect to a person who had not yet reached the age of 16, multiple offences (whether or not ‘in concert’).

### 11.2.3 Offences charged and declared proven, other than human trafficking

Table 11.4 shows other offences that were charged and declared proven in the 108 cases, in addition to human trafficking. Even if they were acquitted on all the human trafficking offences charged, the defendants might have been convicted of other offences.

Table 11.4 Other offences charged and declared proven

Other offences	Indictment		Declared proven	
	N	%	N	%
Violent offences <sup>15</sup>	42	39%	28	26%
Offences against public decency <sup>16</sup>	40	37%	22	20%
Money laundering, drugs offences, tax evasion	20	19%	20	19%
Crimes against property <sup>17</sup>	15	14%	9	8%
People smuggling <sup>18</sup>	13	12%	8	7%
Participation in a criminal organisation <sup>19</sup>	11	10%	7	6%
Forgery <sup>20</sup>	7	6%	5	5%
Offences against the Arms and Ammunition Act	7	6%	4	4%
Other offences	5	5%	5	5%
Influencing a person in making a statement <sup>21</sup>	1	1%	1	1%

N=108

Violent crimes and offences against public decency are the most frequently charged in addition to human trafficking. In the category of offences against public decency, rape was relatively frequently the offence (in 15 cases), although a charge of rape was only declared proven

15 Including Articles. 138, 141, 282 284, 285, 287, 300, 302 Dutch Criminal Code and some other violent offences.

16 Including Articles 240b, 242, 243, 244, 246, 248b Dutch Criminal Code and some other offences against public decency.

17 Articles 310, 311, 312, 317, 321, 326, 416 Dutch Criminal Code.

18 Article 197a Dutch Criminal Code.

19 Article 140 Dutch Criminal Code.

20 Articles 225, 231, 232 Dutch Criminal Code.

21 Art. 285a Dutch Criminal Code.

in four cases.<sup>22</sup> Money laundering, drugs offences and tax evasion was charged in roughly one-fifth of all cases, and was declared proven in every case. People smuggling and participation in a criminal organisation were charged in 12% and 10% of all cases, and declared proven in 7% and 6% of all cases, respectively. Influencing the making of a statement was only charged in addition to human trafficking in one case and was declared proven, alongside an acquittal on the human trafficking charges.

As Table II.4 shows, human trafficking is often charged together with other serious offences, such as violent crimes and offences against public decency.<sup>23</sup> Violent crimes and offences against public decency can also be seen as means of coercion in a human trafficking offence. It is possible, for example, to bring charges for the same rape not only as a separate offence but also as a means of coercion in human trafficking (see §II.3.4).

The significance of the use of sexual or physical violence and threats, in the context of the situation of exploitation, is discussed in §II.3.4.

## II.3 Article 273f of the Dutch Criminal Code

### II.3.1 Introduction

The new human trafficking provision, Article 273a Dutch Criminal Code, entered into force on 1 January 2005 (it was renumbered to 273f without any substantive amendment in September 2006). The provision significantly expanded the range of acts that are criminalised as human trafficking, adding other forms of exploitation in the area of labour and services and the forced removal of organs to sexual exploitation.

In contrast to Article 250a of the (old) Dutch Criminal Code, the new article was inserted under the title ‘Offences against personal liberty’ rather than the title ‘Offences against public morals’.<sup>24</sup> This emphasises the nature of the offence: it is not the sector in which the act occurs that makes it an offence, but the fact that the exploitation constitutes a violation of the victim’s personal liberty.<sup>NRM5</sup>

In this chapter, references to Article 273f Dutch Criminal Code refer to the provision that applied (as Article 273a as well) from 1 January 2005 to 1 July 2009:

22 That means there were acquittals in almost 75% of the cases.

23 Occasionally, other offences are charged that have no connection with the human trafficking offences. In most cases, however, these other offences are offences that occurred in the sphere of human trafficking, such as membership of a criminal organisation, violence, rape, money laundering.

24 Since 2000, the punishments for human trafficking in the Dutch Criminal Code have been amended a number of times. In 2000, Article 250ter (old) Dutch Criminal Code was replaced by Article 250a (old) Dutch Criminal Code and profiting from human trafficking was also criminalised. This was also the year in which the Netherlands abolished the general ban on brothels. In 2002, the provision was expanded to exploitation in the sex industry in the broad sense (sexual acts *with and for* a third party for remuneration); in other words, no longer just exploitation in prostitution (*with* a third party).

**Article 273f Dutch Criminal Code**

## 1. Any person who:

- (1) 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;
  - (2) 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;
  - (3) 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;
  - (4) forces or induces another person by the means referred to under (1) 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 (1) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
  - (5) 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;
  - (6) willfully profits from the exploitation of another person;
  - (7) 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 (1);
  - (8) 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;
  - (9) forces or induces another person by the means referred to under (1) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs; shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years and a fifth category fine\*, or either of these penalties:
2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.
  3. The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine\*, or either of these penalties:
    - (a) offences as described in the first paragraph if they are committed by two or more persons acting in concert;
    - (b) offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.

4. The offences as described in the first paragraph, committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 under (b), shall be punishable with a term of imprisonment not exceeding ten years and a fifth category fine\*, or either of these penalties.
5. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine\*, or either of these penalties.
6. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine\*, or either of these penalties.
7. Article 251 is applicable *mutatis mutandis*.

On 1 July 2009, the human trafficking provision of Article 273f Dutch Criminal Code was amended again. This amendment related to the applicable sentences and not to the actual definition of the offence (see §2.2 and Appendix 1).

The legislature chose to adopt a single human trafficking provision in which many acts of varying natures are criminalised. Article 273f is therefore a complex article. The distinction between the nature of different types of work or services and between adult and underage victims means that a large number of subsections was needed to describe all the criminal acts. The result is the longest article in the Criminal Code. It is also not easy to fathom, partly because a number of terms that are used are not further explained. These terms come from the international instruments on which the new human trafficking provision is based. Consequently, it is not only Dutch legal sources that are relevant for the interpretation of the article, but also the underlying international legislation, which describes human trafficking as, among other things, a serious form of organised crime and a violation of human rights. The offence must also be seen in that light.<sup>25</sup>

### II.3.2 International background

A number of binding agreements at the UN and EU level are particularly relevant for the Dutch legislation on human trafficking, including the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children<sup>26</sup> (2000) and the EU Framework Decision on combating trafficking in human beings (2002).<sup>27</sup> The definition of human trafficking in Article 273f is based in part on these international instruments.

<sup>25</sup> Smit & Boot-Matthijssen (2007).

<sup>26</sup> The Netherlands ratified this protocol, a supplement to the UN Convention against transnational organised crime, on 27 July 2005.

<sup>27</sup> For a complete survey of relevant international legislation, see ‘Uitvoering van internationale regelgeving ter bestrijding van mendsmokkel en mensenhandel, *Parliamentary Documents II* 2003/04, 29 291, no. 3, p. 1.



*Article 3 of the Palermo Protocol (2000) reads:*

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.

*Article 1 of the EU Framework Decision on combating trafficking in human beings (2002) reads:*

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 transfer or exchange of control over that person, where:
  - a) use is made of coercion, force or threat, including abduction, or
  - b) use is made of deception or fraud, or
  - c) there is an abuse of authority or of a vulnerable position, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
  - d) payments of 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 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 human 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.

In March 2009, the European Commission presented a proposal for a new EU Framework Decision on trafficking in human beings (see §3.4.4).<sup>28</sup> Article 1 of the proposal adopts the broad definition of human trafficking that is also included in the UN Palermo Protocol and

<sup>28</sup> Proposal for a Framework Decision of the Council on preventing and tackling human trafficking, and protecting victims, and revoking Framework Decision 2002/629/JBZ, COM (2009) 136 definitive, 25 March 2009.

the Council of Europe Convention on Action against Trafficking in Human Beings (2005) in order to promote the harmonisation of legislation.<sup>29</sup>

### II.3.3 Definition of the offence in Article 273f of the Dutch Criminal Code

In accordance with the UN Palermo Protocol and the EU Framework Decision (2002), the definition of the offence in Article 273f (1) (1) Dutch Criminal Code is formulated in terms of an ‘act’ (recruiting, transporting, moving, accommodating or sheltering), using ‘force or other means of coercion’ with the ‘intention of exploiting’ (Article 273f (1) (1) Dutch Criminal Code).

The term ‘exploitation’ is explained in Article 273f (2) in the form of a non-exhaustive list of what ‘at least’<sup>30</sup> constitutes exploitation: exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services,<sup>31</sup> slavery or practices similar to slavery or servitude.<sup>32</sup>

It should, in any case, be clear that, by definition, exploitation in prostitution, which is the subject of this chapter, is exploitation.<sup>33</sup>

Article 273f (1) (4) makes it an offence for a person to force or induce another person by those same means to make himself or herself available for performing work or services or to take any action towards another person, in the circumstances referred to, which he knows or may reasonably be expected to know will result in that other person making himself or herself available for performing work or services.

Wilfully profiting from the exploitation of another person is made a punishable offence by Article 273f (1) (6), while subsection (1) (9) makes it an offence for a person to force or induce another person by means of coercion to provide him with the proceeds from prostitution or sexual acts with or for a third party. These subsections refer to forms of profiting from hu-

29 That means that the proposed definition also encompasses human trafficking for the purpose of removing organs. In contrast to the UN Protocol and the Council of Europe’s Convention, the proposal also explicitly includes exploitation of activities related to begging or of illegal activities, as one of the forms of exploitation (Article (1) (3) of the proposal for a Framework Decision of the European Commission). Given the non-exhaustive list in the UN Protocol (and in the Council of Europe’s Convention), these forms must also be deemed to fall under them – and hence also under Article 273f Dutch Criminal Code.

30 Art. 273f Dutch Criminal Code also implements the UN Protocol, including the words ‘exploitation comprises at least [...]’ in art. 273f (2) Dutch Criminal Code.

31 The UN Protocol refers to ‘forced work or services’, while the English version of the EU Framework Decision (2002) refers to ‘forced or *compelled* work or services’. ‘*Compulsary*’ also means obligatory, compelled or imposed, and is therefore close to ‘*forced*’. Since the Framework Decision uses both terms together, it is proposed including both terms in the description of exploitation (*Parliamentary Documents II 2003/04*, 29 291, no. 3, p. 19).

32 The term ‘at least’ in Article 273f (2) Dutch Criminal Code shows that this is a non-exhaustive list. In international terms, the Dutch legislation is unique in this respect. On the grounds of the legality principle, the recent UNODC Draft Law against Trafficking in Persons stated that other forms of exploitation should be explicitly included in national legislation. The UN Protocol does not contain a definition of *exploitation*.

33 This is more complicated for exploitation in other sectors, see Chapter 12. Sexual acts with and for a third party for remuneration is prostitution.

man trafficking. The person profiting may be, but is not necessarily, a person other than the person who created the situation of exploitation.<sup>34</sup>

Article 273f (1) (3) makes it a criminal offence to recruit, move or abduct a person with the intention of inducing that other person to make himself or herself available to perform sexual acts with or for a third party for remuneration in another country. This provision implements the 1933 Geneva Convention for the Suppression of Traffic of Women of Full Age.<sup>35</sup>

A number of elements of the offence are discussed below.

#### 11.3.4 Means of coercion

Art. 273f (1) (1) describes a number of means of coercion:

‘Force, violence or other act, the threat of violence or other act, extortion, fraud, deception, abuse of authority arising from the actual state of affairs, abuse of a vulnerable position, and giving or receiving remuneration or benefits to secure the consent of a person who has control over that other person.’

It should be noted here that these means are irrelevant in the case of underage victims.<sup>36</sup> Providing accommodation for a minor with the intention of exploitation, for instance, is human trafficking even if no force or other means is used.<sup>37</sup> Force is also not required when a person is recruited, taken or abducted with the intention of inducing that person to make him or herself available to perform sexual acts with or for a third party for remuneration in another country (Article 273f (1) (3)).<sup>38</sup>

Coercion is effected by the use of any of the means listed in Article 273f (1) (1).

The case law includes examples of coercion (related to exploitation) – particularly in the sex industry.<sup>39</sup> Exploitation implies a certain degree of involuntariness on the part of the person who is exploited, which lies in the impossibility of escaping from the situation of exploitation.<sup>40</sup> A person can be introduced to a situation of exploitation by means of coercion, but also prevented from leaving the situation. The consent of a victim of human trafficking to

34 Cleiren & Nijboer (2008), Article 273f Dutch Criminal Code, note 8(j).

35 *Bulletin of Acts, Orders and Decrees* 1935, 598. This convention was originally implemented in Article 250a (1) (2) (old) Dutch Criminal Code.

36 Except with respect to Article 273f (1) (9) Dutch Criminal Code.

37 In the provisions of Article 273f (1) (2), (5) and (8) Dutch Criminal Code, the means referred to under subsection 1 do not constitute elements of the offence. See §11.4.6.

38 In accordance with Article 273f (1) (3) Dutch Criminal Code. See §11.4.2.

39 Smit & Boot-Matthijssen (2007).

40 The legislative history of the UN Palermo Protocol is also relevant here: ‘the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved’. Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, UN Doc. A/55/383/Add.1 (3 November 2000).

the intended or actual exploitation is irrelevant if any of the means of coercion are used. This point of departure corresponds with the existing international instruments.<sup>41</sup> The specified means are not part of the definition of the offence of human trafficking as it applies to minors, and consent is therefore never relevant in those cases.<sup>42</sup>

Where measures that directly restrict physical freedom are taken (for example, locking up or guarding a person), withdrawal is impossible in practice. When the exploiter uses other means to control the victim, the victim might in practice be able to escape, but his or her perception of the situation might prevent it. The facts and circumstances must then show that victims could reasonably assume that they could not escape from the situation on their own. This might, for example, be due to the consequences (actual or perceived) of leaving or to the actual conditions under which the victim is staying or working.<sup>43</sup> For example, the constraint might be found in a debt relationship with the employer or a third party, the cultural context, the fact that the person is a minor or a combination of these factors.<sup>NRM5</sup>

The district court in Leeuwarden, for example, found that by abusing the victim's social situation, by constantly exerting pressure on her with the threat or use of physical violence and emotional blackmail and by providing her with a false identity document, the suspect had created a situation that induced the victim to continue working as a prostitute.<sup>44</sup> The district court in Groningen convicted a suspect who had brought her victim under the influence of voodoo (among other things) of human trafficking.<sup>45</sup> The fact that a person is addicted to narcotics might be a factor limiting that person's freedom of choice and preventing him or her from escaping the exploitation.<sup>46</sup> The fact that a person is not staying legally in the Netherlands can also be regarded as a factor indicating exploitation of dependency and, therefore, abuse of authority arising from the actual state of affairs, according to the Supreme Court.<sup>47</sup>

41 See Article 1 (2) of the EU Framework Decision (2002) and Article 3 (b) of the UN Palermo Protocol. On the grounds of these provisions, the consent of the victim of human trafficking to the intended or actual exploitation is irrelevant if one of the means of coercion is used. These provisions have not led to explicit legislation; the explanatory memorandum shows that this was not felt to be necessary (*Parliamentary Documents II* 2003/04, 29 291, no. 3, p. 19).

42 See Article 273f (1) (2), (5) and (8) Dutch Criminal Code.

43 In this context, see also Arnhem Court of Appeal, 23 May 2006, LJN: AX4208, in which the court, in a case about sexual exploitation, found: "The possible consent to his/her exploitation is not decisive. Essential is whether under the given circumstances the victim has no reasonable choice but to be in a situation of exploitation and voluntariness on the part of the victim is in fact lacking entirely or to a serious extent".

44 Leeuwarden District Court, 23 March 2002, LJN: AF2879.

45 Groningen District Court, 12 December 2000, LJN: AA8975.

46 Supreme Court, 18 April 2000, NJ 2000, 443.

47 Supreme Court, 18 April 2000, NJ 2000, 443. See also European Court of Human Rights, 26 July 2005, *Siliadin v. France*, finding 118, in which the European Court found that "although the applicant was not threatened by a 'penalty', the fact remains that she was in an equivalent situation in terms of the *perceived* seriousness [italics: BNRM] of the threat. She was an adolescent girl in a foreign land, unlawfully present in French territory and in fear of arrest by the police".

The absence of consent can arise at a later stage, and also with respect to a person who is already working or planning to work in prostitution.<sup>48</sup> For example, the district court in The Hague ruled that the vulnerable, isolated and dependent position of the victims had been abused, despite the fact that the women, from Eastern Europe, has started working in the sex industry to earn a lot of money and build a better life.<sup>49</sup>

It is, in fact, not a requirement that the means are used against the victim personally. A means can be used against a third party in order to persuade another person or to get another person to yield to the will of the offender.

Table 11.5 presents a list of the forms of coercion actually used, as distilled from the convictions. Combinations of different means of coercion can be used together.

Table 11.5 *Actual forms of coercion*

Actual forms of coercion	N	%
Physical violence <sup>50</sup>	30	41%
Threat of violence <sup>51</sup>	29	39%
Psychological violence <sup>52</sup>	16	22%
Sexual violence <sup>53</sup>	7	9%
Control	41	55%
Isolation	40	54%
Deception	42	57%
Dependency	39	53%
Debts <sup>54</sup>	23	31%
Sale/gift/loan	7	9%

N=74

48 The Hague Court of Appeal, 17 March 1997, NJ 1997, 429.

49 The Hague Court of Appeal, 30 December 2002, LJN: AF2850. In this sense, see also Leeuwarden District Court, 2 January 2007, LJN: AZ5824, in which the court found that the suspect had profited shamelessly from the fact that the victims *had decided to work as prostitutes abroad* because of the extremely poor living conditions and the absence of any future prospects in their country of birth, Latvia. To the contrary: Alkmaar District Court, 18 March 2008, LJN: BC7682.

50 Including physical violence against third parties, such as family or friends of the victims, although this was only sporadically mentioned.

51 Including threats of violence against third parties, such as family or friends of the victim, although this was only sporadically mentioned.

52 This covers, among other things, humiliating the victim, abusing the victim's psychological condition, abusing a situation of authority, blackmailing the victim, for example by means of threatening to tell others about the sex work, and threatening to sell the victim to another group of human traffickers.

53 This covers five rapes of the victim and two cases of other sexual violence.

54 Including agreed or imposed payments to settle the case.

The most common form of violence used by suspects is ‘physical non-sexual violence’ (in 41% of the judgments); ‘threat of violence’ was used in almost as many cases. ‘Psychological violence’ was declared proven in roughly one-fifth of the judgments, and ‘sexual violence’ in 9% of the judgments.

In more than half of all judgments (55%), ‘control’ had been exercised over the victims by or through the offender. In this context, the victim might be accompanied to and from the work place so that he or she is never out alone or the victim might be called constantly during working hours; it could include possessing the key to the victim’s home and checking the victim’s earnings. Almost equally often, victims are isolated from the outside world to a greater or lesser extent; examples of this include physically locking the victim up, creating social isolation and confiscating the victim’s telephone and passport. Controlling a victim is often accompanied by keeping him or her in isolation.

In 57% of the judgments, the suspects had used false pretences or ‘deception’,<sup>55</sup> with regard to a loving relationship and a future together (in 22 judgments), the suspect’s financial position (in 16 judgments), the working conditions (in 15) and/or the type of work (in 14).

In addition, in more than half of the judgments it emerged that the victims were ‘dependent’ on the offenders in various ways, for example for money (in 18 judgments), to gain entry to the Netherlands (in 13), for accommodation (in 13), for an identity document (in 10), for work (in 7) and/or for drugs (in 8). Establishing a situation of dependency for the victim resulted in the creation of ‘authority arising from the actual state of affairs’.

In almost one-third of all the judgments victims were in a ‘debt relationship’ to the exploiter. These usually involved debts connected with the trip or being smuggled to the Netherlands. Seven judgments explicitly showed that there was ‘sale, gift and/or loan’ of a victim. In these cases, the victims were treated as property.

The means of coercion ‘abuse of a vulnerable position’, ‘abuse of authority arising from the actual state of affairs’ and ‘deception’, and the question of whether means of coercion should be considered separately or in combination with each other will be addressed further with a number of practical examples. The study has shown that there is still a great deal of uncertainty on these points.

*Abuse of a vulnerable position, authority arising from the actual state of affairs and deception*

The means of coercion specified in Article 273f (1) (1) are based in part on international legislation. Table 11.6 shows how the international instruments have been implemented in national legislation.

55 See Supreme Court, 2 October 2001, LJN: AB2806 (on the term ‘deception’) and Supreme Court, 8 September 2009, LJN: BJ3537, in which the Supreme Court found that the terms deception and abuse of a vulnerable position also have factual significance.

Table 11.6 Implementation of the means of coercion in Article 273f (1) (1)<sup>56</sup>

Article 3 (a) UN Palermo Protocol	Article 1 (1) EU Framework Decision on Trafficking in Human Beings	Article 273f (1) (1)
the threat or use of force or other forms of coercion, of abduction	coercion, force or threat, including abduction	force, violence or other act, or by threat of violence or other act
		coercion
fraud	fraud	fraud
Deception	deception	deception
the abuse of power	abuse of authority, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or	abuse of authority arising from the actual state of affairs <sup>57</sup>
the abuse of a position of vulnerability	abuse of a vulnerable position, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or	abuse of a vulnerable position
the giving or receiving of payments or benefits to achieve the consent of a person having control over another person	payments of benefits are given or received to achieve the consent of a person having control over another person	the giving or receiving of payments or benefits to secure the consent of a person who has control over the other person

Examples of a ‘position of vulnerability’ to emerge from the accompanying documents to the Protocol and the Framework Decision include illegal or uncertain immigration or residence status, a minority position or circumstances such as sickness, pregnancy or a physical or mental handicap.<sup>58</sup> For abuse of a vulnerable position, there does not have to be inequality in a relationship.<sup>59</sup>

The means ‘abuse of authority arising from the actual state of affairs’ has a broader scope than ‘abuse of power’ in the Protocol and ‘abuse of authority’ in the Framework Decision.<sup>60</sup> These means of coercion are objectified. ‘Abuse of authority arising from the actual state of affairs’ and ‘abuse of a vulnerable position’ are sometimes confused.<sup>61</sup>

<sup>56</sup> Story (2009).

<sup>57</sup> In the predecessor to Article 273f (1) (1) (Article 250a (old)) Dutch Criminal Code), the term ‘relationships’ was used instead of ‘circumstances’.

<sup>58</sup> See, for example, *Legislative Guide*, p. 268 and COM (2000)854, §4.

<sup>59</sup> Compare Noyon et al. (2006), Article 273f Dutch Criminal Code, note 3, supplement 137.

<sup>60</sup> In the explanatory memorandum at the time of the introduction of Article 250ter (old) and 250bis (old) Dutch Criminal Code, for example, this means was explained as follows: this abuse is presumed when “the prostitute is in or enters a situation in which the circumstances are not the same as those that ought to apply for an articulate prostitute in the Netherlands”, *Parliamentary Documents II* 1988/89, 21 027, no. 3, p. 3-4.

<sup>61</sup> During the period that ‘abuse of a vulnerable position’ was not included in the provisions of Dutch criminal law on human trafficking, conduct that would now fall under it was interpreted as ‘abuse of authority arising from the actual relationships’. Examples of this are that a person is addicted to narcotics or the fact that a person has no legal residence status in the Netherlands. In Supreme Court, 18 April 2000, NJ 2000, 443,



The case law yields a diverse range of examples addressing the question of which facts and circumstances create a situation of deception, abuse of authority arising from the actual state of affairs or abuse of a vulnerable position. The fact that it is often difficult to determine which category specific facts fall under is acknowledged in the conclusion of the PPS in a case before the Supreme Court, 8 September 2009,<sup>62</sup> where it was noted that the term ‘deception’ covers a diffuse array of conduct, facts and circumstances that have to be considered in relation to each other.<sup>63</sup> The Supreme Court confirmed the ruling of the court of appeal in Arnhem<sup>64</sup> that making a victim dependent by providing free cocaine, putting pressure on her, bringing her to a place of prostitution, arranging a room and exercising control all give rise to exploitation by abuse of authority arising from the actual state of affairs and deception (Article 273f (1) (4) Dutch Criminal Code).

The *District Court in Amsterdam*<sup>65</sup> regarded the fact that the suspect had falsely pretended that he wanted to build a future with the victim in Spain and the victim’s deep love for him constituted abuse of authority arising from the actual state of affairs. It was also taken into account that the suspect had made the same pretence with other women. On the other hand, the *District Court in Den Bosch*<sup>66</sup> did not see such abuse where the suspect had told the victim that he had debts and that they could buy a house or nice clothes together, when the victim was in love with him.

The aspect of debt recurs in many cases of this type (involving loverboys) and seems to be used as a means of coercion. For the methods used by offenders, see §9.4, NRM3 and NRM5. It is no coincidence that a suspect starts to talk about debts and a future together and then suggests the possibility of prostitution. This is a pattern and has to be recognised as such. An example of recognising a pattern can be found in the following judgment by the court of appeal in Amsterdam.<sup>67</sup>

‘This case involves girls and young women who were brought into a position of emotional dependency by the suspect and his fellow suspects. The suspect and/or his fellow suspects formed a relationship with a woman, who was shown total love and devotion in the beginning and offered the prospect of a golden future with the suspect. Then – usually quite soon – a change occurred in the relationship, whereupon the woman was told by the suspect that, if she wanted to stay with him, she would have to provide the financial means – by prostituting herself. Once the woman had been brought into prostitution, she was then obliged to surrender all her earnings to the suspect and/or his fellow suspects, usually under the pretence that the

consideration 3.3.1, these circumstances were described as abuse of authority arising from the actual relationships.

- 62 Supreme Court, 8 September 2009, LJN: BJ3537, advisory opinion of Advocate-General Vellinga.  
 63 The discussion of whether or not there was deception will therefore have to focus on whether deception has been proved and not whether deception was properly described in the indictment.  
 64 Arnhem Court of Appeal, 3 September 2007, unpublished.  
 65 Amsterdam District Court, 21 December 2007, LJN: BC1037.  
 66 Den Bosch District Court, 19 February 2009, LJN: BH3388.  
 67 Amsterdam Appeal Court, 28 November 2006, LJN: AZ3374.

money would be saved for both of their futures. It is apparent both from statements by various complainants and from the transcripts of various tapped conversations that the suspect and/or his fellow suspects decided that a woman could only stop working for the day if she had earned a certain amount, just as it was also decided for her where and when she had to work. Acting in this way, the suspect and/or his accomplices therefore gained substantial authority over the women and/or deceived them. In these circumstances, there is no question whatever of an ‘articulate prostitute’, as the legislature put it. The fact that some of the women involved in this case had worked previously as prostitutes does not detract from that. In the court’s opinion, the facts and circumstances declared proven constituted ‘abuse of authority arising from the actual state of affairs and/or deception’.

Although it is important to recognise a pattern, particularly in view of the rapid changes and modifications in the methods used by offenders – that must not lead to facts and circumstances being ‘checked off’ on the basis of one particular method, as in the case of the judgments of the appeal court in Den Bosch<sup>68</sup> and the district court in Utrecht that are discussed below,<sup>69</sup> in which decisive significance was attached to the victims’ continuing contact with their family (hence no detachment) and continuing to go to school and the office.

The question of whether one or more means of coercion was used has to be answered first. Only after the existence of this objective situation of coercion has been established does the question arise of whether the victim had no other realistic choice. This issue is not dealt with uniformly, as the following examples show. The District Court in Den Bosch<sup>70</sup> left open the question of whether there was a situation of coercion. However, without first establishing whether there was coercion, the question of whether the victim could have resisted it cannot be answered. That question is then, as it were, objectified.

The *District Court in Amsterdam*<sup>71</sup> found on this point that the coercion does not necessarily have to consist of physical violence, threats or financial coercion, but can also arise because the victim finds herself in a situation of dependence in which, under the circumstances, she has no other choice but to enter or stay in a situation of exploitation. The means of coercion then constitutes abuse of authority arising from the actual state of affairs. The district court saw that abuse in the situation where (forming a relationship with the victim, telling her that he had large debts and that good money could be earned with prostitution, asking her to go into prostitution), the suspect, who was much older than the victim, had caused the victim to be in a situation of dependency. The court saw this as the suspect actively pushing the victim in the direction of prostitution and ruled that the victim was brought into a situation in which she was left with no other choice but to respect his wishes.<sup>72</sup>

68 Den Bosch Court of Appeal, 15 April 2009, LJN: BI1162.

69 Utrecht District Court, 29 May 2009, LJN: BD8803.

70 Den Bosch District Court, 19 February 2009, LJN: BH3388.

71 Amsterdam District Court, 9 June 2009, LJN: BI6950.

72 The court acquitted on the elements of violence, while declaring proven ‘repeated striking, pushing and throwing against furniture, grabbing by the throat’. It is not clear from the judgment how the court saw this. Perhaps the proven violent acts were seen in the light of the authority.

The District Court in Den Bosch<sup>73</sup> found that there might have been abuse of authority arising from the actual state of affairs or abuse of a vulnerable position, but nevertheless ruled that the victim was not in a situation where her freedom of choice was *objectively* limited or she could *reasonably believe* that she had to work in prostitution through the action of the suspect. The court also found that it could not be said that she was induced to make herself available for prostitution by acts of exploitation by the suspect.

The victim's perception plays a role in the decision on whether he or she could reasonably have made any other choice.<sup>74</sup>

*District Court in The Hague*<sup>75</sup>

'The violation of fundamental human rights – physical and mental integrity and personal freedom – is decisive. In deciding whether this was the case, the seriousness, duration and scale of the means of coercion and the economic benefit to be gained from the situation play a role. The victim's consent to the situation is irrelevant, if any of the said means of coercion was used. The *subjective perception* [italics BNRM] may be a factor in determining whether the victim could have withdrawn from the suspect's sphere of authority.'

The same line was also followed in the following case from the United States:

*USA v. Timothy H. Bradley and Kathleen M. O'Dell*, no. 04-1146, no. 04-1147, US Court of Appeals for the first circuit, 2004 U.S. App. Lexis 25174, Dec. 8, 2004 decided.

The court rejected an argument put forward by the defence that the workers were not forced to remain at work and that they could have fled to escape it with the finding that the point was whether the person in question could reasonably believe that there was compulsion to continue working,<sup>76</sup> According to the court, that was the case.

This finding of the court corresponds with the (unpublished) reasoning of the district attorney in the case of Calimlin, who argued as follows: 'The fact that Martinez may have had an opportunity to escape is irrelevant if the defendants, using one or more of the prohibited means discussed earlier, made Martinez reasonably believe that she could not leave or that she would suffer serious harm if she did so. A victim who reasonably believes she cannot leave is under no affirmative duty to try to escape. Bradley, 390 F.3d 145,153 (upholding jury instruction that government need not prove physical restraint, such as the use of chains, barbed wire, or locked doors to establish offense of forced labor; and the fact that the victim may have had the opportunity to flee is not determinative of the offense of forced labor if the defendants placed the victim in such fear or circumstances that he did not reasonably believe he could leave).'<sup>77</sup>

73 Den Bosch District Court, 19 February 2009, LJN: BH3388.

74 European Court of Human Rights, 26 July 2005, *Siliadin v. France*.

75 The Hague District Court, 14 December 2007, LJN: BC1761.

76 USA v. Bradley and O'Dell, under p. 7, no. 6, \*\*18.

77 Van Delden (2009).

The fact that the victim herself says that working in prostitution was her own free choice also seems to play a role in the decision.<sup>78</sup> Sometimes the victim's statement that it was her free choice is not accepted. The District Court in Arnhem,<sup>79</sup> for example, ruled that although the complainant declared that it was her own free choice to work in prostitution, the court did not believe it because the victim was under pressure from the suspect.

The existence or otherwise of free choice has to be seen in the light of the use of coercion. Especially in the case of deception, abuse of authority or of a vulnerable position, victims will often believe they made the choice themselves.

The question of whether a victim also has a more or less normal life seems to be another factor in assessing whether the victim had a reasonable alternative. For example, the Court of Appeal in Den Bosch<sup>80</sup> ruled (in an *obiter dictum*) that in that context, it took into account the fact that the complainant had shown that at the time – although troubled – she was nevertheless capable of consciously making important choices, such as going to school to complete her education. The Court of Appeal could therefore not exclude the possibility that the complainant had seized on the suspect's proposal in a carefully considered manner as an opportunity to leave home. At the same time, according to the court, she stated that when she started she regarded it as her own choice.<sup>81</sup>

In January 2008, the Court of Appeal in Den Bosch found that, in view of the legislative history and the UN Protocol and the terms of Article 273f Dutch Criminal Code, a certain initiative and positive action on the part of the suspects is assumed, whereby conscious abuse is made of the weaker or vulnerable position of victims.<sup>82</sup> Only if that is established can it be decided whether there was the intention of exploitation, according to the court of appeal. This was a case in which the charges were related to human trafficking in the hospitality sector. The public prosecution service has appealed to the Supreme Court in this case<sup>83</sup> (for more on this case, see also §12.6).

The point of departure formulated by the Court of Appeal in Den Bosch has sometimes been followed subsequently in cases of human trafficking in the sex industry.<sup>84</sup> The Court of

78 The point of departure is that the consent of the victim is not relevant if means of coercion were used. See Article 1 (2) EU Framework Decision (2002) and Article 3 (b) of the UN Palermo Protocol. On the grounds of these provisions, the consent of a victim of human trafficking to the intended or actual exploitation is irrelevant if any of the means of coercion is used. These provisions have not led to explicit legislation; the explanatory memorandum shows that this was not felt to be necessary (*Parliamentary Documents II 2003/04*, 29 291, no. 3, p. 19).

79 Arnhem District Court, 29 April 2008, LJN: BDo634. See also Utrecht District Court, 18 April 2008, LJN: BC9917, discussed in §11.7.2.

80 Den Bosch Appeal Court, 15 April 2009, LJN: BI1162.

81 See also Utrecht District Court, 29 May 2008, LJN: BD8803, in which case the fact that the victim had an ordinary job in addition to her work in prostitution and had contact with her family played an important role in the assessment of the victim's freedom of choice.

82 Den Bosch Court of Appeal, 30 January 2008, LJN: BC2999; LJN: BC3000 (Chinese restaurant case).

83 The judgment of the Supreme Court is expected on 24 November 2009.

84 Alkmaar District Court, 18 March 2008, LJN: BC7682. For example, the Alkmaar District Court found, like the Den Bosch court of appeal, that in deciding whether there was use of coercion it has to be decided

Appeal in Den Bosch<sup>85</sup> also feels that the terms of Article 273f make a certain initiative and positive action, together with conscious abuse of the victim's vulnerable position, a condition with respect to sexual exploitation.

This condition does not automatically follow from the definition of the offence, and the question is whether the court of appeal is correct in stipulating that condition.

*Should means of coercion be considered separately or as a whole?*

Human trafficking often takes place in an environment of violence, threats and force. This violence (sexual or physical) is sometimes charged as a means of coercion in human trafficking and sometimes as a separate offence and sometimes as violence used against another victim.<sup>86</sup> It is important to consider the entire context in deciding whether there was human trafficking and to review the means of coercion in relation to each other.<sup>87</sup>

In a judgment of the *District Court of The Hague*,<sup>88</sup> all means of coercion were assessed separately. In this case, the court established that there was evidence that the victim had performed her work as a prostitute under the influence and pressure of the suspect and that the suspect had kept an eye on her, but the court did not consider the proven violence in connection with the human trafficking. The court also found it plausible that threats had been made but, again, did not make a connection with the human trafficking. Nor was the fact that the victim surrendered the money she earned from prostitution relevant for the court. At the same time, the court found the separate charge of intentional deprivation of liberty with respect to the same victim to have been proved.

The *District Court in Utrecht*<sup>89</sup> also regarded the violence used by the suspect against the victim as separate from the forced prostitution. The suspect was charged with forcing a victim into prostitution and keeping her there for more than two years (the charges were brought under Article 273f (1), (4) and (9)) and of assaulting or causing grievous bodily harm to the same victim for more than four years. The court found that the assault during this period (2003-2007) had been proved: the victim had been struck on the skull and the ears until she was bleeding from the ears, her legs had been kicked and she had been dragged by her hair. The court also found that it had been proved that the suspect had threatened the victim that if she left him,

whether there was a certain initiative and positive action on the part of the suspect. The court declared in this case – in which the suspect was accused of recruiting women to work in prostitution in his escort company in the Netherlands in Hungarian newspapers – that offences under Article 273f (1) (3) Dutch Criminal Code had been proved, but charges for the same set of facts under subsection (1) (9) (the women meanwhile worked for the suspect's escort business and were living in the Netherlands illegally) led to acquittal since all the persons said they were working voluntarily and at their own initiative, which was apparently found to lie in the fact that the women had personally responded to the suspect's advertisements.

85 Den Bosch Court of Appeal, 15 April 2008, LJN: BI1162.

86 There are cases in which rapes, (serious) assaults and deprivation of liberty, besides being treated as means of coercion in charges for human trafficking offences, are also charged as separate offences. For example, in five judgments there were convictions for rape as a means of coercion. One of those cases was also the only case in which rape was charged as a separate offence as well as a means of coercion: Utrecht District Court, 25 July 2007, LJN: BBo450. In this judgment, the rape as a means of coercion and the rape charged as a separate offence were not the same rape; they were two rapes of two different victims.

87 Supreme Court, 8 September 2009, LJN: BJ3537.

88 The Hague District Court, 8 August 2006, LJN: AY5835.

89 Utrecht District Court, 3 October 2008, LJN: BG1625.

she would never see her daughter again. Nevertheless, the court ruled that human trafficking had not been proved because it had not been proved that these means had induced the victim to make herself available for prostitution.

The *District Court in The Hague*<sup>90</sup> also found, in acquitting suspects for human trafficking and convicting them for assault and uttering threats, that no direct connection had been established between the violence used and the threats and the work in prostitution. The threat consisted of the words: ‘I am going to put my fist in your vagina and pull out your uterus’. The evidence showed that the complainant was pregnant and that the suspect had demanded she have abortion.

The picture to emerge from the almost 200 judgments since January 2007 that were studied is that Dutch prostitution policy still sometimes seems to play a role (even in judicial findings of fact on means of coercion) in decisions on whether a victim could reasonably have made a different choice. This is perhaps explicable on the grounds of the explanatory memorandum<sup>91</sup> to the original proposal for Article 273a of the old Dutch Criminal Code, in which the comparison was made with the ‘articulate Dutch prostitute’. However, that comparison can only refer to the situation where the prostitute was already *working* in prostitution, and cannot be a factor in deciding on the ‘free choice’ to *enter* prostitution.<sup>92</sup>

### 11.3.5 The term ‘exploitation’

Human trafficking is actual or intended exploitation.<sup>93</sup> Article 273f (2) Dutch Criminal Code gives a non-exhaustive list of what can constitute exploitation, but this list does not provide any clearly delineated, substantive criteria. In relation to the sex industry, the legislature and the Supreme Court refer to a situation of exploitation if the individual concerned is in a situation in which the conditions are not the same as those that an articulate prostitute in the Netherlands would enjoy.<sup>94</sup> The nature of the work to be performed is very important in this interpretation. Forced employment in the sex industry is, by definition, exploitation, since the physical integrity of the victim is always affected.<sup>95</sup>

It is clear from the legislative history, which is based in part on the aforementioned international instruments, that there is no requirement that exploitation actually took place.<sup>96</sup>

90 The Hague District Court, 5 October 2007 (unpublished).

91 *Parliamentary Documents II* 1988/89, 21 027, no. 3, pp. 3-4.

92 See §11.3.5 below.

93 *Parliamentary Documents II* 1988/89, 21 027, no. 3, p. 2.

94 For example, Supreme Court, 5 February 2002, LJN: AD5235, in which reference was made to the explanatory memorandum to the bill to introduce Article 250ter (old) Dutch Criminal Code. Article 250ter (old) and Article 250a (old) Dutch Criminal Code are the predecessors of the current Article 273f Dutch Criminal Code.

95 The same applies for the forced removal of organs.

96 *Parliamentary Documents II* 2003/04, 29 291, no. 3, p. 19. See also Supreme Court, 19 September 2006, LJN: AX9215.

## II.4 Article 273f Dutch Criminal Code in practice

In one of the 108 judgments in 2007 that were studied, charges were brought under Article 250ter (1) (1) of the old Criminal Code. In 25 judgments, charges were brought under Article 250a of the old Criminal Code. However, in most judgments (94 in total), offences were charged, solely or also, on the grounds of the relatively new provision of Article 273f Dutch Criminal Code.<sup>97</sup>

The application of Article 273f (1) raises quite a few problems in practice. A number of them are discussed below.

### *Jurisdiction*

The point of departure for the Dutch rules on jurisdiction is the territoriality principle: Dutch criminal law applies to anyone who commits any criminal offence *in the Netherlands*.<sup>98</sup>

However, it is established jurisprudence that if the offence was committed both in the Netherlands and abroad, conduct that constitutes part of the criminal offence and takes place outside the Netherlands can also be prosecuted by virtue of Article 2 of the Dutch Criminal Code.<sup>99</sup> This means that if only part of the offence is committed in the Netherlands, the entire offence can be prosecuted in this country, quite apart from the question of whether the offences committed in the Netherlands can themselves be seen as separate offences, in the form of attempt, for example.

The Council of Europe's Convention on Action against Trafficking in Human Beings<sup>100</sup> contains a provision in which the obligation to establish jurisdiction, outside the territory of states, is formulated more broadly than it is in the current Dutch criminal legislation.<sup>101</sup> Given the nature of the offence of human trafficking, the government has proposed opting for the maximum scope of protection offered by the Convention. For this reason, it has proposed, in accordance with the Convention,<sup>102</sup> expanding jurisdiction on three points for the offences described in the Convention.<sup>103</sup> For more information on this point, see §2.6.

97 It is possible that in one judgment several human trafficking offences were charged on the basis of different article numbers depending on the periods the offences were alleged to have been committed.

98 Article 2 Dutch Criminal Code. The Netherlands' jurisdiction is regulated in Articles 2 to 8 Dutch Criminal Code.

99 Cleiren & Nijboer (2008), Article. 2 Dutch Criminal Code, note. 3c.

100 On this point, see also §3.5.1.

101 See Article. 31 of the Council of Europe's Convention on Action against Trafficking in Human Beings.

102 Article 31 (1) (a) to (c) requires that jurisdiction be established when the offence is committed in a country's territory or on board a country's ship or aircraft (Articles 2 and 3 Dutch Criminal Code). Article 31 (1) (d) requires jurisdiction to be established for offences committed outside the country by a national of the country or a stateless person who has permanent residence or domicile in that country, if the offence is punishable under the law of the place where it was committed or the offence is committed outside the jurisdiction of any state. Article 31 (1) (e) obliges jurisdiction to be established for offences committed against a country's own nationals. On the grounds of Article 45 of the Convention, the Netherlands may make a reservation to all or part of this provision. The Netherlands has said that it does not intend to make such reservation. See also §3.5.1.

103 *Parliamentary Documents II* 2007/08, 31 429, no. 3.



Human trafficking does not have to be transnational, but it often is. Article 273f (1) (3) Dutch Criminal Code is transnational, by definition.<sup>104</sup> It can cover recruitment abroad and exploitation in this country, but also recruiting victims in this country and putting them to work abroad or, as in the *Koolvis* case,<sup>105</sup> recruiting victims abroad (Nigeria) and exploiting them in prostitution, both here and in other European countries, via the Netherlands.

The District Court in Groningen<sup>106</sup> pronounced a conviction under Article 273f (1) (3) with respect to Bulgarian women brought from Bulgaria to the Netherlands. The court declared that it was proven that the suspect had transported the victims from Bulgaria to the Netherlands, but declared that the prosecution was inadmissible with regard to the conduct in Bulgaria due to the absence of jurisdiction. In view of the judicial finding of fact, the court's decision with respect to the absence of jurisdiction is incorrect.

*District court in Almelo (Sneep)*<sup>107</sup>

'Counsel has argued with respect to count 1 of the indictment concerning [woman 21] that the prosecution should be declared inadmissible, since the suspect does not have Dutch nationality and the court has no jurisdiction with respect to the elements of charge 1 that took place abroad.

The court does not share this view. On the grounds of Article 2 of the Dutch Criminal Code, Dutch criminal law applies to anyone who commits a criminal offence in the Netherlands. The suspect is charged with human trafficking in count 1, which, in the court's opinion, insofar as it relates to one and the same victim must be regarded as a single continuous offence that was committed by a combination of acts in various places. With respect to [woman 21], the suspect is accused of various acts carried out in the commission of human trafficking that took place both in the Netherlands and in Belgium. If places in the Netherlands as well as outside can also be deemed to be places where the offence was committed, on the grounds of said article that offence may be prosecuted in the Netherlands, even with respect to the acts constituting the part of the offence that took place outside the Netherlands. The defence is therefore rejected.

With respect to the separate charge of assault of [woman 21] charged under count 3, the court finds that this charge relates to a separate offence, the acts in the commission of which took place exclusively in Belgium. The court therefore has no jurisdiction and the public prosecutor is therefore declared inadmissible in the prosecution of count 3, insofar as it relates to [woman 21].'

The striking of the victim (woman 21) was charged both as a means of coercion and as a separate offence. The violence was, in any case, the context in which the human trafficking took place (see §11.3. The striking of the victim (woman 21) does not appear in the judicial finding of fact. If the striking in the charges for human trafficking would have been the same as the striking in the charges for assault, the connection with the human trafficking offence could perhaps have created jurisdiction. The court acquitted on the charge of participation in a criminal organisation. Both the human trafficking offences and the assault were charged

<sup>104</sup> On this point, see also §11.4.2

<sup>105</sup> On this point, see §9.5.5.

<sup>106</sup> Groningen District Court, 2 July 2009, LJN: BJ1334.

<sup>107</sup> Almelo District Court, 11 July 2008, LJN: BD6969.

in that context, so if the membership of the criminal organisation had been declared proven, the result would have been different.<sup>108</sup>

### *Charges*

It is not easy to bring charges under Article 273f. The description of the facts of the criminal conduct often show a series of acts that could (successively) fall under subsections (1), (4) and (9)<sup>109</sup> but, nevertheless, a choice is made to bring charges of criminal behaviour under just one of the subsections.

The distinction between subsection (1) and subsection (4), in particular, often causes problems. For example, charges are often brought under subsection (1) when the description of the facts shows that subsection (4) would support a completed offence.

The acts and the means of coercion are sometimes confused.

#### *District Court in The Hague*<sup>110</sup>

‘In the court’s opinion, the public prosecutor has classified a number of factual details under an incorrect heading. For example, allowing a person to remain in the Netherlands without a valid residence permit is more part of the means of coercion ‘abuse of authority arising from the actual state of affairs’ than the exploitation itself, while employing a person in the household for long days for a small remuneration is in fact an element of exploitation. Since the court is not bound by the public prosecutor’s qualification, the court will decide whether the offences actually charged can be proved. Insofar as they are proved, the court will qualify them as it deems correct. The formulation of this article of the law does, in fact, lead to confusion.’

The aggravating circumstances are not always explicitly mentioned<sup>111</sup> (see §11.5).

The following example illustrates the importance of the choices made in bringing the charges.

#### *District Court in Zutphen*,<sup>112</sup>

This was a judgment in which women were working in the escort sector and in which that work and the circumstances under which it was performed were assessed as though it was a case of ‘other forms of exploitation’.<sup>113</sup> The case involved two women from Brazil who had worked in the suspects’ escort company at different periods. In addition to a number of forms of human trafficking, people smuggling was also charged.

108 Supreme Court, 14 December 2004, LJN: AD4292, advisory opinion of Advocate-General Wortel.

109 These subsections are referred to for the reader’s convenience. The same naturally applies for subsections (2), (5) and (8).

110 The Hague District Court, 14 December 2007, LJN: BC1761.

111 For example, Rotterdam District Court, 13 August 2007, unpublished.

112 Zutphen District Court, 17 March 2009, LJN: BH6277; LJN: BH6262.

113 Also in The Hague District Court, 9 June 2009, LJN: BJ1279; LJN: BJ1280; LJN: BJ1281, in which sexual services with another person in Chinese massage salons was also charged as another form of exploitation. To the contrary: Alkmaar District Court, 26 July 2006, LJN: AY5332, in which the employment of persons to perform sexual acts with a third party in Thai massage salons was charged and declared proven as forced prostitution. Exploitation outside the sex industry was not yet punishable at the time this offence was committed.

The court acquitted on human trafficking and convicted for people smuggling. The court found the following facts had been proved:

That the suspect

- ordered the tickets for the journey from (place) in Brazil to Amsterdam and back from a travel agent; and
- paid for the tickets for the trip and sent them to (victim B); and
- collected (victim B) from the airport; and
- provided shelter and accommodation for (victim B); and
- bought clothing and lingerie for (victim B); and
- explained to (victim B) about the escort business; and
- under the name (name A) placed advertisements on the internet and in newspapers for escort services with an accompanying telephone number; and
- if clients ordered a girl, provided information and caused information to be provided (by telephone) to the clients; and
- if a client ordered a girl, noted and checked the address of that client; and
- instructed (victim B) to work as a prostitute/escort; and
- transported (victim B) and arranged for her to be transported to and from clients; and
- provided condoms and sponges; and
- received the money that (victim B) earned with the escort (between €125 and €150); and
- gave €30 and/or €35 of that earned money as basic earnings to (victim B); and
- informed (victim B) that she must be available to work everyday

What is immediately striking is that the public prosecution service chose not to bring charges under Article 273f (1) (3), but under Article 273f (1) (1), *alternatively* (4). Article 273f (1) (1) and (4) can also very easily be charged together. A conviction on the grounds of Article 273f (1) (3) would have been inevitable, on the basis of the judicial finding of fact set out above. It is also noteworthy that the indictment with respect to the principal charge was not based on the fact that the intended exploitation was for the purpose of exploitation in prostitution. Exploitation in prostitution is, by definition, exploitation. Terms of employment and working conditions such as earnings and accommodation are irrelevant in that case. And working as an escort *is* prostitution. Perhaps the fact that this was not charged as exploitation in prostitution wrong-footed the court. There was also no prosecution under Article 273f (1) (9), even though the aforementioned judicial finding of fact provides sufficient grounds for one.

The court explained the acquittal on the charge of human trafficking as follows:<sup>114</sup>

‘First and foremost, the court finds that it is a socially undesirable labour situation, when women, who are in a socially or economically difficult position in their own country, are convinced by another person to work in a distant country as escorts in that other person’s company.’

<sup>114</sup> The indictment relating to victim B covered several periods; the handing of this case was limited to the first period.

The court described this as an undesirable labour situation, even though it falls directly under the description in Article 273f (1) (3) and is therefore human trafficking.<sup>115</sup> It concerns, after all, prostitution. The court also found:

‘That fact, however, does not in itself mean that women were, in an unacceptable manner, restricted in their freedom of action and choice and employed under unacceptable conditions, to such an extent that there was exploitation. This depends on the particular facts and circumstances of the case.’

With respect to the use of means of coercion the court found:

‘The fact that the suspect and fellow suspect *manifestly exerted pressure* on (victim B) and (victim A) to be available from a particular time (18.00) and to work when they were physically unwell, cannot in itself be described as coercion. The fact that the suspect and (fellow suspect) threatened to inform the families of (victim B) that she was working as an escort, perhaps exerted moral pressure on the complainant, but this cannot be regarded as being such that for that reason she was unable to offer resistance to what the suspect and fellow suspect expected of her.’<sup>116</sup>

The facts often lead to charges being brought under several subsections, and sometimes the decision to limit the charges to one or two subsections seems arbitrary.

The difference between the offences under Article 273f (1) (1) and (4) lies more in the fact that for charges under subsection (1) it is not necessary that the victim was induced to make herself available for prostitution. If the means of coercion, the conduct and the intention are established, every element of the offence has been met. Intention of exploiting in prostitution is adequately factually described (see §11.4.1). It was otherwise in the District Court in Utrecht<sup>117</sup> in a case in which charges were brought under Article 273f (1) (1) and (4) and (9). The court found that it was not proved that the victim was *induced* to make herself available for prostitution and also discussed whether the victim could have made another choice. However, that is irrelevant for charges under subsection 1. Nevertheless, the court acquitted on all charges.

Table 11.7 shows how many of the judgments that were analysed included charges that were brought under the different subsections and in how many of the convictions the charges under the subsections were declared proven. The different categories are not mutually exclusive, since charges are regularly brought under combinations of different subsections and declared proven.

115 No charges were brought under Article 273f (1) (3) Dutch Criminal Code, however.

116 See also the sections under the headings ‘abuse of a vulnerable position, authority arising from the actual state of affairs and deception’ and ‘means of coercion considered separately or as a whole’ in §11.3.4.

117 Utrecht District Court, 3 October 2008, LJN: BG1625.

Table 11.7 Number of judgments in which charges are brought/declared proven under different subsections

	Indictment N=108		Declared proven N=74	
	N	%	N	%
Art. 273a/f (1) (1)	67	62%	38	51%
Art. 273a/f (1) (3)	36	33%	22	30%
Art. 273a/f (1) (4)	34	32%	22	30%
Art. 273a/f (1) (6)	20	19%	14	19%
Art. 273a/f (1) (9)	23	21%	16	22%
Art. 273a/f (1) (2), (5) or (8)	37	34%	24	32%

The following sections discuss how the different subsections of the article are applied in practice. Since charges are usually brought under several subsections, which are therefore applied together, the distinction is not always straightforward.

#### 11.4.1 Subsection 1

Art. 273f (1) (1) reads:

‘Any person who:

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;’

Table 11.7 shows that in a large majority (67) of the judgments that were analysed, charges were brought under subsection (1). In more than half (38) of the analysed judgements that led to at least a conviction for human trafficking, the charges under subsection (1) were declared proven. In at least<sup>118</sup> 29 judgments, the courts acquitted on at least one offence charged under subsection (1).

#### *Background to the criminal provision described in subsection 1*

The prohibited acts are derived from the UN Protocol on trafficking in human beings (2000) and the EU Framework Decision on trafficking in human beings (2002). These are activities designed to achieve the ultimate objective of exploitation. Recruiting, transporting, moving,

<sup>118</sup> It is possible that in the 38 judgements in which at least one offence under subsection (1) (among others) was declared proven, the suspects were also acquitted for another offence charged under subsection (1).

accommodating and sheltering have to be interpreted in accordance with normal everyday speech, on the one hand, but also have to be construed in accordance with the desire to tackle human trafficking as broadly as possible, on the other. Giving the terms a limited and purely literal interpretation is not reconcilable with that intention.<sup>119</sup>

*District Court in Amsterdam*<sup>120</sup>

The indictments in this case were not published;<sup>121</sup> however, it is possible to conclude from the judicial findings that charges were brought under Article 273f (1) (1) and (9). The court acquitted on the charges under subsection (1) and stated, in that context, that it had taken into account the desire arising from the Protocol on trafficking in human beings not to interpret the term recruitment and the terms transport, move, accommodate and shelter in a limited and literal sense. The court found that it had not been proved that the suspect had recruited the victims with the intention of exploitation. The suspect was purely intent on securing financial gain by manipulating the situation in which the victims found themselves rather than creating the the situation for them or persuading to them to enter it, according to the court. The court did convict on the grounds of subsection (9). According to the judicial finding of fact, the court found that it had been proved that ‘the suspect determined the waiting times’, ‘the victim had to ask permission if she had to stop her work as a prostitute’ and ‘the suspect made her work longer if she had not earned enough’.

It is not clear why the public prosecutor did not also choose to bring charges under subsection (4).

In its decision, the court took into account the fact that the victims were already working in prostitution voluntarily and that it was not the suspect who had brought them into prostitution. In principle, that is irrelevant even for Article 273f (1) (1), especially since it is clear from the judgment that the suspect prevented the victim from leaving prostitution.<sup>122</sup> Apparently, the court felt that this was relevant for a conviction under Article 273f (1) (1). The question is whether the court would have convicted under subsection (4) if charges had also been based on that subsection.

The conduct must be for the purpose of exploitation. The exploitation itself does not have to have taken place. The intention is then shown by the events that have been declared proven.<sup>123</sup>

119 Noyon et al., on the situation until 1 November 2006, Article 273f Dutch Criminal Code, note 3.2; Cleiren & Nijboer, 2008, Article 273f Dutch Criminal Code, note 8(e).

120 Amsterdam District Court, 21 February 2008, LJN: BC8624.

121 A number of district courts do not or used not to include the indictments in the judgments, so the information to be retrieved from the judgments published on [www.rechtspraak.nl](http://www.rechtspraak.nl) is limited.

122 Maastricht District Court, 6 February 2008, LJN: BC4379. To the contrary: The Hague District Court, 29 January 2008, LJN: BC2949, in which the court (correctly) found that the fact that the victim already worked in prostitution was not relevant since ‘she was induced to stop working independently and to work for the suspect in prostitution.’

123 Alkmaar District Court, 26 July 2006, LJN: AY5332. The court declared the summons null and void because the intention of exploitation in prostitution did not comply with Article 261 Dutch Criminal Code without a further elaboration of the facts of the ‘exploitation’ in the indictment. The Supreme Court (Supreme Court, 9 September 2006, LJN: AX9215), however, did find the term ‘sexual acts’ to be an adequate factual description.

In the convictions, the term ‘exploitation’ is usually elaborated in terms of forced prostitution or the confiscation of earnings. In 11 judgments, the judicial finding of fact also explicitly refers to a confiscation of earnings.

#### 11.4.2 Subsection 3

Art. 273f (1) (3) reads as follows:

‘any person who 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’.

Table 11.7 shows that in one-third (36) of the analysed judgments in 2007, charges were brought under subsection (3). In almost one-third (22) of the judgments that led to at least a conviction for human trafficking, the offences under subsection (3) were declared proven. In at least<sup>124</sup> 14 judgments, the court acquitted on at least once offence charged under subsection (3).

Table 11.8 shows that a surprising number of judgments involved victims from Romania. The country of destination for all the foreign victims (divided among 33 indictments and 19 judicial findings of fact) was the Netherlands; for the three Dutch victims, it was Belgium.

Table 11.8 Nationality of victims in the judgments in which charges were brought under Article 273f (1) (3)<sup>125</sup>

	Indictment		Judicial finding of fact	
	N	%	N	%
Romania	16	44%	9	41%
Czech Republic	6	17%	5	23%
Poland/Lithuania	6	17%	2	9%
Bulgaria	4	11%	2	9%
Netherlands	3	8%	3	14%
Hungary	1	3%	1	5%
Total	36	100%	22	100%

124 It is possible that in the 22 judgments in which at least one offence under subsection (3) (among others) was declared proven, a suspect was also acquitted of another offence charged under subsection (3).

125 Three victims came from Poland, one victim came from Lithuania and two victims came from Poland or Lithuania.



*Background to the criminal provision described in subsection (3)*

Article 273f (1) (3) Dutch Criminal Code is a provision that transposes an obligation arising from the International Convention for the Suppression of the Traffic in Women of Full Age signed in Geneva in 1933 into Dutch criminal legislation.<sup>126</sup> That convention required states to criminalise the recruitment of adult women if it was done with the intention of committing indecent acts in another country, ‘even with their consent.’<sup>127</sup> Consequently, whether it is voluntary or not is irrelevant, since there is no element of coercion in this provision. The recruitment of a person in another country (including an EU country) for prostitution is punishable, even if the person recruited consents to it.

In general, these criminal acts are difficult to demonstrate, as the explanatory memorandum to the amending law in 1994 stated:<sup>128</sup> ‘The legislature therefore does not seem to expect much more from this provision than to comply with an international treaty obligation.’ Nevertheless, practice shows that prosecutions are brought relatively frequently under Article 273f (1) (3) (see Table 11.7).<sup>129</sup>

Several elements of the offence have been further explained by the legislature or the courts. In light of the legislative history, the intention was to provide extensive protection to the victim of actions that are criminalised by the provision. The Supreme Court has therefore construed the terms ‘recruits’ and ‘takes’ quite loosely. ‘Recruit’ is any act by which a person is recruited for the purpose of bringing that person into prostitution in another country, without the need to show that the method of recruitment limited the person’s freedom of choice.<sup>130</sup> ‘Taking’ could be proved in a human trafficking case, even when the victim has travelled alone to the Netherlands. The victim in that case would have been ‘enticed to the Netherlands under false pretences and forced to work in prostitution there’.<sup>131</sup> The ticket was paid for by an accomplice and the victim was collected from the airport in the Netherlands by the suspect and an accomplice.<sup>132</sup>

126 This Convention was originally implemented in Article 250a (1) (2) (old) Dutch Criminal Code.

127 See also Gerritsma & Wijers (2003).

128 *Parliamentary Documents II* 1988/89, 21 027, no. 3, p. 9.

129 A reservation that need to be made about the provision is that this ban on ‘transnational recruitment’ hampers access to the legal Dutch prostitution market for nationals of other member states (forms of labour that do not involve sexual acts in fact fall outside the scope of this offence), which is in violation of Community law (Gerritsma & Wijers, 2003).

130 Supreme Court, 18 April 2000, NJ 2000, 443.

131 Supreme Court, 20 December 2005, LJN: AU3425. Noyon et al. on the situation until 1 November 2006, Article 273f Dutch Criminal Code, note 3, supplement 137 – sheltering must be interpreted broadly.

132 As regards the taking or abduction of persons, reference can also be made to the possibilities offered by Article 278 Dutch Criminal Code, since the Supreme Court has ruled that not only the ‘export’ but also the ‘import’ of persons can fall under it (Cleiren & Nijboer, 2008, p. 1191, referring to Supreme Court, 20 November 2001, LJN: AB2809; LJN: AB2810). The abduction of persons to the Netherlands with the intention of unlawfully surrendering them to the power of another person or rendering them helpless and putting them to work in the sex industry, for example, can also fall under abduction. Article 278 Dutch Criminal Code provides for a maximum prison sentence of 12 years.

*Several applications of the criminal provision described in subsection (3)*

This section contains a number of judgments concerning Article 273f (1) (3). The most noteworthy is the judgment of the District Court in Maastricht<sup>133</sup> (which was followed by the District Court in Leeuwarden<sup>134</sup>). The suspect was charged under Article 273f (1) (3), alternatively under subsection (9), and, as a separate offence, under subsection (6). The court acquitted the suspect on all charges. Insofar as it is relevant here, the court found:

‘In the Netherlands, however, not every form of prostitution is punishable. The point of departure of Dutch policy with respect to exploitation of prostitution is that criminal law instruments must be used to tackle forms of exploitation where economic profit is secured in an illegitimate manner from the exploitation or the person concerned is not always completely free to decide whether to perform the sexual acts, can refuse to do so and can also stop entirely.’

The court establishes a link here with Dutch prostitution policy.

To the contrary: *District Court in The Hague*<sup>135</sup>

The aforementioned judgment of the District Court in Maastricht was invoked in this case. The court rejected this defence, finding that Article 273f (1) (3) does not require force or unlawful influence. The simple recruitment of persons with the intention that they will make themselves available for prostitution is an act that is made an offence under that article.

Another example of the application in practice of this subsection is given in the box below.

*District Court in Haarlem*<sup>136</sup>

In three cases, the court acquitted on the alternative charges brought under Article 273f (1) (3), with the following reasoning:

‘With respect to the implicit alternative charges under count 1, the court finds that, in its opinion, it is inherent to the term ‘induce’ that there must be a situation in which the suspect and/or accomplices abuse the victim’s situation, as a result of which the victim is induced to make herself available to perform sexual acts. On the grounds of the evidence in the file before it, the court is of the opinion that it does not follow from that evidence, apart from the statement of the victim herself, that the suspect and accomplices had the intention of inducing the victim to make herself available to perform sexual acts. For example, there is no evidence in the file of actions on the part of the suspect and/or accomplices by which the victim was induced, or at least to show by which actions the victim was convinced to start working as a prostitute.’

133 Maastricht District Court, 6 February 2008, LJN: BC4379.

134 Leeuwarden District Court, 10 March 2009, LJN: BH5358.

135 The Hague District Court, 7 March 2008, LJN: BC6098.

136 Haarlem District, 10 December 2007, LJN: BD9897; LJN: BD9902; LJN: BD9894.

The court here formulates an additional requirement that does not follow from the description of the offence, since the use of means of coercion is not included in the definition of the offence in Article 273f (1) (3).

These examples show that this subsection is not applied uniformly. Convictions under Article 273f (1) (3) followed in 22 of the 36 cases.

### II.4.3 Subsection 4

Article 273f (1) (4) reads:

‘the person who forces or induces another person by the means referred to under 1 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 1 which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available’.

Table II.7 shows that in roughly one-third (34) of the analysed judgments in 2007 charges were brought under subsection (4). In almost one-third (22) of the judgments that led to at least a conviction for human trafficking, the charges under subsection (4) were declared proven. In at least<sup>137</sup> 12 judgments, the court acquitted on at least one offence charged under subsection (4).

#### *Background to the criminal provision described in subsection (4)*

For punishment of an offence under this subsection, it is not relevant whether the labour or service was actually performed. The Supreme Court ruled that ‘for punishability (...) it is not necessary that any sexual act was actually performed. What is decisive is that the victim made herself available to do so under coercion or influence.’<sup>138</sup> This subsection covers any act that causes the other person to be in a situation where he or she makes him or herself available.<sup>139</sup> Such acts include, for example, any act aimed at a woman who has voluntarily engaged in prostitution with the effect of preventing her from freely stopping.<sup>140</sup>

The relationship between the ‘inducing’ in subsection (4) and the means of coercion used is discussed further in §II.3.4.

The element ‘knows or may reasonably be expected to know’ in this provision actually encompasses both intent and *culpa*. When the suspect knows that ‘as a result the other person will make himself/herself available for performing [...]’, there is intent and when the suspect

137 It is possible that in the 22 judgments in which at least one offence under subsection (4) (among others) was declared proven, the suspect was also acquitted of another offence charged under subsection (4).

138 Supreme Court, 19 September 2006, LJN: AX9215. This judgment was based on Article 250a (1) (1) Dutch Criminal Code, one of the predecessors of Article 273f (1) (4).

139 Cleiren & Nijboer, 2008, Article 273f Dutch Criminal Code, note 8(h).

140 Cleiren & Nijboer, 2008, Article 273f Dutch Criminal Code, note 8(h), referring to Supreme Court, 19 May 1992, NJ 1992, 716 and Supreme Court, 6 July 1999, NJ 1999, 701

‘may reasonably be expected to know [the act] will result in the other person making himself/herself available for performing (...)’, it is *culpa*.<sup>141</sup>

#### 11.4.4 Subsection 6

Article 273f (1) (6) reads as follows:

‘the person who wilfully profits from the exploitation of another person’.

Table 11.7 shows that in almost one-fifth (20) of the analysed judgments, charges were brought under subsection (6). In an equally large proportion of the convictions (14), the charges under subsection (6) were declared proven. In at least<sup>142</sup> seven judgments, the court acquitted on at least one offence charged under subsection (6).

Article 273f (1) (6) up to and including (9) make various forms of profiting from human trafficking an offence. When profiting from sexual exploitation was inserted in Article 250a of the old Criminal Code, it was said that a separate criminal offence of profiting was felt to be necessary, since it was not certain whether the provisions on participation provided sufficient protection.<sup>143</sup>

The person profiting may be, but does not necessarily have to be, a different person to the person who has created the situation of exploitation.<sup>144</sup>

The District Court in Maastricht<sup>145</sup> found in a case in which charges were brought under Article 273f (1) (6) that, for the offence to be declared proven, it was necessary for the suspect to have exploited the victim and that *he also intended to exploit her*. The court found that that had not been proved and acquitted the suspect. However, personal exploitation and intent to exploit are not requirements for subsection (6). The intent in subsection (6) has to be directed at profiting. The court probably meant that it had not been established that the victim was exploited, which is required for a conviction under Article 273f (1) (6).

#### 11.4.5 Subsection 9

Article 273f (1) (9) reads as follows:

‘the person who forces or induces another person by the means referred to under 1 to provide him with the proceeds of that person’s sexual acts with or for a third party or of the removal or that person’s organs.’

141 The intent and the *culpa* in Article 273f (1) (5) Dutch Criminal Code do not have to concern the fact that the victim has not yet reached the age of 18, see *Parliamentary Documents II* 1996/97, 25 437, no. 3, p. 9. This means that the offender does not have to know the age of the victim.

142 It is possible that in the 14 judgments in which at least one offence under subsection (6) (among others) was declared proven, the suspect was also acquitted of another offence under subsection (6).

143 *Parliamentary Documents II* 1996/97, 25 437, no. 3, p. 9.

144 Cleiren & Nijboer, 2008, Article 273f Dutch Criminal Code, note. 8(h).

145 Maastricht District Court, 6 February 2008, LJN: BC4379.

This provision also applies with respect to underage victims; Article 273f contains no separate provision with respect to this act applicable to victims who have not yet reached the age of 18 (as is the case with subsections (2) and (5) in relation to subsection (1) and subsection (4) respectively).

Table II.7 shows that charges were brought under subsection 9 in roughly one-fifth (23) of the analysed judgments. In roughly the same proportion of the convictions (16), offences under subsection (9) were declared proven. In at least<sup>146</sup> seven judgments, the court acquitted on at least one offence charged under subsection (9).

For a conviction under Article 273f (1) (9), as with subsection (1), it is not necessary for the victim to have been induced by the suspect to make herself available for prostitution. The establishment of the means of coercion in relation to inducing the provision of the proceeds from the prostitution is sufficient. In that sense, this subsection is easier to prove.

#### II.4.6 Subsection (2), (5) and (8) (underage victims)

If the victim is underage, the situation is regarded as human trafficking even without the use of coercion.

Article 273f (1) (2):

‘any person who recruits, transports, 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’.

Article 273f (1) (5):

‘any person who induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his or 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’.

Article 273f (1) (8):

‘any person who 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’.

Table II.7 shows that in roughly one-third (37) of the analysed judgments, charges were brought under subsection 2, 5 and/or 8. In almost one-third (24) of the convictions, the

<sup>146</sup> It is possible that in the 16 judgments in which at least one offence under subsection (9) (among others) was declared proven, the suspect was also acquitted of another offence under subsection (9).

charges under subsection (2), (5) and/or (8) were declared proven. In at least<sup>147</sup> 13 judgments, the court acquitted on at least one offence charged under subsection (2), (5) and/or (8). The intent and the *culpa* in Article 273f (1) (2), (5) and (8) do not have to be directed at the fact that the victim has not yet reached the age of 18 years (see also *Parliamentary Documents II* 1996/97, 25 437, no. 3, p. 9). This means that the offender does not have to know the age of the victim. As already mentioned, there is no variant of subsection (9) for underage victims.

## 11.5 Aggravating circumstances

Article 250ter (old), Article 250a (old), Article 273a (old) and Article 273f Dutch Criminal Code all make provision for aggravating circumstances. The sentences for human trafficking were increased as of 1 July 2009 (see §2.2 and Appendix 1) as follows:

- In the first subsection (unqualified forms of human trafficking), the maximum sentence was increased from six to eight years.
- In the third subsection (human trafficking committed by two or more persons acting in concert or human trafficking committed in respect of a victim younger than 16), the maximum sentence was increased from eight to twelve years.
- In the fifth subsection (human trafficking with the aggravating circumstance of resulting in serious physical injury or threatening the life of another person), the maximum sentence was increased from 12 to 15 years.
- In the sixth subsection (human trafficking resulting in death), the maximum sentence was increased from 15 to 18 years.

Because the sentence was increased for both aggravating circumstances in the third section of the article, the fourth section lapsed. Until 1 July 2009, this provision fixed the maximum sentence at 10 years for human trafficking committed by two or more persons acting in concert *and* with respect to a victim younger than 16.

Table 11.9 shows the proportion of the human trafficking judgments that were analysed in which the various aggravating circumstances were charged, as well as the number of convictions in which the different aggravating circumstances were declared proven. Naturally, these are not mutually exclusive categories, since it is possible that different aggravating circumstances had been charged and found proven in the same judgment, if only because more than one offence is often charged and declared proven. All that can be stated on the basis of Table 11.9, therefore, is that aggravating circumstances had been charged in a minimum of 80 and a maximum of 82 judgments, and aggravating circumstances were also declared proven in a minimum of 52 and a maximum of 54 judgments.

<sup>147</sup> It is possible that in the 24 judgments in which at least one offence under subsections (2), (5) and/or (8) (among others), was declared proven the suspect was also acquitted of another offence under subsection (2), (5) and/or (8).

Table 11.9 Number of judgments in which charges were brought and/or declared proven under the relevant subsections<sup>148</sup>

	Indictment N=108		Judicial finding of fact N=74	
	N	%	N	%
Acting in concert (Article 250ter/a (2) (1) (old)/273a/f (3) (1))	80	74%	52	70%
Victim younger than 16 (Article 250ter/a (2) (2) (old)/273a/f (3) (2))	–	–	1	1%
In concert and a victim younger than 16 (Article 250ter/a (3) (old)148/273a/f (4))	–	–	2	3%
Resulting in serious physical injury (Article. 250ter/a (2) (3) (old)/ Article 273a/f (5))	–	–	–	–
Resulting in death (Article 273a/f (6))	–	–	–	–

The aggravating circumstances presented in the table are discussed in §11.5.1 to §11.5.

### 11.5.1 In concert (co-perpetration)

Table 11.9 shows that ‘human trafficking committed by two or more persons acting in concert’, pursuant to Article 250ter/a (2) (1) (old) and Article 273a/f (3) (1) Dutch Criminal Code, was charged in almost three-quarters (80=74%) of the analysed judgments. In relative terms – on the basis of the convictions – this aggravating circumstance was declared proven slightly less often (52 times=70%). In at least<sup>149</sup> 28 judgments, the court acquitted on at least one offence in which the aggravating circumstance ‘in concert’ was charged.

### 11.5.2 Victim younger than 16

Table 11.9 shows that ‘human trafficking involving a victim who is under the age of 16’, pursuant to Article 250ter/a (2) (2) (old) and Article 273a/f (3) (2) Dutch Criminal Code, was never charged, but was declared proven in one judgment.<sup>150</sup> That was also the case for the combination of aggravating circumstances ‘human trafficking in concert with respect to a victim

148 Article 250ter/a (3) (old) Dutch Criminal Code can cover both the combination of ‘in concert’ and ‘victim younger than 16’ and the combination ‘in concert’ and ‘serious physical injury’. Since neither Article 250ter (3) (old) Dutch Criminal Code nor Article 250a (3) (old) Dutch Criminal Code appears in the indictments in the analysed judgments in 2007– and therefore also not in the judicial findings of fact – that has no influence on the data presented here.

149 It is possible that in the 52 judgments in which at least one offence under the aggravating circumstance ‘in concert’ was declared proven, the suspect was also acquitted of another offence that was charged under (among others) the aggravating circumstance ‘in concert’.

150 Den Bosch District Court, 28 November 2007, unpublished.



who is under the age of 16', pursuant to Article 250ter/a (3) (old) and Article 273a/f (4) Dutch Criminal Code.<sup>151</sup> This aggravating circumstance was declared proven twice, although it had not been charged.<sup>152</sup>

Notably, in 11 judgments at least one victim was under the age of 16 at the time of the human trafficking offences charged.<sup>153</sup> In those cases, the aggravating circumstance of 'human trafficking with respect to a victim who is under the age of 16' was not explicitly charged.

*District Court in Rotterdam*<sup>154</sup>

This case concerned human trafficking involving a victim who was under the age of 16. The indictment on this point read – insofar as it is relevant – that the suspect, during a certain period in municipality X, in implementation of the suspect's intended offence of inducing another person to make herself available for performing one or more sexual acts with or for a third party for remuneration, 'while that other person had not yet reached the age of 18' (Article 273f (1) (5) Dutch Criminal Code). The aggravating circumstance – the fact that the victim was under the age of 16 – was not explicitly mentioned or even described as an aggravating circumstance.

In 24 judgments, at least one victim was a minor at the time of the human trafficking offences charged – perhaps older than 16, but in any case younger than 18. At this moment, a human trafficking offence committed with respect to an underage person (between the ages of 16 and 18) is not yet an aggravating circumstance. This could change in the future.

The aggravating circumstances were expanded in March 2009 in the European Commission's proposal for a new EU Framework Decision on trafficking in human beings.<sup>155</sup> According to the Commission, by means of aggravating circumstances, account must be taken of the need to protect particularly vulnerable victims, which include children.<sup>156</sup> The fact that the offence is committed with respect to a particularly vulnerable victim is an aggravating circumstance. A child is, by definition, a vulnerable victim, and in the proposal a child is defined as any person under the age of 18. Like the current EU Framework Decision (2002), the proposal does not in fact contain any obligation for national judges to actually apply these circumstances in determining the sentence.

The aggravating circumstance that is based on the age of sexual majority (16 in the Netherlands) is not relevant for human trafficking, either in the sex industry or in any other sector.<sup>157</sup>

151 This chapter is based on Article 273f Dutch Criminal Code as it applied until 1 July 2009.

152 Den Bosch District Court, 28 November 2007, unpublished (with respect to an offence other than one where only 'human trafficking with respect to a victim younger than 16' is declared proven) and Haarlem District Court, 17 April 2007, unpublished.

153 This relates to a total of 12 victims; in one judgment there were two victims younger than 16.

154 Rotterdam District Court, 13 August 2007, unpublished.

155 See §3.4.4.

156 As well as adults who are vulnerable due to personal circumstances or because of the physical or psychological consequences of the offence, according to the proposal of the European Commission.

157 In the (current) Framework Decision of 2002 refers to an especially vulnerable victim 'at least when the victim was under the age of sexual majority under national law and the offence has been committed for the

The applicable age for the aggravating circumstance that is currently included in Article 273f Dutch Criminal Code could now already be changed to 18. ECPAT International and the Kinderrechtencollectief have, in fact, stated earlier that the aggravating circumstance in the human trafficking provision should be expanded to cover minors (persons under the age of 18), where sexual exploitation is involved.<sup>158</sup>

### II.5.3 Serious physical injury, threatening the life of another person or resulting in death

Article 250ter/a (2) (3) (old) and Article 273a/f (5) Dutch Criminal Code<sup>159</sup> (human trafficking resulting in serious physical injury) or, in the case of Article 273a/f (5), human trafficking that threatens the life of another person, and Article 273a/f (6) (human trafficking resulting in death), do not appear in the indictments in the analysed judgments.

This does not mean that human trafficking committed under these aggravating circumstances – particularly resulting in serious physical injury and threatening the life of another person – could not have been charged and might possibly have been declared proven in the judgments that were analysed. One example is a case in which a suspect was charged with eight offences, including attempted manslaughter, an attempt to cause serious bodily harm and two human trafficking offences. These four offences were committed with respect to the same victim and were all declared proven in first instance.<sup>160</sup> A number of the facts that were charged and declared proven (which constituted part of the four offences that were declared proven) are listed below.

*District Court in Utrecht*<sup>161</sup>

With respect to the *attempted manslaughter* of victim A the defendant, among other things:

- (repeatedly) squeezed the victim’s throat with force and kept squeezing it and then pushed the victim against the wall and pushed her up by the throat until the victim lost consciousness, and then kicked the victim’s body until she regained consciousness;
- placed a large knife against the victim’s throat and then cut the victim’s arm and wrist with the knife.

With respect to the *attempt to cause serious bodily harm* to victim A the suspect, among other things:

purpose of exploitation of the prostitution of others or other forms of sexual exploitation, including pornography’, Article 3 (2) (b) of the EU Framework Decision on trafficking in human beings.

158 ECPAT International, 2006; NGO Report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands, May 2008. The Kinderrechtencollectief comprises Defence for Children International/ECPAT Nederland, Unicef Nederland, the Landelijke Vereniging van Kinder- en Jongerenrechtswinkels, the National Youth Council, Plan Nederland, Save the Children Nederland, Jantje Beton and the Stichting Kinderpostzegels Nederland.

159 This chapter is based on Article 273f Dutch Criminal Code as it applied up to 1 July 2009.

160 On appeal, only assault, and not attempted serious assault, was declared proven (Amsterdam Court of Appeal, 5 February 2009, LJN: BH 2476).

161 Utrecht District Court, 25 July 2007, LJN: BB0450

- repeatedly beat/kicked the victim in the face and/or nose with force;
  - kicked the victim’s body with his foot with force;
  - put out a burning cigarette on the victim’s knee and/or (upper) leg and/or (lower) leg;
  - head-butted the victim in the nose;
  - stabbed/cut the victim’s leg with a knife and/or then poured vinegar and/or chlorine into/over the bleeding wound.
- With respect to the *two human trafficking offences* with respect to victim A, the suspect used means of coercion consisting of the fact that the suspect, among other things:
- arranged for tattoos to be placed on her (right) upper arm and left breast;
  - systematically assaulted the victim and/or held a heated skewer, or at least a heated object, against the bottom of her bare foot;
  - told the pregnant victim that she had to have an abortion and/or exerted pressure on her and/or induced her to have an abortion.

The separately charged attempted manslaughter and attempt to cause grievous bodily harm that were found proven both took place during a four-and-a-half year period in which the victim was in a situation of exploitation. These two offences could therefore also be regarded as means of coercion in the two *human trafficking offences* charged, which could have produced human trafficking that threatens the life of another person. It is possible to charge one and the same offence – the attempted manslaughter, for example – not only as a separate offence but also as a means of coercion – and as an aggravating circumstance.

It is also noteworthy that the means of coercion that were actually proved could also have yielded the aggravating circumstance in Article 273f (5), but it was neither charged nor ruled on. Under certain circumstances, inducing a person to be tattooed can be regarded as causing serious physical injury.<sup>162</sup> Human traffickers regularly tattoo their victims (see §9.4.4). In the Sneep case, forcing or inducing a person to have an abortion did lead to a charge and conviction for the aggravating circumstance described in the subsection (5). The grounds for sentencing in this case included the following.

*District Court in Almelo (Sneep)*<sup>163</sup>

‘The court has also considered whether there was rape, forced breast enlargement, *abortion as a statutory aggravating circumstance*, the role that the suspect played in the events and possible recidivism’ (italics: BNRM).

Article 82 of the Dutch Criminal Code contains a number of examples of ‘serious bodily harm’ (‘serious physical injury’ in the words of Article 273f).<sup>164</sup> The article shows that forcing or inducing a person to have an abortion, in any case, can be regarded as serious bodily harm

<sup>162</sup> A situation in which an unconscious woman was tattooed was found to be serious physical injury by the Supreme Court (Cleiren & Nijboer, 2008, p. 1272, referring to Supreme Court, 22 May 1990, NJ 1991, 93).

<sup>163</sup> Almelo District Court, 11 July 2008, LJN:BD6957, LJN:BD6969, LJN:BD6972, LJN:BD6974, LJN:BD6965 and LJN:BD6960.

<sup>164</sup> ‘i. The term ‘serious bodily harm’ includes an illness for which there is no prospect of a complete recovery, a long-term disability preventing the performance of the duties of office or the practice of a profession, and

in accordance with the judgments in the Sneep case. The list in this article is not, in fact, exhaustive, which means the courts also have the freedom to treat other instances as serious physical injury.<sup>165</sup>

## II.6 Attempt and complicity

### II.6.1 Attempt

Article 273f Dutch Criminal Code quickly leads to a completed offence. For example, for subsection (1) or subsection (4) it is not necessary for the victim to already have been working in prostitution.<sup>166</sup> In fact, in practically<sup>167</sup> all the cases in 2007 that were studied where attempt was declared proven, there was also a completed offence.

This applies to the indictments where the attempt was the principal<sup>168</sup> charge as much as for the convictions on an alternative charge of attempted human trafficking with acquittal on the principal offence charged.

Attempted human trafficking was charged as a principal offence in six judgments. A principal or alternative charge of attempted human trafficking was ultimately declared proven in nine judgments.

#### *District Court in Rotterdam*<sup>169</sup>

The public prosecutor had brought principal charges under Article 273f (1) (5) and, alternatively, attempt thereto. At the hearing, the public prosecutor asked for acquittal on both the completed offence and the attempt because, according to the public prosecutor, there had been a voluntary withdrawal. The court rejected this and convicted for attempted human trafficking. The court's further findings on the evidence show that the actual prostitution had not taken place but that the victim had made herself available for it. This could therefore imply a completed offence.

#### *District Court in Groningen*<sup>170</sup>

In this case, the public prosecutor brought charges under Article 273f (1) (4) and at the hearing amended them to the attempt variant. In this context, one of the actions ('accommodation in his home') was amended at the hearing to 'offered (temporary) shelter'. Even 'providing (temporary) shelter' would fall under the terms 'accommodate or shelter' in Article 273f (1) (1) and would therefore have constituted a completed offence.

aborting or destroying a foetus in utero. 2. The term 'serious bodily harm' also include a disorder of the intellectual faculties lasting more than four weeks.'

165 Cleiren & Nijboer (2008, p. 635 and p. 1272).

166 Supreme Court, 19 September 2006, LJN: AX9215.

167 In the judgments of the Amsterdam District Court (6 November 2007, unpublished) it is not clear what the actual events were. The suspect was proved to have made agreements to transfer the victim to an unknown man for €500, which was described as attempt to commit an offence under Article. 273f (1) (9).

168 For example, in Almelo District Court (2 March 2007, unpublished) where offences under subsections (1), (4) and (9) were charged in the attempt variant. The court convicted for attempt and found in the grounds for sentencing that the attempt had failed because the woman resisted. But even in this case, the conduct found proven indicates a full offence.

169 Rotterdam District Court, 13 August 2007, unpublished.

170 Groningen District Court, 23 January 2007, LJN: AZ6816; LJN: AZ6817; LJN: AZ6818.

*District Court in Utrecht*<sup>171</sup>

The public prosecutor brought charges under Article 273f (1) (4) in conjunction with Article 45 Dutch Criminal Code. Here too, the court found that it had been proved that the suspect had provided shelter to the victim and that the suspect had brought the victim to the Zandpad (the place of prostitution). As in the case in the District Court in Groningen (23 January 2007), the proven facts produced the completed offence under Article 273f (1) (1).

The District Court in The Hague<sup>172</sup> found in this context that ‘although it can be declared proven that the suspect transported, moved and accommodated the complainant, these acts, given their *external manifestation*, should be regarded more as a start to the implementation of the suspect’s intention to recruit the complainant as a prostitute, and therefore as an attempt, than as a completed offence’ (italics: BNRM). Given the text of the law, and in light of the international legislation, this finding is incorrect (see also §II.4.1). The question is, what should then be regarded as a punishable attempt? Sending SMS messages with a recruiting text? Driving along the Zandpad (in Utrecht) when a room has already been rented?

In the bill to implement the Council of Europe’s Convention on the protection of children against sexual exploitation and sexual abuse (the Lanzarote Convention), *grooming is made a specific offence* (see Article 23 of the Convention).<sup>173</sup> The loverboy method also has a so-called *grooming* period, during which seduction and separation are used to facilitate exploitation. Consequently, given other human trafficking/loverboy methods (see §9.4.3), rape and making recordings of it and threatening to post them on the internet can constitute violence, threats and compulsion as a prelude to later exploitation.

The Court of Appeal in Arnhem<sup>174</sup> found that seduction was not enough for a finding of criminal attempt. Advocate-General Machielse explained in his advisory opinion for the Supreme Court’s judgment of 2 October 2001<sup>175</sup> how every offence has its own acts of commission and how, in that case, it was important whether deception had started. In that case, the Court of Appeal in Den Bosch had ruled that writing love letters, the suspect’s statement that he wanted a relationship with the victim and his telling the victims that he was very rich were sufficient to deceive those women. The court also found that with an offence like human trafficking, disguising one’s intentions was actually a characteristic of deception. The Supreme Court dismissed the appeal.

The District Court in Haarlem<sup>176</sup> declared criminal attempt proven, which consisted of the suspect saying to a victim in a forceful way: “You will be my whore and you can earn €300 to €500”.

171 Utrecht District Court, 6 August 2007, LJN: BB1186. See ook: Almelo District Court, 2 March 2007, unpublished.

172 The Hague District Court, 29 January 2008, LJN: BC2949.

173 See also §2.6.

174 Arnhem Appeal Court, 28 November 2006, LJN: AZ3374.

175 Supreme Court, 2 October 2001, LJN: AB2806.

176 Haarlem District Court, 9 May 2006, LJN: BD5491.

A successful prosecution at an earlier stage could have a preventive effect and provide the basis for development of case law. Filing an appeal is also important in that regard.

## II.6.2 Complicity

In 10 cases, complicity in human trafficking was the principal or alternative charge brought. In seven cases, the charges led to a full acquittal on the human trafficking offences charged. In two cases, the charges were declared proven and there was a conviction for this form of participation.

The acts of accommodating or sheltering, transporting and moving per se constitute the elements of the definition of the offence in Article 273f (1) (1). Contrast this with the situation of a driver in an armed robbery (Article 312 Dutch Criminal Code), for example, where the transport does not constitute an element of the offence. In assessing a charge based on Article 273f (1) (1), the stated acts must be assigned their own significance. The definition of the offence is met with the act of transporting or accommodating itself (naturally in addition to the existence of the means of coercion and intention). The legislature explicitly made these acts separate offences as human trafficking.

The *District Court in Middelburg*<sup>177</sup> acquitted on the charges of ‘human trafficking in concert’ and convicted on ‘complicity in human trafficking’. In this case, it found only the act of driving / transporting was proven and described this as complicity. Without seeing the case file, it is impossible to say anything more about the actual events and therefore about the cooperation between this suspect and the principal suspect. Nevertheless, it is possible to draw some conclusions from the grounds for sentencing: ‘The suspect acted, for remuneration, as a chauffeur driving to and from Antwerp with his cousin’s girlfriend, who was working in prostitution. The suspect gradually realised from telephone calls that this girlfriend had not freely made up her mind to perform that work, but she was induced to do it by his cousin. The suspect should consequently have decided not to act as an accomplice for his cousin any longer. The court blames him for nevertheless continuing with the transport. This made him an accomplice to human trafficking.’ The court decided in its finding for acquittal that complicity in human trafficking could not be declared proven simply because the suspect was entirely subordinate to his older cousin and ‘performed a non-essential role for the offence by acting as a driver and transporting the victim to and from Antwerp at times determined by the cousin’ (italics: BNRM). All in all, it is therefore still clear that in the court’s opinion this suspect, as an accomplice, transported a woman for six and a half months who, as the suspect in any case knew after some time, was forced into prostitution.

It was otherwise in a case in the District Court in Haarlem,<sup>178</sup> where the actions of transporting and accommodating per se were regarded as complicity.

<sup>177</sup> Middelburg District Court, 30 October 2007, unpublished.

<sup>178</sup> Haarlem District Court, 17 April 2007, unpublished.

One-fifth of the convicted offenders performed the role of ‘snorder’, the person who brings a victim to and from the workplace. Almost three-quarters of the convicted offenders performed the role of pimp. Half were involved in recruiting victims and 35% transported victims to the Netherlands from abroad. Roughly a quarter had to guard the victims and 5% of those convicted were operators of a sex business.<sup>179</sup>

On the different roles of offenders, see also §9.3.3.

## 11.7 Problems with evidence

### 11.7.1 Types of judgments

Some of the 108 analysed judgments were abridged judgments, with or without findings on the grounds for conviction or acquittal, some were abridged judgements with detailed evidence following the filing of an appeal, some were so-called Promis judgments (rendered as part of the Promis programme, which is designed to improve the explanation of grounds given by judges in criminal cases) and three judgments were rendered by a police court. The following tables gives an overview.

Table 11.10 Breakdown of analysed judgments in 2007

Type of judgment	N	%
Abridged judgments without further findings on grounds for conviction or acquittal	26	24%
Abridged judgments with further findings on the grounds for conviction or acquittal	47	44%
Abridged judgments with detailed explanation of evidence <sup>180</sup>	14	13%
Promis judgments	18	17%
Police court judgments	3	3%
<i>Total</i>	<i>108</i>	<i>100%</i>

Of the 29 judgments that contained no further findings on the grounds for conviction or acquittal or details of the evidence, there were 19 convictions (66%) and 10 acquittals (34%). Caution is required here in view of the fact that in the analysed judgments from 2007 the evidence was only fleshed out in 30% of the cases (abridged judgments with detailed evidence and Promis judgments).<sup>181</sup> Where the court’s finding did devote specific attention to problems with the evidence (79 judgments, or 70%), that information has been used. These 79 judgments led to 55 convictions for human trafficking (70% of the 79 judgments).

179 The various roles are mutually exclusive. It is a regular occurrence that an offender performs different roles in human trafficking.

180 Two of these judgments included an additional finding setting out the evidence.

181 N=32 – see the explanation of the research methods in Appendix 2.



## II.7.2 Reports of crime and statements by witnesses/victims

Victims of human trafficking can report this offence to the police and can make incriminating statements against defendants to the police and the examining magistrate. These reports and incriminating statements play an important role as evidence in human trafficking cases. However, in contrast to victims of other types of offence, victims of human trafficking are often still in one way or another under the influence of the alleged offenders during the investigation. Feelings of love or even anger often continue to linger for a long time, which creates problems for gathering evidence. There are victims who, for various reasons, will not report the crime or make an incriminating statement. Others will, but they often later retract them. These are common problems that judges in human trafficking cases have to deal with in practice.

*District Court in Utrecht*<sup>182</sup>

The court found that although there was legal evidence of forced prostitution, the court was not convinced. The decisive factor was that the victim had not reported the crime and had retracted earlier incriminating statements before the examining magistrate and at the hearing. The court devoted a general finding to this point:

“If the person who actually performed the work firmly insists that it was not involuntary and that it also did not occur under circumstances of which it could be said that the work was therefore performed under forced conditions, then, in the court’s opinion, it is not a situation in which criminal law can provide protection.”

Without going into the specific facts of this case, this finding is remarkable. Such a general finding (and obiter dictum) fails to recognise the problem surrounding reporting offences in human trafficking cases. The consent of a victim is not relevant when means of coercion are used. Even the victim who consents must receive protection under criminal law.

Table II.II Statements by victims

	Indictment N=108		Judicial finding of fact N=74	
	N	%	N	%
Report of the offence and/or incriminating statement	69	64%	55	74%
– of which at least a report of the offence	52	48%	39	53%
Exonerating statement	18	17%	7	9%
Incriminating and exonerating statement	16	15%	7	9%

Comparing the percentages in Table II.II, the impression is created that, as expected, reports of the offence and/or incriminating statements lead to more convictions in relative terms.

<sup>182</sup> Utrecht District Court, 18 April 2008, LJN: BC9917.

This was true in 64% of all judgments as well as 74% of all convictions. The opposite would then apply for exonerating statements (17% and 9%, respectively) or conflicting statements (15% and 9%, respectively).

It is evident in 69 (64%) of the 108 analysed judgments that a (presumed) victim reported the offence against the suspect and/or an incriminating statement about the suspect to the police and/or the examining magistrate.<sup>183</sup> Convictions were handed down in 55 (80%) of these 69 judgements. In 52 of the 69 judgments there was at least one or more reports of the offence by (presumed) victims, in 39 of which (75%) there was a conviction for human trafficking. Statements made by victims to the police or the examining magistrate exonerating suspects were mentioned in at least 18 judgments. Fewer than half of these involved convictions.<sup>184</sup>

In at least 16 judgments, there were both incriminating and exonerating statements by victims. These could have been from the same victims – who retracted an earlier report of the offence or an earlier incriminating statement – but it also occurs that different witnesses contradict each other in the same case. Fewer than half of these judgments resulted in convictions for human trafficking.<sup>185</sup>

The following section discusses the possible consequences of the court's decision on the reliability of the incriminating and exonerating statements made by witnesses or victims.

#### *Influencing of witnesses/victims*

It sometimes appears that statements by witnesses/victims have been influenced by suspects.

##### *District Court in Amsterdam*<sup>186</sup>

'Whereas the suspect would have us believe that the victims entered prostitution voluntarily, the court points out that these were young, vulnerable women who through his actions were in a position of dependency on him and that there is then no longer any question of 'voluntariness'. One thing and another even led one of the victims to be willing to make false statements under oath in order to exonerate the suspect.'

##### *District Court in Utrecht*<sup>187</sup>

'The suspect's lawyer has, in an attachment to a letter of 7 December 2006, sent the court a letter from the complainant to her father. At the hearing, the complainant stated that she had indeed written the letter. The letter says that she was not forced to work in prostitution. The complainant has stated that the suspect forced her to write the letter. Partly in view of everything stated above, the court finds this explanation by the complainant to be credible.'<sup>188</sup>

In this judgment, the court also stressed the victim's fear. The court described the impression that the victim had made: 'During the hearing the complainant also made a reliable and credible impression. The impression to emerge from the case file is of a victim, complainant, who was to-

183 Since there are no details of the evidence in a number of judgments, the numbers may actually be greater.

184 N=7=39%.

185 N=7=44%.

186 Amsterdam District Court, 21 December 2007, LJN: BC1037.

187 Utrecht District Court, 27 March 2007, unpublished.

188 This passage is included in the grounds for sentencing.

tally in thrall to the suspect and for whom the mere thought of the defendant was enough to cause great panic and total dismay. For example, various police officers who interviewed her stated that the complainant literally shook with fear during an interview as she described what had happened to her. The testimony of the complainant during the hearing confirmed this impression. The complainant was also very emotional and her body was shaking during the hearing.’

Four judgments also showed that witnesses/victims are threatened.

There was evidence of threats to witnesses/victims in the Sneep case. In the grounds for the sentencing of one of the suspects, the court found that the suspects were not averse to making threats, as clearly shown by threats to blow up the home of the family of the complainant (victim) with explosives or even to murder the complainant if she did not withdraw her report of the crime.<sup>189</sup>

On occasion, the public prosecution service says that there are more victims than those who reported a crime or otherwise made a statement at the time of the summons. Evidence is sometimes collected via wire taps or observation,<sup>190</sup> in which case the identity of some persons remains unknown. These persons are therefore not identified by name as victims in the indictment, which is sometimes inevitable in human trafficking cases. In a number of cases in 2007, however, the courts decided that the description of ‘these persons’, or ‘one or more (other) women’ in the indictment was not clear enough and those parts of the indictments were declared null and void.<sup>191</sup>

A problem of an entirely different order occurred in a case before the police court in Middelburg. Occasionally a person is summoned for making a false report of human trafficking. The police court in Middelburg acquitted a suspect of this in 2007.

*District Court in Middelburg*<sup>192</sup>

A woman was suspected of making two false reports. The public prosecutor regarded the first report of the offence as false because the suspect had failed to disclose the fact that she had been in Belgium for some time in the period from July to December 2005, and in any case on 11 September 2005 and for some time afterwards. The public prosecutor considered the second report to be false because the suspect stated that during the entire period from July 2005 to March 2007 she had been in the power of the man who abused her, although she could demonstrably have made a complaint and had been in an institution receiving help in December 2005.

In the view of the police court, the official record of the first report of the offence contained so many formal defects that it could not serve as evidence of the accuracy of any statement made by the suspect. There had been no professional interpreter, the complainant had not signed it, no reasons were given for the change in the subject matter of the report of the crime (as a result of which change the guidelines in the Instruction on investigation of and prosecuting of sexual abuse should have been followed and had not been), there was no second interview-

189 Almelo District Court, 11 July 2008, LJN: BD6957.

190 See §8.4.

191 Amsterdam District Court, 26 July 2007, unpublished and Almelo District Court, 2 March 2007, unpublished. This involves 5 (5%) of the 108 judgements in first instance in 2007.

192 Middelburg District Court, 3 April 2007, LJN: BA2128.

ing officer present, the questions asked were not recorded, the place of the offence was given as the police station, etc. Furthermore, the court described the content of the official report as so incomplete and inadequate as to have no significance as a truth-finding document. The suspect's statement that she had the feeling that she was not being taken seriously in making the complaint seemed to the police court to be an understatement. The suspect made a second report of the offence to another police force 18 months later. The public prosecution service felt it was plausible that this was also a false report, particularly because during the intake interview preceding the complaint, the suspect had not said that she had already reported the crime in Amsterdam in December 2005 and because the story about Belgium did not appear in the Amsterdam complaint. The public prosecutor accepted this conclusion and decided that the suspect should be arrested for making a false report.

The police magistrate found that this conclusion was premature, to say the least. There was no question of essential contradictions between the two complaints. The main points of the suspect's story matched in the two different reports (the man [name and alias], his external features, including a noticeable tattoo in the shape of a heart, the departure from Middelburg and stay in a house in or near The Hague, the rapes, the departure to Belgium and the stay in a brothel there, the return to the Netherlands and the stay in a house in Amsterdam). It is not unusual for gaps to appear in the recording of such interviews, as the expert witness explained at the hearing. These can be explained by the many fears, taboos and uncertainties, as well as the erratic sense of time, that victims of human trafficking usually suffer from.

In this case, the police court felt it was not incomprehensible that the suspect had not told the story about Belgium when making the complaint in Amsterdam, simply because so much emphasis was placed on the rapes (the official report starts with the phrase: 'I have just told you how I came to the Netherlands and now I want to tell you about the rape').

In the police court's opinion, the failure to refer to the earlier Amsterdam report in the first part of the second complaint was explained by the fact that the interview stopped with the stay in Belgium. The fact that the complaint was not raised during the intake interview had no decisive significance, according to the police court, because an intake interview cannot be equated with reporting a crime; furthermore, the intake interview only took two pages to describe a period of more than 18 months, during which the suspect had been in many different places, all of them strange to her. It is very possible that the suspect simply forgot to explain certain events or skipped them because she felt they were less important.

The police court therefore also found that it had not be legally or convincingly proven that the suspect intended to mislead the police when making the second report of the crime, and acquitted her.

### 11.7.3 Reliability of witness statements of (presumed) victims

A victim of human trafficking often experiences various psychological and physical problems as a result of the crime she has suffered. Psychological problems, in particular, including post-traumatic stress syndrome, can lead to a loss of recall about events. This has an influence on the witness statements made by presumed victims of human trafficking. In addition, for various reasons (such as shame, fear of reprisals and feelings of love for the human trafficker) victims are not always willing to make a statement.<sup>193</sup> The Instruction on human trafficking

193 Shreki (2009). For an extensive (quantitative) study see C. Zimmerman et al.: *Stolen Smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe, findings from a European study*, The London School of Hygiene & Tropical Medicine 2006.

includes guidelines on how the police and public prosecutors should treat presumed victims of human trafficking during interviews.<sup>194</sup> In this part of the case-law study, we investigated which factors played a role in the court's assessment of witness statements by victims. In 42 (39%) of the 108 judgments, the court commented favourably or negatively on the reliability of the witness statements that were used as evidence in the trial in its findings.

Professor R. Bullens (professor of forensic psychology and diagnostics) appeared as an expert witness in the Sneep mega case, in which role he assessed the reliability of the statements made by victims. He stated that in assessing the reliability of statements, he mainly considered the following:

- the victim's personality (in which possible personality disorders can play a role);
- the internal consistency of the statements made by a victim (where the degree of consistency within a single statement and between the different statements made by the same victim play a role); and
- the interview techniques employed (where the environment in which the statements are taken must be professional – the environment and the atmosphere during the interview and the attitude of the interviewers must be neutral – and the degree to which further questions are asked, particularly about inconsistencies, play a role).<sup>195</sup>

The first two factors that, according to Bullens, influence the reliability of victims' statements can also be found in the judgments in 2007 that were analysed by BNRM, but the appropriate interviewing techniques were not.

#### *Different factors in assessing the reliability of a witness statement*

The analysis of the 42 findings of guilt or innocence show that the courts took into account five different factors in assessing whether witness statements were reliable or not. The distribution of these five factors is shown in Table 11.12. The different factors are then described.

Table 11.12 *Factors in assessing reliability*

	Findings of guilt or innocence N=42	
	N	%
The presence/absence of supporting evidence	32	76%
The statement: degree of consistency	24	57%
The statement: level of detail	11	26%
The likelihood that a statement was true or false	9	21%
The personality of the witness	4	10%

<sup>194</sup> *Government Gazette* 2008, 253.

<sup>195</sup> BNRM report of a day of the hearing in the Sneep case, 9 June 2008.

1. *The presence/absence of supporting evidence*

In 32 judgments, the findings of the court included a mention of whether the statements by a victim were or were not supported by other evidence. In half of these judgments, the court specifically stated that the supporting evidence took the form of statements by other witnesses; in the other half, other supporting evidence sufficed. The presence of supporting evidence probably has a positive effect on the court's perception of the reliability of the statements, and the absence of supporting evidence and/or the presence of conflicting evidence probably has a negative effect on the court's perception of their reliability. In 21 judgments, the court stressed the existence of other evidence to support the witness statements.

2. *The statements: degree of consistency*

In 24 judgements, the court referred to the internal consistency<sup>196</sup> of the statements. For example, a court occasionally specifically mentioned the consistency or inconsistency of different statements by a victim. This probably has an impact on the judge's perception of the reliability of the statements.

In four cases, the court found that different statements made by the same victim were consistent as regards content.

In 13 judgments, the court in fact stressed that the statements made by the victim differed from each other, as in the following finding: 'Complainant B made an incriminating statement to the police, but watered down that statement on essential points, and partly retracted it, before the examining magistrate.'<sup>197</sup> In seven judgments, the court acknowledged that there were internal inconsistencies between the different statements of a presumed victim but found these inconsistencies to be explicable because, in these cases, the victims were under the influence of the suspects at the time they made the inconsistent, exculpatory statement. Several explanations given by the courts for inconsistent statements are 'fear of (reprisals by) the suspect', 'love/sympathy for the defendant' and 'a situation of dependency in which the victim finds herself', as found, for example, by the District Court in Arnhem.<sup>198</sup> It is noteworthy that the courts have sometimes sought their own explanation for the inconsistencies in statements, which suggests that in these cases, the court took into account the specific problems surrounding victim statements in human trafficking cases.

*District Court in Utrecht*<sup>199</sup>

'In the court's opinion, there are no inconsistencies that affect the reliability and prevent the use of the statements by the witness (name of witness) as evidence in court. Rather, in the later statements of (name of witness) there is only a seemingly forced denial of the earlier detailed report of the crime in 2005, in which the witness is unable to convincingly explain the reason for the later retraction and which persons other than the suspect were responsible for the

196 By internal consistency is meant that the statements by the same victim are in agreement. By external consistency is meant that the statements of different victims are in agreement.

197 Rotterdam District Court, 12 November 2007, unpublished.

198 Arnhem District Court, 12 December 2007, unpublished.

199 Utrecht District Court, 25 July 2007, LJN: BBo450.

events described by her in 2005. It was also noteworthy in this context that the later statements made by (name of witness) contained no new information.’

‘(...) the court feels that there is sufficient evidence that the witness was still in a similar position at the hearing’.

A striking aspect in this case is that in an official report of findings drawn up by the public prosecutor, she (the public prosecutor) stated that the witness must make a truthful statement at the hearing but that she would not arrest the suspect on a charge of perjury if she did not. The court found that this was undesirable since it ‘[is] essential for the criminal process, in which the finding of truth is central, that a witness testifying under oath must tell the truth and not be granted a certain degree of immunity in advance by the public prosecutor’. Nevertheless, the court understood that the public prosecutor wanted to ensure that this particular witness would appear at the hearing.

This was in fact the first case in which a so-called ‘scope official report’ was inserted in the case file, including a detailed description by Professor R. Bullens of the position in which victims of loverboys find themselves, a situation in which loverboys do not shun threats of violence, intense psychological pressure and playing on the feelings of guilt of usually vulnerable young women. The court therefore did not bring charges of perjury.<sup>200</sup>

### 3. *The statements: level of detail*

In 11 judgements, the court assigned value to the detailed nature of the statements made by the presumed victims. A statement can contain many details or only a few; which probably has an effect on the judge’s perception of the reliability of the statement. This factor was cited in a positive sense in 10 cases. In one case, it had a negative effect, precisely because there were no details.

### 4. *The likelihood that a statement is true or false*

In nine judgments, the courts found that it was not plausible that a witness statement made by a victim was false and regarded the statement as reliable. This assumption was based either on the lack of a motive to make a false statement, the fact that the statement was partially exculpatory or because it was not shown that the statement was made in exchange for a residence permit.

*District Court in Groningen*<sup>201</sup>

‘It appeared to the court that there was no motive to make a false statement, since the women were very fearful of make incriminating statements about the suspects and also seemed to have no further interest in disclosing all the information.’

<sup>200</sup> This seems to be an application of the *non-punishment* principle (see Chapter 6).

<sup>201</sup> Groningen District Court, 23 January 2007, LJN: AZ6816; LJN: AZ6818.



In five judgments in 2007, information emerged about the residence status of 19 victims.<sup>202</sup> In one of the few cases in which a court made a finding on the residence status of a victim, it did so in relation to the aspect of vulnerability:

*District Court in The Hague*<sup>203</sup>

'Although this is not explicitly shown by the case file, the court takes as its point of departure in assessing the status of the victims in this case that they were all living illegally in the Netherlands. The court reaches this conclusion on the basis partly of the repatriation of these victims to Bulgaria and partly the reference to the so-called B9 status. Their illegal status in the Netherlands greatly increased the vulnerability of victims' position.'

In two judgments<sup>204</sup> in 2007, the court rejected the argument by the defence that the victims had only reported the crime against the defendant to secure B9 status. In both cases, the court found that this argument was not supported by the facts and circumstances. From the defence's point of view, in particular, acquiring B9 status could be put forward as a motive for making a false statement with respect to the suspect. It is therefore interesting that only two judgments expressly commented on such a motive. This does not mean that the issue of the victim securing B9 status after reporting a crime of trafficking was not raised in a criminal case, but apparently it is not often used by the defence as an explicit ground for challenging the reliability of the statement. In none of the judgments did the court mention acquiring B9 status as an indication that a false statement had been made or as otherwise undermining the reliability of the statement made by the presumed victim. It is, in fact, seldom possible to conclude from the judgments whether a presumed victim secured B9 status or not.<sup>205</sup>

##### 5. *The personality of the witness*

In four judgements, the courts specifically addressed the impression that the witness had made. This impression can be overwhelmingly positive or negative, which would probably have a positive or negative impact on the judge's perception of the reliability of that person's statements. In the four cases in which the factor was mentioned, the finding was positive.

202 Haarlem District Court, 17 April 2007, unpublished: '(...) by taking these girls, without legal residence status, to the Netherlands ...' and Haarlem District Court, 4 September 2007, unpublished: 'The suspect abused the apparently deep desire of the smuggled persons to settle – temporarily or otherwise – in Europe, while this was not legally possible for them.'

203 The Hague The Hague, 20 April 2007, LJN: BA3472; LJN: BA3480; LJN: BA3485.

204 Arnhem District Court, 21 February 2007, unpublished and Arnhem District Court, 21 September 2007, unpublished.

205 Shreki, 2009.

*The reliability of a witness statement*

Together,<sup>206</sup> the five factors described above provide a benchmark for the reliability the courts have attached to witness statements in their judgments. This section looks for a possible correlation between findings about the general reliability of witness statements and the resulting convictions or acquittals.

Table 11.13 Average score on reliability in relation to conviction for human trafficking

	Full acquittal for human trafficking	Conviction for human trafficking
Average score on reliability <sup>207**</sup>	-1.18 <sup>208</sup>	1.45 <sup>209</sup>

N=42

\*\*p<0.01

Table 11.13 shows that the average score for reliability in the judgments<sup>210</sup> leading to a conviction for human trafficking was significantly higher than the score for reliability in the judgments that led to a full acquittal on charges for human trafficking offences. This means that the more reliable a judge feels witness statements are, the greater the chance is of a conviction for one or more human trafficking offences.

Strikingly, of the 33 acquittals (in 25 of which findings on the evidence were included), only four explicitly mentioned that a statement by a witness should be dismissed as unreliable. In the other acquittals, part of the reason for acquittal was to be found in the victims' statements (such as the fact that the victim withdrew the report of the crime or denied being exploited, or the statement was not supported by other evidence).<sup>211</sup> Part of the explanation for the acquittals lay in the interpretation of Article 273f Dutch Criminal Code.

206 A factor that is expected to have had a positive influence on the perception of reliability is coded +1; a factor that is expected to have had a negative influence on this perception is coded -1; and a factor that is not mentioned in a judgment is coded 0. The factors are added together and form a scale variable that shows the court's perception of the reliability. Cronbach's alpha: 0.51. A score of +5 means that the court felt the witness statements were very reliable and a score of -5 means the court regarded the witness statements as very unreliable. The average reliability score for the 42 judgments is 0.76 (SD: 1.68) with a minimum of -2 and a maximum of 4.

207  $t=4.68$ ;  $df=12,13$ ;  $p=0.00$ .

208 SD and N are 1.78 and 11 respectively.

209 SD and N are 0.96 and 31 respectively.

210 In which the findings referred to the reliability of the witness statements in a positive or negative sense.

211 Which factors did play a role in the final decision on the reliability of a statement.

## 11.8 Victims

Table 11.14 Number of victims

	Indictments		Convictions		Acquittals	
	N	%	N	%	N	%
Number of judgments	108	100%	74	69%	34	31%
Number of victims	257	100%	174	68%	83	32%

The 108 judgments in 2007 that were studied involved a total of 257 (presumed) victims.<sup>212</sup> Because it is possible that the same person appears as a victim in different charges against different suspects, the victims are not, by definition, 257 different persons. The total number of victims that are ultimately mentioned in the convictions is 174. This means that in 83 cases (32%), a victim was identified as such by the public prosecution service but there was no conviction on the human trafficking offence with respect to that person. This figure corresponds almost precisely with the percentage of acquittals for human trafficking (31%). These figures also do not necessarily involve 174 or 83 different persons.

Table 11.15 Average number of victims

	Average	Minimum	Maximum
Number of victims per indictment	2.4 <sup>213</sup>	1	14
Number of recognised victims per conviction	2.4 <sup>214</sup>	1	14

On average, there were 2.4 victims in each case that was brought and 2.4 victims in each conviction for human trafficking. In both the indictments and the convictions that were studied, there was a minimum of one victim and a maximum of 14.

### 11.8.1 Personal characteristics

Table 11.16 shows that the vast majority of all presumed and recognised victims were woman. The gender of five of the presumed and two of the recognised victims was unknown. At least 34 victims were underage (younger than 18) and at least 12 were under the age of 16. However, the date of birth is only included for 91 of the presumed and 68 of the recognised victims in the judgments. It is suspected that this was done mainly if a victim was underage or had just

<sup>212</sup> These figures cannot be compared with the figures from CoMensha concerning victims in 2007 as presented in Chapter 4. CoMensha registers the victims reported to it without this necessarily that there has been an investigation or prosecution for human trafficking relating to them.

<sup>213</sup> SD=2.2; N=108.

<sup>214</sup> SD=2.4; N=74.

reached adulthood. The youngest victim mentioned in a judgment with a date of birth was 11 at the time of the offence and the oldest victim was 31. They were both found to be victims.

Table 11.16 Personal characteristics of victims

		Presumed victims <sup>215</sup>		Recognised victims <sup>216</sup>	
		N	%	N	%
Gender	Male	8	3%	5	3%
	Female	244	95%	167	96%
	Unknown	5	2%	2	1%
	<i>Total</i>	257	100%	174	100%
Age	Younger than 16	12	5%	7	4%
	Between 16 and 18	22	9%	13	7%
	Between 18 and 21	33	13%	26	15%
	21 and older	24	9%	22	13%
	Unknown	166	65%	106	61%
	<i>Total</i>	257	100%	174	100%

The case relating to the 11-year-old victim is atypical.<sup>217</sup> The suspect in this case was a paedophile with a personality disorder who was accused both of indecency with a number of young boys and the exploitation of two boys aged 11 and 14 respectively. The suspect was sentenced to two years in prison with a hospital order for compulsory psychiatric treatment.

## 11.8.2 Specific characteristics of the offence

### *Place of forced work*

Most cases in 2007, according to the 74 judgments in which suspects were convicted of human trafficking, involved forced employment in the sex industry in the Netherlands. In at least five cases, a victim was also forced to perform work abroad. Three cases involved forced prostitution in the Netherlands and abroad. In two cases, victims were recruited in the Netherlands and put to work in Antwerp in Belgium.

<sup>215</sup> N=257.

<sup>216</sup> N=174.

<sup>217</sup> Den Bosch District Court, 28 November 2007, unpublished.

Table 11.17 Duration of the offence and forced work

	Indictment			Conviction		
	Average	Minimum	Maximum	Average	Minimum	Maximum
Duration of the offence in days	389 <sup>218</sup>	1	4,343	308 <sup>219</sup>	1	3,247

*District Court in Den Bosch*<sup>220</sup>

The District Court in Den Bosch ruled in a case where the suspect was accused of exploiting a woman in prostitution from 1 January 1995 to 22 November 2006, almost 12 years. The court found that the victim worked voluntarily in prostitution in the period from 1 January 1995 to 1 January 1998 and acquitted on the charge of exploitation in that period. The court also found that although the victim was in love with the suspect, was significantly younger and had little experience of life, there was insufficient evidence that she was under the influence of the suspect to such an extent that she had no free choice in working in prostitution, partly because the victim also declared that although it was at the suspect's request, she had chosen voluntarily for prostitution.<sup>221</sup> She was in love and wanted to earn money to enable the suspect to pay off his debts, said the court. But after 1 January 1998, according to the court, there was coercion and the period for which the suspect was convicted was slightly less than *nine years*, during which the suspect had violently exploited the victim. The prosecution had demanded five years' imprisonment. The court found a shorter (but still extremely long) period of exploitation to have been proved and imposed a 36-month prison sentence, with six months conditional.<sup>222</sup>

**11.8.3 Non-punishment principle and repeated victim status***Non-punishment principle*

Two judgments found that a victim personally committed criminal offences under the influence or coercion of the suspect. These offences involved being an accessory to human trafficking and an accessory to rape.

*Repeated victim status*

There was at least one case in 2007 in which a person had repeatedly been a victim. The judgment of the District Court in Utrecht<sup>223</sup> shows that in the period from 1 May 2003 to 31 October 2003, the victim was forced to prostitute herself, then fled and stayed in a shelter for battered women, whereupon she again fell into the hands of the same suspect and again allowed herself to be prostituted from 1 January 2005 to 13 September 2006. Only then did

218 SD=575.2; N=100 (this is unknown for 8 judgments).

219 SD=518.6; N=74.

220 Den Bosch District Court, 25 September 2007, LJN: BB4477.

221 On free choice in relation to means of coercion, see the section headed 'abuse of a vulnerable position, authority arising from the actual state of affairs and deception' in §11.3.4.

222 The duration of the offence could play a role in the sentence.

223 Utrecht District Court, 27 March 2007, unpublished.

she make a complaint. The suspect was charged for both periods, but was not convicted for the first period.

## II.9 Sentences and grounds for sentencing

### II.9.1 Nature of the sentences demanded and imposed

#### *The sentences demanded*

Table II.18 shows that prison sentences were demanded in 96 (89%) of the 108 judgments analysed; in 94 of the cases, a wholly or partially suspended sentence was demanded. The prison sentences were demanded in combination with community service four times, in combination with a supplementary sentence (a confiscation order) seven times, and in combination with a non-punitive order 10 times (the confiscation of seized goods seven times and hospital orders three times). As far as is known, in no case was a community service order or a fine the heaviest punishment demanded by the public prosecution service.<sup>224</sup> On one occasion, the public prosecution service did demand full acquittal<sup>225</sup> on all charges; the defendant was acquitted in that case.

Table II.18 Sentences and non-punitive orders demanded

Principal sentence demanded			In combination with demand for:							
			Community service		Fine		Supplementary sentence		Non-punitive order	
	N	%	N	%	N	%	N	%	N	%
Unconditional prison sentence	65	60%	–	–	–	–	6	6%	6	6%
Partially suspended prison sentence	29	27%	2	2%	–	–	1	1%	4	4%
Suspended prison sentence	2	2%	2	2%	–	–	–	–	–	–
Community service	–	–	–	–	–	–	–	–	–	–
Fine	–	–	–	–	–	–	–	–	–	–
Acquittal	1	1%								
Unknown <sup>226</sup>	11	10%	–	–	–	–	–	–	–	–
<i>Total</i>	108	100%	4	4%	–	–	7	6% <sup>227</sup>	10	9% <sup>228</sup>

224 In 2008, this occurred at least once. The public prosecutor first offered an out-of-court settlement of 110 hours. Zwolle-Lelystad District Court, 27 November 2008, LJN: BG5957 (see also §11.9.4).

225 Amsterdam District Court, 7 September 2007, unpublished.

226 The sentence demanded by the public prosecution was not included in a number of judgements.

227 This is not equal to the sum of the individual percentages in this column because the individual percentages are rounded off.

228 This is not equal to the sum of the individual percentages in this column because the individual percentages are rounded off.

*The sentences imposed*

Table 11.19 shows that prison sentences were imposed in 72 (97%) of the 74 convictions, 70 of which were wholly or partially unsuspended. The prison sentences were imposed in combination with community service eight times, in combination with a supplementary sentence (a confiscation order) twice and in combination with a non-punitive order five times (confiscation of seized goods four times and a hospital order once). The heaviest sentence in one case was community service and in one case a fine. As regards the 35 sentences in which a (partially) *suspended* prison sentence was imposed, both general and special conditions were imposed during the probation period on nine occasions. The special conditions related to following the instructions and directions of the Probation Service in three cases and a ban on establishing contact with the victim in three cases.

Table 11.19 Sentences and non-punitive orders<sup>229</sup>

Principal sentences imposed	In combination with:									
	Community service		Fine		Supplementary sentence		Non-punitive order			
	N	%	N	%	N	%	N	%	N	%
Unconditional prison sentence	37	50%	–	–	–	–	2	3%	2	3%
Partially suspended prison sentence	33	45%	7	9%	–	–	–	–	3	4%
Suspended prison sentence	2	3%	1	1%	–	–	–	–	–	–
Community service	1	1%	–	–	–	–	–	–	–	–
Fine	1	1%	–	–	–	–	–	–	–	–
<i>Total</i>	74	100%	8	11% <sup>230</sup>	–	–	2	3%	5	7%

229 The figures in this table differ to a limited extent from Table 10.10, which come from the public prosecution service’s data. For example, one judgment is not included in the public prosecution service’s data, so the total number of convictions for human trafficking is 73 rather than 74 (this was the judgment rendered by the Groningen District Court on 3 April 2007 – unpublished). This also explains the difference between the figures of 69 (public prosecution service’s data) and 70 (BNRM study) for the (partially) unconditional prison sentences imposed. In addition, there is a discrepancy as regards the community service sentences (public prosecution service data=2, BNRM study=1) and fines (public prosecution service data=1, BNRM study=1). In the case of Haarlem District Court (7 December 2007, unpublished), only a fine was imposed for the offence of human trafficking and not a community service sentence. This is a judgment by the police court, which does not show whether the case involved unqualified or aggravated human trafficking, so that this inaccuracy in Table 10.10 could not be corrected.

230 This is not equal to the sum of the individual percentages in this column because the individual percentages have been rounded off.



### II.9.2 Differences between the sentences demanded and imposed

In the 74 convictions in 2007, the court usually imposed a lighter sentence than was demanded. This was probably due largely to the fact that the charges on which the public prosecution service's demand was based were not all declared proven. In five judgments, the court imposed a heavier sentence than the public prosecution service had demanded, and in 14 judgments the court imposed the sentence demanded. The most striking judgment (in which the court imposed a higher sentence than the public prosecution service had demanded) was the judgment of the District Court in Haarlem,<sup>231</sup> in which 12 months' imprisonment (with four months suspended) was demanded and the court imposed a sentence of 36 months, with 12 months suspended. The court found that the punishment demanded by the public prosecution service totally failed to reflect the seriousness of the offences. This case involved two young victims aged 17 and younger than 16, whom the suspect had brought from Germany and then forced to work in prostitution and exploited for three months in the Netherlands. Although the public prosecutor did not explicitly bring charges under Article 273f (3) (2) Dutch Criminal Code,<sup>232</sup> that is how they were treated by the court.

Table 11.20 Differences in sentences imposed and sentences demanded

Differences in sentences imposed and sentences demanded	N	%
Lighter	52	70%
Heavier	5	7%
Equal	14	19%
Unknown <sup>233</sup>	3	4%
Total	74	100%

In the 70 cases that led to a conviction for human trafficking, in which a (partially) unsuspended prison sentence was demanded, the average unconditional prison sentence demanded was 30.2 months, ranging from 0.25 to a maximum of 144 months.

In 2007, if a (partially) unsuspended prison sentence was imposed in first instance, the average unconditional prison sentence was 20.6 months, ranging from 0.10 to a maximum of 144 months.

231 Haarlem District Court, 17 April 2007, unpublished.

232 The aggravating circumstance that the victim is younger than 16.

233 The sentence demanded by the public prosecutor is not included in some judgments, so that the difference between it and the sentence imposed is also not known – these were the three judgments of the police court.

Table 11.21 Average prison sentences demanded and imposed

	Average	Minimum	Maximum
Unconditional prison sentence demanded (in months)	30.2 <sup>234</sup>	0.25	144
Unconditional prison sentence imposed (in months)	20.6 <sup>235</sup>	0.10	144

The district court in Utrecht<sup>236</sup> imposed the highest prison sentence of 12 years.<sup>237</sup> In that case, the violence and exploitation had lasted around four and a half years in relation to one victim (victim A). There were two other victims. The judgment corresponded with the demand, although the court found that one offence had not been proven and the sentence therefore in fact exceeded the demand. In the grounds for the sentencing, the court referred to a humiliating situation of exploitation and excessive violence. Another point of attention was that the suspect did not appear at the hearing (suspect had been released). The evidence also showed that the first victim was forced to have an abortion when she was five months pregnant. This was not taken into account as an aggravating circumstance. The suspect appealed and the court of appeal<sup>238</sup> acquitted him on a number of elements. The court of appeal broke down the sentence by victim and found five years to be appropriate for the exploitation and serious violence against victim A. Consequently, the full sentence came to six years and 11 months.

Both the court of appeal and the district court mentioned the manipulative, deceptive lover-boy technique, the dependency, the excessive violence and the lack of respect, as well as the serious consequences for the victim. The court of appeal also mentioned another fact that was taken into account in the suspect's favour, which was that the proven attempted manslaughter was a light variant that caused no lasting physical injury.<sup>239</sup>

The district court in Middelburg<sup>240</sup> imposed the lightest sentence in 2007. For complicity (see also §11.6.2) over a period of six and a half months with respect to one victim, the district court sentenced a 23-year-old suspect to 90 days in prison (of which 83 were suspended) and 60 hours of community service. In addition to the partially suspended prison sentence, the public prosecution service had demanded 240 hours of community service. The suspect in this case was also not in preventive custody at the time of the trial.

234 SD=25.5; N=70 (in three cases the sentence demanded is not known (police court judgments), and in one case only a suspended prison sentence was demanded).

235 SD=19.0; N=70 (an entirely suspended prison sentence was imposed twice, and in two cases no prison sentence at all was imposed (community service and fine)).

236 Utrecht District Court, 25 July 2007, LJN: BBo450, also discussed in §11.5.3 and §11.7.3 and elsewhere.

237 For a description of the case, see §11.5.3.

238 Amsterdam Court of Appeal, 5 February 2009, LJN: BH 2476.

239 For a description of the violence declared proven (also by the court of appeal), see §11.5.3.

240 Middelburg District Court, 31 October 2007, unpublished.

### II.9.3 Sentences

Given the small number of cases in which a form of punishment other than an unconditional prison sentence was demanded or imposed and given the small number of cases in which only a suspended prison sentence was demanded or imposed, this section only reviews the relationships between the relevant variables and the *unconditional prison sentences* that were demanded and imposed in the judgments that included a conviction for human trafficking. This section first describes a number of factors that are expected to influence the sentence imposed and then explores possible connections.

#### *Factors influencing sentences*

*Sexual violence*: this covers all situations in which the suspect has used sexual violence. This involves rape and/or other sexual violence, as separately proven offences or as an element (means of coercion) of human trafficking. Examples of ‘other sexual violence’ would include sexual abuse of a minor, sexual relations with a person under the age of 16 and indecent assault. The sexual violence can also be aimed at a person other than the victim of the offence of human trafficking.

*(Brute) force*: this covers all cases in which the suspect used physical non-sexual violence. Physical non-sexual violence against the victim and/or third parties both as separate offences or as an element (means of coercion) of human trafficking fall under this factor. Examples of physical violence include gross maltreatment and simple assault.<sup>241</sup>

*Deception (‘loverboys’ method)*: This covers all cases in which the suspect deceived the victim in connection with a relationship or a future together.<sup>242</sup>

*Age of victim*: in this context, we studied the age of the youngest victim in each judgment and made a distinction between victims younger than 16, victims between the ages of 16 and 18, victims between the ages of 18 and 21 (barely adults) and victims aged 21 and older (adults).<sup>243</sup>

*Number of victims*: the number of victims of human trafficking in each judgment.<sup>244</sup>

*Duration of the offence*: this is the number of days of the longest human trafficking offence declared proven in each judgment.

*Recidivism*: was there any form of recidivism.<sup>245</sup>

<sup>241</sup> (Brute) force also has to be seen in relation to the human trafficking offence, which means it is less important whether this violence was also used against the victim of human trafficking.

<sup>242</sup> This category can also cover foreign victims who are not deceived by a human trafficker about a relationship or a future together (‘loverboy’) but by an appealing story about a bright future in the Netherlands.

<sup>243</sup> These are the youngest victims in the 74 judgments involving convictions for human trafficking. It is possible that the status as victim was not established for all these victims. That would be the case if the human trafficking offences that were charged were not all declared proven and the youngest victim was related to one of the human trafficking offences on which the court acquitted.

<sup>244</sup> In other words, victims of other offences declared proven are not counted here.

<sup>245</sup> This could be previous human trafficking offences (four times), violent offences (ten times), offences against public decency (twice), offences against property (four times), drugs offences (once) and other offences

The average unconditional prison sentence imposed was 19.50 months,<sup>246</sup> with the shortest sentence being less than one month and the longest sentence 144 months.<sup>247</sup>

Table 11.22 shows the distribution of the unconditional part of the prison sentences imposed.

*Table 11.22 Frequency distribution of the unconditional prison sentences imposed*

Unconditional prison sentence	N	%
0 to 12 months	27	37%
13 to 24 months	31	42%
More than 2 years	16	22%
<i>Total</i>	74	100%

In only three of the 16 judgments in which an unconditional prison sentence of more than two years was imposed were there sentences of longer than four years. Tables 11.23 to 11.25 show the correlations between the seven factors described above and the unconditional prison sentences imposed. As Table 11.23 shows, there is a significant correlation between a conviction for sexual violence and the sentence imposed. It can be stated that if a form of sexual violence is found to have been proven, the unconditional prison sentence imposed is higher. This positive correlation with the sentence also seems to exist where there was physical non-sexual violence, and is, in fact, very significant. The finding that the loverboy method (deception in connection with a relationship/a future together) was used shows no significant relationship with the sentence imposed,<sup>248</sup> nor does the presence of any form of recidivism. The latter is particularly noteworthy, since the presence or absence of any form of recidivism is almost always mentioned by the court in the grounds for sentencing as an aggravating or mitigating circumstance.

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(twelve times). In all, 25 (34%) of the 74 (100%) convicted human traffickers were repeat offenders in one way or another.

246 SD and N are 19.10 and 74 respectively – NB: This average differs slightly from the average mentioned earlier – see Table 11.21. The explanation for this is that the four judgments in which no unconditional prison sentence was imposed are also included here (in two cases the prison sentences were entirely suspended and in two cases there was no prison sentence). However, these four cases of 0 months do say something about the sentences and so they are included here.

247 The 74 convictions for human trafficking include 31 cases where a suspect was simultaneously convicted of another offence. Obviously, these other offences have an impact on the sentence.

248 This form of deception is apparently only regarded as a method that is used.

Table 11.23 Correlation between means of coercion, deception technique and recidivism and sentence

Means of coercion	0-12 months		13-24 months		More than 2 years		Total number of judgments	
	N	%	N	%	N	%	N	%
Sexual violence <sup>249*</sup>	2	12%	9	53%	6	35%	17	100%
Brute force <sup>250**</sup>	4	13%	16	52%	11	36%	31	100% <sup>251</sup>
Deception by loverboys <sup>252</sup>	7	32%	6	27%	9	41%	22	100%
Recidivism <sup>253</sup>	7	28%	9	36%	9	36%	25	100%

N=74

\*p&lt;0.05; \*\*p&lt;0.01

Table 11.24 Correlation between age of youngest victim and sentence

Age of youngest victim	0-12 Months		13-24 months		More than 2 years		Total number of judgments	
	N	%	N	%	N	%	N	%
Younger than 16	2	29%	2	29%	3	43%	7	100% <sup>254</sup>
Between 16 and 18	3	27%	6	55%	2	18%	11	100%
Between 18 and 21	5	71%	2	29%	–	–	7	100%
21 and older <sup>255</sup>	17	35%	21	43%	11	22%	49	100%
<i>Total</i>	27	37%	31	42%	16	22%	74	100%

N=74

\*p&lt;0.05; \*\*p&lt;0.01

Table 11.24 shows that 18 of the 74 convictions involved at least one underage victim. There seems to be no significant correlation between the ages of the victims and the sentence imposed. This is noteworthy, especially since a conviction for an offence involving a victim younger than 16 is an aggravating circumstance.<sup>256</sup> However, the table does give the impression that sentences in the highest category of ‘more than two years’ are imposed relatively

249 U=308.00; p=0.02.

250 U=353.50; p=0.00.

251 This is not the same as the sum of the individual percentages in this row because the individual percentages have been rounded off.

252 U=442.50; p=0.10.

253 U=466.50; p=0.07.

254 This is not the same as sum of of the individual percentages in this row because the individual percentages have been rounded off.

255 As already mentioned in §11.8.1, it is assumed that if a victim is underage or just over the age of maturity (between the ages of 18 and 21) this is specifically stated in the judgment, and if a victim is aged 21 or older it is not relevant to mention it. Consequently, this category also includes all unknown data.

256 As is discussed in §11.5.2, this aggravating circumstance is often not charged or declared proven.

more often in the category 'younger than 16' than in the other age categories, although this result is not significant.<sup>257</sup>

Table 11.25 Correlation between the other factors and sentence

	0-12 months	13-24 months	More than 2 years	Total number of judgments
Average number of proven victims per judgment <sup>258*</sup>	1.41 <sup>259</sup>	3.29 <sup>260</sup>	2.13 <sup>261</sup>	2.35 <sup>262</sup>
Average duration of offence in days <sup>263**</sup>	78.89 <sup>264</sup>	242.10 <sup>265</sup>	823.63 <sup>266</sup>	308.28 <sup>267</sup>

N=74

\*p<0.05; \*\*p<0.01

Table 11.25 shows that a larger number of victims declared proven in a judgement coincides with a significantly higher unconditional prison sentence. There is a very significant correlation between the proven duration of the human trafficking offence and the sentence. In other words, the longer the offence continued, the higher the unconditional prison sentence that was imposed.

### Conclusion

The factors that have a significant positive correlation with the unconditional prison sentences imposed are, as expected, the use of sexual violence, the use of (brute) force, a larger number of victims and longer duration of the human trafficking offence. Contrary to what one would expect, there is no significant correlation between the sentence imposed and the presence of any form of recidivism or the younger age of the victims.

### 11.9.4 Orientation points

To achieve the greatest possible consistency in sentencing, orientation points (or sentencing guidelines) have been drawn up for various offences. Providing guidance for the courts, national orientation points are adopted at the meetings of the presidents of the criminal law divisions of the district courts and appeal courts (LOVS), after extensive consultation within

257 As mentioned earlier, some of these victims may not be recognised by the court as victims. In addition to the unequal distribution among the various age categories, this may partially explain why there is no correlation between the ages of victims and the sentences imposed.

258  $F=5.14$ ;  $df=2$ ;  $p=0.01$ .

259 SD and N are 0.84 and 27 respectively.

260 SD and N are 3.22 and 31 respectively.

261 SD and N are 1.46 and 16 respectively.

262 SD and N 2.38 and 74 respectively.

263  $F=14.90$ ;  $df=2$ ;  $p=0.00$ .

264 SD and N 70.71 and 27 respectively.

265 SD and N 241.39 and 31 respectively.

266 SD and N 892.67 and 16 respectively.

267 SD and N 518.65 and 74 respectively.

the courts. There are no orientation points for human trafficking at the moment, but it is clear from the following grounds for sentencing that these would fulfil a need.<sup>268</sup>

*District Court in Almelo (Sneep)*<sup>269</sup>

‘The court has looked at convictions by other courts in the country in an attempt to find similarities with the facts and circumstances as they occurred in this case. Taking all this into account, the court in this case has taken as its point of departure an unconditional prison sentence of eight to ten months per victim, which minimum sentence is increased by the court if there was serious violence used against this victim. In addition, the court considered the length of the period in which the offences occurred as an aggravating or mitigating circumstance. The court has also taken into account whether there was rape, forced breast enlargement, or abortion as a statutory ground for increasing the sentence, the role that the suspect played in the events and possible recidivism. The courts has also adopted as the point of departure for participation in the criminal organisation a prison sentence of 12 months, and a prison sentence of 24 months for the suspects that played a leading role in it.’<sup>270</sup>

In these cases,<sup>271</sup> for example, the court imposed a prison sentence of eight months for being an accessory to human trafficking – Article 273f (1) (1), (3), (4), (6) and (9) Dutch Criminal Code. The court found that only one woman was involved, for a ‘relatively short’ period, with no use of serious violence. The duration of the exploitation was found to be nine months. Whether this is a relatively short period naturally depends on what it is compared with. It is not likely that the victim found this period – 270 days, six days a week – as relatively short. The District Court in Utrecht<sup>272</sup> also stated that in sentencing it referred to the sentences for similar offences and imposed a 15-month prison sentence for a period of five days of forced prostitution of one victim.

The District Court in Amsterdam<sup>273</sup> also looked for orientation points in the sentencing and referred in that context to an earlier judgment of its own,<sup>274</sup> and then explained why it was also departing from it slightly.

The maximum sentence for rape is 12 years’ imprisonment and the orientation point is 24 months. The potential sentence for rape is higher than for unqualified human trafficking, for which the maximum sentence is eight years since 1 July 2009. Rape is regularly used as a means of coercion in human trafficking.

<sup>268</sup> Story (2009).

<sup>269</sup> Almelo District Court, 11 July 2008, LJN: BD6957; LJN: 6960; LJN: BD6965; LJN: BD6969; LJN: BD6972 and LJN: BD6974 (Sneep).

<sup>270</sup> How Almelo District Court regarded the decisions of other courts is not apparent from these grounds for sentencing.

<sup>271</sup> Almelo District Court, 11 July 2008, LJN: BD6969.

<sup>272</sup> Utrecht District Court, 16 July 2007, LJN: BJ3128.

<sup>273</sup> Amsterdam District Court, 9 June 2009, LJN: BI6950.

<sup>274</sup> Amsterdam District Court, 21 February 2008, LJN: BC8624, in which reference is made to other judgments.



In this context, the District Court in Almelo<sup>275</sup> found that offenders usually first have sexual contact with the woman, but this contact seems to be mainly intended to decide whether the victim is suitable for prostitution and also to break down her resistance to that work and to reduce any feelings of self-worth she might still have, whereupon she can then be brought into prostitution.

In four of the analysed judgements from 2007, rape was found to have been used as a means of coercion for human trafficking; in one judgement, rape was not only declared proven as a means of coercion but also as a separate offence<sup>276</sup> and in three cases there was only a conviction for rape as a separate offence. In one of these three cases, there was an acquittal on the charge of human trafficking. Table 11.26 provides some insight into the sentencing in these judgments.

*Table 11.26 Sentences in human trafficking cases connected with rape*

	<b>Judgment</b>	<b>Unconditional prison sentence in months</b>
Rape both as means of coercion in human trafficking and as a separate offence	Utrecht District Court <sup>277</sup>	144.00
Rape as a separate offence in addition to conviction for human trafficking	Den Bosch District Court <sup>278</sup>	16.40
	Arnhem District Court <sup>279</sup>	42.00
Rape as means of coercion in human trafficking	Amsterdam District Court <sup>280</sup>	24.00
	Amsterdam District Court <sup>281</sup>	15.00
	Amsterdam District Court <sup>282</sup>	18.00
	Utrecht District Court <sup>283</sup>	30.00
Rape as a separate offence in addition to acquittal for human trafficking	Leeuwarden District Court <sup>284</sup>	60.00

The relatively light sentences in the judgment of the Den Bosch District Court (2 March 2007) and the relatively high sentence in the judgment of the Leeuwarden District Court (18 October 2007) are noteworthy. The case in Den Bosch involved two young women of 17 and 18 who were brought to stay with the defendant by U, who wanted to turn the suspect's

275 Almelo District Court, 2 March 2007, unpublished.

276 These are two rapes of two different victims, Utrecht District Court, 25 July 2007, LJN: BB0450.

277 Utrecht District Court, 25 July 2007, LJN: BB0450.

278 Den Bosch District Court, 2 March 2007, unpublished.

279 Arnhem District Court, 12 December 2007, unpublished.

280 Amsterdam District Court, 15 February 2007, unpublished.

281 Amsterdam District Court, 15 February 2007, unpublished.

282 Amsterdam District Court, 15 February 2007, unpublished.

283 Utrecht District Court, 27 March 2007, unpublished.

284 Leeuwarden District Court, 18 October 2007, unpublished.

home into a sort of brothel. In exchange, the suspect could have free sex with the two girls. In this case, there were convictions for human trafficking, human trafficking with respect to a victim who has not yet reached the age of 18 and one count of rape of the first victim. There was no violence, but there was coercion arising from the actual state of affairs, and the offences took place over a period of a week. The demand was four years in prison. The court mitigated the sentence because of the suspect's subordinate role and his openness towards the police, and imposed a prison sentence of 672 days, 180 days of which were suspended. The case in the District Court in Leeuwarden involved a former Chinese unaccompanied underage asylum seeker who had exhausted his asylum procedure. The suspect was accused of repeatedly raping the victim and inducing him to make himself available for prostitution, in concert, during a period of four and a half months. The public prosecutor demanded a prison sentence of eight years. The court acquitted the suspect of the human trafficking, but convicted him for the rape. Some violence was used and there was specific recidivism. The sentence was five years.

Some additional examples of sentencing are given below.

*District Court in The Hague*<sup>285</sup>

There was one victim, the exploitation lasted nine years and there was bizarre and excessive violence and permanent physical injury. The demand was three years in prison and a hospital order with mandatory psychiatric treatment; the sentence was five years in prison.

*District Court in The Hague*<sup>286</sup>

There were nine offences in all, including three counts of human trafficking with respect to three different victims and five counts of violent offences. In one of the human trafficking offences, rape was included as a means of coercion. The periods of exploitation were five months, and three and two weeks, respectively. The demand was four years in prison, with one year suspended, and the special condition of receiving aggression management therapy. The sentence was the same.

*District Court in Zwolle-Lelystad*<sup>287</sup>

The court convicted of five offences against one victim, who was 15 years of age, including (in addition to human trafficking), a violent gang rape. The exploitation lasted 15 months. The demand was seven years; the sentence was 40 months in prison.

*District Court in Amsterdam*<sup>288</sup>

There were two victims, each exploited in prostitution for almost two –and a half years, in which serious threats were made, including the use of a pistol and kicking one of the victims on the body. The demand was four years in prison, but the court found that four years was too much since the victims were not also made dependent on drugs.

285 The Hague District Court, 23 January 2008, LJN: BC2583.

286 The Hague District Court, 13 March 2009, LJN: BH3317.

287 Zwolle-Lelystad District Court, 27 January 2009, LJN: BH3317.

288 Amsterdam District Court, 21 December 2007, LJN: BC1037.

*District Court in The Hague*<sup>289</sup>

One woman was locked up and illegally deprived of her liberty. The suspect was also convicted for trying to recruit this woman and another woman for the purpose of exploitation in prostitution. Four years was demanded and the sentence was three years. The suspect had been sentenced to three years in prison for human trafficking not long before.

*District Court in Utrecht*<sup>290</sup>

The court found that for eighteen months a slightly mentally impaired girl had been exploited in the escort sector by a couple. She had to have unprotected sex and was advertised as such. The unprotected sex was declared proven as an attempt to cause grievous bodily harm. The public prosecutor demanded a four-year prison sentence and the court imposed three years with a reference to what was normally imposed in this type of case.

*District Court in Zwolle-Lelystad*<sup>291</sup>

The court convicted a suspect of membership in a criminal organisation with the intention of committing human trafficking and being an accessory to human trafficking. The two victims came from Bulgaria and there was no violence. The duration of the exploitation was four and a half months and one month. The role of the suspect was regarded as minor and the suspect had personally reported to the police. An out-of-court settlement of 110 hours of community service was offered; the court imposed 110 hours.

*District Court in Amsterdam*<sup>292</sup>

There were three victims from Poland, who were exploited for nine, three and two months in prostitution, during which time they were repeatedly raped. The rape was charged as a means of coercion. The public prosecutor demanded a prison sentence of 24 months. The court took account of the fact that at the hearing the suspect appeared to have repented and imposed 18 months.

*District Court in The Hague*<sup>293</sup>

The suspect had exploited four women in prostitution for nine, five and four months and some of the victims had been forced to perform unsafe sex. Serious violence was used. The public prosecutor demanded six years in prison and the court imposed 42 months.

*District Court in The Hague*<sup>294</sup>

A victim from Romania was exploited for four days. The public prosecutor demanded a prison sentence of four months, with two of them suspended, and the court ruled accordingly with respect to Article 273f (1) (1), (3) and (9) Dutch Criminal Code, taking into account the short period of the exploitation.

Determining the sentence is difficult and a comparison of judgments like the one above might not entirely reflect the considerations that are made. Furthermore, many judgments encompass a number of offences, making it impossible to establish which part of the sentence relates specifically to those relating to human trafficking. Other factors also play a role,

289 The Hague District Court, 29 January 2009, LJN: BC2949.

290 Utrecht District Court, 10 December 2008, LJ: BG6680.

291 Zwolle-Lelystad District Court 27 November 2008, LJN: BG5957.

292 Amsterdam District Court, 15 February 2007, unpublished.

293 The Hague District Court, 20 April 2007, LJN: BA3485.

294 The Hague District Court, 21 September 2007, LJN: BB4065.

such as the attitude of the suspects at the trial. Nevertheless, orientation points do seem to be needed for the punishment of offences under Article 273f Dutch Criminal Code.

## II.10 Compensation and deprivation of illegally obtained profits

### II.10.1 Claims for compensation

If victims wish to join as an injured party on the grounds of Articles 51a to 51f in conjunction with Article 361 of the Dutch Code of Civil Procedure, they can do so before<sup>295</sup> or during<sup>296</sup> the hearing of the criminal case. Joining as an injured party in the criminal proceedings is a civil claim for the victim embedded in the criminal process. The claim is therefore governed by the material rules of civil law on the grounds of unlawful act. The court can make an order to pay compensation at the request of the injured party, on demand by the public prosecutor or *ex officio*.<sup>297</sup> The study of the case law in §11.10.2 shows that an order to pay compensation is almost always issued together with the awarding of a claim for compensation. The Central Fine Collection Agency (CJIB) collects the compensation for the victim.<sup>NRM5</sup> (On this point, see §4.4.)

In 2007, 40 alleged victims of human trafficking<sup>298</sup> filed claims for compensation. Three claims were connected with both the human trafficking offence and another offence that was charged simultaneously. These three claims are not included here because it is not clear which part of the claims related to the human trafficking offences. The survey therefore cover 37 (14%) of the 257 alleged human trafficking victims in 2007 who submitted claims as injured parties in first instance exclusively in relation to the charges of human trafficking. The amount claimed in 11 of these claims is not known,<sup>299</sup> so the amount of the claim is only specified in 26 instances.<sup>300</sup>

Claims that are submitted are sometimes broken down into claims for emotional injury (26 times, of which 19 claims are known) and material damage (between 17 and 21 times,<sup>301</sup> of which 16 claims are known). However, in some cases the claim is described as covering emotional injury and material damage, but it is unclear from the judgment which part of the claim is for emotional injury and which part is for material damage (11 times, of which seven claims are known). In this section, these cases are referred to as ‘combined claims’.

295 Article 51b, (1) Dutch Criminal Code.

296 Article 51b, (2) Dutch Criminal Code.

297 Article 36f Dutch Criminal Code. The order can be made if and insofar as the defendant is liable to the victim under civil law for the damage caused by the criminal offence, Article 36f (2) Dutch Criminal Code.

298 Actually 43 alleged human trafficking victims, but three of these claims were not related to the human trafficking but to another offence charged at the same time, so they are ignored here.

299 In these cases, the judgments refer only to a submitted claim, but it is not specified.

300 The amount claimed is based on the amount that was claimed by the victim in first instance.

301 Of one unknown claim it is certain that it concerned a claim for material damage and of four unknown claims this cannot be stated with certainty.

Table 11.27 shows the average amounts of compensation claimed, broken down into claims for emotional injury, material damage, a combination of material damage and emotional injury and the total amount of the claims.

Table 11.27 Known claims submitted for compensation

		Average compensation claimed	Minimum	Maximum
Emotional injury	Per known claim (total €179,606.08)	€9,452.95 <sup>302</sup>	€300	€30,000
	Per judgment with only known claims (total €179,606.08)	€11,973.74 <sup>303</sup>	€300	€35,000
Material damage	Per known claim (total €69,700.43)	€4,356.28 <sup>304</sup>	€50	€31,100
	Per judgment with only known claims (total €69,700.43)	€5,361.57 <sup>305</sup>	€50	€31,100
Combination of material damage and emotional injury	Per known claim (total €277,640)	€39,662.86 <sup>306</sup>	€2,500	€123,640
	Per judgment with only known claims (total €261,640)	€65,410 <sup>307</sup>	€2,500	€127,500
Total	Per known claim (total €526,806.51)	€20,261.79 <sup>308</sup>	€350	€123,640
	Per judgement with only known claims (total €510,806.51)	€26,884.55 <sup>309</sup>	€350	€127,500

Table 11.27 shows that the average amount claimed for emotional injury was €9,452.95, which is more than double the average claim for material damages of €4,356.28. By comparison, the average combined claim (based on only seven claims) is remarkably high at €39,662.86, which can be explained by the outlier,<sup>310</sup> the maximum claim of €123,640 in this category. The victims who submitted a claim, where the amount of those claims is apparent from the judgment, claimed an average of €20,261.79, with a minimum amount of €350 and a maximum of €123,640.

302 N=19.

303 SD and N are 10778.48 and 15 respectively (20 judgements, of which five unknown).

304 N=16.

305 SD and N 9050.66 and 13 respectively (between 14 and 16 judgements, of which between one and three are unknown).

306 N=7.

307 SD and N 69520.93 and 4 respectively (six judgments, of which two are unknown).

308 N=26.

309 SD and N 37685.47 and 19 respectively.

310 An outlier is a value that differs by a significant amount from the average and so can greatly influence the average, especially when it is an average based on a small sample. In this case the average is based on only seven values, so that the maximum claim of €123,640, the outlier in this case, greatly increases the average.

There were 37 claims divided among 26 (24%) of the 108 human trafficking judgments analysed. The total amount claimed is unknown in seven judgments, so the total amount claimed is only known for 19 judgments. The average total amount claimed per judgment in which one or more victims submitted a claim and all the claims are known is €26,884.55, with a minimum amount of €350 and a maximum amount of €127,500. The highest claim in 2007 was the following.

*District court in The Hague*<sup>311</sup>

‘(victim), (...), has joined as injured party with respect to the claim for damages in the amount of €123,640. This claim is partially supported by the documents attached to the joinder form and submitted at the hearing, while that part of the claim, which is simple in nature, is directly based – as shown by the examination at the hearing – on the offence with which the suspect was charged and convicted under 1. The court will therefore decide that the claim of the injured party is partially admissible and shall partially award this claim.

The court will award the claim of the injured party, insofar as the claim relates to the emotional injury sustained, for an amount of €5,000, by way of advance; insofar as the claim relates to travel costs incurred for making the complaint, €140.

The court will declare the rest of the claim of the injured party inadmissible, since that part of the claim is not so straightforward in nature that it can be dealt with in the criminal proceedings. The order to pay compensation will also be imposed.

The nature of the claims (emotional injury, material damage) is usually not further specified in the judgements. There is more information in the judgments about the background or underpinning of the claim for only seven of the claims. In two cases, emotional injury was claimed because the victim had sustained injury related to the offence. Material damage was claimed in three cases as loss of income/confiscation of money, and twice as compensation of the costs of legal assistance.

### 11.10.2 Awarding of claims for compensation

Of the 37 claims submitted (100%), 21 (57%) were awarded, two of them entirely and 19 partially.

In Table 11.28, the average amounts of compensation awarded are broken down by emotional injury, material damage, the combination of the two and the total.

<sup>311</sup> The Hague District Court, 20 August 2007, LJN: BB2033.

Table 11.28 *Claims awarded for compensation*

		Average compensation awarded	Minimum	Maximum
Emotional injury (total €64,050)	Per (partially) awarded claim	€3,558.33 <sup>312</sup>	€300	€12,500
	Per judgment in which it was awarded	€4,926.92 <sup>313</sup>	€300	€12,500
Material damage (total €20,372)	Per (partially) awarded claim	€5,093 <sup>314</sup>	€70	€20,092
	Per judgment in which it was awarded	€5,093 <sup>315</sup>	€70	€20,092
Combination (total €8,000)	Per (partially) awarded claim	€8,000 <sup>316</sup>	€8,000	€8,000
	Per judgment in which it was awarded	€8,000 <sup>317</sup>	€8,000	€8,000
Total (total €92,422)	Per (partially) awarded claim	€4,401.05 <sup>318</sup>	€70	€27,592
	Per judgment in which it was awarded	€5,776.38 <sup>319</sup>	€70	€27,592

Table 11.28 shows that the average amount of €5,093 awarded for material damage was remarkably high, in comparison with both the average amount awarded for emotional injury (€3,558.33) and the average amount claimed for material damage (€4,356.28). The explanation for this is that only four (25%) of the 16 claims for material damage were awarded, partially or otherwise, including one award of €20,092. The average amount awarded to the victims who were awarded their claims for compensation was €4,401.05, with a minimum of €70 and a maximum of €27,592.

The 21 claims were awarded in 16 (84%) of the 19 judgements in which a claim for compensation relating exclusively to human trafficking was submitted. The average total amount awarded per judgment in which one or more victims were awarded a claim was €5,776.38, with a minimum €70 and a maximum of €27,592.

The highest award in 2007 was the following.

<sup>312</sup> N=18.

<sup>313</sup> Sd. and N 3720.25 and 13 respectively.

<sup>314</sup> N=4.

<sup>315</sup> Sd. and N 9999.39 and 4 respectively.

<sup>316</sup> N=1.

<sup>317</sup> N=1.

<sup>318</sup> N=21.

<sup>319</sup> Sd. and N 6919.95 and 16 respectively.



*District Court in Zwolle-Lelystad*<sup>320</sup>

‘In the investigation during the hearing it was established that the injured party (...) sustained direct damage as a result of the offences with which the suspect was charged and which were declared proven under 1 and 2. The amount of that damage has, in light of the content of the “form for joinder of injured party in the criminal proceedings” and of what emerged during the investigation during the hearing, been satisfactorily established as an amount of €27,592 (€20,000 in material damage, €7,500 for emotional injury and €92 in legal costs), plus the costs which are estimated, up to today, at nil.

The claims of the injured party, whose claim is declared admissible, can as such be awarded.

In the court’s opinion, the injured party’s claim (...), insofar as more is claimed, is not so simple in nature that it can be dealt with in the criminal proceedings. The district court will therefore decide that that part of the injured party’s claim is inadmissible and that part of the claim can only be brought before the civil court.

The court shall also, with respect to the offences declared proven under 1 and 2, impose on the suspect, on the grounds of Article 36f of the Dutch Criminal Code, the obligation to pay the State said sum of €27,592 for the benefit of the victim (...).’

While the nature of the compensation awarded (emotional injury, material damage) is not always specified in the judgments,<sup>321</sup> more information about the nature of the compensation is provided in 18 judgments. In eleven cases compensation for emotional injury was awarded to the victim because this damage had, in fairness, been established; in three cases, because the proven offence violated the physical and psychological integrity of the victim; and twice, because it had been established that the relevant offence had caused damage to the victim. Compensation for material damage was awarded once to compensate for travel costs incurred to report the crime and once as compensation for legal assistance.

In all 21 claims for compensation (partially or wholly awarded), the court issued an order to pay compensation. This means that the State collects the amount on behalf of the victim (see §4.4).

### 11.10.3 Grounds for rejection or declaration of inadmissibility of claims

Of the 37 claims for compensation that were submitted exclusively in relation to human trafficking offences, 35 denied – 19 partially and 16 entirely. These claims were either rejected or declared inadmissible. In five cases, a claim was partially rejected and declared partially inadmissible. The grounds given in the judgments for the rejection and declaration of inadmissibility of claims are set out in Table 11.29.

<sup>320</sup> Zwolle-Lelystad District Court, 24 May 2007, unpublished.

<sup>321</sup> This distinction can be found in the joinder form. However, the case files were not examined.

Table 11.29 Grounds for rejection/declaration of inadmissibility

	N	%
Claim is not simple in nature (inadmissible)	21 (+5 <sup>322</sup> )	60% (+14% <sup>323</sup> )
Claim does not refer to an offence declared proven (rejection)	6	17%
Damage not imputable to the suspect (rejection)	5	14%
Claim is too high (rejection)	3	9%
<i>Total</i>	35	100%

N=35

Table 11.29 shows that the majority of the claims were not awarded (at least partially) because the claims were not simple enough to be dealt with at the trial. A victim can then still submit that part of the claim to the civil-law courts. If a claim is rejected on one of the three other grounds shown in the table, this possibility no longer exists.

#### 11.10.4 The application for deprivation of illegally obtained profits

The introduction of the ‘Pluck Them’ legislation created the possibility of depriving illegally obtained benefits from convicted persons.<sup>324</sup> On an application by the public prosecutor, the court can issue a confiscation order against the convicted person in the form of a separate judicial decision,<sup>325</sup> although that does not mean that the deprivation order cannot be handled at the same time as the main trial.<sup>326</sup> Often, however, especially in larger and more complicated cases, the application for deprivation will be brought later. The public prosecutor must indicate during the trial, before the closing statement, whether an application for a deprivation order will be submitted. During the hearing on the application for deprivation, the judge then estimates the illegally earned benefits that the convicted person obtained as a result of the offence.<sup>327</sup> The public prosecutor will generally submit a financial report to support the claim.<sup>328</sup>

322 The five claims that were partially rejected and partially declared inadmissible were dismissed on the grounds of ‘damage not imputable to the suspect’, and ‘claim not simple in nature’. In this table, these five claims are included under the ground for rejection ‘damage not imputable to suspect’. However, some should actually fall under the ground of inadmissibility. Since this would lead to total percentage of 114%, it was decided to present these five claims only between brackets under the ground of inadmissibility.

323 See previous footnote.

324 The underlying idea for confiscating the illegally earned benefits is to send a signal that crime doesn’t pay and to hit criminals where it hurts: in their pockets.

325 Article 36e (1) Dutch Criminal Code

326 *Parliamentary Documents II* 1992/93, 21 504 and 22 083, p. 2.

327 Article 36e (4) Dutch Criminal Code

328 Arnhem Court of Appeal, 19 March 2008, LJN: BC7232. The court found that there is no statutory provision stating how the public prosecution service should actually construct the confiscation file, but that the public prosecution service should make such a calculation.

The point that financial investigations should also be conducted in human trafficking cases was already made in NRM5 (and is included in the Instruction on Human Trafficking). The cases of deprivation that were studied generally involved money earned by the victim in prostitution, with the deduction of costs incurred that are directly related to the offence.<sup>329</sup> The court has great freedom in determining that. An extravagant life style does not necessarily fall under it.<sup>330</sup> The District Court in The Hague<sup>331</sup> issued a confiscation order for a sum of €108,000 and calculated this on the basis of the number of victims, the days worked, the estimated number of clients and the period of exploitation in prostitution, with deduction of costs as illustrated below.

Complainant [A]

1. The convicted person allowed complainant to work for him from 11 October 2006 to 1 November 2006, that is three weeks.
2. Complainant had two clients a day.
3. Complainant asked €100 per client.
4. Although complainant says that she worked every day, the order is based on six working days.

Complainant [B]

5. The complainant worked for the convicted person from May 2006 to 20 November 2006, that is 13 weeks.
6. Complainant received six clients a day.
7. Complainant received €100 per client.
8. The calculation is based on six working days per week.

Costs

9. Complainants declared that the convicted person bought necessities for work such as condoms, sponges and lingerie for them. Interviewing officer estimated these costs at €1,000.
10. The agreements with clients were made by telephone and the suspect also checked up on the women by telephone. Interviewing officer estimates these costs at €1,000.
11. The court has observed that both complainants stated that the convicted person gave them money for groceries and sometimes to go out. The court will fix these costs at €1,600

Benefit [A]: Three weeks x six days x two clients x €100 = €3,600

Benefit [B]: 30 weeks x six days x six clients x €100 = €108,000

Costs: 1000 + 1000 + 1600 = €3,600.

329 Supreme Court, 5 February 2008, LJN: BC2913.

330 Supreme Court, 27 May 2008, LJN: BC7961.

331 The Hague District Court, 29 April 2008, LJN: BL4830. Other courts also imposed heavy confiscation orders. In this context, see Utrecht District Court, 24 June 2008, LJN: BE9470 (€49,544), Den Bosch District Court, 15 December 2008, LJN: BG6328 (€37,971) (in fact the court deducted the obligation to pay the injured party a sum of €13,215 (see Article 36f Dutch Criminal Code). Neither the judgment of the Den Bosch District Court nor that of Den Bosch Court of Appeal in the main case is published, so it was impossible to discover how the size of the claim awarded to the injured party was established), and Utrecht District Court, 10 December 2008, LJN: BG6683 (€18,641).

Table 11.28 shows that the average amount of compensation awarded to victims does not often come in the neighbourhood of that amount. Claims for material damage relating to loss of income are usually declared inadmissible as not being easy to calculate.

Nevertheless, there are examples of claims being awarded for loss of income by injured parties being awarded, as for instance by the District Court in Utrecht,<sup>332</sup> where the court apparently calculated the loss of income without a financial report (the periods involved were five and seven days). The court also awarded a sum for the removal of tattoos. In another case, the District Court in Utrecht<sup>333</sup> awarded a sum of €33,309.85 for loss of income. In that case, the court had a financial report, which showed an income of €95,171. The court awarded 35% of that as loss of income, since the victim would not have earned any more if she had worked for a legitimate escort agency.

The court then decided on the deprivation claim, in which it followed the report drawn up on the criminal financial investigation as regards the costs.

The court estimated the deductible costs at a total of €24,578 for the costs of a car, working clothes and accommodation and fixed the unlawful earnings at €70,593.00. The court also found as follows: “In the principal case, the court has attributed 35% of the gross income to the injured party [victim], as being her share of the earnings/work in prostitution, i.e. a sum of €33,309.85. In the court’s opinion, this amount should be deducted from the benefit of €70,593.00. The court therefore fixes the total unlawfully earned benefit at €37,283.15”. This amount is therefore due to the State and concerns the income earned by the victim. That can surely not be the intention.

If a victim is sold to another trafficker for a certain amount of money, it is clear that this amount should be taken from the trafficker as illegally obtained. Question is whether this amount must be considered as damage of the victim that should as such be refunded.

### 11.10.5 Improvements

Practice, therefore, shows that it is difficult for victims of human trafficking to claim their loss of income from sexual exploitation. Findings from the study of case law (see §11.10.1) show that only 35 (14%) of all 257 victims submitted a claim for compensation, and only a small number of that 14% had their claims ultimately awarded by the courts; the vast majority of the claims for compensation were only partially awarded or not awarded at all.<sup>334</sup>

<sup>332</sup> Utrecht District Court, 16 July 2009, LJN: BJ3128.

<sup>333</sup> Utrecht District Court, 10 December 2008, LJN: BG6680. In two criminal cases of forced prostitution (two suspects, the same facts), Utrecht District Court (both 10 December 2008, LJN: BG6680, BG6681, BG6682 and BG6683) also handled the compensation for the injured party and the order for confiscation. The court expressly took the criminal financial investigation as the point of departure for its calculation. The criminal financial investigation included the notes that the victim herself had kept and the agenda that was kept by the suspect and co-suspect over the period that they had caused the victim to work as a prostitute.

<sup>334</sup> The study of case law shows that the reason for this is mainly the inadmissibility of the claim for compensation because the nature of the claim is not simple.

The successful deprivation cases show that the financial report makes an important contribution to helping the court to establish the income from prostitution. With such a financial report, the victim's material damage is easier to establish, as the example described earlier showed.

To improve the position of the victim in this regard, the financial report should also be available to the victim. This could be done, for example, by adding the report to the criminal file during the hearing of the principal case or by making it available to the victim. In the case of a claim for deprivation of illegally earned benefits, the application for deprivation could also always be made at the same time as the criminal case, so that the judge deciding on the injured party's claim is immediately aware of the financial report. Because this does not always happen, the possibility should be created for adjourning the injured party's claim – which has been submitted during the criminal action – to be dealt with at the *same time* as the application for deprivation. The law should be changed to allow this.

The OSCE's report *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008) shows that securing compensation is also a problem for victims in other countries.<sup>335</sup> There are procedures under criminal, civil and labour law, and in some countries compensation funds (as in the Netherlands), but nevertheless, it is difficult for victims to receive compensation for damage, either from the offender or from the State. In this context, the OSCE, UNHCHR and the Council of Europe recommend using proceeds from crime ('*criminal assets*') to compensate victims or establishing funds to help and to rehabilitate victims.<sup>336</sup>

## II.II Conclusions

This section indicates where there are problems in relation to the topics discussed in this chapter and describes the issues that require special attention.

Article 273f of the Dutch Criminal Code is not a straightforward article. It contains many sections and is multilayered. The history of international treaties is also relevant for the interpretation and application of this provision, as is knowledge of the methods used by perpetrators and the problems facing victims.

The investigation into Dutch case law on human trafficking in the sex industry shows that various legal issues are sometimes treated differently and that the context of violence, coercion, deception and the possibility for victims to escape from their situation is not uniformly evaluated. Statements by victims, and, above all, the internal consistency, play

<sup>335</sup> OSCE-ODISHR May 2008.

<sup>336</sup> *Compensation for Trafficked and Exploited Persons in the OSCE Region*, OSCE-ODISHR May 2008, p. 42. The UN Convention on combating organised crime in fact provides the member states – insofar as this is possible under national law – should primarily consider returning incomes from crimes that are seized to the requesting state so that they can compensate the victims of crimes, see Article. 14 (2) of the UN Convention on prevention of organised crime.

an important role when the evidence is being weighed. It is noteworthy in this context that the judge sometimes actively looks for an explanation for the inconsistencies in the victims' statements. This suggests that in these instances the judges have recognised the specific problems associated with the statements of victims in human trafficking cases. The impression to emerge from the almost 200 judgments since January 2007 that were studied is that even where there is a finding that coercion has been proved, the Dutch prostitution policy sometimes seems to play a role in the evaluation of whether a victim could reasonably have made a different choice. This is perhaps explicable on the grounds of the explanatory memorandum of the original proposal for article 273a of the (old) Dutch Criminal Code, in which the comparison was made with the 'articulate Dutch prostitute'. However, this comparison can only refer to the situation where the prostitute is *already working* in prostitution and cannot be a factor in assessing the 'freedom of choice' to *enter* prostitution. The number of acquittals in human trafficking cases is high, even by comparison with the number of acquittals in rape cases, for example. Contrary to what might be expected, the study showed that this is only partially due to a lack of reliable statements by victims and witnesses.

For some years now there has been talk of establishing a course in human trafficking. The Training and Study Centre for the Judiciary (SSR) has meanwhile devised a basic and an advanced course. The original idea was for a course made up of six modules, covering international legislation, the immigration law background, the social context and the legal problems and concluding with a professional meeting. The course has not yet been launched, however, and judges only occasionally participate in the courses that are currently offered.

There is no specialisation in human trafficking in the judiciary, but the public prosecution service has now begun to appoint regional public prosecutors who specialise in human trafficking.

The number of human trafficking cases brought before the district courts has ranged from 100 to 150 a year in the last few years. Dividing them among 19 courts does not promote the accumulation and retention of sufficient knowledge and expertise. Concentrating human trafficking cases in a few courts would enhance the creation and retention of that expertise.

The BNRM study showed that both the sentences demanded and the sentences imposed in human trafficking cases vary. There seems to be a need for guidelines. Basic principles for the appropriate sentence for human trafficking were formulated for the first time in the Sneep case: a prison sentence of eight to 10 months for each victim, depending on the duration of the exploitation, the level of violence used and the role of the suspect. In that context, a period of exploitation of nine months was regarded as 'relatively short'. Interestingly, aggravating circumstances are seldom explicitly mentioned either by the public prosecution service in the indictment or by the judge in the particulars of the offence. BNRM did not include pre-trial detention in the study. What the judgments did show is that 30% of the defendants and 28% of those convicted were not being held in preventive custody at the time of the trial. BNRM intends to study this subject in more depth.

Studying the judgments in criminal trials yields a lot of information. For example, most of the judgments in 2007 involved human trafficking cases in which victims were forced to work in prostitution in the Netherlands. Almost three-quarters of the convicted perpetrators were pimps. Half were involved in recruiting victims and 35% escorted victims to the Netherlands from other countries. Roughly a quarter had to guard the victims and slightly less than a fifth were responsible for transporting the victims to and from the workplace. A minority of the perpetrators, 5%, operated a sex business. These perpetrators often performed several different roles. It is not possible to tell whether the sex businesses were licensed, unlicensed or illegal.

The judgments that were studied show that it is particularly difficult for victims to recover reparation for material damage, which is often loss of income. In the majority of the judgments these claims (or this part of the claim) were felt to be too complicated and the claims were declared inadmissible. Nevertheless, a slight change has been apparent in more recent judgments, particularly when a financial report has been prepared for the claim for the deprivation of illegally obtained profits and it is available at the time of the trial. One problem, however, is that the application for deprivation of assets is not submitted at the time of the principal case. This could be improved. The financial report for the judge could also be submitted for a decision on the injured party's claim. Finally, the injured party's claim, submitted for the hearing of the main case, could also be adjourned to be dealt with at the same time as the later deprivation claim. The law would have to be amended to allow this.

The study of the case law shows that in cases where the court declared that an attempt had been proved, there was in fact usually a completed offence. Scarcely any prosecutions were found for a 'genuine' attempt. Nevertheless, the jurisprudence of the Supreme Court on attempted human trafficking does leave open the possibility to use this charge more often. It could have a preventive effect if a successful prosecution could take pace at an earlier stage.



## Exploitation in sectors other than the sex industry

### 12.1 Introduction

Since the article on human trafficking was expanded to include exploitation in sectors other than the sex industry ('other forms of exploitation'), there has been growing interest in this area, particularly from the media and the police. Studies are also being carried out and special training courses have been developed for professionals on the subject of other forms of exploitation. The American Trafficking in Persons (TIP) report on the Netherlands, published in the summer of 2009, also devoted a conspicuous amount of attention to other forms of exploitation, and all of the recommendations made in the report concerned other forms of exploitation.<sup>1</sup> A number of conferences and expert meetings on exploitation outside the sex industry have also been organised, both in the Netherlands and abroad.<sup>2</sup>

It has been almost five years since other forms of exploitation were criminalised, and the problems are becoming increasingly evident. It emerged, for instance, during the conference organised by BNRM and the University of Utrecht that there is still a lot of uncertainty about the dividing line between bad employment practices and exploitation, a boundary that has to be defined by the courts. That definition, and certainty about it, is essential for investigations. Ambiguities surrounding the meaning and scope of the means of coercion 'abusing a vulnerable position' have also played a role in the case law to date. Enquiries in other countries indicate that they are struggling with similar problems.

On paper, efforts to tackle other forms of exploitation have intensified, and while practical measures lag behind, there has been a noticeable increase in the number of prosecutions. This is despite the fact that uncertainty about the difference between bad employment practices and exploitation, and the small number of convictions to date,<sup>3</sup> do not provide motivation for identification and investigation.

This chapter (of the English edition) opens with a discussion of some high-risk groups and then goes on to survey the case law on other forms of exploitation.

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- 1 Two of the recommendations also pertain to sexual exploitation. The recommendations read: "Vigorously investigate and prosecute, and convict and punish labour trafficking offenders; enhance forced labour awareness training for prosecutors and judges; continue anti-trafficking awareness initiatives aimed at educating clients of the commercial sex trade as well as beneficiaries of forced labour about the causes and consequences of trafficking; continue efforts to proactively identify trafficking victims in the prostitution and relevant labour sectors of the Netherlands." (Trafficking in Persons Report, 2009, pp. 218-220).
  - 2 The large number of people who registered for the international conference organised by BNRM and the University of Utrecht ('Human trafficking, turning our attention to labour exploitation') in February 2009 indicates the level of interest in the subject.
  - 3 At the time of writing (August 2009), three cases had resulted in convictions for other forms of exploitation. For a discussion of the cases, see §12.6.

*The term ‘other forms of exploitation’*

In this report, ‘other forms of exploitation’ refers to all forms of exploitation outside the sex industry. This could include exploitation in domestic service, agriculture and horticulture, the catering and hospitality sector, in criminal activities, etc. For a non-exhaustive list of types of exploitation that fall within the scope of ‘other forms of exploitation’, see Chapter 8 of the fifth report of the NRM. Organ trafficking does not fall under BNRM’s definition of other forms of exploitation.<sup>4</sup>

## 12.2 Identification and perception

In Article 273f of the Dutch Criminal Code, the provision that makes human trafficking a criminal offence, the legislature makes no distinction between human trafficking in the sense of sexual exploitation and human trafficking in the sense of other forms of exploitation. Both forms of human trafficking constitute the same criminal offence and the sentences are the same for both. The B9 regulation also makes no distinction between victims of sexual exploitation and other forms of exploitation. The training courses on human trafficking provided for members of the police, special investigative services and government inspectorates, the public prosecution service and the judiciary also cover both types of exploitation. Nevertheless, situations involving or potentially involving other forms of exploitation are still dealt with differently than instances of sexual exploitation in practice. For example, it regularly occurs that indications of other forms of exploitation are not recognised, reported and followed up. The number of prosecutions for other forms of exploitation still contrasts starkly with the number of prosecutions for sexual exploitation. Victims and potential victims of other forms of exploitation are also often treated differently to victims of sexual exploitation. For example, victims of other forms of exploitation are not always recognised as victims and are consequently not informed of their rights under the B9 regulation or offered a period for reflection. Occasionally, (potential) victims of other forms of exploitation are placed in aliens detention, whereas for (potential) victims of sexual exploitation an immediate effort is made to find them a place in a shelter.

So although the legislation and the rules make no distinction between sexual and other forms of exploitation, there are differences in how they are dealt with in practice. These discrepancies are due to differences in the perception of sexual and other forms of exploitation. The following case highlights the aspects of the identification, investigation and prosecution of other forms of exploitation and the treatment of potential victims where this perception can have a significant impact.

<sup>4</sup> For a discussion of human trafficking with a view to removing organs, see Chapter 13 of this report.

*Exploitation on an asparagus farm in Someren*

The Labour Inspectorate, the local municipality and the police had been aware for years of irregularities at J's asparagus farm in Someren. Every season, several dozen foreign workers were employed at the farm. Over a period of several years, the Labour Inspectorate had fined J five times for violations of the Foreign Nationals Employment Act and the Minimum Wage Act, among other things. The total amount of the fines was € 566,250.<sup>5</sup>

In the course of several years the police had received several complaints of assault, intimidation, the non-payment of full wages and the withholding of identity papers at the asparagus farm. The municipality was also aware of a number of irregularities at the farm, including the fact that the accommodation for the farm workers did not comply with fire safety regulations.

That last point (the violation of fire safety regulations) ultimately caused the municipality to intervene. Supported by a judgment of the preliminary relief judge<sup>6</sup> in favour of the municipality and after consulting the 'law and order triumvirate' (the mayor, the police superintendent and the chief public prosecutor for the region), the municipality decided to evacuate the farm on 15 May on the grounds of violation of the Housing Act by means of an administrative enforcement measure. Although it had also emerged during the hearing before the preliminary relief judge the week before that the workers were locked in at night and that one of the labour migrants had made a complaint of assault to the police,<sup>7</sup> it was still decided to proceed against J with an administrative enforcement measure and not under criminal law. Approximately 55 workers, most of them Romanian, were discovered during the action.<sup>8</sup> The mayor, who was present during the raid, made a statement to the press about the conditions in which the workers were found: "They could not leave the site during the entire period they worked there. They earned far less than they were promised. Their employer forced them to buy their food on the farm for a lot of money."<sup>9</sup> "The sanitary facilities and the food were dreadful. The people had to buy vouchers for food and shampoo on the farm at enormous prices".<sup>10</sup> About the working conditions, he went on: "They reminded me more of a form of slavery than those of a modern company".<sup>11</sup>

Although there had been at least six known indications of human trafficking<sup>12</sup> the workers were not advised of their rights to a reflection period under the B9 regulation during the

5 Letter from the Minister of Social Affairs and Employment to the Lower House of Parliament, 26 May 2009 (*Parliamentary Documents II* 2008/09, 17 050, no. 385)

6 Den Bosch District Court, 12 May 2009, LJN: BL4809.

7 Den Bosch District Court, 12 May 2009, LJN: BL4809.

8 Appendix to Parliamentary Proceedings I 2008/09, no 2901.

9 'Slavernij' op aspergekwekerij in Someren, *De Volkskrant*, 18 May 2009.

10 'Slavernij' op aspergekwekerij in Someren, *De Volkskrant*, 18 May 2009.

11 Vijf keer eerder boetes voor ontruimd aspergebedrijf, *NRC Handelsblad*, 18 May 2009.

12 The following indicators of human trafficking from the Instruction on Human Trafficking, Government Gazette 2008, 253, appendix 3, were already known to the agencies concerned from observations by the agencies themselves or from reports by third parties to the agencies before the administrative enforcement action took place: spending the night in the workplace; the victim cannot or is not allowed to have contact with the outside world; the victim does not have possession of his own identity papers; the victim receives an

action.<sup>13</sup> The workers were also not interviewed separately; instead, the Labour Inspectorate took all their statements together in the same room by giving them a form to fill in. When a great many of the workers said they did not want to return to J's farm, they were offered shelter on a campsite. The workers were not reported to CoMensha. Although they were still owed wages by J, because they were only to be paid at the end of the season, 36 of the Romanian workers preferred to return to Romania without their money rather than return to J's farm.<sup>14</sup> The municipality then arranged a bus for them. Before they boarded the bus to return to Romania, the municipality made them sign an agreement that they would repay the cost of the journey to the municipality. The group left for home that same day. No action had been taken against J under criminal law at that time. A number of workers opted to continue working on J's asparagus farm.

After some time, the public prosecution service decided to carry out an investigation into human trafficking. At that time, the National Public Prosecutor's Office for Financial, Economic and Environmental Offences was already heading an investigation into violations of the Economic Offences Act. It was decided to split the criminal investigation into two parts: the public prosecutor responsible for human trafficking would head an investigation into human trafficking by the local office of the public prosecution service, while the Office for Financial, Economic and Environmental Offences would lead the investigation into the economic offences. There would be one writ of summons and one court hearing, but with two public prosecutors, one each from the local office and from the Office for Financial, Economic and Environmental Offences.

As already mentioned, a number of workers chose to continue working at J's farm, since they were only to be paid at the end of the season and would be left empty-handed if they left sooner. It is noteworthy that several weeks after the evacuation of the farm, the municipality gave permission for these workers to be housed in tents on J's farm. Also remarkable is the fact that at the end of May the employee insurance implementing agency (UWV) granted 35 work permits that J had applied for, even though workers had earlier been found working there under dreadful conditions and J was the subject of a criminal investigation.<sup>15</sup> At a later stage, the workers who stayed behind were informed of their rights under the B9 regulation. At the time of writing, it was not known whether they had availed of them.

This case illustrates the fact that problems occur at different levels. Although policies and legislation have been developed to address other forms of exploitation, it is noteworthy that rules are not always followed, partly as a result of the prevailing perception of other forms

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unusually low wage compared with the market; the victim works exceptionally long working days or working weeks; and the victim is threatened or confronted with violence.

13 It follows from the B9 regulation: "Even at the *slightest* [italics: BNRM] indication of human trafficking the police must inform the alien of the possibility of reporting the crime or otherwise cooperating with a criminal investigation into human trafficking."

14 Letter from the Minister of Social Affairs and Employment to the Lower House of Parliament, 26 May 2009 (*Parliamentary Documents II* 2008/09, 17 050, no. 385)

15 Appendix to Parliament Proceedings II 2008/09, no. 2885.

of exploitation. The Labour Inspectorate should obviously report indications of human trafficking to the SIOD/EMM.<sup>16</sup> That did not happen in this case, although several indications of human trafficking were evidently known to the Labour Inspectorate, since J had been fined five times. The police also failed to pick up signs of human trafficking that it received over an extended period of time. The workers were also not reported to CoMensha. Another striking feature of the case is that the workers were not informed of their rights under the B9 regulation either before or during the enforcement action, even though that should be done when there is even the slightest indication of human trafficking.

*Victims of other forms of exploitation and the B9 regulation*

As already mentioned in Chapter 5, it is remarkable that the Labour Inspectorate and special investigative services are not mentioned in the B9 regulation, for example with respect to illegal aliens who are discovered during administrative or police checks.<sup>17</sup> The B9 regulation states that the *police* must inform the alien concerned of the rights laid down in the B9 regulation (including the reflection period) if there is the slightest indication of human trafficking. The Labour Inspectorate and the SIOD should also have a more clearly defined role (and responsibility) for aliens who are found in workplaces and are not living legally in the Netherlands if there are signs of human trafficking.

Finally, the fact that the municipality prevented an intervention under criminal law in preference for administrative enforcement is remarkable in light of the approach to human trafficking, since an administrative action against a violation of fire safety regulations does not preclude an intervention under criminal law for human trafficking. The fact that the media scarcely mentioned the term human trafficking also illustrates how this case was perceived. The key to the problem is that, although there were various indications of human trafficking, the situation was not regarded as a possible case of exploitation. The case was seen as a series of separate situations involving violations of labour and administrative law. Even the assaults reported to the police were seen as isolated incidents. Because the various agencies did not connect the various events, either internally or in consultation with other agencies, they failed to see the full context of the potential case of exploitation.

The problems observed in the above case have also been seen (individually or in combination) in others cases known to BNRM and highlight the perception of other forms of exploitation. This has created the impression that economic exploitation is seen as a 'less serious' form of exploitation than sexual exploitation, as became clear during a meeting of the council of immigration judges.<sup>18</sup> Victims of sexual exploitation who are found in a brothel, for example, will obviously not be placed first in aliens detention. It also seems that there are or could be practical problems in finding shelter for victims of other forms of exploitation, especially

16 Instruction on Human Trafficking, Government Gazette 2008, no 253, appendix 3.

17 The term 'Labour Inspectorate' does not appear in the regulation at all.

18 The immigration judges also have a different perception of victims of other forms of exploitation than of victims of sexual exploitation. The aspect of their illegal residence and the accompanying risk that they will disappear again also seems to be a factor.

since the numbers involved are often large.<sup>19</sup> Naturally, such practical problems may never be a reason for deciding not to follow the statutory procedure. Furthermore, other forms of exploitation are also violations of human rights; it is also essential to provide adequate shelter for victims of this serious criminal offence.

#### *Self-identification by victims*

Quite apart from the fact that victims of other forms of exploitation are regularly not recognised as such by the relevant agencies, another problem is that they often do not regard themselves as victims of human trafficking. Victims from other countries, in particular, are generally unaware of their rights and it is difficult for them to assess whether they are victims of exploitation. The National Rapporteur on Trafficking in Human Beings therefore made the following recommendation in her fifth report: “Since people are more vulnerable to exploitation in sectors other than the sex industry if they are unaware of their rights, more needs to be done to inform those who have a marginal position on the labour market, and in society, about their basic labour rights. The government has an important part to play here.” To increase awareness among potential victims of exploitation or of other abuses, at the beginning of 2009 the Ministry of Social Affairs and Employment produced the fact sheet ‘Exploitation at the Workplace’. The fact sheet presents examples of exploitation, briefly explains the rights of victims of human trafficking and gives the names and telephone numbers of relevant agencies. The leaflet has been published in fourteen languages and is distributed by NGOs, organisations that provide help to victims and municipalities.<sup>20</sup> Partly as a result of the case in Someren, existing leaflets about living and working in the Netherlands and about the Minimum Wage and Minimum Holiday Allowance Act have been translated into Bulgarian and Romanian. The leaflets will be distributed in those countries after the summer of 2009.<sup>21</sup>

To make the police, Labour Inspectorate, the SIOD and the Royal Netherlands Marechaussee more alert to human trafficking, the Ministries of Justice, Social Affairs and Employment, and the Interior and Kingdom Relations have jointly produced an introductory film on the subject.<sup>22</sup> BLinN is also trying to increase access to victims by improving the expertise of agencies involved with other forms of exploitation with the project ‘Signaleren en informeren van moeilijk bereikbare slachtoffers van mensenhandel’.<sup>23</sup> BLinN also intends to provide direct support for victims of other forms of exploitation with this project.

19 In the Sneep case (see also Chapter 8), which also involved an enormous number of victims, that problem was dealt with proactively and adequately.

20 The leaflets can be downloaded from [www.postbus51.nl](http://www.postbus51.nl).

21 Human Trafficking Task Force (2009b).

22 A further decision on the format of the film will be made in the second half of 2009 (Human Trafficking Task Force, 2009b).

23 Written information from BLinN, 10 September 2009.

The following case is an example of how an investigation into other forms of exploitation was handled well in practice and shows how good agreements between the various investigative agencies led to the correct treatment of the (possible) victims.

*Case of Indonesian kitchen workers<sup>24</sup>*

In the summer of 2009, the SIOD and the aliens police searched a house where Indonesians, who were living illegally in the Netherlands, were employed preparing Indonesian food under atrocious conditions. The 11 Indonesian ‘employees’ paid a high price to rent a mattress in the house. One of their jobs was to prepare shrimp crackers in temperatures that sometimes reached 50 degrees. The house was full of vermin and constituted a fire hazard because of exposed electric wires.

From the beginning of the investigation in this case, clear agreements were made between the actors. For example, before the house was searched the SIOD and the aliens police agreed on their respective tasks. If it was solely a case of illegal workers, the aliens police would take the lead and the illegal aliens would be placed in aliens detention. If there were also poor working conditions, the SIOD would take the lead and investigate whether there was human trafficking. The municipal Urban Development department was also involved because of the fire hazard and the overcrowding.

After they were detained by the police, the workers who were discovered during the search were immediately offered the reflection period they were entitled to under the B9 regulation as (possible) victims of human trafficking. Four of these potential victims availed of their right to a reflection period, the others decided to return to Indonesia. All of the potential victims were immediately reported to CoMensha. However, because it could not immediately find places in a shelter for the four potential victims of other forms of exploitation, the SIOD itself felt compelled to find and pay for shelter for them in a hotel, and later in a holiday park.<sup>25</sup> After more than a week, CoMensha found places for them in a shelter. Remarkably, however, the shelter was just two streets away from the house where the victims had worked and been exploited, so they found themselves in an environment where they felt unsafe.

Meanwhile, the National Public Prosecutor’s Office for Financial, Economic and Environmental Offences had started a criminal investigation into human trafficking, among other offences. To provide a clear impression of the dreadful conditions in which the victims had to work, it produced an official report of the environment in which they worked with photos and films of the location. The Occupational Health and Safety Inspectorate was called in to prepare a report on the working conditions. All of the (possible) victims were also interviewed at length. The interviews were filmed. The investigation was still underway when this report was written.

24 See, among other things, the press release from public prosecution service, *Illegalen gevonden onder erbarmelijke omstandigheden*, 29 July 2009 (and various newspaper articles, including *Haagse Courant*, 20 July 2009).

25 SIOD also arranged a counsellor and pocket money for the victims.



This case shows that clear agreements on the division of tasks between the various agencies (in this case, the SIOD, the aliens police, the Urban Development department and the public prosecution service's Office for Financial, Economic and Environmental Offences) ensures good cooperation and prevents (possible) victims from falling through gaps in their respective responsibilities. One point requiring attention is that there was no place immediately available in a shelter for the victims reported to CoMensha. Making an official report of the scene with photos and films could be prove to be a useful instrument in helping the court to arrive at a decision when the case comes to trial.

### 12.3 A few high-risk sectors and high-risk groups

The NRM's fifth report contains a lengthy discussion of sectors that are vulnerable to other forms of exploitation. This section contains an update of developments in specific high-risk sectors: the employment agency sector, domestic services and agriculture and horticulture.<sup>26</sup> Marriage as a form or element of human trafficking is discussed in §12.5.4.

The various investigative services have devoted special attention to the high-risk sectors. For example, the Labour Inspectorate has long regarded the construction industry, the employment-agency sector, agriculture and horticulture and the catering and hospitality sectors as high-risk. The public prosecution service has started a pilot project concerning exploitation in Chinese hospitality businesses and employment agencies.<sup>27</sup> Other high-risk sectors identified by BNRM also receive special attention from the investigative services.

#### 12.3.1 *Mala fide* employment agencies

Illegal labour migrants have to overcome many hurdles in order to stay in the Netherlands. As a result, they can, in a number of respects, become dependent on *mala fide* employment agencies that play a facilitating role for them.<sup>28</sup> Research conducted by BNRM for the previous report<sup>NRM5</sup> indicated that gangmasters (from the Netherlands and other countries) and *mala fide* employment agencies hire illegal immigrants. They also trade documents and are guilty of failing to pay their workers properly and of housing them in abominable conditions. *Mala fide* employment agencies are often transient, and sometimes invisible. In these hidden circuits, it is hard for workers to properly defend themselves against abuses,<sup>29</sup> such as bad employment practices,<sup>30</sup> or even criminal offences. Serious abuses can fall under the definition of the offence of human trafficking in Section 273f of the Dutch Criminal Code. In

26 The sectors to which this report does not devote specific attention are still high-risk. Exploitation in criminal activity is discussed in Chapter 6 of this report.

27 See §12.4.

28 See also SIOD (2004), p. 16.

29 Dijkema et al. (2006); Bakker et al. (2004).

30 See Article 7:611 of the Dutch Civil Code.

its fifth report, the NRM therefore recommended that more attention should be devoted to facilitators, such as *mala fide* employment agencies, in the fight against human trafficking.

Research into these employment agencies largely focuses on labour brokering for workers from Central and Eastern European countries. The influx of these workers has contributed to the growth in the number of *mala fide* employment agencies since the accession of countries like Bulgaria, Romania and Poland to the European Union in 2004 and 2007. In addition to migrants from Central and Eastern Europe, there are also illegal aliens working in the Netherlands via *mala fide* employment agencies. Exclusionary policies with regard to illegal immigrants<sup>31</sup> are said to make illegal aliens more dependent on gangmasters and *mala fide* employment agencies.<sup>32</sup>

In addition to the increase in the number of people looking for work, the growth in the number of these employment agencies is also due to the fact that no licence is required for employment agencies.<sup>33</sup> As a result, more employment agencies have entered the market, including those of more questionable legitimacy. The NRM pointed out previously that deregulation of the employment-agency sector would create a risk of exploitation.<sup>NRM5</sup>

#### *Regulation or deregulation of the employment- agency sector*

There have been various reactions to the abuses in the employment-agency sector from politicians, governments and a range of organisations and interest groups.<sup>34</sup> The first steps to address these abuses have been taken by interest groups in the sector itself. For instance, a licensing system based on compliance with the NEN 4400 standard has been developed on the initiative of the Dutch Association of Temporary Work Agencies (ABU).<sup>35</sup> To obtain a certificate, an employment agency is investigated on the basis of a number of criteria: the objective of the business must be to supply temporary workers, the business must keep proper personnel and salary records, and foreign workers must have a work permit. Companies that hire workers from certified employment agencies reduce their risk of recourse and penalties and also have a stronger case in the event of liability claims.<sup>36</sup>

In response to its own research, BNRM raised doubts about the self-regulatory capacity of the employment- agency sector in its fifth report. It has since emerged that the effectiveness of this enforcement strategy leaves a lot to be desired. First, the number of individuals being brokered by *mala fide* parties has not fallen since the introduction of certification, but in fact

31 Engbersen et al. (2004, p. 6) cites the mandatory linking of a social insurance and tax number to a valid right of residence, the Compulsory Identification Act (1994), the Benefit Entitlement (Residence Status) Act (1998) and the Aliens Act (2000).

32 Zuidam & Grijpstra (2004).

33 See the Placement of Personnel by Intermediaries Act (Waadi) from 1998 and the Flexibility and Security Act (Flexwet) from 1999.

34 *Appendix to the Proceedings II* 2007/08, no. 311.

35 Employment agencies have been able to secure voluntary certification since 6 June 2006. The NEN 4400 standard was definitively introduced on 1 January 2007. More than 1,600 employment agencies were certified in June 2008. Source: *Parliamentary Documents II* 2007/08, 17 050, no. 358, p. 3.

36 M. Moser, *NEN 4400-1, het gevecht tegen de malafide uitzendbureaus*. PS Documenta 2008, no. 9.

rose from 80,000 in 2004 to 100,000 in 2006.<sup>37</sup> Although the number of abuses at certified companies is lower than at non-certified businesses, the percentage is still relatively high.<sup>38</sup> This could be due to the absence of any actual sanctions. If abuses are discovered, a company can be suspended for 30 days; the suspension can be converted into a definitive deregistration if the abuses are not adequately remedied.<sup>39</sup> This compliance regime does not, however, provide for any sanctions if a certified company does not adhere to the standards imposed. Another aspect is that subscribing to the NEN standard is voluntary for employment agencies and companies that hire workers from them, which increases the risk that companies will avoid the standards that are designed to prevent abuses.

One of the recommendations made in the NRM's fifth report was therefore to review whether a licensing requirement – analogous to the UK's Gangmaster Licensing Act – would have an effect in terms of preventing exploitative practices in the employment-agency sector and whether similar legislation should be introduced in the Netherlands. The government partially adopted this recommendation by launching an investigation into extending the scope of the BIBOB Act,<sup>40</sup> since by requiring employment agencies to have a licence, the sector would fall within the scope of the BIBOB Act. This would be desirable for the sector primarily because it would provide possibilities for combating criminal activities that municipalities come across in enforcing public order. However, extending the scope of the BIBOB Act to include the employment-agency sector does not mesh with the objectives of the BIBOB Act, since there is no question of government facilitation of criminal activity in that sector. For this reason, it was concluded that extending the licensing requirement to the employment-agency sector – and thus bringing it within the scope of the BIBOB Act – would not be desirable.

The Minister of Social Affairs and Employment also stated that a licensing requirement could not be enforced within the employment-agency system until such time as a clear distinction can be made between businesses that have an allocation function in the market and those that second personnel.<sup>41</sup> The minister also regarded the introduction of the NEN standard as a success because of the growing number of certified employment agencies. The Labour Inspectorate can now carry out inspections more efficiently by only checking the certified employment agencies if there is cause to do so.<sup>42</sup>

37 De Bondt & Grijpstra (2008, p. 41)

38 The Labour Inspectorate found violations of the WAV/WML at 11% of the certified agencies inspected in 2007 and 16% of the uncertified agencies. Source: *Parliamentary Documents II* 2007/08, 17 050, no. 358, p. 5.

39 Dutch Labour Standards Association. *Informatieset over NEN 4400 en het Register Normering Arbeid*. Version 08.03. p5. [www.normeringarbeid.nl/Applications/getObject.asp?FromDB=1&Obj=1001945.pdf](http://www.normeringarbeid.nl/Applications/getObject.asp?FromDB=1&Obj=1001945.pdf). In 2007, there were 54 cases of definitive removal from the register. See [www.normeringarbeid.nl/Applications/getObject.asp?FromDB=1&Obj=1001751.pdf](http://www.normeringarbeid.nl/Applications/getObject.asp?FromDB=1&Obj=1001751.pdf)

40 De Voogd et al. (2008).

41 The broad applicability of Article 7:690 of the Dutch Civil Code means that companies for whom the allocation function is not the main priority can depart from general labour law, to the detriment of the worker, on the basis of Article 7:691 of the Dutch Civil Code. No amendment of Article 7:690 of the Dutch Civil Code is related to the question of whether employment agencies have to register.

42 *Parliamentary Documents II* 2007/08, 17 050, no. 358, p. 7.

The minister is not adverse to the ABU's proposal<sup>43</sup> to make companies that hire workers from uncertified employment agencies jointly and severally liable for payment of the wages (at the level prescribed under the Minimum Wage and Minimum Holiday Allowance Act) and to provide for this in civil law.<sup>44</sup> A legislative proposal has now been prepared to amend Article 7:692 of the Dutch Civil Code in connection with the introduction of host-company liability for payment of the applicable minimum wage and the applicable minimum holiday allowance.<sup>45</sup> There are, however, a number of reservations to be expressed with regard to the government's suggestion that this question should be regulated under civil law.

The first point is that the proposal only refers to 'minimum wage' and 'minimum holiday allowance'; no reference is made to the wages agreed upon in collective labour agreements within a sector.

The Labour Inspectorate is also not given any enforcing role. The Central or Eastern European agency workers must therefore personally compel payment of the minimum wage and minimum holiday allowance from the hiring company, but might refrain from doing so because of their vulnerable position as the result of their illegal status or dependency on the employer.

The Council of State<sup>46</sup> has also ruled that it is uncertain whether the provision satisfies relevant European Directives<sup>47</sup>. The first section of the proposed amendment of Article 7:692 of the Dutch Civil Code would state that 'the provision applies regardless of what law governs the employment contract and the contract between employer and third party'.<sup>48</sup> Time will tell whether this new provision is compatible with European law and how it will work in practice.

Another recommendation in the fifth report touched on the interdepartmental approach to human trafficking, in which the contribution of the Ministry of Social Affairs and Employment is particularly important. In 2008, the Social Intelligence and Investigation Service (SIOD) concluded a project in which 'soft' information was compiled from various sources to produce a list of the potentially worst employment agencies. The aim of this project was to discover information that could help in tackling employment agencies – by means of administrative law or criminal law – that are involved in different forms of fraud in the labour market. The processing and analysis of data from hundreds of reports produced a list of 15 businesses that might qualify for a criminal investigation by the SIOD. The analysis also yielded a list of 291 high-risk businesses, which was handed over to the Labour Inspectorate

43 For the ABU's plan, see *Parliamentary Documents II* 2007/08, 17 050, no. 358, p. 6

44 *Parliamentary Documents II* 2007/08, 17 050, no. 358, p. 6. For a discussion of this legislative proposal, see also Chapter 2.

45 *Parliamentary Documents II* 2008/09, 31 833, no. 4.

46 Advice of the Council of State, 31 October 2008, no. W12.08.0395/111.

47 Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJEU 1997 L 018.

48 *Parliamentary Documents II* 2008/09, 31 833, no. 4.

and the tax authorities for the purpose of inspections. Attempts to tackle *mala fide* employment agencies have, in fact, been a priority in the SIOD's investigative activities for years.<sup>49</sup>

One of the aims of the public prosecution service's pilot project on other forms of exploitation<sup>50</sup> is to build up a crime projection analysis of other forms of exploitation in the employment-agency sector in the Drechtsteden region (Dordrecht, Papendrecht, etc.). It could also help to create a better overview of the situation and, by extension, improve efforts to tackle abuses in the sector.

### 12.3.2 Domestic work

The fifth report of the NRM identified domestic work as one of the highest-risk sectors for other forms of exploitation. Domestic work is hidden from view and can foster social isolation and multiple dependence, especially for foreign workers who live in the employer's home, making domestic workers particularly vulnerable to exploitation. In this section, a number of developments with regard to this high-risk sector are discussed, with special attention to the category of domestic work for diplomats.

Various organisations actively campaign, nationally and internationally, to improve the position of domestic workers.<sup>51</sup> Informational material on the rights of domestic workers, aimed at this specific target group, is now also available in several languages in the Netherlands.<sup>52</sup> Some migrant organisations are very active in promoting the rights of those they represent. For instance, in 2006, after a campaign by the Philippine-based Commission for Filipino Migrant Workers (CFMW), the Abva Kabo trade union opened up membership to undocumented domestic workers.<sup>53</sup> Membership gives them access to legal assistance and free instruction in the Dutch language, among other things.<sup>54</sup>

#### *Domestic work for diplomats*

As indicated in the fifth report, the foreign domestic staff of diplomats face a heightened risk of being exploited.<sup>55</sup> A recent report by the ILO also emphasised the vulnerability of this

49 Annual Report of the SIOD, 2008, p. 12.

50 See §12.4.

51 For example, Anti Slavery International, Human Rights Watch, the International Labour Organisation (ILO), but also Dutch organisations such as Bonded Labour in the Netherlands (BLinN) and the Commission for Filipino Migrant Workers (CFMW).

52 BLinN developed informational material in several languages for this target group in 2008. FNV Bondgenoten also wrote a brochure entitled 'Your rights as a domestic worker'.

53 News report of 27 June 2006 on the CFMW website: [www.xs4all.nl/~ftpcfo01/](http://www.xs4all.nl/~ftpcfo01/). (Accessed on 31 August 2009).

54 S. van Walsum, Status denied: the persistent non-regulation of care and domestic work in Dutch homes. Presented at the conference on New migration dynamics: Regular and irregular activities on the European labour market, Nice, 6-8 December 2007.

55 For a discussion of the consequences under immigration law for household workers who are exploited, see Chapter 6 of this report.

group.<sup>56</sup> Factors that make this group more vulnerable than other domestic workers is the fact that the employer's diplomatic immunity can hamper efforts to combat abuses and the foreign employee's right to stay in the Netherlands is not granted to the employee personally; it is based on the employer's position.

One of the recommendations in the fifth report of the NRM was that the Ministry of Foreign Affairs should develop a more proactive policy with regard to the terms and conditions under which international diplomats in the Netherlands can employ foreign domestic workers. Another recommendation was that these domestic staff should be informed of their rights (under labour law) and should have the possibility of reporting abuses in their labour situation to the ministry, which will refer them on if necessary.

At the beginning of 2009, the Ministry of Foreign Affairs relaxed the policy towards the domestic staff of diplomats, agreeing, among other things, that domestic workers who wish to enter the employment of another privileged party would no longer have to return to the country of origin to apply for a temporary residence permit. In another change to the policy, Dutch missions abroad are instructed to interview domestic workers and explain their legal position in the Netherlands when they are issuing a diplomatic visa. The domestic workers have to be informed about their right to the prevailing minimum wage in the Netherlands, the number of vacation days they are entitled to, their rights in the event of illness or pregnancy, the fact that the employer does not have the right to confiscate the worker's passport, and the employer's obligation to reimburse the costs of the return journey to the country of origin upon termination of the employment contract (the employer may not make the employee work for these costs). The domestic workers are also informed of the possibility of informing the embassy of their own country or the ministry if the employer fails to comply with these legal and contractual obligations. The Dutch embassies abroad are also instructed to inform domestic workers that they can report abuse or human trafficking to the police. For the time being, these instructions are given to the household workers verbally; there are as yet no instructions to provide written information – including telephone numbers for the social services, the police and the ministry of foreign affairs, for example. The instructions do not apply for domestic staff of Dutch diplomats abroad.

In the spring of 2009 the Ministry of Foreign Affairs sent a letter to all embassies and international organisations located in the Netherlands, informing them of the new policy and reminding employers of their obligations towards their personnel under labour law.<sup>57</sup>

56 ILO, Decent work for domestic workers, International Labour Conference, 99<sup>th</sup> Session 2010, Report IV (1).

57 The letter says, among other things, that the employer is not permitted to make the domestic worker work more hours per week than contractually agreed, to withhold the costs of the return ticket from the worker's salary, or to hold onto the worker's passport. One of the recommendations in the fifth report was that private individuals who hire someone for household work should be informed about the minimum standards under labour law and human trafficking for other forms of exploitation (NRM5, 2007, recommendation 34). The letter from the Ministry of Foreign Affairs satisfied the first part of this recommendation. However, the letter does not contain any information about human trafficking for other forms of exploitation.



*Exploitation of a domestic worker*

H worked as a domestic worker for an embassy in the Netherlands on the basis of a privileged document. It was agreed in her employment contract that she would work 40 hours a week and receive a monthly salary of €1,400. However, according to H, she actually worked 15 hours a day, seven days a week, and only received €200 a month in salary. Her employer also took her passport. H wanted to be transferred to another employer. A friend put her in contact with an NGO that helped her. The NGO contacted the Ministry of Foreign Affairs, which then contacted H's employer, who denied H's allegations.

H went to the aliens police for an intake interview. She was not informed of her rights under the B9 regulation or offered a reflection period. H was not at all confident about how her case would be handled and decided to return to her country of origin. The public prosecution service did not launch a prosecution.

The lawyer submitted a claim for back wages against the employer. Since the payments that H did receive were in cash, it was difficult for her to prove that she still owed wages.

The outcome of the proceedings was not known at the time this report was written.

In this case, the domestic worker was able to escape from the situation with the help of a friend and an NGO. However, since this sector cannot be monitored (because the work takes place in the home) and since foreign domestic workers no longer have any contact with the Ministry of Foreign Affairs or other authorities once they are in the Netherlands, situations can arise in which a domestic worker has no contact at all with the outside world and therefore cannot escape a situation of exploitation or other abuse. Reaching this group continues to be an area of concern.<sup>58</sup>

The Ministry of Foreign Affairs receives sporadic reports of abuses within the employment relationship between diplomats and domestic workers. When it receives such a report, the ministry faces a dilemma. Initially, the ministry can do nothing more than ask the privileged employer to comment on the reported abuses. As a rule, the ministry will only be prepared to exert diplomatic pressure if the accusations are supported by other indications that can corroborate the worker's story. A decision to exert diplomatic pressure, however, is always taken in light of relations with the diplomat's state, explicitly including consideration of whether such pressure might have undesirable consequences for the employees of the Dutch embassy in the country in question.

Diplomatic immunity further complicates matters. Nonetheless, a criminal prosecution can be brought despite the immunity, although a sentence cannot be enforced because of the immunity. The advantage of prosecuting the diplomat is that the foreign domestic worker can claim his or her rights under the B9 and B16 regulations.

58 The fifth report also recommends conducting an investigation into how the government can inform vulnerable aliens living legally in the Netherlands (including the domestic staff of diplomats) about their legal position and how they can be given the opportunity to ask questions or report abuses in relation to labour. See NRM5, 2007, recommendation 32.



### 12.3.3 Agriculture and horticulture

Stemming from an international seminar that it organised in April 2009 on exploitation in the agriculture and horticulture sector,<sup>59</sup> the OSCE published a report distilling the international legal framework of exploitation in the agriculture sector, explaining the phenomenon of exploitation in agriculture and horticulture and identifying good practices and the challenges facing relevant organisations.<sup>60</sup> The OSCE cites the nature and conditions of the work (the fact that the work is seasonal, physically taxing, dangerous and low-paid, for example) as causes of exploitation in this sector by preventing workers from standing up for their rights<sup>61</sup>. The OSCE also mentions four trends in the agriculture sector that influence the vulnerability of workers: globalisation, immigration, employment agencies and gangmasters, and the temporary nature of the employment.

The OSCE's findings and the trends it identified are to some extent consistent with an earlier study carried out by BNRM into other forms of exploitation in the Netherlands.<sup>NRM5</sup> That study revealed the agriculture sector as a possible high-risk sector for human trafficking. Exploitation in the agriculture sector is also connected with the high-risk employment agency sector and the high-risk group of workers from Central and Eastern European countries.<sup>62</sup> Many illegal immigrants have, in fact, traditionally worked in the Dutch agriculture and horticulture sector.<sup>63</sup>

The principal cause of exploitation in Dutch agriculture and horticulture arises from the pressure to save on labour costs, which leads to a deterioration in the working conditions of the employees. The introduction of the Placement of Personnel by Intermediaries Act (WAADI)<sup>64</sup> caused explosive growth in the employment-agency sector; the number of employment agencies providing seasonal labour in the Westland greenhouse agriculture and horticulture sector rose from a few dozen to approximately 1,600.<sup>65</sup>

#### *A few initiatives*

There have been various initiatives to prevent or combat abuses in the agriculture sector. Interest groups discuss labour practices and the rights of employees and employers with trade unions and employers' organisations. The agriculture sector's employers' organisation (LTO Nederland) has developed the 'Labour and good employment practices' programme, the aim of which is to encourage its members to meet their staffing requirements in a socially responsible manner. At the beginning of 2002, LTO Nederland and the Dutch Implementing Agency

59 Technical Seminar on Trafficking for Labour Exploitation Focusing on the Agricultural Sector, 27-28 April 2009, Vienna.

60 A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region, July 2009. Available online at [www.osce.org/cthb/item\\_11\\_38709.html](http://www.osce.org/cthb/item_11_38709.html).

61 Such factors include physical and social isolation, lack of information about rights and duties, the absence of trade unions coupled with fear, poverty and racism. Source: OSCE (2009, pp. 29-30).

62 Jenissen et al. (2009), pp. 65 & 69.

63 Benseddik & Bijl (2004).

64 *Bulletin of Acts and Decrees* 1998, 306.

65 Benseddik & Bijl (2004).

for Employee Insurance (UWV) started the Seasonal Labour project, with the aim of helping employers to fill temporary job vacancies and to curb the use of illegal labourers.<sup>66</sup>

Other initiatives designed to address *mala fide* employment agencies are closely connected with exploitation in the agriculture sector; see §12.5.1. The Handmatige Agrarische Loonbedrijven (HAL) project is intended to reduce illegal employment in agriculture and horticulture by certifying so-called HAL companies, which are contractors that supply manual labourers for the sector. Certified companies are now included in the register of the Labour Standards Association (SNA).<sup>67</sup>

Dutch trade unions also fight exploitation in agriculture and horticulture. FNV Bondgenoten started the ‘equal work, equal pay’ campaign in 2006 to ensure that foreign workers do not work under less favourable working conditions than their Dutch counterparts.<sup>68</sup>

The Labour Inspectorate has made agreements with trade unions on investigating exploitation in the agriculture sector. These agreements provide that the Inspectorate will start investigations in response to reports of evasion of the statutory provisions relating to the minimum wage and working hours,<sup>69</sup> which was what happened in the 82 Champi case, in which Polish labourers were working 15 hours a day, seven days a week, for a mushroom grower.<sup>70</sup> The Labour Inspectorate does not investigate the housing situation of workers. If the Labour Inspectorate discovers evidence of poor housing, it reports it to the UWV if a work permit has been granted,<sup>71</sup> or to the relevant municipality or the Housing Inspectorate.<sup>72</sup>

The preventive, supervisory, administrative and criminal-law instruments described above are used to prevent or investigate individual abuses in agriculture and horticulture. However, exploitation often involves an accumulation of abuses, such as low pay, poor housing and a relationship of dependency. Because of this, situations of exploitation might not be perceived as human trafficking, since each violation in a company is dealt with individually – and not in combination with other abuses – by the relevant authority. A striking example of this seems to have occurred at a farm in Someren, a town in Brabant, where workers were poorly housed and worked extremely long days for exceptionally low pay.<sup>73</sup> The employer might also have used coercion. Taken together, the abuses could indicate human trafficking.<sup>74</sup> For a long

66 Online at [www.seizoenarbeid.nl](http://www.seizoenarbeid.nl) (accessed on 7 September 2009).

67 This foundation manages the NEN 4400 standards.

68 The FNV also informed the Standing Parliamentary Committee on Social Affairs about exploitation and repression in everyday practice. A compilation of extreme cases was assembled in a catalogue of grievances entitled *Fij, Jerzy*.

69 *Appendix to the Proceedings II 2007/08*, no. 819, p. 1757-1758.

70 At the time this report was written, the case had not yet been heard by the court.

71 The Implementing Agency for Employee Insurance (UWV) can refuse or revoke a work permit if the housing is poor and if an employer has been given an irrevocable fine for a violation of the Foreign Nationals (Employment) Act. See the letter from the Minister of Social Affairs and Employment (SZW) to parliament, 26 May 2009 (*Parliamentary Documents II 2008/09*, 17 050, no. 385).

72 *Appendix to the Proceedings II 2007/08*, no. 819, p. 1758.

73 See §12.2 for a detailed description of this case.

74 At the time of writing, a criminal investigation was pending. See the letter from the Minister of Social Affairs and Employment (SZW) to parliament, 26 May 2009 (*Parliamentary Documents II 2008/09*, 17 050, no. 385).

time, however, the abuses in Someren were addressed individually by the police and various inspectorates.<sup>75</sup> The Minister of Social Affairs and Employment has promised<sup>76</sup> to investigate how the cooperation and data exchange between the relevant government services could be improved, which will hopefully help to solve this problem.

#### 12.3.4 Exploitation in marriage

The fifth report of the NRM stated that marriage can also play a role in human trafficking. In the study of case law in §12.6, there is a discussion of a decision in which, according to the charges, exploitation took place within a marriage.<sup>77</sup> ‘Brides’ in marriages that are not based on consensus constitute a high-risk group for human trafficking. A marriage that the bride and groom initially enter into consensually can later result in a situation of exploitation, if it emerges in retrospect that the groom or his family wants to use the bride as a ‘domestic slave’, for example. The consent or otherwise to the choice of partner varies in forced marriages. There are also different manifestations of forced marriages, one of the most common being the marriage arranged by family members.<sup>78</sup> With any form of forced marriage, treating it as a family matter does not do sufficient justice to the phenomenon. Outside of the relational context in which the marriage takes place, a forced marriage is defined as a religious or legal marriage in which the preparatory acts of marriage have taken place against the free will of at least one of the marriage candidates and to which consent has been given under a certain kind of force.<sup>79</sup>

Nothing is known about how widespread forced marriages are, since the relevant authorities do not keep records of it. It is also uncharted territory for many Dutch professionals. A possible reason for this is that forced marriages are frequently entered into abroad. Women or men who become the victim of exploitation in a marriage are extremely vulnerable because the exploitation occurs within the domestic sphere – concealed from the outside world. The fact that victims of exploitation in marriage usually come from abroad and therefore do not speak the language well or know how to approach agencies also makes this group particularly vulnerable to exploitation.

International legislation contains explicit prohibitions against forced marriages, but they do not refer to human trafficking.<sup>80</sup> The Supplementary Convention on the Abolition of Slav-

75 *Appendix to the Proceedings II* 2007/08 no. 2901.

76 Letter from the Minister of Social Affairs and Employment (SZW) to parliament, 26 May 2009 (*Parliamentary Documents II* 2008/09, 17 050, no. 385).

77 See the ‘Imported bride case’, §12.6.2.

78 “An arranged marriage is a marriage whereby the parents seek a partner for their child. The degree of influence the child can and may exercise with respect to the choice of partner in these marriages varies from a great deal to very little” (Cornelissens et al., 2009, p. 21).

79 Cornelissens et al. (2009), p. 10.

80 Examples are Article 16 (1) opening lines and under b of the UN Convention on Women’s Rights, Article 23 (3) of the International Convention on Civil and Political Rights, Article 16 (2) of the Universal Declaration of Human Rights and Article 12 of the European Convention on Human Rights.

ery, the Slave Trade and Institutions and Practices Similar to Slavery,<sup>81</sup> to which the Netherlands is party, does cite forced marriage as a practice similar to slavery.<sup>82</sup>

A forced marriage can possess characteristics of slave trading and slavery, in that the victim is traded or is under the control of or is the ‘property’ of another person. Reasoning by analogy with the Supplementary Convention, the forced marriage could qualify as a form of exploitation falling within the scope of Article 273f (1) (1) of the Dutch Criminal Code, as long as the other criteria for the application of that provision are satisfied.

As mentioned above, nothing is known about the scale of exploitation within marriage in the Netherlands. In the ‘Imported bride’ case discussed in §12.6.2, the bride managed to escape from her situation after attending an assimilation course and seeing a film about two women who had been mistreated and locked up for years.<sup>83</sup> Devoting attention to the phenomenon in assimilation courses could perhaps be a good way of reaching at least some of the potential target group and prompting discussion of forced marriages and the possibility of exploitation within a marriage.

#### 12.4 Dutch case law on other forms of exploitation, 2005-2009

The fifth report of the NRM devoted a lot of attention to exploitation in sectors other than the sex industry (other forms of exploitation) and the criminalisation of human trafficking with a view to such exploitation. The report noted that the lack of a clear definition of what ‘exploitation’ involves in this context makes it difficult to identify, investigate and prosecute this form of human trafficking. The legislature chose to leave the further interpretation of ‘exploitation’ and the scope of the description of the offence to the legal practice. How the legal practice performs this task of establishing the law has far-reaching implications for the investigation and prosecution of other forms of exploitation. To gain a better insight into the development of case law and the bottlenecks concerning other forms of exploitation, BNRM analysed the available case law on other forms of exploitation from the time Article 273 (a) to (f) of the Dutch Criminal Code took effect until the time this report was written<sup>84</sup>. Because of the importance of the formulation of the law, all the judgments were examined very closely, and it was decided to describe each case in detail in this report.

In §12.6.1, the most important features of the analysed judgments and the problems they highlight are discussed. In the following section, all the judgments are discussed in chrono-

81 Geneva, 7 September 1956.

82 Considered comparable to slavery are: (c) Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person;

83 Source: public prosecutor’s closing statement in the ‘Imported bride’ case. Rotterdam District Court, 3 December 2008, unpublished.

84 Judgments through 1 September 2009 are included in the study. At that point, the decisions in 12 cases were known.

logical order. The discussion concludes with a comparison with the jurisprudence in other countries (§12.6.3).

#### 12.4.1 An outline of the case law

The prosecution of other forms of exploitation was slow to take off after 1 January 2005. The case law is therefore limited. At the time of writing, 12 cases had been dealt with in first instance<sup>85</sup> (seven of which are known to have been appealed). In one case, the appeal court had made a decision, which was appealed to the Supreme Court. The Supreme Court has not yet pronounced judgment in the case. It is therefore still too early to draw any definitive conclusions from the case law; however, a number of trends and issues are emerging from the case law and are discussed in the sections below.

The judgments indicate that neither producing convincing evidence nor weighing the facts and circumstances in cases concerning other forms of exploitation is straightforward. The early prosecutions failed mainly on the charge of exploitation or intention of exploitation, which is not surprising, since it is precisely this element of the offence that has to be fleshed out by means of judicial interpretation. It is on this point, accordingly, that the case law shows interesting differences of interpretation. There are also interesting aspects to the question of whether there was coercion in the form of abusing a vulnerable position. One point that needs to be addressed, for example, is how much weight the judge should attach to the fact that the initiative for the employment did or did not come from the suspect and/or that the person put to work agreed to the terms and conditions of the employment.<sup>86</sup>

Another question is whether the worker had any reasonable alternative to ending up in a situation of exploitation or whether it could have been avoided. The case law is still evolving on this point. The following analysis of the judgments attempts to answer these questions in light of the treaties underlying Article 273f Dutch Criminal Code, since the treaties signed by the Netherlands and European legislation should also guide the further interpretation and delineation of the prohibition on human trafficking outside the sex industry.<sup>NRM5</sup>

#### *Definition of the offence*<sup>87</sup>

As regards other forms of exploitation, Article 273f (1) (1) of the Dutch Criminal Code is based on the definition of human trafficking in Article 3(a) of the UN Palermo Protocol<sup>88</sup> and Article 1(1) of the EU Framework Decision on combating trafficking in human beings.<sup>89</sup>

85 Here a 'case' refers to an investigation that has been dealt with by the courts. Eight of the 12 cases involved more than one suspect.

86 In this respect, compare The Hague District Court, 21 November 2007, LJN: AZ2707 (Fleurtop) and The Hague District Court, 14 December 2007, LJN: BC1195 (Mehak) on the one hand, and the Den Bosch Court of Appeal, 30 January 2008, LJN: BC3000 (Chinese restaurant) on the other. In Zwolle District Court, 29 April 2008, LJN: BDo846, the judge seems to have followed a middle course.

87 For more details, see fifth report of the NRM, Chapter 8.

88 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000.

89 Framework Decision on Human Trafficking, 19 July 2002, 2002/629/JHA.

It is a criminal offence to recruit, transport, move, accommodate or shelter another person by force, violence or other act, with the intention of exploiting that other person. This definition of the offence, which, incidentally, does not require the other person to be actually exploited, refers to coercion in the broad sense. In addition to force, violence and the threat of violence, the provision also refers to an ‘other act’ or ‘threat of other act’, extortion, fraud, deception or the abuse of authority arising from the actual state of affairs, the abuse of a vulnerable position and giving or receiving remuneration or benefits in order to obtain the consent of a person who has authority over that other person.<sup>90</sup> Insofar as these means appeared in Article 250ter and Article 250a of the old Dutch Criminal Code, there have been court decisions that further define them.<sup>91</sup>

If a suspect is charged under Article 273f (1) (1), the judge assesses the evidence presented against the three elements of the description of the offence (act, means, intention). The public prosecution service has no particular difficulty proving recruitment, transport, moving, accommodation or sheltering of another person (the acts). In the judgments studied, the judicial finding that a case had not been proved most often rested on the assessment of the means of coercion (abuse of a vulnerable position) and the element of exploitation.

#### *Abuse of a vulnerable position*

The line taken in the case law on the means of coercion is that the combination of illegal residence, a poor economic position and inability to speak Dutch create a vulnerable position. Even illegal residence on its own creates a vulnerable position.<sup>92</sup> In some decisions it was assumed that if the suspect was aware that the other person was in this vulnerable position and took advantage of that position to derive some benefit (by acquiring cheap labour), it was a case of abuse of a vulnerable position.<sup>93</sup>

However, in the ‘Chinese restaurant’ case, the Court of Appeal in Den Bosch cited an additional requirement for a judicial finding that there was ‘abuse of a vulnerable position’ by ruling that a certain initiative and positive act by the perpetrator(s) is presumed, by which they consciously abuse the weaker or vulnerable position of victims.<sup>94</sup> The court of appeal’s

90 In view of the intention of the international instruments on which the enumeration of the means is based, terms such as force, fraud and extortion must be interpreted broadly and in a technical sense, and not strictly according to the relevant definitions of the offence (Cleiren and Nijboer, 2008).

91 The Supreme Court ruled that there was no coercion if the victim did not notice the coercion or perceive it as such and, conversely, that it is sufficient that the means of coercion frightens or intimidates the victim, even if it would not generally have made an impression on others (Supreme Court, 13 June 1995, DD 1995, 387 and Supreme Court, 28 May 1996, DD 1996, 321, respectively). For more examples, see Lestrade (2008).

92 The Court of Appeal in Den Bosch ruled that aliens who had been hired were in a vulnerable position “simply because they were staying in the Netherlands illegally” (Den Bosch Court of Appeal, 30 January 2008, LjN: BC2999). Zwolle District Court adopted a similar formulation in the Moonfish case (Zwolle Court, 29 April 2008, LjN: BDo860).

93 For example, see The Hague District Court, 21 November 2006, LjN: AZ2707 (Fleurtop) and The Hague District Court, 5 October 2007, LjN: BB5303 (Dwergarend).

94 Den Bosch Court of Appeal, 30 January 2008, LjN: BA0145 and LjN: BA0141.



judgment in this case is not yet final.<sup>95</sup> The criterion applied by the court of appeal has been adopted by other judges in later cases involving other forms of exploitation.<sup>96</sup> On this means of coercion, Cleiren and Nijboer write: “The legislative history provides no further explanation of abuse of a vulnerable position. According to Rummelink, it may arise if one person encounters the other person in such a position without there being any relationship between the two, while abuse of authority pertains more to inequality where there is a relationship.<sup>97</sup> It is precisely in the case of subtle coercion, such as the abuse of a vulnerable position, that the abuse is often concealed in more passive acts, for example, where a suspect agrees to a request by an alien, who is residing illegally in the Netherlands and has no money or shelter, to be allowed to perform work for him or her in exchange for a low wage. As the court ruled in the Fleurtop case, the suspect abuses the vulnerable position if he or she is aware of that position and takes advantage of that position to derive some benefit. To decide whether this constitutes human trafficking, it then has to be decided whether there was exploitation or the intention of exploitation. In the case law examined, however, the court regularly found that this form of coercion had not been proved, which meant that the court did not proceed to consider the question of whether exploitation had taken place.

In each of the three cases that resulted in a conviction for other forms of exploitation, a more severe means of coercion was used, such as force or violence. Obviously, the coercion was clearly evident in these cases. However, the less evident means of coercion, such as misuse of a vulnerable position, were included in the text of the legislation for a reason. It is precisely these subtle forms of coercion that are used in other forms of exploitation.

### *Exploitation*

The second subsection of Article 273f Dutch Criminal Code enumerates what, at least, the term exploitation encompasses. In addition to sexual exploitation, it includes forced or compulsory labour or services, slavery and practices similar to slavery or servitude. The legislature explained that these forms of modern slavery could include forcing someone to work under coercion or the abuse of a dependent position of a person who, under the given circumstances, did not reasonably have any other choice but to end up in a situation of exploitation, citing as an example an extremely long working week for disproportionately low pay in poor working conditions.<sup>98</sup> Not every abuse in relation to work constitutes exploitation.<sup>NRM5</sup> In the case of exploitation as the intended outcome of human trafficking, fundamental rights such as human dignity, personal freedom or physical integrity are at stake.<sup>99</sup>

The judgments that have been rendered to date confirm that Article 273f only pertains to excessive abuse in relation to work. It is noteworthy that two of the three cases in which

95 The judgment of the Supreme Court is expected on 24 November 2009.

96 For example, see Zwolle District Court, 29 April 2008, LJN: BDo860 (Moonfish) and Almelo District Court, 10 April 2009, LJN: Blo944 (Garage owner). This argument was even adopted in several cases of sexual exploitation. On this point, see §11.4.1 (escorting Brazilian women).

97 Cleiren and Nijboer (2008).

98 *Parliamentary Documents II* 2003/04, 29 291, no. 3, p. 18.

99 See also Korvinus et al. (2006).



suspects were convicted of other forms of exploitation involved personal services and the performance of domestic work in the home of the suspect(s), accompanied by, among other things, physical violence and such intensive contact between suspects and victims that the latter had little or no personal privacy.<sup>100</sup> The third case that led to a conviction for other forms of exploitation<sup>101</sup> also involved very close contact between victim and suspect, as well as an extraordinary amount of physical violence against the victim. Seven of the nine cases that resulted in acquittals, on the other hand, involved commercial employment where the interaction between the workers and the suspects was less evidently stifling and overwhelming because, for example, it was not a one-on-one relationship or because they did not live in the same house. It is possible that the work place (in the house or at a business location that is part of the formal economy) and the degree to which the relationship between the suspect and victim is a commercial one influence the court's opinion on where the dividing line between poor employment practices and exploitation lies. It is also possible that convincing evidence of exploitation is easier to produce if the victim's physical integrity has been violated by violence than, for example, by physically harmful work or an exhausting work regime.

Exploitation affects a person's fundamental rights. In some judgments<sup>102</sup> the courts explicitly considered whether there had been a violation of human rights, but only after first deciding whether there had been exploitation. However, exploitation is a violation of human rights, so that question should no longer need to be answered if, in the court's view, exploitation within the meaning of Article 273f has already been proved.

In two rulings, it was found with regard to the 'intention of exploiting' (as an element of the offence) that this intention was not present since the actions were not exclusively, or in these cases primarily, focused on exploitation.<sup>103</sup> However, the law does not require the intention to be focused exclusively on exploitation. With abusive actions in combination with coercive measures, the suspect might have other goals in addition to exploitation, without this necessarily standing in the way of a conviction under Section 273f (1) (1) Dutch Criminal Code.

The fifth report of the NRM stated that a situation constitutes exploitation if there is coercion, poor terms of employment or working conditions or multiple dependency *and* the victim does not have or reasonably feels he or she does not have the freedom to escape from the work situation. It should be noted here that this condition is also satisfied if withdrawal from the situation is possible in practical terms, but the victim's subjective appraisal forms an obstacle to doing so. This subjective perception of a lack of freedom caused particular difficulty in a number of rulings ("The bar was set too high"). In a number of judgments,

100 Utrecht District Court cites the victim's statement that "the suspect totally lived his life for him" (Utrecht District Court, 17 June 2008, LJN: BD7426).

101 Haarlem District Court, 22 April 2009, LJN: BL3519.

102 See, for example, Utrecht District Court, 17 June 2008, LJN: BD7426 and Zwolle District Court, 29 April 2008, LJN: BD0860.

103 See the cases 'Imported bride' (Rotterdam District Court, 3 December 2008, unpublished) and 'Abuse by social worker' (Leeuwarden District Court, 10 February 2009, LJN: BH2373).

the court found that it could not be established that the workers had no reasonable choice other than to work for the suspect(s), or that they had been free to leave.<sup>104</sup> The question then is what realistic alternative did the workers have? On the other hand, in a number of other cases it was in fact assumed that the workers did not have the freedom to escape the situation even though their freedom was not physically impaired.<sup>105</sup> In the Dwegarend case, the court found it plausible that it would have been difficult for the female workers to stop working, since they would no longer have any income or shelter. Nevertheless, a number of them independently returned to Poland or started working for themselves as domestic workers in the Netherlands. Despite the fact that there was evidently a realistic and demonstrated alternative for a number of the women, this did not prevent the court from finding that there was coercion in the form of misuse of a vulnerable position. In the Mehak case, the court gave an apt interpretation when it said that it could see a certain ‘inconsistency’, since the victims came to work in the Netherlands voluntarily and were grateful that the suspects enabled them to do so. However, that does not alter the actual impossibility, having arrived in the Netherlands, of escaping from a hopeless situation under degrading conditions, which the court felt could be characterised as a situation of servitude as referred to in Article 273f (2) Dutch Criminal Code.

#### *Nature of the work*

In three judgments, the activities carried out by the worker or victim in the situation of exploitation were criminal offences. In the two rulings that resulted in acquittal for human trafficking,<sup>106</sup> the court did mention the criminal nature of the work in reaching the conclusion that there had been no exploitation, but it is not apparent from the judgment that the court attached any weight to the fact that the work that the workers had to perform constituted a crime. The fact that the low pay and long working hours could not be characterised as extreme should, however, be considered in connection with the fact that the work itself was a criminal offence.

According to the charges, in six of the 12 cases studied, sexual services had also been performed by the workers/victims. In the Chinese massage parlours case<sup>107</sup> the masseuses, according to the charges, had to perform both massages and sexual acts with customers. From a perusal of the charges, however, it seems that the public prosecutor overlooked the fact that performing sexual acts with a third party for remuneration constitutes prostitution and that if any one of the means of coercion is used to persuade the victim to engage in sexual

104 Similar arguments were put forward by the court in the Chinese restaurant, Van stekkie tot stickie, Moonfish, Abuse by social worker, Garage owner and Chinese massage parlours cases.

105 This was the situation in the Fleurtop (The Hague District Court Haag, 21 November 2006, LJN: AZ2707), Mehak (The Hague District Court, 14 December 2007, LJN: BC1761) and Mentally Impaired Person (Utrecht District Court, 17 June 2008, LJN: BD7426) cases.

106 In both cases, the criminal work involved cutting cannabis. See The Hague District Court, 21 November 2006, LJN: AZ2707 (Fleurtop) and Rotterdam District Court, 5 July 2007, cause-list number: 10/775007-06 (Van stekkie tot stickie).

107 The Hague District Court, 9 June 2009, LJN: BJ1281.

acts, the situation has to be regarded as forced prostitution, and therefore as human trafficking. In this case, in addition to the exploitation in the massage parlours cited in the charges (other form of exploitation), the suspects could reasonably also have been charged with exploitation in the prostitution sector. The court subsequently acquitted the suspects on all the charges relating to human trafficking offences.

In five other cases<sup>108</sup> there were also sexual acts, but they were not commercial in nature. In these five cases, the workers/victims were said to have been sexually abused by the suspects themselves. The court found that the sexual abuse had been proved in two of the cases,<sup>109</sup> which raises the question of whether sexual exploitation by a single person, outside the sex industry, can fall within the scope of Article 273f. An NGO put this question to BNRM some time ago in relation to the case described below.

*Sexual exploitation outside the sex industry*

J was living illegally in the Netherlands and came into contact with an older, single Dutch man. He offered her domestic work in his home. J could earn a small amount and would also receive room and board.

J moved in with the man. It turned out that the man wanted to have sex with her. She saw no possibility of refusing his advances and at first accepted that this was part of the deal. The man demanded a great deal of sex, however, and rarely let her go (literally). Sometimes, when things became too much for the client, she could go out for a walk. She could have run away, but stayed because of the promises the man made. He promised to marry her and secure a residence permit for her. He said he was already arranging it with the municipality. J saw this as her only possibility of obtaining legal residence in the Netherlands. She assumed the man would keep his promise.

There are parallels between this case and a case in Leeuwarden, in which a social worker took a client into his home and persuaded her not only to perform domestic work, but also to have sex with him.<sup>110</sup> It could be argued that in the case described above, the suspect provided the woman with accommodation/shelter, using coercion in the form of deception (the woman was told she would get a residence permit if she married the man) and/or abuse of authority arising from the actual state of affairs and/or abuse of a vulnerable position (J was living in the Netherlands illegally and feared to get arrested and the man took advantage of that). The question then arises of whether there was the intention of exploiting the woman. Section 273f (2) Dutch Criminal Code also cites ‘other forms of sexual exploitation’ as a form of exploitation. It does not say that third parties must be involved, as is the case with exploitation in prostitution. Given the intention of international instruments such as the Palermo Protocol, on which Section 273f of the Dutch Criminal Code is based, there is also no reason to interpret the term ‘other forms of sexual exploitation’ restrictively. Moreover, if a person is

108 These are the Fleurtop, Van stekkie tot stickie, Imported bride, Abuse by social worker and Forced drug smuggling cases. All of these cases are discussed at length in the next section.

109 Namely in the Abuse by social worker and Forced drug smuggling cases.

110 Leeuwarden District Court, 10 February 2009, LJNd: BH2373. The case is discussed at length in §12.6.2.

indeed guilty of human trafficking if he or she persuades another person to perform domestic work by taking advantage of the other person's vulnerable position, why would it be any different if that vulnerable position is exploited to obtain sexual favours?

The question that has to be answered is, when is there a case of 'other forms of sexual exploitation'? After all, a person's physical integrity is, by definition, affected by this form of exploitation, in contrast to exploitation in the labour relationship. Is the mere fact that someone must have sex with another person in a situation where the victim's vulnerable position is exploited sufficient to establish human trafficking? Can there already be a case of 'other forms of sexual exploitation' if the 'victim' had sex with the suspect once (as a result of the use of coercion)? Does this form of exploitation fall somewhere between forced prostitution and forced labour or services, or rape? And when do the sexual acts become rape and under what circumstances can they fall within the scope of human trafficking? Can it be argued that in the case of more evident forms of coercion (such as violence or the threat of violence), it is rape, while more subtle forms of coercion (such as abuse of a vulnerable position), point more in the direction of human trafficking? The courts have not yet ruled on these questions.

### *Charges*

In most cases, charges were brought under various sections of Article 273f Dutch Criminal Code; the combination of section 1, subsections 1 and 4, was frequently charged. What is striking is that in a few cases charges were only brought in connection with section 1, subsection 1.<sup>111</sup> It is not clear why subsection 4 was not included in the charges in these cases. Sometimes the elements were confused in the elaboration of the facts in the charges. For instance, indicators of exploitation were sometimes mentioned when means of coercion were meant,<sup>112</sup> and vice versa, facts were sometimes presented under the heading of exploitation, when they were elements of the means.<sup>113</sup>

### *Appeal and cassation*

Because the task of formulating the law has been left to the courts, it is important for more rulings to be rendered in cases of other forms of exploitation. It is also important for appeal courts, and of course the Supreme Court, to rule on these matters. In seven of the 12 cases examined, the decision in first instance was appealed. At the time of writing, a judgement on appeal had only been rendered in the 'Chinese restaurant' case. The five cases in which

<sup>111</sup> These are the Chinese restaurant and Mehak cases, see §12.6.2.

<sup>112</sup> The indictment in Den Bosch District Court, 8 March 2007, LJN: BA0145 (Chinese restaurant), stated, for example: "[...] this coercion, fact, deception and/or abuse consisted of the fact that he, the suspect, allowed said persons, all of whom were living in the Netherlands illegally, for (on average) six days a week, (roughly) eleven hours a day in the [name of restaurant] restaurant (of which the suspect was one of the managers) in exchange for food and lodging, or a very small monetary remuneration and/or housed them with other persons in a (small) room in the building in which the [name of restaurant] restaurant is established and/or prevented them from leaving the building, or seeking contact with the outside world." The indicators of exploitation are mentioned in the arguments supporting the finding that there was coercion.

<sup>113</sup> This was the case in the indictment in The Hague District Court, 14 December 2007, LJN: BC1195 (Mehak). See §12.6.2.

no appeal had been filed<sup>114</sup> were all cases that ended in acquittal on the human trafficking charges.

### *General characteristics*

Almost every case of other forms of exploitation that has been tried involved events in sectors that were referred to earlier as high-risk sectors:<sup>NRM5</sup> crime (cannabis growing and drug smuggling), the Chinese catering sector, personal services and domestic work, cleaning and factory work in the food industry. In one case, the events took place in the craft metal-working sector. Nine of the 12 cases involved labour performed by migrants, some of whom had only recently arrived in the country. In total, 35 suspects were tried in the 12 cases, and in all of the cases, other charges were brought in addition to human trafficking, such as violations of the Opium Act, participation in a criminal organisation, human smuggling, illegal weapon possession, abuse by a social worker, complicity in assault leading to death, complicity in assault, influencing witnesses, rape and offences against tax law. Although only four suspects – in three cases – were found guilty of human trafficking, 23 of the 31 suspects acquitted of human trafficking were convicted of one or more of the other offences they were charged with. Two cases resulted in a full acquittal.

The four suspects convicted in the three cases were given average prison sentences of 33 months;<sup>115</sup> one was also sentenced to community service. In two rulings, the court also ordered the convicted persons to pay compensation for emotional injury as demanded by the victim (€500 and €1,500, respectively).<sup>116</sup>

Finally, in four cases, the victims/workers were involved in criminal offences that were closely related to the situation of exploitation. In two of these cases, the victims were prosecuted for those offences.<sup>117</sup>

### *Cultural aspects*

In almost all the cases, the suspects and the people who worked for them shared a cultural background, in the sense that they belonged to the same or a related ethnic or linguistic group. In two cases, the relationship was closer still, with family ties between the victims and suspects.<sup>118</sup> This seems to confirm in practice that in certain forms of ethnic entrepreneurship there is a heightened risk of exploitation and that exploitation also occurs within relationships and/or families.<sup>NRM5</sup>

114 These are the cases discussed at length in §12.6.2: Fleurtop, Van stekkie tot stickie, Polish cleaners (the public prosecution service lodged an appeal in this case, but later withdrew it), Imported bride and Garage owner.

115 It should be noted that three suspects were also found guilty of other serious offences, specifically rape and causing the smuggling of drugs (Forced drug smuggling case) and complicity in assault (Mehak case)

116 Utrecht District Court, 17 June 2008, LJN: BD7426 (Mentally handicapped person) and Haarlem District Court, 22 April 2009, LJN: BI3519 (Forced drug smuggling).

117 This is The Hague District Court, 21 November 2006, LJN: AZ2707 (Fleurtop) and The Hague District Court, 14 December 2007, LJN: BC1195 (Mehak). For a discussion of the problems surrounding victims as offenders, see Chapter 6 of this report.

118 In the Mehak and Imported Bride cases, it was established that the suspects and victims were relatives.

*Cultural aspects in trials for other forms of exploitation*<sup>119</sup>

Following the ruling in the Mehak case,<sup>120</sup> BNRM investigated whether cultural background also played a role in other cases of other forms of exploitation. In the Mehak case, the District Court in The Hague ruled that it was plausible in the relevant cultural setting that the victims were unable to have access to their own identity documents. The district court also took the victim's cultural background into account as an extenuating circumstance. Quite apart from the decision in the Mehak case, there are other reasons for assuming that cultural background might have played a role in other cases of other forms of exploitation. First, there is overlap between the countries of origin of the suspects and victims.<sup>121</sup> Second, culture can be seen as one of the factors that makes a person vulnerable to exploitation. Belonging to a particular cultural minority group can result in discrimination, which might make it more difficult to find employment. Cultural values can also cause people to regard certain actions or conditions as acceptable. Certain cultural stereotypes can also influence preferences for certain migrants and a person's possibilities of being hired in the country of destination. Third, the element of coercion in Article 273f Dutch Criminal Code can also depend on the subjective perception (in other words, the cultural context) of the victim.<sup>122</sup>

All seven<sup>123</sup> cases known to BNRM as of 1 November 2008 were examined to investigate the role of cultural background in cases of other forms of exploitation. The examination of the files showed that, with the exception of the appellant's brief, the indicators of cultural background<sup>124</sup> can be found in most of the case documents studied,<sup>125</sup> which suggests that all of the actors in the criminal trial referred to cultural background.<sup>126</sup> The cultural background is brought into the case in various ways, such as when arguing against the severity of the sentence or in the discussion of personal circumstances. Cultural background also plays a role in the evidence. The inability of the individuals concerned to speak Dutch and their not being in possession of a passport as a result of the cultural setting led to a conclusion that they did not act voluntarily. However, it emerged from interviews with judges that they seem to be searching for a balance between taking cultural background into account and not doing so, but without much certainty about the latitude and the boundaries within which the cultural background can be taken into account. It can be concluded that the Mehak case seems to have been an exception, in the sense that cultural background was explicitly cited on several occasions in the judgment, although that does not necessarily mean that it played a role in the evidence of the specific means of coercion. What was striking here was the fact that the charges on other forms of exploitation in this case were incidental.<sup>127</sup> The manner in which culture played a role in the Mehak case does not seem to be out of step. Cultural background can be an important factor, both in relation to the evidence and the severity of the penalty.

119 Bogaerts (2009).

120 The Hague District Court, 14 December 2007, LJN: BC1761.

121 In NRM5, BNRM reached the conclusion, after studying descriptions of various cases, that the gangmaster/employer and the employee are often immigrants from the same country of origin or have the same cultural background.

122 Cameron & Newman (2008).

123 Fleurtop, Chinese restaurant, Van stekkie tot stickie, Polish cleaners, Mehak, Moonfish and Mentally handicapped person.

124 The indicators used are: country of birth/country of origin, indigenous group, ethnicity, urbanity, social class, religion and command of the Dutch language.

125 The following were studied in each instance: final judgment, prosecutor's closing statement, pleadings, appellant's brief and the official report of the hearing.

126 Only in the case of the Mentally handicapped person were no indicators referred to. An explanation for this might be that the culprit and victim were both native Dutch persons so cultural differences played no role.

127 The case involved assault resulting in the death of the infant Mehak, because she was said to be bewitched.



### 12.4.2 Discussion of court decisions

This section discusses the 12 rulings concerning other forms of exploitation, in chronological order.

#### *Cannabis cultivation – Fleurtop*

In the first case involving other forms of exploitation to come before the courts,<sup>128</sup> the suspects were acquitted of human trafficking. The facts as they emerged from the judgment are set out in the box below.

#### *Case of cannabis cultivation – Fleurtop*

The suspects regularly hired Bulgarian men, women and older children living illegally in the country to cut the tops of cannabis plants. The illegal activities took place in the evening and at night, and the workers were paid approximately €4.50 an hour. The Bulgarians usually received a telephone call shortly before they were to come to work, informing them when and where they were to wait to be picked up. The cutters were then transported to the cutting location in vans that were too cramped and were blacked out or in the sealed cargo area of a truck. The cutters usually had no idea where they were working. On arrival at the site, they had to turn off their mobile telephones. The working conditions were poor: seated on crates and in the stink of the plants they had to cut the tops off the cannabis plants. They were not allowed to leave the area they were working in. After completing the work, they were brought back to The Hague.

In its assessment of whether there was human trafficking in this case, the court found, with regard to the means, that the suspects had recruited Bulgarians who were residing illegally in the Netherlands, spoke hardly any Dutch and were in an economic position that could be described as outright poverty to perform criminal work (cutting cannabis plants) in the evenings and at night. The suspects unscrupulously took advantage of the Bulgarians' desperate situation. Given the context in which the Bulgarians had to survive, the court rejected the defence's position that they did the work gladly and voluntarily and that there was no question of coercion, since the cutters themselves turned up at the pick-up point and some of them knew what kind of work they would be doing. The court therefore ascertained that there was coercion through misuse of a vulnerable position and of authority by ruling: "The suspect and his accomplices induced the illegal cutters to make themselves available to perform work by abusing their vulnerable position and by abusing authority arising from the actual state of affairs."<sup>129</sup>

The court then considered whether there was exploitation. For this to be the case, there would have to be a violation of fundamental rights. To evaluate whether that was the situation in this case, the court took into account the following circumstances: people in a vulnerable position were induced by the suspects to perform criminal activities for them; the work was

<sup>128</sup> The Hague District Court, 21 November 2006, LJN: AZ2707. This judgment is final and irrevocable.

<sup>129</sup> The Hague District Court, 21 November 2006, LJN: AZ2707.



badly paid (about 25% below minimum wage without any social security) and performed in poor conditions. The transport to and from work totally failed to meet the standard for safe transport. Once they had stepped into the blacked-out van or cargo area of a truck, the people were no longer able to withdraw from the work for which they had been recruited.

The court found these circumstances to be in violation of decent employment practices and accused the suspects of treating the workers without respect, but it did not arrive at the verdict that there was exploitation, since the Bulgarians depended entirely on the suspects for the work, the cutters performed the work on an incidental basis and it had not been shown that the working hours were extremely long or the pay was extremely low; therefore, the suspects did not violate the rights of the cutters to such an extent that exploitation as referred to in Section 273a/f Dutch Criminal Code could be established. The court said in the decision that it was a ‘close call’.

The court apparently did not attach any weight to the fact that the work that the labourers had to perform was a criminal offence. The fact that the poor pay and long working hours could not be described as extreme should be seen in conjunction with the fact that the work *itself* was punishable.

The decision is final and irrevocable.<sup>130</sup>

#### *Chinese restaurant*

The prosecution of a chef and sous-chef<sup>131</sup> for the exploitation of illegal workers in a Chinese restaurant also resulted in an acquittal by the district court,<sup>132</sup> and, later, the court of appeal in Den Bosch<sup>133</sup>, although the decisions were based on different considerations than those in the Fleurtop case.

#### *Chinese restaurant case*

This case concerned illegal Chinese aliens working in a Chinese restaurant. They worked on average of 11 to 13 hours a day, six days a week, for a monthly wage of €450 to €800. They slept a number of workers to a bedroom. The court of appeal found that the workers had themselves approached the restaurant for work and that they were free to leave at any time. It ruled that human trafficking had not been proved. The chef and sous-chef were convicted of people smuggling.<sup>134</sup>

<sup>130</sup> The public prosecution service withdrew an appeal it had lodged earlier.

<sup>131</sup> The main suspect (the owner of the restaurant) is a fugitive.

<sup>132</sup> Den Bosch District Court, 8 March 2007, LJN: BA0145 en LJN: BA0141. The judgment against the third suspect followed several months later: Den Bosch District Court, 28 July 2007, LJN: BD8599. This judgment also produced an acquittal on human trafficking, but the suspect was convicted of a tax offence and of forgery. As far as BNRM is aware, no appeal has been filed.

<sup>133</sup> Den Bosch Court of Appeal, 30 January 2008, LJN: BC3000 and LJN: BC2999.

<sup>134</sup> In first instance, the sous-chef was acquitted on all charges, and the chef was acquitted of human trafficking but convicted of people smuggling. The appeal court found both defendants guilty of people smuggling.

The suspects were charged with human trafficking under Article 273f (1) (1) of the Dutch Criminal Code. It is noteworthy that Article 1 (4) was not included in the charges. Following the district court, the court of appeal ruled that the description of human trafficking in the UN Palermo Protocol, which Article 273f Dutch Criminal Code implements, relates primarily to activities designed to achieve the ultimate aim of exploitation, while the former human trafficking provision (Article 250a Dutch Criminal Code) was primarily concerned with the exploitation *per se*. This distinction was indeed made in the explanatory memorandum, but the legislature also stated there that “human trafficking is (aimed at) exploitation”<sup>135</sup>. The ban on human trafficking therefore also encompassed exploitation: excessive abuse in a relationship of work or service, as well as the acts designed to place a person in that kind of position. The fact that *exploitation* is the key term in the definition of the offence in Article 273f Dutch Criminal Code follows from, among other things, the legislative history, in which reference is made to various treaties, and the legislature’s intention to give priority to the preservation of physical and emotional integrity and the individual’s personal freedom in criminalising human trafficking.<sup>NRM5</sup>

The court of appeal first established whether acts were performed (recruiting, accommodating or sheltering) involving the use of one of the means cited in section 1 of the article. In deciding whether coercion was used in the form of the misuse of a vulnerable position or of authority, the court of appeal first found: “The first thing that can be said is that the Chinese referred to in the charges were in a vulnerable/weaker position simply because they were living in the Netherlands illegally”.<sup>136</sup> Since it had been established that they were in a vulnerable position, the court of appeal considered whether the suspects had *abused* that vulnerable position. In the court of appeal’s view, this presumed a certain initiative and positive action on the part of the perpetrator(s), whereby they consciously abused the weaker or vulnerable position of the victims. The court of appeal found that, although the workers in this case were in a vulnerable position simply because they were residing in the Netherlands illegally, the suspects had not taken the initiative or taken positive action towards them. They had only responded to requests, and sometimes entreaties, from the workers, who had themselves decided to migrate, were in the country to earn money, did not owe any debts to the suspects and were free to leave the restaurant. Under those circumstances, according to the court of appeal, it had not been proved that the suspects had intentionally misused the workers’ vulnerable position by giving them shelter and accommodation. The court also found that persons who only asked for room and board in exchange for work performed their unpaid or seriously underpaid work voluntarily. With this opinion, the court of appeal disregarded the fact that the suspects were aware of the vulnerable position of the workers – as indicated by the entreaties – and availed of this vulnerable position to hire extremely cheap labour. This can be characterised as the means of coercion (abusing a vulnerable position)

135 *Parliamentary Documents II* 2003/04, 29 291, no. 3, p. 2.

136 Den Bosch Court of Appeal, 30 January 2008, LJN: BC3000 and LJN: BC2999.

that, if it is established, makes the victim's consent irrelevant.<sup>137</sup> It is not clear why this should be different where the contact or initiative comes from the victim.

Although the court of appeal did not have to decide whether exploitation took place at the restaurant, it decided that it had not. Although the situation was socially undesirable, with the workers sharing bedrooms above the restaurant, working days of 11 to 13 hours, with only five days off each month and a monthly salary of €450 to €800,<sup>138</sup> it had not been shown that the working conditions *per se* were bad, and the workers were able to freely dispose of their income. Moreover, the court of appeal found, it could not be said of the Chinese that they did not have any reasonable choice but to reside and work in the restaurant. What realistic alternative the Chinese illegal aliens might have had remains the question.

The public prosecution service appealed to the Supreme Court in this case.<sup>139</sup>

*“Van stekkie tot stickie” case*

The third case in the Netherlands involving prosecution for human trafficking in the sense of other forms of exploitation also ended in an acquittal on the human trafficking charges.<sup>140</sup>

*Van stekkie tot stickie case*

This case, like the Fleurtop case, involved Bulgarians employed in the cannabis-growing sector. Also like the Fleurtop case, a number of female workers were reportedly sexually abused. Seven suspects were tried. In addition to human trafficking,<sup>141</sup> the charges included rape,<sup>142</sup> people smuggling, growing and preparing cannabis and participation in a criminal organisation. The district court in Rotterdam convicted the suspects for the last three crimes, but found that rape and human trafficking had not been proved.

The public prosecutor in this case argued that the circumstances under which the workers had to work could certainly be described as abhorrent by Dutch standards: “[...] an extraordinarily low wage, paid as undeclared income, small (upstairs) rooms in an oppressive environment for a high rent, no hot water and no heating (albeit because the gas had been shut off for months), and no continued payment of wages in the event of illness”<sup>143</sup>. The public prosecutor also argued: “And during this period, she [one of the victims; BNRM] saw no

137 Art. 3(b) UN Palermo Protocol: “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.” Article 1 (2) of the EU Framework Decision: “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.”

138 The judgment does not mention that this would at best be equal to €3,20 an hour.

139 *OM in cassatie om uitbuiting illegale Chinezen*, Trouw, 30 January 2008.

140 Rotterdam District Court, 5 July 2007. The judgments have not been published.

141 The charge of human trafficking related to both sexual exploitation and other forms of exploitation. The charge of sexual exploitation related to the systematic rape of one of the workers.

142 Three suspects were charged with rape.

143 Public prosecutor's closing speech, June 2007.

chance of escaping from that situation. She could not leave and was not allowed to leave, or at least saw no possibility of leaving.”<sup>144</sup>.

The court’s reasoning for the acquittal on human trafficking was concise: “It cannot be concluded from the content of the file and the proceedings at the hearing that the persons named in charge 1 were exploited. In [the name of the place] the persons who were working in the cannabis plantation were not exceptionally poorly paid; people were free to leave when they wished; they had their own rooms and they organised joint barbecues.”

In its judgment, the district court only addressed the element of exploitation. Since it found that this element had not been proved, the suspects were acquitted of human trafficking. As in the Fleurtop case, no additional weight was assigned to the fact that the workers were engaged in criminal activities. The rulings are final and irrevocable.

#### *Polish cleaners case*

The prosecution of two suspects for the exploitation of Polish cleaners, among other things, also led to no convictions for human trafficking. The facts on which the district court<sup>145</sup> based its decision on this case are as follows.

#### *Dwergarend| Polish cleaners case*

The suspects recruited a number of Polish women to come to the Netherlands to do domestic work. Most of the women were in a bad financial position in Poland and were coming to the Netherlands to earn money. The women themselves made the decision to come to the Netherlands, where the suspects arranged accommodation and cleaning work (mainly for private individuals) for them. The women spoke no Dutch. They received less than the minimum wage (up to €6.50 per hour) and sometimes had to perform unpaid work. According to most of the women, there was an atmosphere of fear in the dwelling they were staying in. Stories circulated that they would be raped or knocked down by a car if they ran away. The suspects did nothing to dispel these fears.

In assessing whether there had been complicity in human trafficking, the district court in The Hague looked at the meaning of the term ‘exploitation’, referring to a non-exhaustive list of indicators of exploitation in the NRM’s fifth report. The court observed that the women were not informed of their rights and the suspects abused their ignorance regarding their legal position. Accordingly, the court found it plausible that it would be difficult for the workers to stop working, since they would then have no income or accommodation. Nonetheless, a number of the women returned independently to Poland or started working for themselves in the Netherlands as cleaners. Although there was evidently a realistic and demonstrable alternative for some of the women, the court found that the means of coercion ‘abuse of a vulnerable position’ had been used.

<sup>144</sup> Public prosecutor’s closing speech, June 2007.

<sup>145</sup> The Hague District Court, 5 October 2007, LJN: BB5303. The judgment in the case of the second defendant was not published.

The court ruled that in this case the following indicators of exploitation had been met: (1) deception (misusing the workers' ignorance of his or her legal position), (2) poor working conditions (the worker was not paid the minimum wage) and (3) multiple dependency (the workers depended on the employer for shelter). The court found that it had not been proved that the suspects had used or threatened to use physical violence against the workers.

In the court's view, the suspects had acted extremely reprehensibly in consciously abusing the Polish women's vulnerable position.<sup>146</sup> The court condemned the suspects for infringing socially accepted ideas of what constitutes good employment practices but found that, since in its view the working and living conditions were not extraordinarily bad, there was no situation of excesses that violated fundamental rights and there was therefore no situation of exploitation within the meaning of Article 273f (1) (1) and (6) Dutch Criminal Code. The court referred to excesses in the plural. An accumulation of less serious abuses can also result in excess in the sense of exploitation. The excess then lies in the accumulation of abuses.<sup>NRM5</sup> In this case, the court referred to the indicators of exploitation and found that three of the indicators were present.

### *Mehak*

At the end of 2007 the District Court in The Hague handed down the first convictions for human trafficking outside the sex industry in the Mehak case.<sup>147</sup>

#### *Mehak case*

A married couple from India were convicted for exploiting three other Indian people whom they employed for domestic work. The victims came to the Netherlands with the help of the suspects and were entirely dependent on them. They received a very small wage and were given board and lodging in the suspects' house. They did not have free access to their money or passports,<sup>148</sup> worked long days, were in the same environment day in and day out and were severely impeded in their contact with the outside world. They had no privacy whatsoever and were subjected to physical violence.

A striking feature of the case is that no charges were brought under Article 273f (1)(4). The charges relating to Section 273f only pertained to section 1(1) of the Dutch Criminal Code. Since the actions (sheltering, accommodating) commenced before 1 January 2005, when Article 273f of the Dutch Criminal Code had not yet taken effect, the court confined itself to the

146 Interestingly, the court in this case found that it had been proven that the suspect had consciously abused the vulnerable position of the Polish women. What is clear is that in this case the initiative came from the suspect. Nevertheless, by contrast with the Chinese restaurant case, the court did not say this in so many words. However, the court did not find that the nature of the work constituted exploitation within the meaning of section 2 of Article 273f Dutch Criminal Code.

147 The Hague District Court, 14 December 2007, LJN: BC1195 and LJN: BC1761. This was a mega case on charges including assault resulting in the death of an infant. The human trafficking was 'an added bonus' in this case, which is discussed in more detail in the text box on culture in cases of other forms of exploitation (§12.5.1) and in §6.3 on the non-punishment principle.

148 The visas of the victims lapsed after some time, making them illegal immigrants.

period from 1 January 2005 in its judgment. Since the accommodation was provided for the victims on a continuous basis, even after 1 January 2005, there was no difficulty in finding that the act of accommodating had been proved. In the judgments, which are not yet final and irrevocable, the court based its opinion that the situation involved a case of modern slavery, based on the explanatory memorandum to Article 273a/f Dutch Criminal Code,<sup>149</sup> earlier case law and the literature. The court based its reasoning on the criterion that there must be objective excess, or circumstances that are unacceptable according to standards that apply in Dutch society and the legal system. What is normative is the violation of fundamental rights – physical integrity, emotional integrity or personal liberty. Factors in determining whether there has been a violation are the seriousness and duration of the coercion used and the economic advantage to be gained. The court found that the victims’ consent to the situation is irrelevant if any of the means of coercion is used.<sup>150</sup> The victims’ subjective perception can play a role in deciding whether they could have removed themselves from the power exerted by the suspects. In the ruling, the victims’ subjective perception was a major factor in the finding that the victims felt they had no real alternative other than to work for the couple.

In evaluating whether this case involved human trafficking, the court took the following circumstances into account:

- the exceptionally low pay – by Dutch standards – for the work (€23.75 to €50.00 per month). The court noted that the free room and board did not alter the fact that the pay was extremely low;
- the very long (sometimes extremely long) working days;
- payments were not made, or not made in full, to the victims personally;
- the victims’ passports were kept in a suitcase<sup>151</sup>;
- the victims were in the same environment day in and day out, with little or no contact of any kind with the outside world;
- the complete lack of privacy. The three victims stated that they had no room of their own. They also stated that the suspects frequently called them at the house to check what they were doing. “Even telephone conversations with family in India were fully controlled by [A].”<sup>152</sup> There was therefore little or no privacy;
- the physical violence.<sup>153</sup>

All of the facts and circumstances *taken into account together* meant, in the court’s opinion, that there was an excessive situation in which the physical and emotional integrity and personal liberty of the victims were violated to a far-reaching degree. They performed forced labour, since they could not escape from the sphere of influence of the suspects. The judge

149 *Parliamentary Documents II* 2003/04, 29 291, no. 3.

150 See also EU Framework Decision (2002) and UN Palermo protocol (2000).

151 The district court said that it had to be assumed that none of the three victims had free access to their passports.

152 The Hague District Court, 14 December 2007, LJN: BC1195.

153 The district court was convinced that the victims were beaten by A, in any case.

found that the extreme underpayment in relation to the working hours and other conditions demonstrated the intention of exploitation.<sup>154</sup>

The court did ascertain a certain ‘duality’, since the victims came to the Netherlands voluntarily to work and were grateful to the suspects for enabling them to do so. However, this does not detract from the actual impossibility, once in the Netherlands, of escaping the hopeless situation under inhuman conditions, which the court deemed could be characterised as a situation of servitude as referred to in Section 273f (2) of the Dutch Criminal Code. This ‘duality’ observed by the court shows striking parallels with the situation of the workers in the aforementioned Chinese restaurant case. They, too, started working voluntarily and were grateful that the suspects offered them work and shelter. At the same time, it was ascertained in both cases that the workers/victims were in a vulnerable or hopeless and degrading position. In the Chinese restaurant case, the decisive factor was ultimately the initiative or positive action with respect to abuse of the vulnerable position of the victims, which the district court and the court of appeal in Den Bosch said was required and had not been proved. In the Mehak case, an initiative or positive action on the part of the suspects was not a criterion as regards the means of coercion.

Another parallel with cases discussed earlier can be found in the grounds given for the punishment of both suspects. The court stated: “The fact that they perhaps also believed they were doing these people a favour by allowing them to work for them in the Netherlands does not detract from [the human trafficking, BNRM].”<sup>155</sup> Similar defences were put forward by suspects in other cases as well. One of the suspects in the Polish cleaners case, for instance, made the following statement: “All I was doing was helping the women. I understood where they came from.”<sup>156</sup>

In the Mehak case, A, the mistress of the house, was sentenced to three years and nine months in prison.<sup>157</sup> B, the master of the house, was sentenced to two years and three months in prison.<sup>158</sup> Both suspects are fugitives.<sup>159</sup> The public prosecution service has appealed both rulings.

### *Moonfish*

The district court in Zwolle-Lelystad handled another case relating to other forms of exploitation, involving Indians living illegally in the Netherlands.<sup>160</sup>

154 The district court found violence, misuse of a vulnerable position and misuse of authority arising from the actual state of affairs to be means of coercion that had been proven.

155 The Hague District Court, 14 December 2007, LJN: BC1195 and LJN: BC1761.

156 Official report of the public hearing, The Hague District Court, 21 September 2007.

157 She was found guilty of human trafficking, complicity in intentionally influencing the freedom of a person to make a true and conscientious statement to judge or public official (multiple offences) and complicity in premeditated assault (multiple offences).

158 He was found guilty of human trafficking and of complicity in intentionally influencing the freedom of a person to make a true and conscientious statement to a judge or public official (multiple offences).

159 The suspects’ lawyer has explicit power of attorney; Article 279 Dutch Criminal Code.

160 Zwolle District Court, 29 April 2008, LJN: BDo860; LJN: BDo846 and LJN: BDo857.



*Moonfish*

In this case, three brothers from India were tried on suspicion of exploiting Indians in their tofu factory. The workers, who usually offered themselves for work at a Sikh temple, performed heavy labour in the tofu factory. They usually worked long hours, six days a week. The pay was low. The workers were dependent on the suspects for work, transport and accommodation. They were housed in the home of one of the brothers, where some of them had to share a bed.

Before arriving at the question of whether the workers were exploited, the court first considered whether acts had been performed that constituted misuse of a weaker or vulnerable position on the part of the workers. Like the court of appeal in Den Bosch in the Chinese restaurant case, the Zwolle district court argued that this assumed some initiative and positive action on the part of the suspects.

First and foremost, the district court found that the workers were in a vulnerable position simply because they were living in the Netherlands illegally. To this point, the district court's reasoning is virtually identical to that of the appeal court in Den Bosch in the Chinese restaurant case. By contrast with the court in the Chinese restaurant case, however, in the Moonfish case the district court in Zwolle found that the suspects had taken the initiative and had acted consciously by transporting, accommodating and sheltering the Indian men, in the process abusing the victims' vulnerable position, and with the aim of deriving benefit from the recruitment of cheap labour for a tofu factory. The court based this finding on the following facts and circumstances:

- The workers were living in the Netherlands illegally and were not legally permitted to work, which the suspects knew.
- The workers (or their families) had incurred substantial debts to finance their journey to Europe.
- The workers spoke no Dutch and had no identity papers.
- The work in the factory was onerous by Dutch standard.
- The workers generally worked six days a week, often for more than eight hours a day, for €800 per month. No overtime was paid. The workers paid the suspects €100 a month in rent.
- Eight people were living in one dwelling, arranged by the suspects, and some had to share a bed.
- The suspects also provided the transport to and from work.
- The workers were not insured for medical costs.
- No taxes or social insurance premiums were paid for them.

The court found that although most of the workers had voluntarily offered their services, which meant that no active recruitment was necessary, nevertheless such active and deliberate action had been undertaken as to constitute misuse of the victim's vulnerable position. The active and deliberate action was related to the transport, accommodation and sheltering of the illegal workers. The workers' vulnerable position had been misused with these actions. The manner in which the workers found the work is reminiscent of the Chinese restaurant

case, in which the workers themselves also approached the suspects for work. For the court of appeal in Den Bosch, however, the workers' initiative was the decisive factor for assuming that the suspects did *not* actively abuse their vulnerable position.

Having established that by their actions the suspects had misused the illegal workers' vulnerable position, the court considered whether there was exploitation or an intention of exploitation. The court described the situation as socially undesirable but felt there was no intention of exploitation. Referring to the criterion used in the NRM's fifth report to distinguish exploitation as referred to in Article 273f of the Dutch Criminal Code from other abuses,<sup>161</sup> the court ruled that the circumstances were insufficiently serious to be described as violation of fundamental rights. In the court's opinion, therefore, the situation was not excessive, and it ruled that there was no relationship of debt bondage between the suspects and the workers and that the suspects did not hold the workers' identity papers so there was not such an excessive labour relationship, multiple dependency or lack of freedom that the Indians did not reasonably have any other choice than to work for the suspects. However, the question is the same as in the Chinese restaurant case: what was the workers' alternative?

The court provided little in the way of a specific explanation as to why it did not feel the situation was excessive. It merely concluded that there were long working days and weeks involving onerous work for an income that did not match market rates.<sup>162</sup>

The court did find that people smuggling had been proved, however. In its grounds for the sentence, the court found as follows: "The court considers it very serious that the suspect and his co-perpetrators placed illegal aliens in such an undesirable situation and made them work under extremely bad conditions: long working days, working weeks of six days, having to share a bed, income of no more than €800 per month, no payment for overtime, and no medical insurance. This is completely unacceptable according to Dutch standards." The public prosecution service has appealed the rulings.

### *Mentally impaired person*

The District Court in Utrecht dealt with the second case involving other forms of exploitation that resulted in a conviction.<sup>163</sup>

#### *Case of a mentally impaired person*

The suspect and victim both lived alone in the same apartment building. The two were initially friends. Over the course of time, they saw each other on a daily basis, and the suspect had the victim perform household work (washing dishes, vacuuming, cleaning windows). He also got

161 There is coercion, poor terms of employment or working conditions or multiple dependency and the victim does not have or does not reasonably feel he or she has the freedom to leave the working situation.

162 It is not possible to discover from the judgment (without investigating the case file) precisely how long the working days were. If it is assumed on the basis of the above that the working week was six days, at eight hours a day, for €800 a month, the wage could not have been more than €3.85 an hour.

163 Utrecht District Court, 17 June 2008, LJN: BD7426.

the victim, a Dutch man who functions at the level of a ten-year-old child because of a mental impairment, to take over his job delivering mail for a month and a half. The suspect paid the victim for this once, in the amount of €50. The victim worked at a sheltered workshop and had to perform the various activities for the suspect in addition to his own job. The man also had to get up early in the morning to make the suspect's breakfast and coffee before going to work. In that context, the suspect once made the victim pay him €50 for making the wrong coffee. The man also had to fetch 15 euros worth of cannabis for the suspect and pay for it himself whenever the suspect felt he had done something wrong. Finally, the court accepted that the suspect had regularly kicked the victim and twice held a burning cigarette against his hand. The events occurred over the course of slightly more than a year.

The public prosecution service charged the suspect under both Section 273f (1)(1) and (1)(4) Dutch Criminal Code. In order to decide whether there had been a situation of criminal exploitation, the court considered the following three questions in order: (1) Was there work or services? (2) Was there a possible situation of exploitation? and (3) Was there exploitation to such an extent that human rights were violated? All three questions were answered in the affirmative.

The victim had to perform household tasks, buy cannabis and deliver parcels for the suspect without receiving reasonable compensation. Work and services were therefore performed. The court then addressed the second question: Was there a situation of exploitation? The court took into account the fact that the suspect knew the victim was vulnerable and impressionable and did not dare to refuse. He took advantage of this by making him work in his place without providing reasonable compensation. An additional factor was that he threatened to hit the victim if he did not perform the tasks properly and did actually assault him. As a result of his mental impairment, the victim did not reasonably have the possibility of extracting himself from the situation. He was consequently in an involuntary situation in which he was forced to perform the activities demanded by the suspect. The court said that this made it a situation of exploitation.

Although the court found that exploitation had been proved, which in itself implies that human rights had been violated, it considered the question of a human rights violation separately. However, exploitation already implies a violation of human rights, so this question should therefore not need to be answered separately if, in the court's opinion, exploitation in the sense of Section 273f of the Dutch Criminal Code has been proved. In this case, the court ruled that the victim's human dignity and personal liberty had been violated.

Since the suspect's lawyer argued in his plea whether there was *intention* of exploitation (under 1), the court then specifically addressed that question, arriving at the conclusion that, in addition to the actual exploitation, there had also been the intention to exploitation. The court was convinced that the suspect took the victim into his house in order to have the man work for him. The suspect also transported the victim with the aim of having him deliver parcels. This all implies that the suspect acted intentionally, and the court deemed that it had been proved that the actions were undertaken with the intention of exploitation.

The suspect was sentenced to a prison term of seven months, four months of which were conditional, with a probation period of two years. The suspect was also given a community service order of 120 hours and ordered to pay compensation to the state for the benefit of the victim. The court imposed the order for compensation for emotional injury *ex officio* and fixed the initial amount of compensation at €500.<sup>164</sup>

*The imported bride*<sup>165</sup>

In the next case in which charges of human trafficking in the sense of other forms of exploitation were filed, six suspects stood trial for, among other things, the exploitation of a family member, a young Moroccan woman.<sup>166</sup>

*The imported bride*

A young Moroccan woman was brought to the Netherlands by her in-laws when she married the principal suspect. The public prosecutor argued that the bride had to live with her in-laws despite an agreement to the contrary, was prevented from leaving the home, was made to perform household tasks, was mistreated, was prevented by the in-laws from contacting her family and was prevented from participating in society by being kept for a long time in almost total isolation by her in-laws.<sup>167</sup>

The suspects were charged under Article 273f (1) (1) and (1) (4) of the Dutch Criminal Code. With regard to the charges based on section (1) (1), the District Court in Rotterdam ruled that it had to be established that the suspects had the intention of exploiting the bride at the time she was brought to the country. In the court's opinion, however, the primary objective of bringing the bride to the country was to enable her to live a married life with one of the suspects. The only evidence that suggested otherwise was the bride's statement, but that statement only reflected the bride's conclusion following her actual stay. The court said that this was *ipso facto* insufficient to prove intent. The court therefore found that the charges brought under section (1) (1) had not been proved. It is noteworthy that the court ruled in favour of the suspects in terms of what their primary intention was.<sup>168</sup> The question is whether, it is relevant if, with regard to that intention, an objective is primary or secondary. It is also not unusual to conclude the intention from later actions. The court does not comment on this, however.

The court then considered whether the bride had been coerced and/or induced to perform household work (section (1) (4)). Here too, the court encountered evidentiary problems. Since, in the court's opinion, the case file contained no other evidence to support the complainant's statements that she had been coerced into performing household work, the court

164 For a discussion of compensation for victims of human trafficking, see § 4.3 of this report.

165 See §12.5.4 for an analysis of forced marriage as a form of human trafficking.

166 Rotterdam District Court, 3 December 2008, the judgments have not been published.

167 Public prosecutor's closing statement, 19 November 2008.

168 See also Leeuwarden District Court, 10 February 2009, LJN: BH2373 (Abuse by social worker).

also found that the charges under section (1) (4) had not been proved. The court noted, unnecessarily, that it did suspect that the bride had been left to her fate in the Netherlands by the family and that ‘to a certain extent’ she had been charged with household duties. The court also found that the family did not meet its duty of care towards a new member of the family who was largely dependent on her family.

The six family members were charged not only with human trafficking, but also illegal deprivation of liberty. Four family members were also suspected of assault, and the bride’s spouse was charged with both rape and causing grievous bodily harm. Although the court found that these charges had not been proved either, it did base its ruling on the following facts and circumstances.

With regard to the charges of deprivation of liberty, the court found: “Of the offences with which the suspects are charged, the court only considers it proven that the complainant did not have her own key to the home, it was made difficult for her to contact her family in Belgium and Morocco, and that she was accompanied by family members on visits to agencies.”<sup>169</sup> As regards causing grievous bodily harm, with which the bride’s spouse was charged, the court ruled: “On the complainant’s body, the forensic doctors found, [...] among other things, a scar above her right eyebrow and on her right lower arm, which could perhaps be explained by actions of which the suspect is accused in the charge but with which the forensic doctors could not ascertain a causal relationship with sufficient certainty.”<sup>170</sup> Finally, with regard to the rape with which the spouse was charged, the court ruled that the forensic doctor had found scar tissue near the vagina but could not make any pronouncement on when the injury had occurred or confirm or rule out a causal connection with rape.

It is noticeable that the court separated the different facts in evaluating the offences charged and did not consider them in combination with each other in deciding whether there was human trafficking involved. Human trafficking in the sense of other forms of exploitation is an offence in which a conviction frequently depends on an accumulation of circumstances that can only lead to a finding that the offence has been proved by considering them in relation to each other<sup>171</sup> (see also §11.3.4).

The suspects were all acquitted on all charges. The rulings were not appealed.

#### *Abuse by social worker*

A decision that also resulted in the acquittal on charges of other forms of exploitation involved a case in which a social worker with the Dutch Mental Healthcare Agency (GGZ) was tried for exploiting one of his female clients.<sup>172</sup>

169 Rotterdam District Court, 3 December 2008, unpublished.

170 Rotterdam District Court, 3 December 2008, unpublished.

171 As the district court expressly did in the Mehak case, The Hague District Court, 14 December 2007, LJN: BC1195.

172 Leeuwarden District Court, 10 February 2009, LJN: BH2373.

*Case of abuse by social worker*

In the course of his work for the GGZ, the suspect came into contact with the victim after becoming her case manager. During this supervision, the social worker and his client formed a relationship, which ultimately resulted in the woman moving in with the suspect at the latter's initiative. In his closing statement, the public prosecutor put forward the following circumstances: the woman did all of the suspect's housekeeping, she regularly had to have sex with him, she was persuaded to take out loans for the suspect and the suspect regularly withdrew money from her account.<sup>173</sup> According to the public prosecutor, the case involved the coerced performance of work or services and financial exploitation.

The suspect was charged under both Article 273f (1)(1) and (1)(4) Dutch Criminal Code. With regard to the means of coercion the suspect was charged with using,<sup>174</sup> the court found that the suspect “certainly abused his position as care provider and the vulnerability of [victim 2],”<sup>175</sup> having earlier established that “the initiative for forming the relationship came from the suspect and [victim 2] has stated that she consented because she wanted the attention and trust of the suspect.” But the court evidently did not feel that the use of any means of coercion had been proved. On that point, the court found: “Exploitation presumes a certain degree of involuntariness or subjection, whereby the situation of exploitation violates fundamental human rights, such as human dignity or personal liberty. Taken as a whole, the actions of the exploiter must be aimed at limiting the victim's options to such an extent that the victim sees no other possibility than to submit to the exploiter's wishes. In the court's opinion, there was no question of that in this case, since it has not been established that [victim 2] ended up in such a situation of dependence involuntarily.” In light of the conviction under Article 249 (2) (3) of the Dutch Criminal Code<sup>176</sup> in relation to the same victim, this reasoning is difficult to comprehend. This conviction indicates that the suspect had a position of authority over the victim arising from the actual relationship, and therefore there was also authority arising from the actual state of affairs within the meaning of Article 273f (1) Dutch Criminal Code.

If any of the means of coercion is used, the victim's consent is irrelevant.

Nor did the court find any intention to exploit (subsection (1) (1)). The court found that intent had not been sufficiently established: “Although the suspect at times acted [...] the court has not been convinced that he built up his contact with [victim 2] exclusively with a view to be-

173 Public prosecutor's closing statement, 27 January 2009.

174 “[...] (use and/or misuse of a psychological authority which the suspect (repeatedly), also in view of his capacity as responsible case manager and/or supervisor employed by the Dutch Mental Health Care Agency in [place name] or as a certified and registered health care worker/nurse (with a so-called BIG (Professionals in Individual Health Care) registration, via the suspect's company/agency [company name] and/or the psychological condition of [name of victim; BNRM], over [name of victim]).”

175 Leeuwarden District Court, 10 February 2009, LJN: BH2373.

176 The essence of criminality under Article 249 of the Dutch Criminal Code is the inequality in the positions of the offender and the victim. Subsection 3 of this article reads: “a person who, working in health care or social care, commits an indecent act with a person under his authority or his charge as a patient or a client.”

ing able to exploit her.”<sup>177</sup> The insertion of the word ‘exclusively’ in this sentence is confusing. There is no requirement for the intent to be *exclusively* focused on exploitation.

The suspect was sentenced to two years in prison for committing indecent acts with the woman and another client. He was also disbarred from his profession for seven years. The public prosecution department appealed the ruling.

#### *Garage owner*

This case before the district court in Almelo involved a Serbian man staying in the Netherlands illegally, who worked at the suspect’s garage for €5 per hour.<sup>178</sup>

The court first considered the question of whether there was misuse of authority or of a weaker/vulnerable position. The court decided that the victim was in a vulnerable position because he was residing in the Netherlands illegally. In determining whether the suspect also misused this vulnerable position, the court took the following circumstances into account: the worker had personally taken the decision to come to the Netherlands, he could not find work in Serbia, he had debts in Serbia and was therefore unable to support his family, his illegal status prevented him from earning an income legally in the Netherlands, it was he who approached the suspect’s company seeking work, it was agreed he would be paid €5 an hour, this money was paid weekly and was entirely at the worker’s disposal, the worker was not bound to the suspect by any monetary debt or other obligation and he was free to stop working work and to leave at any time. In light of these circumstances, the court decided that there was no abuse of a vulnerable position. In reaching this decision, the court used the same criterion as the court of appeal in Den Bosch in the Chinese restaurant case,<sup>179</sup> “On the above grounds, the court is of the opinion that the suspect cannot be said to have taken the *required* initiative or to have taken positive action with respect to said person, for example by approaching him or persuading him to come and work at the company.”<sup>180</sup> Since the means was not proved, the court did not address the question of whether there was exploitation or intention of exploitation in this case. The court did not explicitly comment on the charge based on the sixth subsection of Article 273f (1): wilfully profiting from the exploitation of another person. After all, even if the means of coercion is not proved, there can still be a case of profiting from exploitation.

The suspect was acquitted of human trafficking and money laundering, but the court did find that he was guilty of people smuggling (the employment of an alien remaining unlawfully in the Netherlands, Section 197b Dutch Criminal Code). The suspect was sentenced to 150 hours of community service. The worker’s claim for back wages and for damages were declared inadmissible because it was too complex.

177 Leeuwarden District Court, 10 February 2009, LJN: BH2373.

178 Almelo District Court, 10 April 2009, LJN: BL0944.

179 Den Bosch Court of Appeal, 30 January 2008, LJN: BC3000 and LJN: BC2999.

180 Almelo District Court, 10 April 2009, LJN: BL0944.



*Forced drug smuggling*

In April 2009, the district court in Haarlem rendered the third conviction for other forms of exploitation.<sup>181</sup>

*Case of forced drug smuggling*

In this case the victim was lured to Curacao by the suspect (her ex-boyfriend) under false pretences. By making serious threats against the woman and her child, the suspect made it clear to the woman that she had to transport cocaine to the Netherlands, and then raped her. At a later date, the suspect pushed the packages of cocaine into the woman's body. The victim said she didn't want to participate in the smuggling, but the suspect refused to listen. The suspect made a number of threats against the woman and her three-month-old baby during the acts. The victim ultimately left for the Netherlands with the packets of cocaine in her body and was arrested on arrival there.

The suspect was charged not only with human trafficking (Section 273f (1) (4) of the Dutch Criminal Code) but also with rape and causing another person to smuggle drugs. The District Court in Haarlem decided that all three offences had been proved.

With regard to the charges of human trafficking,<sup>182</sup> the court found that it had been proved that the suspect had forced the woman to perform services (transporting narcotics to the Netherlands) by forcibly inserting the packets of cocaine into her vagina and anus and saying in a threatening tone: "You just do what I say" and "If you don't do it, you'll get the Colombian necktie and I'll throw your child in the sea".

As stated, the court also convicted on the charges of rape and causing another person to smuggle drugs. The judicial finding of fact on the offence of causing another person to smuggle drugs was particularly relevant for the victim, since this finding that the suspect caused another person to smuggle drugs established that she is not an offender. The victim could therefore not be prosecuted for drug smuggling.<sup>183</sup> In its grounds for the sentence, the court said: "In causing said import, the suspect abused the complainant [the victim], a former girlfriend, whom the suspect treated as nothing more than a mechanical device, an implement."<sup>184</sup>

In accordance with the public prosecution service's demand, the suspect was sentenced to four years in prison. The court also awarded the claim of 1500 euro in compensation for the emotional injury suffered by the victim.

181 Haarlem District Court, 22 April 2009, LJN: BI3519. This judgment is also discussed in §6.3.

182 Both the indictment and the statement of judicial findings say 'one of the means referred to in Article 273f (1) (1) of the Dutch Criminal Code' without specifying which form of coercion it is.

183 See also §6.3 of this report.

184 Haarlem District Court, 22 April 2009, LJN: BI3519.

*Chinese massage parlours*

The most recent decision concerning other forms of exploitation known to BNRM at time of writing<sup>185</sup> was the following.

*Chinese massage parlours*

Two Chinese men and a Chinese woman were suspected of exploiting Chinese women living in the Netherlands illegally in two massage parlours cum manicure studios.<sup>186</sup> In these massage parlours, massages were given for €30 an hour, of which €12 went to the masseuse and €18 to the employer. According to the public prosecution service, the illegal workers received lower wages than legal workers, they had to perform sexual acts with customers for payment and they were housed in poor conditions by the suspects. The proceeds from any sexual services performed by the masseuses were split fifty-fifty between the worker and the suspects.

As emerges from the terminology used, the indictment (the charges were brought by the National Public Prosecutor’s Office for Financial, Economic and Environmental Offences in this case) relates mainly to ‘other forms of exploitation’. In the section concerning Article 273f (1)(4) Dutch Criminal Code, the suspect was charged that “by abusing authority arising from the actual state of affairs and/or by abusing the vulnerable position of said persons, he induced (women) to make themselves available for performing work or services (subsection 4), the work or services consisting of, among other things, work as a masseuse in [names of the massage parlours]”.<sup>187</sup> The suspect was also charged under Section 273f (1)(9). The charges read that “the suspect and/or his co-perpetrator(s) offered these women work that consisted of massaging men and/or providing sexual services to these men, or at least work that in different circumstances those women would not have performed or not for the wages they received” and “whereby the benefits from the proceeds of said persons’ sexual acts consisted of the fact that said persons had to surrender to the suspect and/or his co-perpetrator(s) a part of the proceeds from the sexual acts performed by them with one or more third parties in the massage parlours of the suspect and/or his co-perpetrator(s) and/or elsewhere”.

The public prosecutor seems to have disregarded the fact that sexual acts with a third party constitutes prostitution and that if a person is induced to perform them with any of the means of coercion, it is a case of forced prostitution and, hence, also human trafficking. So in addition to the exploitation in the massage parlours (other forms of exploitation) cited in the charges, it would have been reasonable to include a separate charge of exploitation in prostitution in the indictment.

The court subsequently acquitted the suspects on all the charges connected with the human trafficking offences.

<sup>185</sup> Reference date is 1 August 2009.

<sup>186</sup> The Hague District Court, 9 June 2009, LJN: BJ1281; LJN: BJ1280 and LJN: BJ1279. A fourth suspect in this case was not charged with human trafficking: LJN: BJ1282.

<sup>187</sup> The Hague District Court, 9 June 2009, LJN: BJ1281; LJN: BJ1280 and LJN: BJ1279.

With regard to the means of coercion, the court found as follows: “The court therefore considers it plausible that their illegal status forced said women to accept this work and that they would not have performed this work, or at least not for the wages they received for it, if they had been staying in the Netherlands legally, so that in that sense there is a certain degree of involuntariness. After all, the women concerned had to survive and under those circumstances, as [name of victim] and [name of victim] have stated, there were just happy to have found paid employment”. In addition, the court said: “Nor has it been shown that the persons concerned did not have the freedom to leave the work situation. The mere fact that they were illegal aliens is insufficient in that context. After all, as [victim’s name] also stated, there were other ways of earning money if they could no longer work in the suspect’s parlour.” Although the court evidently felt that it had been proved that a number of the women also provided sexual services (the agreements for which were made with the customers concerned by the suspects and the proceeds from which were split fifty-fifty with the women), the court seems to have disregarded the fact that with regard to exploitation in prostitution and profiting from the proceeds of a prostitute’s sexual acts, the hourly rate<sup>188</sup> and accommodation<sup>189</sup> are irrelevant.

The court therefore evidently makes no distinction between exploitation in prostitution and other forms of exploitation, which, even though the charges were unfortunately formulated on this point, certainly would have been possible on the grounds of the charges under Section 273f (1)(4) Dutch Criminal Code and should have been made on the grounds of the charges under Section 273f (1)(9).<sup>190</sup> Even if the court found that the coercion had not been proved and the findings regarding the hourly rate and housing can be regarded as superfluous, the distinction should have been made.

Although the three suspects were acquitted of human trafficking, the court ruled that the offences of participation in a criminal organisation (Section 140 of the Dutch Criminal Code) and people smuggling (Section 197a of the Dutch Criminal Code) and violations of Sections 68 and 69 of the State Taxes Act had been proved. The suspects were each sentenced to 18 months in prison, nine of which were imposed conditionally with a probationary period of two years. In all three cases, the suspects and the public prosecution service both appealed the verdicts.

188 On the hourly rate, the court ruled: “In the court’s opinion, it follows from these statements that the persons concerned worked for a very low hourly rate, of which the suspects [the names of the suspects] also demanded a disproportionate share”.

189 On the accommodation, the court found: “However, it has not been established that the suspects and his fellow suspects also provided them with shelter that did not comply with the requirements of reasonable and decent accommodation. Leaving aside the fact that only three of them stated that they slept in the salon, the case file contains no evidence that the accommodation was inadequate in the aforementioned sense”.

190 The Hague District Court, 9 June 2009, LJN: BJ1281; LJN: BJ1280 and LJN: BJ1279.

### 12.4.3 A comparative international survey

As announced in the introduction to §12.6, as part of its survey of judicial decisions on cases of other forms of exploitation, BNRM also examined legislation and case law on this point in a number of other countries. The aim was to gain an insight into how the legislatures and courts in other countries interpret the various elements of other forms of exploitation. The Netherlands may be able to learn from the legal frameworks and judgment in the other countries.

The comparative legal survey focused on Belgium, France, Norway and the United States.<sup>191</sup> Human trafficking for other forms of exploitation has been a criminal offence in Belgium and the United States for a relatively long time, and these countries therefore have greater experience in prosecuting these forms of exploitation. France stands out for its strict interpretation of the UN Palermo Protocol. Finally, Norway is included in the survey because it is a European country that has ratified the UN Palermo Protocol but is not bound by the EU Framework Decision on human trafficking (2002) because it is not a member state of the EU.

In order to make a comparison with the situation in the Netherlands, this section discusses a selection of laws and cases concerning other forms of exploitation in the other countries.<sup>192</sup>

#### *Definition of the offence*

France, Norway and Belgium have included the definitions of the offence of human trafficking under titles in the criminal code that characterise human trafficking as a violation of human dignity, personal liberty or physical integrity.<sup>193</sup> It is conspicuous that the criminalisation of other forms of exploitation is provided for in the national legislation of the countries surveyed both in separate articles and consolidated in a single article. For instance, the United States has four terms for economic exploitation in criminal law: *forced labour* (18 USC par. 1589), *involuntary servitude* (18 USC par. 1584), *peonage* (18 USC par. 1581) and *slavery* (18 USC par. 1583). Contrary to the situation in the Netherlands, these forms of exploitation are contained in separate provisions of the criminal law. The US also has another section that criminalises actions relating to preparing and facilitating exploitation.<sup>194</sup> As is the case with

191 For a discussion of case law in other countries, see ILO, 2009, *Forced labour and human trafficking. Casebook of Court decisions*. Switzerland: ILO; and Coster van Voorhout, 2009, *Human trafficking for labour exploitation*.

192 It was not the intention to provide a complete overview of the jurisprudence in countries that were studied. Furthermore, only the legislation relevant to other forms of exploitation is discussed. The research methods are explained in Appendix 2.

193 The Belgian human trafficking article is currently to be found in Book 2, Title VIII (Offences and serious crimes against the person), Chapter IIIter (Human Trafficking), Articles 433quinquies, 433sexies, 433septies, 433octies and 433novies of the Criminal Code. In France, Chapter V of the Code Pénal (offences against human dignity) in Articles 225-4-1 to 225-4-9 of the Code Pénal. Norway, in Part II of the *Almindelig borgerlig Straffelov* (Strl), chapter 21 ‘offences against personal liberty’, § 224. The US in Title 18 - Crimes And Criminal Procedure Part I – Crimes, Chapter 77 - Peonage, Slavery, And Trafficking In Persons.

194 18 USC par. 1590.

Section 273f Dutch Criminal Code, Belgium, France and Norway have included different forms of exploitation in a single, central provision of criminal law. In addition to sexual and economic exploitation, these provisions also explicitly refer to other forms of exploitation, such as coercing another person to beg (Belgium<sup>195</sup> and France<sup>196</sup>), coercing another person to commit crimes (Belgium<sup>197</sup> and France<sup>198</sup>) and coercing another person to perform military service abroad (Norway<sup>199</sup>). Belgium also has a provision that, although it doesn't fall under human trafficking, does criminalise the accommodation of vulnerable illegal aliens in conditions that are contrary to human dignity (rack-renter practices).<sup>200</sup>

As regards the scope of the human trafficking provisions, France adopts a narrow definition of the term human trafficking, as set out in the EU Framework Decision and the UN Palermo Protocol. Only the actions to prepare and facilitate human trafficking with the aim of exploiting a person are criminalised as human trafficking *per se* in France. If the actual exploitation started, and therefore manifests itself in the work environment, this conduct does not fall under the central human trafficking article, 225-4-1 of the Code Pénal, but under entirely different provisions of French criminal law and other legal regimes.<sup>201</sup> Under section 225-4-1 of the Code Pénal, the suspect's intention to exploit will have to be proved before the exploitation actually manifests itself. However, the preparations for human trafficking will be difficult to identify before the exploitation has taken place. As far as BNRM is aware,<sup>202</sup> there have been no cases that have led to convictions for other forms of exploitation under this provision in France. A potentially problematic aspect in this context is that French judges view manifest situations of exploitation, which constitute the offence of human trafficking according to the EU Framework Decision and the UN Palermo Protocol, from a perspective of labour law or as a form of poor employment practices.

Unlike the French legislation, the Norwegian legislation is interpreted to mean that the victims 'have been subjected to forced labour'. This formulation by the court seems to indicate that the definition of the offence in §224, paragraph 1 Strl, under b) requires that forced labour has actually occurred.<sup>203</sup>

195 Article 433 quinquies § 1 sub 2 in conjunction with Article 433ter, Criminal Code.

196 Article 225-4-1, Code pénal.

197 Article 433quinquies § 1 sub 5, Criminal Code.

198 Artikel 225-4-1, Code pénal.

199 §224 paragraph 1 Strl under c.

200 See Article 433decies of the Criminal Code. This Belgian provision is not covered in the remainder of this study.

201 For example, Article 225-13 of the Code Pénal requires, for the purpose of the definition of the offence – which encompasses living and working conditions contrary to human dignity (but not in the sense of human trafficking) – *a du travail accompli*. See also Article 225-14 Code Pénal and Article L8221-5 *Code du Travail*.

202 Written consultation with Comité Contre l'Esclavage Moderne, 14 August 2009 and consultation with Commission Nationale Consultative des Droits de l'Homme (CNCDDH) on 2 July 2009.

203 See *Jaeren District Court: The Public prosecution Authority vs Daniel D., Case no. 08-069332MED-JARE, 4 July 2008*. The Norwegians seem to have (partially) dealt with this, however, by criminalising a number of facilitating and preparatory activities for human trafficking as forms of participation in human trafficking on the grounds of §224 paragraph 2 Strl.

Table 12.1 presents a convenient comparative overview of the texts of the central statutory provisions on human trafficking in each country.

Table 12.1 Overview of regulation concerning other exploitation

Country / Organisation	Central human trafficking article (concerning other forms of exploitation)	Action	Means of coercion	(Intention of) exploitation
Netherlands	Section 273f (1) (1) of the Dutch Criminal Code	‘any person who [...] recruits, transports, moves, accommodates or shelters another person’	‘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’	‘with the intention of exploiting this other person’
EU	Article 1 EU Framework Decision on Trafficking in Human Beings (2002)	‘recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person’	‘a) use is made of coercion force or threat, including abduction, or b) uses is made of deceit or fraud, or c) there is an abuse of authority or a position of vulnerability, which is such that the person has no real or 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 persons’ 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’
UN	Article 3 (a) UN Palermo Protocol	‘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 IN SECTORS OTHER THAN THE SEX INDUSTRY

Country / Organisation	Central human trafficking article (concerning other forms of exploitation)	Action	Means of coercion	(Intention of) exploitation
Belgium	Article 433quinquies (3) Criminal Code	'the recruitment, transportation, transfer, accommodation, sheltering of a person, the exchange or transfer of control over that person'	not applicable	'for the purpose [...] of exploiting that person or allowing that person to be exploited in conditions that are in violation of human dignity'
France	Article 225-4-1 Code pénal	'de recruter [...], de la transporter, de la transférer, de herberger ou de l'accueillir'	'en échange d'une rémunération ou de tout autre avantage ou d'une promesse de rémunération ou d'avantage'	'pour la mettre à sa disposition ou à la disposition d'un tiers, même non identifié, afin soit de permettre la commission contre cette personne de conditions de travail ou d'hébergement contraires à sa dignité'
Norway	§ 224 paragraph 1 (b) Almindelig borgerlig Straffelov	'any person who [...] exploits another person'	'by force, threats, misuse of another person's vulnerability'	'for the purpose of forced labour'
US	Victims of Trafficking and Violence Protection Act of 2000, Section 103 <sup>204</sup>	'the recruitment, harboring, transportation, provision, or obtaining of a person'	'through the use of force, fraud, or coercion'	'for the purpose of labor or services, or subjection to involuntary servitude, peonage, debt bondage, or slavery'

### Means of coercion

As in the Netherlands, in Norway and the US the use of certain means of coercion is an element of the offence of human trafficking. In Belgium, by contrast, the use of coercion is an aggravating circumstance.<sup>205</sup> Coercion was a component under the old Belgian human trafficking law,<sup>206</sup> but producing evidence of coercion proved problematic. The new legislation was intended to put an end to these evidentiary problems.<sup>207</sup> In France, the only means of coercion included in the definition of the offence of human trafficking is the receipt of money or any other benefit, emphasising the commercial nature of exploitation. Other means of

204 Section 103 gives a definition of 'severe forms of human trafficking', but it is not a provision making it a criminal offence, although Section 103 does give an abridged description of the various elements in different American human trafficking articles.

205 Articles 433sexies to 433octies of the Belgian Criminal Code.

206 Article 77bis of the Aliens Act.

207 See Vermeulen (2006, p. 15).



coercion mentioned in the EU Framework Decision, the UN Palermo Protocol and Article 273f of the Dutch Criminal Code are aggravating circumstances in French law.<sup>208</sup> Accordingly, Belgium and France also comply with Article 3 (c) of the UN Palermo Protocol, which further provides that the use of coercion does not have to be proved if the victim of human trafficking is under the age of 18. Norway has a provision to this effect in its law.<sup>209</sup>

Reservations can be expressed about the omission of means of coercion in the Belgian and French definitions of the offence. Work that does involve coercion or abuse of a vulnerable position, but not a violation of human dignity,<sup>210</sup> might not fall under the scope of the current provision. It is also possible to argue the opposite. Since the Belgian and French definitions of the offence have not included coercion or abuse of a vulnerable position, forms of illegal work or illegal employment could be prosecuted under the central human trafficking provisions.<sup>211</sup> Case law shows, however, that this latter reservation does not apply for Belgium.<sup>212</sup> The means of coercion included in the law on human trafficking in Belgium, France,<sup>213</sup> Norway and the US largely correspond with the means stipulated in Article 273f Dutch Criminal Code; such means as threats, force, the use of violence and abuse of a vulnerable position.<sup>214</sup> In Belgium, the coercion does not have to be directed against the victim, but can also affect other persons.<sup>215</sup> In addition, the American legislature explicitly refers to ‘document confiscation’<sup>216</sup> and causing ‘psychological, financial, or reputational harm’<sup>217</sup> as means of coercion. One American provision (18 USC par. 1590), which is solely concerned with preparing and facilitating human trafficking, provides that *every* means can be used however.

#### *Abuse of a vulnerable position*

Abuse of the victim’s vulnerable position is a factor in the human trafficking provisions in Belgium, France and Norway.<sup>218</sup> These countries adopt the terms ‘particularly vulnerable

208 Article 225-4-2 Code Pénal.

209 §224 Strl.

210 For an interpretation of the term *human dignity*, see the text under the heading ‘Exploitation’ in this section.

211 Vermeulen (2006, p. 18).

212 For example, the Correctional Court in Tongeren (21 December 2006, 9<sup>th</sup> chamber) acquitted the defendants of human trafficking. The young women who worked in the bar were paid, were not deprived of their freedom of movement, threatened or obliged to perform certain acts against their will. Furthermore, they could choose to be paid by the day or by the week and could determine their day off. They performed the work voluntarily. There was also no evidence that the standards for safety at work and the welfare of the employees had not been observed in the café. See also the section under the heading ‘Case law’ for a number of successful prosecutions for human trafficking.

213 Note: in Belgium and France, the use of coercion is an aggravating circumstance.

214 Article 273f (1) (1) of the Dutch Criminal Code might have a broader scope with the inclusion of the phrase (in italics) “person who by [...] *or other fact* [...] recruits, transports, moves, accommodates or shelters another person with the intention of exploiting this other person [...]”.

215 Article 433septies under 7 Belgian Criminal Code.

216 18 USC par. 1592. This article concerns only the actions relating to preparing or facilitating exploitation.

217 18 USC par. 1589.

218 In Belgium and France, abuse of a vulnerable position is an aggravating circumstance. In Norway, it is an element of the definition of the offence.

position,<sup>219</sup> ‘vulnerability (or dependency)’<sup>220</sup> and ‘vulnerable situation’ in their human trafficking articles.<sup>221</sup> The international legislation and case law in this study show that a vulnerable position can arise from both constant and variable factors related to contextual factors and the personal characteristics of the victim.<sup>222</sup>

Belgian and French legislation and jurisprudence show that the vulnerable position of the victim is related to the contextual factors arising from the economic or other relationship with the human trafficker, illegal status or even an economic crisis in a geographic area.<sup>223</sup>

*Exploitation in the textile industry*<sup>224</sup>

Two years before the introduction of the current human trafficking provision, Article 225-4-1 of the Code Pénal, the following case came before the court in France. In the Vendée, employees were being exploited in the textile industry. Employer B prohibited his employees from laughing, talking or raising their heads. In the hot summer months, the doors were kept closed, and in the winter the heating was not switched on, but employees were not allowed to keep their jackets on. B enforced these rules strictly and punished any violations. B. also threatened to close down his business so that the employees would end up on the street.

With respect to the employees’ position of dependency, the appeal court ruled that it was reflected in their lack of schooling. The appeal court also found that the textile sector was directly affected by the economic crisis at the time and that the events had occurred in an area where there was already a lot of unemployment. The loss of their jobs could therefore have disastrous consequences for the employees, according to the appeal court. The court concluded that a general economic crisis could create a situation of dependency.

According to the appeal court, the condition ‘à des conditions de travail ou d’hébergement incompatibles avec la dignité humaine’ was also met and various elements in the textile company together created working conditions that were incompatible with human dignity. This was reflected in the extremely strict discipline, the poor physical conditions and the humiliations in B’s company and B’s constant reminders that the employees depended on him, as their employer, for continued employment.

Monsieur B was sentenced to two years in prison and fined 100,000 francs. In the related civil case, the victims were each awarded 3,000 francs.

A vulnerable position can also arise from personal characteristics such as youth, psychological or physical ailments and illness (Belgium and France).<sup>225 226</sup>

219 Artikel 433septies sub 2, Belgian Criminal Code.

220 Artikel 225-4-2 sub 2, Code pénal only mentions ‘une personne dont la particulierè vulnérabilité’. Articles 225-13 and 225-14 Code Pénal use the term ‘la vulnérabilité ou l’état de dépendance’ (France).

221 §224 Strl (Norway).

222 See, for example, the Norwegian *Jaeren District Court: The Public prosecution Authority vs Daniel D., Case no. 08-069332MED-JARE, 4 July 2008*. This case is discussed later in this section under the heading ‘Exploitation of travellers’.

223 France makes a distinction in Article 225-13 Code pénal between a dependent position and a vulnerable position. Note, however, that this is not the central human trafficking article, 225-4-1 Code pénal. See also: *Cour d’appel Poitiers, 26 February 2001, N de pourvoi: 02-81453 (Procureur de la République v. Monsieur B.)*. This case is discussed here under the title ‘Exploitation in the textile industry’.

224 *Cour d’appel Poitiers, 26 February 2001, N de pourvoi: 02-81453 (Procureur de la République v. Monsieur B.)*.

225 Article 433septies, Belgian Criminal Code and Article 225-4-2, Code Pénal.

226 An example of this in Dutch practice is the Case of the mentally impaired victim, discussed in §12.6.2.

Most of the Belgian judgments that were studied concerned illegal immigrants as victims of other forms of exploitation. Belgian jurisprudence adopted the following reasoning in finding that such cases were abuses of an ‘administrative situation’: the administrative situation is related to the victim’s illegal status. The abuse of that situation was then established by the payment of a low wage,<sup>227</sup> or circumstances concerning the actual employment of the illegal employees, their accommodation and the long working hours<sup>228</sup>. The Correctional Court of Charleroi also found that some freedom of movement on the part of the victims did not detract from the abuse of their illegal administrative situation in Belgium.<sup>229</sup>

Unlike the Dutch judgments in the Chinese restaurant and the Garage Owner cases,<sup>230</sup> the Correctional Court in Ghent<sup>231</sup> decided, in a case in which Romanian workers offered their services to the defendant, that the victims taking the initiative did not alter the fact that their vulnerable position had been abused.

*Exploitation in horticulture*<sup>232</sup>

Two Romanians had worked for years maintaining and growing garden plants for the suspect. The Romanians had offered their services to the suspect themselves. The workers had no documents, worked 11 months in the year, for 10 to 14 hours a day, except on Sunday. They lived in a caravan. In the early years they were paid very little, and in the last three years they had no longer received any wages, apart from €50 a week. When they demanded their money, the suspect replied that he would pay them later. One day, they went to demand their money again and then returned to the caravan. To frighten them, the defendant set the caravan on fire.

The court ruled that this was abuse of the vulnerable situation, stressing that the fact that the workers had personally offered their services did not affect the abuse. The workers were living in the country illegally, were employed illegally and depended on the suspect’s benevolence. They were employed in degrading conditions, as was demonstrated by the failure to comply with the agreements on payment and the miserable accommodation (the caravan) the defendant had provided them with. The aggravating circumstance of abuse of a vulnerable situation was also deemed to exist because the employees were staying illegally in Belgium, were employed illegally and were subject to the whims of the employer. Furthermore, the victims had no genuinely acceptable choice but to suffer the abuse: they continued to work because the defendant promised to pay their back wages, which they would not receive if they stopped working.

227 Tongeren Correctional Court, 11 January 2007, 9<sup>th</sup> chamber.

228 Bruges Correctional Court, 19 June 2007, 14<sup>th</sup> chamber. Exploitation – in Belgium a violation of human dignity (see the section headed ‘Exploitation’ for an explanation of this term) – requires that the offenders have profited or wanted to profit from the human trafficking activity. Such intention to profit was manifested in this case by low wages, long working days and poor accommodation.

229 Charleroi Correctional Court, 15 May 2007, 6<sup>th</sup> chamber; Bergen Court of Appeal, 26 December 2007, 3<sup>rd</sup> chamber.

230 Den Bosch Court of Appeal, 30 January 2008, LJN: BC3000 and LJN: BC2999, and Almelo District Court, 10 April 2009, LJN: BL0944, respectively.

231 Ghent Correctional Court, 22 October 2007, 19<sup>th</sup> chamber.

232 Ghent Correctional Court, 22 October 2007, 19<sup>th</sup> chamber. A summary of this judgment (without the grounds for the sentence) was published in the CGKR’s annual report in 2007.

In this case, therefore, there was no requirement that abuse of a vulnerable position assumes a certain initiative or action on the part of the perpetrator, as was suggested by the appeal court in Den Bosch in the Chinese restaurant case.<sup>233</sup> In the countries studied, whether a person agreed to the exploitation is irrelevant for a finding of human trafficking if there were means of coercion and such means are required by the relevant law.<sup>234</sup>

In the US, ‘abuse of a vulnerable position’ is not explicitly included in any article on exploitation. The vulnerable position of the victim is far more important for establishing whether the coercion used forced the victim to allow himself or herself to be exploited.<sup>235</sup> In this context, the American legislature and case law refer to personal characteristics and surrounding factors, although these can vary depending on the article concerning exploitation. For example, there is no special protection for illegal immigrants, children and mentally impaired persons in the old, and almost unused, human trafficking provisions on ‘peonage’ and ‘involuntary servitude’.<sup>236</sup> However, 18 USC par. 1590 (c) (1) ‘Trafficking with respect to peonage, slavery, involuntary servitude, or forced labour’ does provide that the means of coercion ‘abuse of the law or legal process’ is a provision actually intended to protect vulnerable persons with an illegal status. In American case law,<sup>237</sup> this position was also adopted with respect to 18 USC par. 1589 ‘forced labour’: illegal aliens should be regarded as a particularly vulnerable group.<sup>238</sup>

### *Exploitation*

In the EU Framework Decision and the Palermo Protocol, exploitation is specified as encompassing forced labour or services, slavery or practices similar to slavery, and servitude. The four American provisions on economic exploitation express these specifications in terms of

233 See §12.6.2 for a discussion of this judgment.

234 In accordance with Article 3(b) Palermo Protocol and Article 1 (2) EU Framework Decision. See also the American case *USA v. Joseph Djoumessi*, no. 07-1740, *US Court of Appeals for the Sixth Circuit*, 538 F.3d 547; 2008 US App. LEXIS 17689, 2008 FED App. 0306P (6th Cir.), July 23, 2008, *Argued*, August 20, 2008, *Decided*, August 20, 2008, *Filed*.

235 *USA v. Kozminski*, U.S. Supreme Court, U.S. 931 (1988), no. 86-2000, *Argued February 23, 1988*, *Decided June 29, 1988*.

236 18 USC par. 1581 and 18 USC par. 1584, respectively. See *US v. Kozminski*, *US Mich.* 1988, 108 S.Ct 2751, 487 US. 931, 101 L.Ed.2d 788, on remand 852 F.2d 1288.

237 *USA v. Timothy H. Bradley and Kathleen M. O'Dell*, no. 04-1146, no. 04-1147, *US Court of Appeals for the first circuit*, 2004 U.S.App. Lexis 25174, Dec. 8, 2004 *decided*.

238 In fact, it is also regarded as an aggravating factor in the US when a vulnerable person is affected by a crime. The question can arise whether the involvement of a vulnerable victim of human trafficking can have a general effect of increasing a sentence since it is already more or less discounted in (the nature of) the offence and the maximum sentence. The court in the Calimlin case decided that this question should be answered objectively rather than subjectively, since if a victim belongs to a group of people who are in general vulnerable to becoming victims of human trafficking, the American courts must discount the relevant aggravating circumstance in the sentence, regardless of whether the victim can also be regarded (on the grounds of the nature of the victim) as particularly vulnerable. In this case, the victim was a member of the group illegal aliens, who are often victims of human trafficking. Purely on those grounds, they must be regarded as vulnerable victims. *USA v. Elnora M. Calimlin en Jefferson N. Calimlin*, *US Court of Appeals, seventh circuit*, Nos. 07-1112, 07-1113 & 07-1218, No. 04 CR 0248, *argued January 9, 2008*, *decided August 15, 2008*.

intent, specifically for the purpose of ‘forced labour’, ‘involuntary servitude’, ‘peonage’ and ‘slavery’. Loosely translated, it seems possible to conclude from the history of the American legislation that the provision on ‘involuntary servitude’ is deemed to cover the most serious cases of human trafficking.<sup>239</sup> Victims of less serious cases – but still cases that involve, at the least, ‘severe forms of worker exploitation’ – are protected by the ‘forced labour’ provision (18 USC par. 1589), the lower limit of which forms the boundary between criminal law and labour law.<sup>240</sup> In a nutshell, in the American situation there is a division between criminal exploitation of labour (18 USC par. 1581, 1583, 1584, 1589) on the one hand, and human trafficking *per se* for the purpose of criminal exploitation of labour, on the other (18 USC par. 1590). The decisive factors in American case law are still only (1) whether the employer got the employee to perform work or services, (2) by applying one of the means of persuasion or coercion specified in the various human trafficking provisions of the USC and (3) whether the employer did so ‘knowingly’. In contrast to the Dutch courts, with the exception of the American appeal case Bradley and O’Dell,<sup>241</sup> the American courts do not seem to have gone on to enquire whether there was an excessive situation or such a violation of fundamental human rights that one could speak of exploitation. Very probably this was connected with the evidence in the relevant cases.

In Belgian legislation, exploitation is defined as a violation of human dignity. The legislation and case law that were studied in Belgium seem to show that exploitation or a violation of human dignity require that the offender profited or wanted to profit from the human trafficking activity. Such an intention to profit is manifested by circumstances relating to the work, the living environment and the wage, but not solely illegal work or illegal employment.<sup>242</sup> For example, a wage that is manifestly not in proportion to the very large number of hours worked, possibly without a day off, or the provision of unpaid services, are described as working condition that are in violation of human dignity.<sup>243</sup> The absence of a clear legal defi-

239 It is now clear from American case law that ‘peonage’ is seen in American legal practice as an element of ‘involuntary servitude’. *Taylor v. State of Ga.* US Ga, 1942, 62 S.Ct. 415, 315, US 25, 86 L.Ed. 615. In fact, every case that has been prosecuted as a ‘peonage’ case could also have been brought for ‘involuntary servitude’. *US v. Shackney, C.A.2 (Conn.) 1964, 333 F.2d 475.*

240 Think, in particular, of the Fair Labour Standards Act (FLSA).

241 USA v. Timothy H. Bradley and Kathleen M. O’Dell, no. 04-1146, no. 04-1147, US Court of Appeals for the first circuit, 2004 U.S.App. Lexis 25174, December 8, 2004 decided. P.8.

242 See Bruges Correctional Court, 19 June 2007, 14<sup>th</sup> chamber. The Belgian legislature does not define human dignity in Article 433quinquies of the Criminal Code but gives a number of indicators in the explanatory memorandum to the bill to amend various provisions with a view to strengthening efforts to tackle human trafficking and people smuggling, Parl. St., Kamer, 2004 - 2005, doc. 51 1560/1.

243 The wage that is lower than the average monthly minimum income, as referred to in a collective labour agreement concluded in the Belgian National Labour Council, can be an incontrovertible indication of economic exploitation for the fact-finding judge. There can also be working conditions that are not compatible with the standards laid down in the law of 4 August 1996 on the welfare of workers in the performance of their work. Depending on the specific circumstances of the case, the fact-finding judge has to decide on the existence of this element. See the explanatory memorandum to the proposal for a law to amend various provisions with a view to strengthening efforts to tackle human trafficking and people smuggling, Parl. St., Kamer, 2004 - 2005, doc. 51 1560/1.

inition of precisely what is meant by human dignity could give judges too wide a margin for interpretation; the term could be construed in different ways, which could again ultimately lead to evidentiary problems.<sup>244</sup> On the other hand, the advantage of the broad definition is that it can cover various forms of exploitation. In Belgium, it is often the working condition linked to the conditions under which workers are housed that are decisive for deciding whether there was human trafficking,<sup>245</sup> as the following case shows.

*Exploitation in terrace building*<sup>246</sup>

Two suspects with Belgian nationality were suspected of exploiting workers, mainly Bulgarians. The East European victims worked for a company that built terraces and driveways and installed fences. The employees were paid €5 to €6 an hour, worked 10 to 12 hours a day and lived in caravans on site, but €50 to €70 a month was withheld for accommodation, water and electricity.

The Correctional Court in Bruges ruled that ‘intended or actual exploitation’ in the final paragraph of Article 433quinquies (1) of the Belgian Criminal Code meant that a person intended to profit or did profit from the human trafficking activity. The profit or intention to profit was manifested in this case by the low wages, long working hours and poor accommodation. The conditions under which the illegal workers were actually employed, their accommodation and the long hours worked by these persons demonstrated that the suspects abused the ‘precarious situation’ – as defined in Article 433septies (2) of the Belgian Criminal Code – in which these persons found themselves. The hourly wage paid was significantly lower than the minimum hourly wage in the sector. Nevertheless, clients were billed four times the net amount paid to the workers.

The court found the defendants guilty under Article 433quinquies (1)(3), with the aggravating circumstances under Article 433septies (2) and (6) of the Belgian Criminal Code. The two defendants were sentenced to prison terms of 18 months and 12 months, respectively. Both were also fined €1,000. The court noted that the suspects had acted purely and solely with the intent of earning money without concern for the living conditions of the illegal employees.

If the victim does not have the freedom or does not reasonably feel that he or she has the freedom to escape from the working situation, this can constitute exploitation under Dutch law. This is the case even if withdrawal is, in practice, possible, but the victim’s subjective appraisal forms an obstacle to doing so.<sup>NRM5</sup> In one case known to BNRM, an American court considered the argument put forward by the defence that the employees were not forced to continue working and that they could have fled to escape it. The court rejected this defence with the finding that the point was whether the person in question could reasonably believe that there was compulsion to continue working.

<sup>244</sup> Vermeulen (2006, p. 18).

<sup>245</sup> Centre for Equal Opportunities and Anti-Racism (2007, p. 110).

<sup>246</sup> Bruges Correctional Court, 19 June 2007, 14<sup>th</sup> chamber.



*Possibility to escape the situation*<sup>247</sup>

In this case the prosecution put forward the following reasoning: “The fact that [the victim] may have had an opportunity to escape is irrelevant if the defendants, using one or more of the prohibited means discussed earlier, made Martinez reasonably believe that she could not leave or that she would suffer serious harm if she did so. A victim who reasonably believes she cannot leave is under no affirmative duty to try to escape.” The court rejected the suspect’s defence that the employees were not forced to continue working and that they could have fled with the finding that the point was whether the person in question could reasonably believe that there was compulsion to continue working. According to the court, that was the case here.

An important issue in the Bradley and O’Dell case was the following instruction given by the judge to the jury: “[...] that government need not prove physical restraint, such as the use of chains, barbed wire, or locked doors to establish the offense of forced labor; and the fact that the victim may have had the opportunity to flee is not determinative of the offense of forced labor if the defendants placed the victim in such fear or circumstances that he did not reasonably believe he could leave”.<sup>248</sup>

In a number of Dutch judgments, the court ruled that it could not be established that the employees had no reasonable choice but to work for the suspects, or that they were free to leave.<sup>249</sup> Belgian and Norwegian judges seem to assume more readily than the Dutch courts that victims have no realistic alternative than to submit to the human traffickers.<sup>250</sup> For example, a Norwegian court argued that if a person is actually being exploited it does not matter how he or she found himself in that situation and any consent to it is irrelevant. The victim’s consent can be annulled by the abuse of his or her vulnerable position. In deciding whether the person is in such a position, according to the Norwegian court, the victim’s situation before the exploitation is relevant, but it is also possible to consider the victim’s situation at the time of the exploitation.

*Exploitation of Travellers*<sup>251</sup>

On 4 July 2008, the first judgment in a case involving other forms of exploitation was rendered in Norway. Both the suspects and the individuals who worked for them were British and belonged to the ‘Travellers’ community. Travellers come originally from Ireland, lead a wandering existence and often work in the informal economy. The suspects recruited young people – one of whom was underage – from the street. The young people had problems and some were scarcely able to look after themselves because they had been banished from their homes and because of unemployment, homelessness and health problems. They agreed to the proposed work, laying asphalt and tiles for private individuals, first in the United Kingdom and later in

247 USA v. Bradley and O’Dell, bottom of p. 7, no. 6, 18.

248 See for a parallel, the judgment of the European Court of Human Rights in the case of Siliadin (also discussed in NRM5).

249 See the following cases: Chinese restaurant, Van stekkie tot stickie, Moonfish, Abuse by social worker, Garage owner and Chinese massage parlours: §12.6.2.

250 See, for example Ghent Correctional Court, 22 October 2007, 19th chamber and Jaeren District Court: *The Public Prosecution Authority vs Daniel D.*, Case no. 08-069332MED-JARE, 4 July 2008.

251 Jaeren District Court: *The Public Prosecution Authority vs Daniel D.*, Case no. 08-069332MED-JARE, 4 July 2008.



Norway and Sweden. The suspects paid their journey and housed the four to six employees in a single caravan. They worked 12 hours a day, six days a week. Most of the victims earned the equivalent of €11 plus board and lodging a day. On Sundays and days when there was no work they went from door to door looking for work. Although witnesses made different statements on the subject, the court found it credible that the suspects had used physical violence or the threat of violence against the victims.<sup>252</sup>

The court ruled that in this case the consent of the victims was annulled by the abuse of their vulnerable position. The court then stated that “[...] merely the conditions of work that the accused has admitted mean that there exists an ‘exploitation’, and key topics in any evaluation of whether this occurred in abuse of a vulnerable situation or not will be what their life situation was prior to the exploitation, and the situation in which they were exploited”. The living conditions of the victims before the exploitation were such that there was abuse of a vulnerable situation in this case. The victims were homeless at the time and their only income was social security benefits. Several of the victims also had serious personal problems. The victims appeared to the judges to be ‘young people who were hardly able to look after themselves’. During the exploitation, the abuse of the victims’ vulnerable situation was shown by the low wages, the violence and threats, the long working days and the poor living conditions, including that fact that they were repeatedly moved to different places. Although they did not lack food and clothing, there was exploitation in this case by means of abuse of a vulnerable situation.

Another point, according to the court, is whether the victims ‘have been subjected to forced labour’. The court interpreted ‘forced labour’ as work that a person does not start voluntarily and/or cannot withdraw from. The court found this latter aspect had been proved in this case, partly because of the victims’ multiple dependency on the suspects,<sup>253</sup> the threat of violence if they were to run away and their lack of money. Given the situation in which the victims found themselves during the exploitation, they could not stop voluntarily. Under those conditions, they were therefore subject to forced labour.

The suspect received a prison sentence of 18 months, with deduction of the time spent on remand.<sup>254</sup> The perpetrator had to pay each of the victims just over €1,100 for emotional injury. In establishing the amount of compensation, the court took into account the conditions under which the victims were living before the exploitation. The profits were also confiscated and a car was seized by the government.

### *Nature of the work*

As mentioned in §12.6.1, the Dutch courts have not yet ruled on a situation in which a person is induced by means of coercion to make him or herself available to perform sexual acts with only the suspect as a form of human trafficking. In Belgium, the Centre for Equal Oppor-

252 The judgment states that two victims who cooperated with the investigation and prosecution received police protection. The district court found that there was no proof of death threats being made by the suspects.

253 A relationship of multiple dependency arose because the victims were at an unknown location in a strange country and found it difficult to make themselves understood, among other things. The victims depended on the suspects for food and shelter. Only one victim had a valid passport.

254 The suspect had been in provisional custody for seven months. The court suggested that there were also punitive aspects to the fact that the suspect had no contact with the outside world during his period in custody, apart from a monthly telephone call with his wife, who gave birth during the period he was on remand. The suspect was also an English-speaking illiterate, so the time he spent in provisional custody was described as unusually difficult for him.

tunities and Anti-racism (CGKR), which publishes an annual report on human trafficking, prompted a discussion of this topic. In its annual report for 2007, the CGKR said that under the old human trafficking provision, Article 77bis of the Aliens Act, the court based their central analysis on abuse of a precarious situation. Situations involving sexual slavery outside the context of prostitution could also fall under this broad definition. In the new human trafficking provision, Article 433quinquies of the Belgian Criminal Code, sexual exploitation is confined to prostitution and child pornography. The CGKR gave the example of the following case.

*Sexual acts with suspect*<sup>255</sup>

In this case, there was said to be a network through which the suspect arranged for attractive young female and male workers to come to Belgium by offering the prospect of generous terms of employment. Once they arrived in Belgium, the young women had to work 14-hour days, sometimes without being paid and in atrocious accommodation. In addition, the young women had to satisfy the defendant's numerous sexual demands.

The district court and the appeal court found that human trafficking for the purpose of economic exploitation and rape had been proved but that sexual exploitation had not been proved.

According to the CGKR, the court file clearly shows that the suspect also arranged for the young women to come in order to satisfy his sexual urges.<sup>256</sup> Economic exploitation was therefore not the suspect's sole intention. On the basis of this case – in which it acted as a civil party – the CGKR wondered whether the judgments would have been different if the definition of the offence of human trafficking had related to every form of sexual exploitation and not just to exploitation in prostitution. The Dutch legislation (Article 273f (2) of the Dutch Criminal Code) in fact treats other forms of sexual exploitation, in addition to prostitution, as a form of exploitation. The question posed by the CGKR therefore does not seem to apply to the Dutch situation.

## 12.5 Conclusions

This section outlines areas where problems arise in the subjects discussed in (the Dutch version of) this chapter and subjects that deserve special attention.

### *Identification and perception*

Growing attention is being devoted to identifying other forms of exploitation. For example, the Ministry of Social Affairs and Employment produced a fact sheet entitled 'Labour and Exploitation' to raise awareness among potential victims. However, although Dutch legislation makes no distinction between sexual and other forms of exploitation, in practice there

<sup>255</sup> Charleroi Correctional Court, 15 May 2007, 6<sup>th</sup> chamber and Bergen, 26 December 2007, 3<sup>rd</sup> chamber.

<sup>256</sup> Centre for Equal Opportunities and Anti-Racism (2007), p. 15.

are differences in how they are identified, investigated, prosecuted and tried, mainly related to the perception and recognition of situations of other forms of exploitation. The impression is that other forms of exploitation are seen as 'less serious' than sexual exploitation. In principle, the seriousness of the exploitation does not depend on the sector in which it occurs.

It also seems that the care for victims of other forms of exploitation creates or could create practical problems, especially since the numbers involved are sometimes substantial. Victims of other forms of exploitation are not always reported to CoMensha.

Other forms of exploitation obviously occur. There must therefore be an adequate response to excesses from the entire chain of relevant actors.

#### *Investigation and prosecution*

In practice, however, investigative agencies still know relatively little about the problem of other forms of exploitation. There is no clear picture of the scale of the problem, the conditions under which people are forced to work and the extent to which criminal organisations are involved. Other forms of exploitation are described as a blank spot in the *National Threat Assessment 2008*. The relevant agencies (the Labour Inspectorate, SIOD, the various police forces) do not always exchange warnings of exploitation. The Labour Inspectorate only occasionally reports signs to the SIOD. Furthermore, combinations of different signs of exploitation are not always recognised as potential instances of human trafficking. The circumstances are more usually regarded as a series of isolated instances of breaches of labour and administrative law. Because the various agencies fail to make the connection between all of the various events, either within the organisation itself or together with other agencies, they fail to see it as a possible case of exploitation.

The public prosecution service's Office for Financial, Economic and Environmental Offences does not always pick up information from investigations or does not always conduct an investigation into human trafficking, despite the fact that the public prosecution service has made human trafficking a priority. The failure to act on signals is also connected with the fact that the scope of exploitation has not yet been clearly defined in jurisprudence. This makes it difficult for investigative services and the public prosecution service to estimate which situations the courts will regard as human trafficking.

To stimulate an integrated approach towards other forms of exploitation, the public prosecution service has started a pilot project with the police in the Zuid-Holland-Zuid region. Training courses in human trafficking have been provided for employees of various departments in the Labour Inspectorate. The SIOD has made the fight against other forms of exploitation a priority and it recently produced an internal programme entitled 'Programme to strengthen the approach to human trafficking'.

Certification of SIOD investigators had not yet been introduced when this report was written. The division of the Labour Inspectorate devoted to working conditions has also not yet had any human trafficking training even though poor working conditions can be a sign of

human trafficking. On the other hand, WAV inspectors and AMF inspectors have received training in human trafficking.

#### *Text of the law*

Not for the first time has the question arisen of whether the text of Article 273f Dutch Criminal Code should be amended to clarify the scope of other forms of exploitation. The text of the law is certainly not straightforward. This is due, among other things, to the fact that the text is taken almost verbatim from international provisions. The explanatory memorandum to article 273f of the Dutch Criminal Code provides little help for the courts, to whom the further interpretation has consciously been left. Studying the legislation and case law in a number of other countries shows that the legal practice in those countries faces similar problems, while their legislation, although always based on the Palermo Protocol, differs in certain respects. Countries in which other forms of exploitation have long been punishable (such as Belgium and the US) have meanwhile gained a lot of experience in prosecuting these forms of human trafficking. Judges in the Netherlands could perhaps learn from similar cases abroad. An international databank of judicial rulings might be a solution. Amending the act would not solve the problems relating to the interpretation and recognition of what constitutes other forms of exploitation.

#### *Case law*

Although the scope of the offence of human trafficking in the sense of other forms of exploitation has not yet been clearly defined in case-law, a number of trends have emerged in the jurisprudence. Three of the 12 cases of other forms of exploitation to date have led to convictions for human trafficking. In the judgments studied, the finding of fact failed most often on the elements of exploitation or the intention of exploitation and the coercive instrument ‘abuse of a vulnerable position’. It is possible that the workplace (behind the front door or at a business location that is part of the formal economy) and the commercial nature of the relationship between the perpetrator and victim influences where the judge draws the line between poor employment practices and exploitation. It is also possible that convincing evidence of exploitation is easier to supply if the victim’s physical integrity is violated by physical violence than by, for example, physically harmful work or an exhausting working regime.

As regards the criterion that the victim does not or does not reasonably feel that he or she is free to escape from the labour situation, the subjective perception of a lack of liberty has raised complications in a number of judgments. Courts still seem to deal differently with the question of whether the worker had a reasonable alternative to becoming involved in the situation of exploitation. In other countries the judge seems to be more willing to assume that the victim had no real alternative than to work for the exploiter.

In four of the 12 cases studied in the Netherlands the victims/employees were involved in criminal offences closely related to the situation of exploitation. In two of these cases, the victims were prosecuted for them. This fact is interesting in the context of the possibilities

provided by the non-punishment principle (see Chapter 6). In the two judgments that lead to acquittal on charges of human trafficking, the court, in finding that there was no question of exploitation, did mention the criminal nature of the work, but the judgment did not show that the court had attached any weight to the fact that the work the workers had to perform was punishable.

In half of the cases that were examined, according to the indictment sexual services were also performed by the employees/victims. One case involved sexual services with a third party for payment; in the five other cases, the employees/victims were sexually abused by the defendants themselves. The question that arises is whether providing sexual services for a single person under compulsion, outside the sex industry, can fall within the scope of article 273f of the Dutch Criminal Code. No court has yet ruled on this issue. A similar discussion has arisen in Belgium.

Practice also seems to confirm that there is an increased risk of exploitation in certain forms of ethnic entrepreneurship and that exploitation also occurs within relationships and/or families. There is little certainty about the extent to which cultural background can be taken into account in a judgment in a case involving other forms of exploitation.

#### *Risk sectors and risk groups*

Several groups at risk of other forms of exploitation are discussed in Chapter 12. What stands out is that people from Central and Eastern European countries and people living illegally in the Netherlands often work through *mala fide* employment agencies, which makes them vulnerable to exploitation. Although certified employment agencies are guilty of fewer abuses than non-certified companies, the percentage is still relatively high. This is therefore another area of concern.

Domestic staff employed by diplomats face an additional risk of exposure to exploitation because the immunity of diplomats complicates prosecution in the event of abuses. The Ministry of Foreign Affairs has taken various steps to improve the position of the domestic staff of diplomats. For example, domestic workers are given instructions, which include pointers on human trafficking. However, the instructions are given verbally; there is no written information, such as the telephone numbers of organisations that can help victims of human trafficking, the police or the ministry. This makes it more difficult for a domestic worker to contact the appropriate agencies if he or she experiences a situation of exploitation.

Exploitation within marriage is another area of attention. There are no details available on the nature and scale of it.



## Human trafficking for the purpose of organ removal

### 13.1 Introduction

The topic of human trafficking for the purpose of organ removal was addressed in NRM5. This examination was prompted by the fact that as of 1 January 2005, Section 273f of the Dutch Criminal Code can also be applied to human trafficking for the purpose of organ removal. In the case of human trafficking with regard to organs, the description of the offence not only includes the removal of organs, but also for example the arranging and/or brokering of international travel for the purposes of illegally removing an organ and the recruitment and/or misleading of donors.<sup>1</sup>

The exploration of the topic in NRM5 consisted of two surveys. The first involved a literature study on the legal framework for organ transplants in the Netherlands, the international organ trade, the question of whether Dutch people are involved in this and the ethical debate on the different ways in which organs are available for transplant.

The second survey, among transplant surgeons and coordinators, was focused on the question of whether there were Dutch kidney patients in the Netherlands who had wanted to, tried to or did in fact purchase a transplant kidney in the Netherlands or abroad. The findings indicated that organs were not being traded in the Netherlands but that greater vigilance is needed on this topic. Medical tourism and organ tourism may be more common in the Netherlands than previously assumed.

#### *Delineation of terms*

There have been various indications in the past year that Dutch (kidney) patients may be making use of the commercial trade in organs inside and outside the Netherlands. As argued in NRM5, organ trade is not the same as human trafficking but can, in practice, coincide with it within the same body of facts. It is also indicated in NRM5 that insurance companies' experiences with organ tourism by Dutch kidney patients have not yet been investigated. The emphasis of this chapter is therefore not only on human trafficking and organ trade, but also on organ tourism and the Dutch insurance system. Since the organ trade or certain forms thereof primarily concern kidney donation, the emphasis of this chapter is on these organs in particular.

This chapter also only addresses organ trade and human trafficking for the purpose of organ removal involving live donors. Post-mortem organ removal is medically possible and there

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1 Instruction on Human Trafficking (2008A022), *Government Gazette* 2008, 235.



are indications that in the past, organs of executed prisoners in China were sold without the permission of the deceased or their relatives by (individuals within) the Chinese government.<sup>2</sup> The Chinese government recently acknowledged that most donor organs in China come from prisoners sentenced to death.<sup>3</sup>

The question arises however of whether these cases also involve human trafficking for the purpose of organ removal. Under Dutch law, that is not the case if the people have already died.<sup>NRM5</sup> Post-mortem organ removal is a violation of Section 9 of the Organ Donation Act (WOD) and Section 80 of the Burial and Cremation Act, if and insofar as no declaration of intent from the donor is available.

*Working definitions used in this chapter*

- Commercial organ donation ('transplant commercialism')': policy or practice whereby organs are seen as a marketable good, which includes the sale and purchase for any material gain.
- Medical tourism: travelling abroad to receive an organ for implant there without material gain.
- Human trafficking for the purpose of organ removal'': using certain (coercive) means to recruit, transport or house another with the aim of removing that person's organs or having them removed.
- Organ'': component of the human body or human foetus with the exception of blood or reproductive cells.
- Organ trade'': the offering for sale and actual sale of an organ, the purchase of an organ and the brokering and/or deliberate transplant of a traded organ for profit, between buyer and seller.
- Organ tourism ('transplant tourism')': travelling abroad to receive an organ for implant there whereby organ trading and/or commercial organ donation is made use of, or when use of the resources (organs, professional healthcare providers and transplant centres) for the transplant to the foreign patient undermines the capacity of the country in question to provide transplant services to its own population.

2 Shimazono (2007) cites a 2005 study which states that a Chinese medical centre performed 450 kidney and liver transplants for non-Chinese patients from 19 countries. According to the official country report on China from the Department for the movement of persons, migration and alien affairs, asylum and migration affairs division on 24 March 2009, p. 59 and Huang et al., 2008, p. 1938, in 2007 China adopted the *Regulation on Human Organ Transplantation* which states that organ donors, even executed prisoners, must explicitly give permission for organ removal. There are indications however that such illegal practices continue. Matas & Kilgour, 2007, talk about deliberate government policy whereby organs are purchased from executed prisoners. Special prisoners are also reportedly selected for this, with a view to removing organs. Such cases can be said to involve human trafficking.

3 See for example: "China admits use of organs from executed prisoners" [*China geeft gebruik van organen geëxecuteerden toe*], Het Parool, 27 August 2009; "China to fit abuses in organ donation" [*China gaat misstanden bij orgaandonaties bestrijden*], NRC Handelsblad, 27 August 2009.

– Organ transplant<sup>\*\*</sup>: the complete process starting from the preparations for the surgical transfer of an organ from one person to another, including the preservation and storage of the organ in the interim.

\* Based on the *Draft glossary on donation and transplantation* from the World Health Organisation<sup>4</sup>

\*\* According to NRM<sub>5</sub>

Recent scientific and normative literature from the 2007-2009 period is discussed in §13.2. Findings from qualitative and quantitative studies on the nature and scope of the international organ trade are described in §13.2.1. The empirical research into these organ transplants sketches out a picture of organ donors from underdeveloped countries who surrender a kidney for financial reasons to wealthy patients needing organs. §13.2.2 briefly describes, from a normative perspective, a few new contributions to the ethical discussion on the permissibility of different forms of organ donation.

The relevance for the Netherlands of the ethical discussion on the permissibility of different forms of organ donation emerges from the case described in §13.3. In 2007 a Dutch insurance company reimbursed a Dutch woman who underwent a kidney transplant in Pakistan. At the time Dutch politicians raised the question of whether this kind of development was desirable. In §13.3.1 the role played by the Dutch insurance system in reimbursing the costs of organ donation procedures abroad and the corresponding legislation is discussed. At the root of the international organ trade (as well as organ tourism) and human trafficking for the purpose of organ removal is the shortage of organ donors. §13.3.2 discusses in more detail the government's approach to reducing this shortage.

The last subsection (§13.3.3) shows that, in addition to the Pakistan case above, there were two other signals that failed to provide points of departure for further investigation in relation to human trafficking for the purpose of organ removal. There are also more concrete indications that the (international) organ trade is occurring on a limited scale in the Netherlands. Vigilance is advised therefore: the organ trade in the Netherlands could take off, possibly accompanied by cases of human trafficking for the purpose of organ removal, since the shortage of suitable donors is still pressing.

The fact that Dutch health insurers are bound by various European and international treaties with regard to reimbursing the costs of organ transplant procedures abroad is discussed in §13.3. Not only do such documents have an effect on national jurisdictions, the empirical findings and normative standpoints cited earlier have also had repercussions on (recent) in-

4 Editorial Group for a Global Glossary, *Draft Glossary on Donation and Transplantation* (date unknown). This explanatory glossary was put together following a meeting entitled *Data Harmonization on Transplantation Activities and Outcomes: Editorial Group for a Global Glossary Meeting* in Geneva on 7/8 June 2007 organised by the World Health Organisation. The working document is emphatically only intended for reference and is not an official publication of the World Health Organisation.

ternational regulations from various organisations. §13.4 contains a very brief description of the European and international legal framework concerning the organ trade and human trafficking for the purpose of organ removal.

## 13.2 Empirical and normative framework

The results of qualitative and quantitative studies into the effects of organ tourism on the organ provider in organ-exporting countries are first discussed. These findings may help determine a standpoint on the permissibility of organ tourism. Although there is consensus on the criminalisation of human trafficking for the purpose of organ removal, this and other forms of organ trade are the subject of discussion. Since NRM5 already addressed the medical-ethical discussion on commercial organ transplants, this section does not touch on the various perspectives again, but does address the contributions published between the years 2007-2009.

### 13.2.1 Empirical research

Little empirical research has been conducted into the organ trade and human trafficking for the purpose of organ removal. The available results indicate that the circumstances in which organ donations occur in certain countries point to forms of organ trade and possibly even human trafficking.

Commissioned by the World Health Organisation, Shimazono (2007) conducted a literature study in which he brought together the qualitative and quantitative data from available studies on organ trade. The scope and consequences of the international trade in organ-importing<sup>5</sup> and organ-exporting<sup>6</sup> countries were described on the basis of 51 scientific articles and 243 media reports.<sup>7</sup> As such, Shimazono's study is the only summarising report with such an extent of information on the organ trade and human trafficking for the purpose of organ removal.<sup>8</sup>

5 Shimazono cites countries such as Australia, Canada, Israel, Japan, Oman, Saudi Arabia and the United States as examples.

6 Organ-exporting countries are, for example, Bolivia, Brazil, China, Colombia, the Philippines, India, Iraq, Iran, Israel, Moldova, Pakistan, Peru and Turkey.

7 Fifteen 'other' documents are also used, according to Shimazono. The nature of these is unknown.

8 The Council of Europe is currently conducting a multidisciplinary international study into organ trade and human trafficking for the purpose of organ removal, see the Council of Europe's Action to combat trafficking in human beings, CM/Inf(2008)28, 9 June 2008. This study from the Council of Europe had not yet been published when this report was written. In addition, the European Parliament states that Europol has not carried out any study into organ sale and organ trade because it argues that there are no cases that can be supported with documentary evidence. The European Parliament countered this by stating that documents show that organ trade is indeed a problem for EU member states. See: Resolution of the European Parliament of 22 April 2008, Organ donation and transplantation: policy measures on the EU level, P6\_TA(2008)0130.

*Scope and forms of organ tourism*

Although qualitative studies on the scope of the organ trade are still very scarce, Shimazono estimates the number of kidney transplants as a result of organ trade and human trafficking at five percent of the total number of live kidney transplants performed worldwide.

Shimazono distinguishes four forms of international organ trade, which also includes organ tourism (see Figure 13.1).

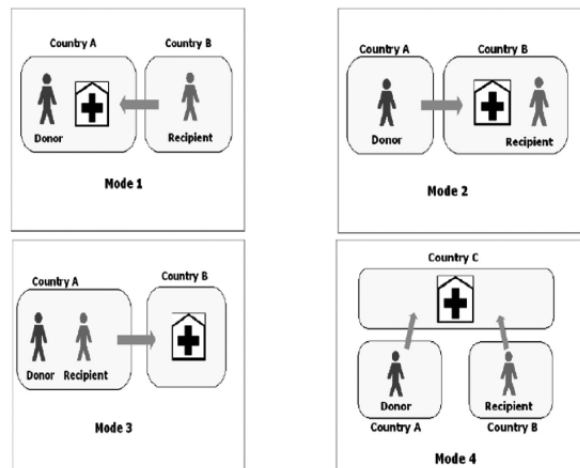
**Modes of international organ trade and organ trafficking**

Figure 13.1 In mode 1 a recipient travels from country B to country A where the donor and the transplant centre are located. In mode 2 the donor from country A travels to the recipient and transplant centre in B. Mode 3 is the situation in which the recipient and the donor travel from country A to the transplant centre in country B. In mode 4 the donor travels from country A and the recipient from country B to the transplant centre in country C.

*Consequences of organ tourism for donor and recipient*

Shimazono also looked at the effects and consequences of undergoing an organ transplant in organ-exporting countries. Based on thirteen studies, he concluded that the recipient runs a heightened risk of medical complications. The chance of survival and the body's acceptance of the new organ are also substantially lower than prescribed by internationally accepted standards.

In response to the three quantitative studies, Shimazono wrote about the economic and medical consequences that the organ trade has for the paid kidney donors in the organ-exporting countries of Egypt, India and Iran. He revealed that poverty is usually an economic motive for paid donors to surrender a kidney. The financial benefit from the organ donation proves to be short lived. In Egypt, 78% of the paid donors had spent the money received within five months after donation. 73% of them were unable to engage in as much labour-

intensive work. In India, families of paid kidney donors had a lower income in general. It also emerged that most donors (93%) had surrendered a kidney to pay a debt, but that 75% still had a debt after the donation. In Iran, 65% indicated that the organ donation had negative effects on (the practice of) their profession. In the three countries, a large majority of the paid donors reported that the organ donation had caused their health to deteriorate. Shimazono states that these findings are consistent with the results of qualitative studies carried out in other organ-exporting countries. Paid donors from these countries also indicated that they suffered from depression, regret and discrimination<sup>9</sup>. They also often had no access to medical after-care. A 2007 survey of kidney donors in Pakistan showed that 90% were illiterate and 70% performed debt labour. Respondents stated that paying off a debt was the most important motive for surrendering a kidney. For the rest, 88% of them reported that their financial situation did not improve after the kidney donation and regretted the decision to sell the organ.

The findings above relating to organ trade are in contrast to research by Zuidema<sup>10</sup> into altruistic donors in the Netherlands. None of the altruistic kidney donors from the study experienced medical or psychosocial complications of a permanent nature after the donation. Nor did any of them regret his decision after the fact.<sup>11</sup> This is true both for persons who donated a kidney to someone they knew and for kidney donors who had never and would never meet the recipient of the organ.<sup>12</sup> This conclusion is also supported by similar research among 5,000 altruistic kidney donors who in fact indicated they had experienced an improvement to their self confidence, relationship and quality of life after the donation.<sup>13</sup>

9 Shimazono does not elaborate on where this discrimination in relation to paid kidney donation originates from or how it is expressed.

10 Zuidema et al., 2009.

11 Reasons cited for donors to surrender a kidney include the fact that some altruistic donors know patients in their immediate or broader environment who have a kidney disease or must undergo dialysis. Others indicated that they knew seriously ill (kidney) patients (who they were unable to help).

12 Zuidema et al., 2009, describes five ways in which live kidney donation takes place at the Erasmus Medical Centre in Rotterdam. Good Samaritan kidney donation: live donation of a kidney to an unknown recipient (*non-directed altruistic donation*). Non-directed donation: a living donor anonymously donates a kidney to a recipient on the waiting list; directed donation: a living donor donates a kidney to an acquaintance with whom he or she does not have any particular emotional or family relationship (at the Erasmus Medical Centre, Good Samaritan donors can also opt for this directed form of donation); Donor-exchange programme: couples where one partner is not compatible with the other for the purposes of donation exchange a donor kidney with another couple; Domino couple-exchange programmes: a Good Samaritan donor gives a kidney to a recipient of an exchange couple that could not find a suitable donor in the exchange programme, and the donor from this couple, who has already indicated they are willing to donate, gives a kidney to a patient on the waiting list.

13 Clemens, et al. 2006.

### 13.2.2 Ethical discussion

Although there is consensus in the scientific debate on the impermissibility of human trafficking for the purpose of organ removal, the ethical discussion on the (international) organ trade and organ tourism continues. Few insights have been added in relation to this topic since NRM5. Various authors for instance, who are also cited in NRM5, state in new articles that organ trade and organ tourism are equivalent to human trafficking for the purpose of organ removal. It is notable striking in this discussion that a number of the authors who became involved in the ethical discussion serve (together) at regulatory organisations or organisations with an important advisory function. As such, the current debate on the international level (2007-2009) is not characterised by a variety of innovative opinions or perspectives.

#### *Impermissibility of organ tourism*

The empirical research results discussed in §13.2.1 are regularly used to argue in support of the assertion that organ tourism is usually a form of human trafficking.

The worldwide shortage of available organs from altruistic donors is seen as the root cause of the organ trade and organ tourism. Consequently, people with a weak socioeconomic status in organ-exporting countries are exploited since patients want to evade waiting lists for organ transplants in their own (organ-importing) countries.<sup>14</sup> It is concluded that the organ provider's social determinants – poverty, debts, a vulnerable social position or illiteracy – are a reflection of social inequality between the donor and recipient and compel the donor to sell an organ.<sup>15</sup> Because of these determinants, there is no autonomy or freedom of choice for the organ provider. For this reason it is claimed that there is usually a case of coercion and exploitation.<sup>16</sup>

Various experts also indicate that regulations are sidestepped or violated in both organ-exporting and organ-importing countries in the event of organ tourism.<sup>17</sup> There are indications that organised crime plays a role in the worldwide trade in organs.<sup>18</sup>

There are also a number of practical objections to the organ trade for the organ recipient. This can include the lack of essential donor information from the organ provider and an impairment of the usual doctor-patient relationship.<sup>19</sup>

14 Danovitch & Delmonico, 2008.

15 Budiani-Saberi & Karim, 2009.

16 Epstein, 2007; Budiani-Saberi & Delmonico, 2008, p. 925 and Danovitch & Delmonico, 2008, p. 387.

17 Geis & Brown, 2008.

18 See, for example, Geis & Brown, 2008. In her book *La Caccia. Lo e i Criminali di Guerra*, former prosecutor for the International Criminal Tribunal for the former Yugoslavia Carla Del Ponte accuses the Kosovar Liberation Army of murdering 100 to 300 Serbians for the purpose of removing their organs. In 2008 the Council of Europe started an investigation into these accusations led by Dick Marty. [assembly.coe.int/ASP/NewsManager/EMB\\_NewsManagerView.asp?ID=4847](http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4847)

19 Danovitch & Delmonico, 2008, p. 388

*Criticism*

Evans<sup>20</sup> believes that one should be cautious in taking a definitive position concerning organ tourism as a form of human trafficking. Although Evans subscribes to the practical objections and empirical studies that point to exploitation and coercion, he claims that many arguments against organ trade are ethnocentric and only represent a Western view. Evans warns that such an approach will not solve the actual problem – the shortage of altruistic organ donors – but only contribute to worsening diplomatic relations between countries.

What is striking about this assertion is that in the 2007-2009 period at least, a number of organ-exporting countries (China<sup>21</sup>, the Philippines<sup>22</sup> and Pakistan<sup>23</sup>) took measures to counter organ tourism, while in various organ-importing countries like Israel<sup>24</sup>, Singapore<sup>25</sup> and the United States<sup>26</sup> voices are being heard and/or regulations have been introduced to allow forms of commercial organ transplant.<sup>27</sup>

In the Netherlands too there are proponents of financial incentives for donation by live donors. The Council for Public Health and Care (RVZ) stated in 2007 that altruism and payment can go hand in hand.<sup>28</sup> The Council claimed that a concrete reward could give this form of donation a significant boost. A life-long exemption from paying health insurance premiums would in that case be the most suitable form of reward. According to the RVZ, there is less of a risk that someone would donate an organ in order to get money if the reward is free health insurance. The Association of Dutch Health Insurers is adverse to this however, since it could appeal to people in financial need.<sup>29</sup>

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20 Evans, 2008.

21 *Regulation on Human Organ Transplantation* of 23 June 2008. China also launched a national organ donation system in August 2009 in order to find more donors, become less dependent on executed prisoners, and combat illegal trade. See *Public call for organ donations*, China Daily, 26 August 2009. [www.chinadaily.com.cn/china/2009-08/26/content\\_8616938.htm](http://www.chinadaily.com.cn/china/2009-08/26/content_8616938.htm).

22 On 29 April 2008 President Arroyo announced a ban on all kidney transplants for foreigners. *Timeline: Kidney Trading in the Philippines*, Newsbreak Online, 16 March 2009. [newsbreak.com.ph/index.php?option=com\\_content&task=view&id=5927&Itemid=88889458](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=5927&Itemid=88889458).

23 *Transplantation of Human Organs and Human Tissue Ordinance 2007* can be found at [www.health.gov.pk/](http://www.health.gov.pk/)

24 According to the Israeli *Organ Transplant Bill* from 2008, live kidney donors are seen as chronically ill patients. In Israel chronically ill patients are exempted from paying health insurance premiums. See *Compromise Found on Kidney-Donor Benefits*, Arutz Sheva, 3 April 2008. [www.israelnationalnews.com/News/News.aspx/125463](http://www.israelnationalnews.com/News/News.aspx/125463).

25 The *Human Organ Transplant Bill 2009* provides for a financial compensation for live kidney donors. See [www.parliament.gov.sg/Publications/090003.pdf](http://www.parliament.gov.sg/Publications/090003.pdf).

26 According to *Wait-Listed to Death*, Wall Street Journal, 17 December 2008, the *National Kidney Foundation* plans to revise its position on a total ban on organ trade. [online.wsj.com/article/SB122948107890913051.html](http://online.wsj.com/article/SB122948107890913051.html).

27 There are also ideas in Belgium about compensating live donors who donate kidneys. A study is currently being conducted on the instruction of the Belgian Ministry of Public Health to determine the cost price of surrendering a kidney. See “Government wants to engage live organ donors as well” [*Overheid wil ook levende orgaandonoren inschakelen*], HLN, 17 August 2009. [www.hln.be/hln/nl/962/Gezondheid/article/detail/971361/2009/08/17/Overheid-wil-ook-levende-orgaandonoren-inschakelen.dhtml](http://www.hln.be/hln/nl/962/Gezondheid/article/detail/971361/2009/08/17/Overheid-wil-ook-levende-orgaandonoren-inschakelen.dhtml).

28 Van Dijk & Hilhorst, 2007.

29 “Criticism on remuneration for kidney donor” [*Kritiek op beloning voor nierdonor*], NOS, 10 November 2007. [www.nos.nl/nos/artikelen/2007/11/arto00001C8239C1229CEDD.html](http://www.nos.nl/nos/artikelen/2007/11/arto00001C8239C1229CEDD.html).



### 13.3 Developments in the Netherlands

It is concluded in NRM<sup>5</sup> that there are currently few indications that organ trade or human trafficking for the purpose of organ removal occurs in the Netherlands. The report did warn about the possible increase in organ tourism by Dutch patients and the need for vigilance with regard to any donations that may not be entirely voluntary and donations in exchange for financial compensation at Dutch transplant centres.<sup>NRM<sup>5</sup></sup> A number of developments have taken place in the Netherlands since that report which support these points for concern.

Following a case in which a Dutch kidney patient travelled to Pakistan for a transplant, it is becoming clear what role the government allocates the Dutch insurance system with regard to combating and preventing organ tourism. In §13.3.1, relevant developments with regard to regulation in this area are discussed.

The Master plan for Organ Donation is then discussed in §13.3.2. In this subsection the government's angle of approach and action plan to reduce the shortage in organ donations is discussed. The relevance of this for human trafficking for the purpose of organ removal is clear from the rationale behind the penalty provision of the relevant Organ Donation Act – to combat commercial transplant practices. After all, commercialisation can result in involuntary removals.<sup>NRM<sup>5</sup></sup>

In §13.3.3, incidents of international organ trade and human trafficking for the purpose of organ removal in the Netherlands and the responses to these from the police and public prosecution service are described.

#### 13.3.1 Insurance system in the Pakistan case

The RVZ report above and the response to this from the Association of Dutch Health Insurers demonstrate that the discussion on commercial organ transplants is a topical one in the Netherlands as well. In its broadcast on 21 January 2008, television programme Netwerk showed a case of organ tourism in which a Dutch kidney patient underwent a transplant in Pakistan. A Dutch health insurer had reimbursed the patient the costs of the kidney transplant. The research from Shimazono showed that in Pakistan, these kinds of transplants can involve organ trade. There have also been incidents in this country known to involve human trafficking for the purpose of organ removal.<sup>30</sup>

Members of parliament posed questions in response to the broadcast to Minister Klink of Public Health, Welfare and Sport on the permissibility of a kidney transplant in Pakistan and reimbursement by a health insurer of the costs of such a transplant.<sup>31</sup> In his answers to these parliamentary questions, the minister reported that under the Healthcare Insurance Act the

30 *Pakistan Arrests 9 in Kidney Removal Case*, New York Times, 27 May 2007 [www.nytimes.com/2007/05/27/world/asia/27pakistan.html?\\_r=1](http://www.nytimes.com/2007/05/27/world/asia/27pakistan.html?_r=1).

31 *Appendix to the Proceedings II 2007/08*, nos. 1741 and 1742; *Parliamentary Documents II 2008/09*, 28 140, no. 62.

health insurer is not required to investigate whether the donor was paid more for the organ than the income lost as a result of the operation. Nor did the information at hand provide sufficient indications to conclude that the case involved a criminal offence under Dutch law. The permission to remove organs in exchange for payment is void in the Netherlands on grounds of Section 2 of the Organ Donation Act.

*Punishability of (international) organ trade*

Section 32 of the Organ Donation Act is relevant for the punishability of organ trade in the Netherlands and by Dutch persons abroad. The following actions are made punishable offences in this section:

- intentionally causing or facilitating a person to grant a third party permission to remove an organ while the donor is alive in exchange for payment that exceeds the costs, including lost income, that are a direct consequence of the removal of an organ (a commercial compensation);
- the public offering of compensation for an organ that amounts to more than the costs, including lost income, that are a direct result of the removal of an organ (a commercial compensation).<sup>32</sup>

In this case the circumstances in which the donor surrendered his kidney are not known. As a result it is not clear whether the kidney patient's action has criminal law consequences in the Netherlands. The patient had paid the compensation to the Pakistani hospital and not the kidney donor. As such there was no direct connection between the contested action (the payment of a kidney donor) and the performance that arose from the health insurance agreement (the reimbursement of the costs of the kidney transplant).

With regard to the payment of the health insurer's compensation to the kidney patient, the Healthcare Insurance Act stipulates that a compensation must be paid out regardless of whether the organ was paid for or not. The minister stated that "a kidney transplant is covered by health insurance if the insured person needs this transplant and this transplant is performed in a medically responsible manner. This does not alter the fact that [the health insurer] could have refused to reimburse the costs on grounds of the Civil Code by claiming that the compensation was unacceptable in accordance with the criteria of reasonableness and fairness or at odds with good morals or public order. In order to successfully appeal in court to these provisions of the Dutch Civil Code, the insurer has, in any event, in the context of its burden of proof, the difficult task of discussing the specific circumstances concerning the patient and his transplant in Pakistan."

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<sup>32</sup> Free translation.

*Healthcare Insurance Board*

The Healthcare Insurance Board had indicated to the relevant health insurer in a number of considerations<sup>33</sup> concerning the reimbursement of the costs of the kidney transplant that it was possible for the health insurer to refuse to reimburse the costs of kidney transplants in Pakistan on grounds of the Civil Code.<sup>34</sup> Section 3:40 of the Civil Code prescribes after all that a legal act that, by its substance or purport, is at odds with good morals or public order is void. The Board deemed that a situation in which kidneys donated in exchange for payment are used falls within the territory of good morals.<sup>35</sup> The Board stated: “This applies all the more since in the Netherlands it is also at odds with the standards of the (written) law. This use of kidneys donated in exchange for payment regardless of where this took place can be at odds with good morals. The question here is whether payment to the donor under any circumstances can be considered at odds with good morals. If the agreement is reached with the full consent of the donor and in accordance with the laws of the relevant country, could that verdict be different from the verdict in cases where there is a case of pressure (such as coercion, violence, deceit or abuse of circumstances)? This verdict primarily relates however to the agreement with the donor, or the treatment agreement.”

The Board also concluded that “evident consent of the donor, if this is already presumed, [can] make it more difficult to decide that reimbursement of the transplant costs contravenes good morals”. Although organ trade in Pakistan was still legal in 2007 at the time of the incident<sup>36</sup>, the discussion seems relevant here as well whether one can speak of the exploitation and coercion of donors if they feel forced by miserable circumstances to surrender their kidney. The Board stated that in such a consideration, the individual case must be examined and that this will not always result in the same outcome. The Board concluded with the statement that the health insurer had to make the decision independently in this case.

*Healthcare Insurance Act*

In the Parliamentary Document on Organ transplants abroad dated 3 November 2008, Minister Klink informed parliament that in consultation with the Minister of Justice he had decided to amend the Healthcare Insurance Act such that the insurer must refuse to reimburse costs of procedures if there is serious doubt about the ethical permissibility of the transplant.<sup>37</sup> This legal measure will be taken on 1 January 2010, the minister said. Another

33 The Board did not give the health insurer any advice, but instead shared a number of considerations, since it is not within its authority to answer the main question (Does a kidney transplant abroad fall within the coverage of a basic policy if a kidney donated in exchange for payment is used?).

34 Healthcare Insurance Board AaZ, 1 October 2007.

35 Good morals should be regarded as the standards of unwritten law perceived as fundamental in a certain social constellation, whereby morality is central.

36 Organ transplants for foreigners have been banned since the introduction of the *Transplantation of Human Organs and Human Tissue Ordinance 2007*. This Pakistani law stipulates penalties and prison sentences for those who trade in organs or unlawfully remove them (according to the conditions that are set in the *Transplantation of Human Organs and Human Tissue Ordinance 2007*).

37 *Parliamentary Documents II 2008|09*, 28 140, no. 62.

change concerns the Healthcare Insurance Decree.<sup>38</sup> This amendment means that a kidney transplant performed outside the EU or the countries that are party to the Agreement on the European Economic Area only falls within the insured performance of the Healthcare Insurance Act if the organ has been donated by a blood relative, spouse or registered partner. According to Minister Klink, this could result in fewer people seeking refuge in buying a kidney.<sup>39</sup>

### 13.3.2 Master plan for Organ Donation

As described above, the enormous shortage of donors is at the root of the organ trade and human trafficking for the purpose of organ removal. This shortage is only expected to increase in the coming years.<sup>40</sup> In order to respond to this, the Master plan for Organ Donation was set up in 2008 by the Organ Donation Coordination group.<sup>41</sup> The Coordination group saw the low degree of registration in the system at the time as the root of the shortage of donors. For this reason, the options for financial incentives for live donation were investigated. This would result in limiting the prohibition on organ trade as described in the Organ Donation Act. The relevance of this for human trafficking for the purpose of organ removal is clear from the rationale behind the penalty provision of the WOD – to combat commercial transplantation practices. After all, commercialisation can result in involuntary removals.<sup>42</sup> NRM<sup>5</sup>

The Coordination group investigated the different aspects of and support among the Dutch population for various remuneration systems<sup>43</sup> for live donation. It emerged from this that there is insufficient support among the population for the inclusion of financial incentives. Another finding was that financial incentives are both ethically and legally undesirable. The Coordination group stated that the appeal to the immaterial symbolic value of the integrity of the human body outweighs the material value and commercialisation of the body. The legitimacy for a doctor cooperating with a financially motivated organ donor would also lapse.<sup>44</sup> In addition to the foregoing ethical arguments, the legal latitude for most forms of financial incentives is also lacking, both on the national (WOD) and European level<sup>45</sup>.

38 *Parliamentary Documents II* 2008/09, 29 689, no. 265.

39 *Appendix to the Proceedings II* 2008/09, no. 3179.

40 Council of Europe, Parliamentary Assembly, Social, Health and Family Affairs Committee. *Trafficking in organs in Europe*, document 9822, 3 June 2003.

41 Organ Donation Coordination group, 2008.

42 WHO, A62/15, report on Human organ and tissue transplantation, 26 March 2009.

43 Among other things, it has been suggested that live donors be exempted from paying their health insurance premium.

44 Organ Donation Coordination group, 2008, p. 102.

45 The Organ Donation Coordination group referred in this context to the *Convention on Human Rights and Biomedicine* of the Council of Europe (*Treaty Series* 1997, 113). See §13.3.2. In her policy letter on Ethics on 7 September 2007, the State Secretary for Public Health, Welfare and Sport stated her intention to ratify the this convention in the near future. The convention in question had not yet been ratified when this report was written.

The Coordination group concluded by stating that the financial encouragement of live donation must be rejected. It also concluded that by extension, live donation involving payment of the donor abroad is undesirable.<sup>46</sup>

The government follows this line taken by the Coordination group in the Master plan.<sup>47</sup>

### 13.3.3 Incidents, investigation and prosecution

In its Instruction on Human Trafficking<sup>48</sup> the public prosecution service states that illegal organ removal does not seem to occur in Western Europe. The literature study cited in the Instruction<sup>49</sup> dates from 2004 and pertains to organ trade. With regard to organ trade, the researchers in question hardly found any reliable information that related concretely to the Netherlands. It was concluded that there mainly seemed to be a great many rumours.<sup>50</sup>

As indicated below, there are now indeed signs and indications of the existence of organ trade and organ tourism in the Netherlands.

#### *Incidents*

It emerges from the Pakistan case cited above that since NRM5, there has been at least one case known in which Dutch citizens took part in organ tourism.

In 2009 it emerged that the organ trade might also be taking place in the Netherlands. The programme Undercover in Nederland showed that people would be willing to surrender a kidney in exchange for payment.<sup>51</sup> In such cases the organ provider would pretend during the medical check-in procedures to be a friend of the recipient with an altruistic motive for enabling the transplant.

There are also kidney patients in the Netherlands who place advertisements in hopes of finding an altruistic live donor.<sup>52</sup> Although legal,<sup>53</sup> this example shows the desperation of patients and such advertisements may invite organ trade.

It is not only the media that play a role in detecting organ trade. Doctors, hospitals, municipal health authorities and the Public Health Inspectorate could also contribute to these efforts. The public prosecution service points out that such authorities and individuals may pick up on an indication, during a consultation with a patient or when examining or performing surgery on a patient, that the patient might be being coerced into allowing the removal of the organ. In such cases they should alert the patient to the possibility of filing a report and

46 Organ Donation Coordination group, 2008, p. 85.

47 Ministry of Public Health, Welfare and Sport. Government position on Master plan for Organ Donation. *Parliamentary Documents II* 2007/08, 28 140, no. 48.

48 Instruction on Human Trafficking (2008A022), *Government Gazette* 2008, 235.

49 Van der Leun & Vervoorn, 2004, pp. 30-31.

50 Van der Leun & Vervoorn, 2004, pp. 30-31.

51 Broadcast on 29 March 2009.

52 Broadcast of EénVandaag, 11 June 2009.

53 Answers to parliamentary questions from Van Gerven on organ advertisements in the Netherlands and organ trade. *Appendix to Proceedings II* 2008/09, no. 3179.

the assistance that welfare services can provide. They too can file the report of ascertained abuses themselves.<sup>54</sup>

It is doubtful however whether Dutch doctors would file a report in the event of ascertained cases of organ tourism. They may have doubts about providing care to patients in the period following the transplant abroad, but also in assessing whether the situation contravenes their own professional standards (and possibly Dutch law). There are indications that Dutch doctors are in fact confronted with organ tourism. From interviews with a surgeon, eight nephrologists and four transplant coordinators from the Netherlands it emerged that they knew a total of 27 people who had undergone a transplant in the past ten to fifteen years in organ-exporting countries like China, India, Iraq, Iran and Pakistan.<sup>55</sup>

### *Investigation*

It is unknown whether human trafficking for the purpose of organ removal actually occurs in the Netherlands. BNRM received two signals from police in 2006 and 2007 concerning the possible involvement of human trafficking for the purpose of organ removal. The information available did not provide the responsible investigation services with any point of departure for further investigation. CoMensha also registered one possible case of human trafficking for the purpose of organ removal, in September 2007. This involved a man of Indian background who had told police that he was being forced to surrender a kidney. Ultimately the man left the country for an unknown destination.

The Czech Ministry of Foreign Affairs reported on a case that took place between September 2002 and October 2004. This case centred on a violation of Section 209a of the Czech Penal Code. This provision relates to the unauthorised treatment of human tissue and organs of persons who are already deceased. The suspects in the matter were employees of the Czech tissue bank, who were in contact with an organised group from the Netherlands.<sup>56</sup>

### *Public prosecution service*

BNRM is not currently aware of any cases in which the public prosecution service started prosecution with regard to human trafficking for the purpose of organ removal. In the Instruction on Human Trafficking, the public prosecution service states that illegal organ removal does not seem to occur in Western Europe.<sup>57</sup> The Instruction deals very summarily with the removal of organs as a form of human trafficking.

54 Instruction on Human Trafficking (2008Ao22), *Government Gazette* 2008, 235.

55 See Ambagtsheer, 2007. Many of the patients were born outside the Netherlands or had some other sort of foreign background. Ethnic networks and the internet played an important role in facilitating paid organ transplants abroad.

56 Ministry of the Interior, Security Policy Department, 2008, *Status Report on Trafficking in Human Beings in the Czech Republic*, 2009, p. 15. Incidentally it is not reported whether the suspects were in fact convicted under the relevant Section 209a of the Czech Penal Code. Nor is anything about the nature of the organised group mentioned.

57 Instruction on Human Trafficking (2008Ao22), *Government Gazette* 2008, 235.

### 13.4 International regulations

The relevant national legislation concerning organ trade and human trafficking for the purpose of organ removal was described in NRM5. The report at hand also focused in the foregoing sections on a number of recent changes to national regulations for combating organ tourism and organ trade. As indicated by the Master plan on Organ Donation, Dutch legislation is bound by a number of treaties on the European and international level. There are also various other (legally non-binding) directives and declarations drafted by organisations that work internationally with organ donation or to combat organ trade and human trafficking for the purpose of organ removal.

In 2009 a study prepared jointly by the UN and the Council of Europe was published on the trade in organs and tissue, which includes human trafficking for the purpose of organ removal.<sup>58</sup> This study gives an overview of the state of affairs, examines existing measures to combat organ trafficking and explores possible further steps to combat this phenomenon, including the possible establishment of new international regulations.<sup>59</sup> For this reason the international legal framework is not described in detail here; for such a description, see the relevant study by the Council of Europe.

Legal research by BNRM indicates that the call on governments to take measures to remedy the shortage of available organs and work away waiting lists for patients is a common theme throughout the European and international legal framework. Relevant European and international documents also state that human trafficking for the purpose of organ removal must be combated.

The European and international regulations differ in the extent of detail and on a number of definitions. The most far-reaching regulation from the Council of Europe<sup>60</sup> for instance declares that cell, tissue and organ donation may only take place on altruistic grounds, whereby any expenses must be reimbursed. In this context a decision to donate an organ must take place on the basis of informed consent and both the party providing the organ and the party receiving it must have access to all the necessary medical after-care.

Differences can be found in the description of the human body parts to which the relevant regulations apply. The Declaration of Istanbul – drafted by *The Transplant Society* and the *International Society of Nephrology* – purely relates to (parts of) organs. The Council of Eu-

58 Council of Europe, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, Joint Council of Europe/United Nations study, available at: <http://www.unhcr.org/refworld/docid/4b1ce76f2.html>

59 Announced in: Council of Europe's action to combat trafficking in human beings, CM/Inf(2008)28, 9 June 2008.

60 *Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin* (2002)



rope<sup>61</sup> and the World Health Organisation<sup>62</sup> also talk about human tissue and cells. Blood (and blood products) are not part of the definitions concerning organ trade and human trafficking. This does not mean that such activities – blood trade<sup>63</sup> and human trafficking for the purpose of removing blood (and blood products)<sup>64</sup> – do not occur.

### 13.5 Conclusion

This section identifies where the bottlenecks with regard to the topics discussed in this chapter are located and what topics in particular deserve attention.

The topic of organ trade generates interest in the Netherlands. The news media regularly devote attention to it. It is an important point of concern internationally as well. There is hardly any information available on the actual occurrence of the phenomenon in the Netherlands. It was already noted in NRM5 that vigilance is necessary. This is still fully the case.

There are for example indications that people travel from the Netherlands to organ-exporting countries. In order to detect possible abuses in the sphere of human trafficking, vigilance is necessary from facilitating, supporting and executive authorities in connection with organ donations, such as medical personnel and health insurers, concerning the origin of an organ in the event of, in particular, medical tourism.

Further investigation into organ trade, organ tourism and human trafficking for the purpose of organ removal in the Netherlands may be able to offer support on this point.

In her policy letter on Ethics on 7 September 2007, the State Secretary for Public Health, Welfare and Sport stated her intention to ratify the Convention on Human Rights and Biomedicine of the Council of Europe. That has not yet happened.

61 The *Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin* (2002) is a supplement to and specification of the general provisions of the Convention on Human Rights and Biomedicine. The term ‘tissue’ is made more explicit in this protocol and also includes human cells, but does not include blood (or blood products), foetuses or reproducible organs.

62 In the report *Human Organ and Tissue Transplantation* from 2009 the World Health Organisation presents new *Guiding principles on Human Cell, Tissue and Organ Transplantation*. *Guiding Principle 5* prescribes that cell, organ and tissue donation may only take place voluntarily – for altruistic reasons – and rejects the trade in these human body parts. Any costs incurred by the donor may be reimbursed.

63 A gang in the Chinese province of Guangdong engaged in the illegal trade in blood. They sold the blood of at least two hundred paid donors to blood banks. The donors gave blood much more frequently than permitted, sometimes as often as ten times per month. The blood was then sold on with false donor names and subjected to little screening. The gang primarily used poor migrants from the countryside who had gone to the urban areas in hopes of improving their situation. “Blood gang rounded up in China” [*Bloedbende” opgerold in China*], *Brabants Dagblad*, 9 April 2007, [www.brabantsdagblad.nl/algemeen/bdbuitenland/1293384/Bloedbendeopgerold-in-China.ece](http://www.brabantsdagblad.nl/algemeen/bdbuitenland/1293384/Bloedbendeopgerold-in-China.ece).

64 In March 2008 Trouw reported on a situation that sounds like human trafficking. Five people were arrested in the Indian city of Gorakhpur on suspicion of having held fifteen indigent people hostage and selling their blood to private clinics. The victims, who were too weak to stand, had been lured to Gorakhpur with the promise of high paying work. The leader of the gang reportedly earned approximately 50,000 rupees (790 euros) per day from the trade. “Indian suspects of blood trading arrested” [*Indiase verdachten van handel in bloed opgepakt*], *Trouw*, 18 March 2008. [www.trouw.nl/nieuws/laatstenieuws/article1798119.ece](http://www.trouw.nl/nieuws/laatstenieuws/article1798119.ece).

## 14.1 Introduction

In its previous reports the NRM has made recommendations on a number of key issues. The subjects included: giving sufficient priority to practical efforts to tackle human trafficking; ensuring that the agencies with a role in tackling human trafficking have sufficient capacity; creating the right attitude among agencies confronted in one way or another with human trafficking; raising awareness of human trafficking and its manifestations among professionals and the public; the provision of care for victims and the registration of victims; and education and training for professionals. Progress has been made on these issues in many respects. Nevertheless, they still require attention. This chapter contains a new set of recommendations, some of them constituting an updating of recommendations made in previous reports.

The NRM feels that the Human Trafficking Task Force has an important role to play in following up the recommendations. The task force was established to remove obstacles to the effective implementation of policy against human trafficking that have been found to exist in practice. It is for that reason that the task force consists of representatives of the agencies that play a key role in tackling human trafficking. The task force is asked to promote the implementation of policy.

The Dutch policy against human trafficking is laid down in the National Human Trafficking Action Plan (NAM; December 2004) and the additional measures adopted in 2006. The task force has also written an Action Plan, which was most recently updated in a Progress Report in September 2009. In the action plan, the task force enumerated ten specific measures to address problems it had identified. In this way, the task force is making an essential contribution to tackling human trafficking. Despite the existence of the action plan, the policy principles that are laid down in the NAM still apply. The action plan and the additional measures failed to devote specific attention to underage victims.

As regards the earlier recommendation concerning the availability of sufficient capacity, it has to be remembered that capacity is not a goal in itself but that it is always important to assess whether the policy objectives in this important area can be achieved with the available resources. Factors such as priorities, attitude, awareness and training naturally play a prominent role in this regard. For example, it is important in this context that human trafficking teams already formed by the police are not abolished since otherwise the expertise they have gained will be lost.

One of the recommendations in the Fifth Report of the NRM was that the public prosecution service should give practical effect to its policy priority of fighting human trafficking. Major steps have been taken to address human trafficking in the sense of sexual exploitation. However, there are still shortcomings in the investigation and prosecution of other forms of exploitation (exploitation outside the sex industry). It is therefore necessary to formulate specific measures to address these other forms of exploitation and carry them out in practice.

Earlier reports also drew attention to the so-called facilitators: individuals and organisations that are not directly involved in human trafficking but who consciously or unconsciously contribute to it through their work. Examples are forgers of documents, fraudulent employment agencies and job placement agencies, and financial and legal advisors, but also doctors for instance. There are also many more occupations that could become facilitators. One example is tattoo artists, since some human traffickers have their victims tattooed. This professional group could also be alert to possible signs of trafficking.

There are a large number of partners in the anti-human trafficking chain. Several years ago the police decided to evaluate its own performance in tackling human trafficking by introducing the Police Force Monitor. Other agencies could do the same and by doing so accept responsibility for their own performance in this field.

The new recommendations relate to legislation, aliens policy, enforcement and local policy, awareness and identification of human trafficking, training and education, help for victims, investigation, improving the quality of crime-reporting, prosecutions, trials, the registration of victims, data collection and the human rights approach.

The recommendations are arranged by subject and differ in terms of their urgency. For example, some recommendations can be carried out relatively easily and quickly, while others will require more effort.

## 14.2 The recommendations

### *Legislation*

1. It is important that the Act on the regulation of prostitution lays down rules to harmonise the policies of municipalities to prevent the so-called waterbed effect.
2. The aggravating circumstance for sentencing based on the age of sexual majority (which is 16 in the Netherlands) is irrelevant for human trafficking, in the sex industry or otherwise. The age prescribed in article 273f (3) (2) of the Dutch Criminal Code should be raised to 18.
3. It should be made possible by law for a decision on a claim by an injured party that is submitted in accordance with article 51b of the Dutch Code of Criminal Procedure to be made at the same time as the decision on the demand for an order to confiscate criminal assets.

*Aliens policy*

4. In ground a of Chapter B16/7 of the Aliens Act Implementation Guidelines the words ‘have led to a conviction’ should be replaced by the words ‘to have led to a prosecution’. Consequently, ground b would lapse and the explanatory memorandum will have to be amended. If ground a is amended, guarantees will have to be created to ensure that the victim remains available and willing to cooperate with an investigation and prosecution. Given the terms of the regulation, this amendment will not necessarily lead to more applications for continued residence being granted. It would significantly shorten the period of uncertainty for victims about their future. It might also make victims more willing to report offences. The decision to prosecute is also an objective criterion with respect to a person’s status as victim. Finally, this amendment would also resolve the problem that it is not easy for victims to submit the judgment in the human trafficking case relating to them.
5. Decisions based on immigration law concerning victims who are also offenders should take account of a person’s status as a victim and the relationship between the offence committed by the victim and the human trafficking situation. Every victim who cooperates in the criminal investigation of a human trafficker should be entitled to the rights under the B9 regulation, in principle even if the victim has criminal antecedents. In the case of a victim who has committed a criminal offence, that person’s status as a victim and the relationship between the offence and the human trafficking situation should also be explicitly taken into account in reaching a decision to declare that person an undesirable alien or on the right to continued residence and it is not enough to simply refer to a conviction as a ground for the decision.
6. Steps should be taken to ensure that the agreement to create security files to allow repatriation to proceed in a responsible fashion is actually complied with. The premise that when reporting human trafficking leads to a conviction of the defendants it is established in law that repatriation of the victim to the country of origin involves risks (B16/7, ground a) should also apply for complainants who are witnesses.

*Enforcement and local policy*

7. Municipalities should take the initiative for a ‘chain approach’ to human trafficking – which is not limited to dealing with the loverboy problem – directed by a single official. The logical solution for smaller municipalities that are unable or unwilling to adopt their own chain approach is to cooperate with larger municipalities. The VNG can provide the necessary support in establishing a chain approach.
8. A care coordinator should be appointed in every region.
9. A ‘comprehensive approach’ is required to guarantee the effectiveness of efforts to tackle human trafficking in the sex industry. Elements of such an approach are:
  - improved control of the licensed prostitution sector to prevent human trafficking, including the investment of time in building up a relationship of trust with the prostitutes working in the sector and making thorough enquiries about signs of human trafficking;

- a crack down on illegal prostitution;
  - clear written agreements concerning the allocation of tasks between the police and municipalities.
10. Municipalities on one hand, and police and the public prosecution service on the other, should improve the provision of relevant information to each other. Municipalities, the police and the public prosecution service should also monitor the various initiatives that have already been taken in this regard and try to ensure the sharing of information actually yields results.

#### *Awareness and identification*

11. Indications of human trafficking in the sense of exploitation in sectors other than the sex industry should be reported immediately to SIOD/EMM by the Labour Inspectorate and by other inspectorates and investigative agencies. The instructions to the Labour Inspectorate about which indications inspectors should report immediately to SIOD/EMM, and when, should be tightened up. This could also involve comparison of the databases of the Labour Inspectorate and the SIOD.
12. Identification of other forms of exploitation by all the relevant agencies needs to improve. Specifically, this means that the Labour Inspectorate (in the workplace), the SIOD (in the workplace), the aliens police and the Koninklijke Marechaussee (at the time of the detention of aliens), the IND (during the asylum procedure) and Repatriation and Departure Service (in aliens detention centres) can be expected to be proactive in making enquiries about and otherwise searching for signs of human trafficking.
13. In light of the sector's vulnerability to human trafficking and the unwillingness of victims to report offences, an effort should be made to establish more 'eyes and ears' in the prostitution sector. To realise this it is important for all relevant agencies, including the Labour Inspectorate, the fire brigade and the municipal health service, to scrutinise the applicable licensing conditions. The chain approach could play a role in this. Operators and managers of sex establishments and prostitutes should also be informed of how they can report abuses and their responsibility to do so.
14. The Child Protection Council and child care services should be alert to signs of human trafficking, for example recognising and responding to signs of victims of loverboys, of victims among Roma children and in their advice on sentencing of underage victims as offenders.
15. Following recommendation 33 in NRM5 for the continuation of the publicity campaign on exploitation in the sex industry entitled *Appearances are deceptive*, a permanent public information campaign should be started to raise awareness about other forms of exploitation.
16. When they are being issued with a visa, domestic staff employed by diplomats should be given written information, in addition to a verbal explanation, about their rights, including the telephone numbers and addresses of relevant agencies, the police and the Ministry of Foreign Affairs for the event that they face exploitation.

*Training and education*

17. Police officers in executive positions, who can all encounter human trafficking, should be well informed about what human trafficking (including other forms of exploitation) involves and about the signs that could indicate human trafficking, and how they should make a record of these signs so that human trafficking can be traced and dealt with on the basis of information.
18. Every agency that could be confronted with victims of human trafficking should receive training in how to recognise signs of human trafficking and the exploitation of victims. Specifically, working conditions inspectors should be trained in how to identify other forms of exploitation and that human-trafficking training should start soon for SIOD investigators. It is also important to repeat the training and also provide it for new inspectors and investigators. Joint training for the Labour Inspectorate (labour market fraud and working conditions inspectors) and the aliens police could help to increase their awareness of each other's powers and duties and of their respective roles when potential victims of forms of exploitation outside the sex industry are discovered.
19. A course should be developed for the public prosecution service and the judiciary covering the entire spectrum of human trafficking. Professional meetings, as the SSR calls them, should also be organised.
20. With regard to the application of the non-punishment principle, the problems of victims of human trafficking who are also suspected of offences should be regularly reviewed by the police, the public prosecution service, the judiciary, lawyers, aid agencies, the Child Protection Council, the probation service and the IND. For example, the problems facing victims who are suspects and the non-punishment principle should be covered in courses and during training.

*Help for victims*

21. An early start should be made with the pilot project on category-oriented shelter, in which a distinction should be made between the various groups of victims in terms of gender, age and the nature of their exploitation. The pilot project should also encompass the shelter provided for underage victims. The key aspects of that part of the project should be a pedagogic climate, small groups, safety and education. Existing practical know-how and expertise should be used in the design and operation of these shelters.
22. The capacity for providing shelter for victims should be increased, including the capacity of residential (closed or protected or open) youth care as well as the capacity for accommodating both minors and adult victims who can move on from the initial shelter.
23. The agencies concerned with forms of exploitation outside the sex industry should make agreements about who is responsible for arranging help for possible victims of those forms of exploitation. As mentioned in the Council of Procurators General's Instructions on Human Trafficking, during specific actions detailed plans should be drawn up specifying which agency will do what and when so that victims do not fall through gaps in the system.

24. The nature of human trafficking is changeable and the authorities should therefore be conscious of potential ensuing changes in the categories of victims. The help provided should respond accordingly.
25. The Human Trafficking Task Force is advised to devote particular attention to underage victims.

#### *Investigations*

26. The reference framework on human trafficking prepared by the police, which contains useful measures and standards for handling human trafficking cases, should be adopted by every police force. Every police force should have a specialist human trafficking team.
27. The teams in the police forces that review which cases will be dealt with should assume that – in accordance with the Instruction on Human Trafficking – human trafficking cases must always be investigated.
28. It should be made clear which division of the police organisation will handle human trafficking investigations (including cases of non-sexual exploitation) so that it is not necessary to ‘shop around’ with cases. This recommendation applies for both individual police forces and the Supra-regional and National Criminal Intelligence Services, which must also earmark sufficient capacity for human trafficking cases.
29. Non-location-bound prostitution (for example via Internet and escort agencies) should also be controlled. This is difficult, since methods that formerly seemed effective now appear to be less successful, and effective control is only possible at national or international level. New methods should be developed and experts in electronic media should be hired. One instrument that could help in this respect is a multimedia covenant (similar to the covenant on erotic advertisements) requiring sex businesses to give their licence number and the address of their establishment in advertisements. This instrument is only useful, however, if the information can also be verified. Another idea might be to require these sex businesses to have a permanent telephone number, which is also used by clients.
30. When all of the forces were directly represented in it, one of the functions of the Dutch police’s National Expert Group on Human Trafficking was to encourage and motivate forces for whom human trafficking was less of a priority. The group should continue to perform that role in the new, decentralised structure.
31. Information should be supplied to Europol in accordance with the agreements that have been made, with a view to increasing international cooperation between police forces, both operational and in terms of sharing information. This will yield a greater insight into the methods employed by human traffickers and what needs to be done to combat them.

#### *Improving the quality of crime-reporting*

32. In connection with the fact that some reports of human trafficking provide few if any leads for an investigation, take up capacity in terms of personnel (the public prosecution service and police) and reception facilities, but ultimately cannot be solved, the following recommendations are made. In the short term, the existing rules should be left as



they are but the procedures (a decision not to prosecute, objection) should be speeded up as far as possible. Further research should be conducted into the reasons for the absence of leads that can be investigated and the unwillingness of victims to report human trafficking. There should also be a pilot project, involving a small number of reporting of crime that provide few leads for an investigation, in an attempt to improve the quality of the crime-reporting and to assess whether this could produce more grounds for investigation. Such a pilot project could also investigate whether more specific form of help in category-oriented shelters could help to produce better reports.

#### *Prosecution*

33. Attempted human trafficking is seldom prosecuted. Nevertheless, the case-law of the Supreme Court on attempted human trafficking provides an adequate basis for doing so. The public prosecution service is advised to address this issue. A successful prosecution for attempted human trafficking could have a preventive effect.
34. It is recommended that the public prosecution service should not decide not to prosecute a human trafficking case until after it has reported the case to the EMM for comparison with other ongoing human trafficking investigations and received feedback.
35. In cases involving exploitation outside the sex industry, a consolidated approach is important. This means that both human trafficking and the related criminal offences (offences under the Economics Offences Act, the Aliens Employment Act and the Minimum Wage and Minimum Holiday Allowance Act) are tried by the same forum at the same time so that the judge has a complete picture of the human trafficking.
36. The fact that a person is a victim of human trafficking should be made a ground for declining to prosecute in accordance with the non-punishment principle.
37. A provision should be inserted in the Instructions on Human Trafficking that when a victim commits a criminal offence the fact that the suspect is a victim must be noted in the official report. If it is decided to prosecute a suspect who is also a victim, the public prosecutors in the cases against the human trafficker and the victim should inform each other of their appointment.
38. Financial investigations are almost always conducted in human trafficking cases. It is important for the judge that decides on the victim's claim as an injured party to have the financial report. The public prosecutor can either bring the claim for confiscation of criminal assets at the same time as the main case or submit the financial report during the hearing of the main case.

#### *Trial*

39. There should also be judges that specialise in human trafficking. Given the number of cases on an annual basis, attention should also be given to finding ways of retaining the accumulated expertise.
40. Guidelines should be developed for the purposes of consistency of sentencing in human trafficking cases.

*Registration of victims and data collection*

41. Besides serving as a reporting centre for notifications by victims, CoMensha should also actively collect information and keep records about the further progress of the cases involving registered.
42. All of the relevant agencies should report all victims of all forms of human trafficking to CoMensha. This means that:
  - not only the police and public prosecution service must report, but also all the other relevant agencies;
  - not only victims of sexual exploitation must be reported, but also victims of other forms of exploitation
  - not only aliens must be reported, but also Dutch victims.
43. Data from the public prosecution service should be structured in such a way that information can be derived from it about the occurrence of the different forms of human trafficking (sexual exploitation, exploitation in sectors other than the sex industry and for the purpose of organ removal).
44. It is recommended that a so-called cohort analysis should be carried out to provide insight into the entire course of the proceedings in registered cases.
45. A computerised system should be developed for keeping centralised and standardised records of all (potential) victims of human trafficking who have submitted an application or are known to the IND. The register should maintain a distinction between initial decisions, decisions on objections and decisions on objections after appeal.

*Human rights approach*

46. Provisions concerning help to and protection of victims in the new EU Framework Decision should not lead to restrictions on what has been achieved in the Council of Europe's Convention on Action against Trafficking Human Beings (2005).
47. For the purposes of a human rights approach to combating human trafficking, a strategy should be developed for dealing with the effects these measures against human trafficking can have on human rights and collateral damage should be avoided as far as possible in the implementation of new policy.

## 15.1 Introduction

Efforts to tackle human trafficking are receiving a lot of attention, both in the media and in politics. The perception of human trafficking as a serious problem has, if possible, actually increased and a wide range of measures are being taken to tackle it. For example, a task force has been created, the police and public prosecution services have made human trafficking a priority and there is more specialist help available for victims. Another development has been the introduction of a programmatic approach designed to identify areas in which practical barriers can be placed in the way of human traffickers. The organisations that provide help for victims are also cooperating more closely with partners in the chain by sharing information and referring victims.

Human trafficking takes place covertly. Even the victims are often unwilling to report their exploitation, which is why efforts to prevent human trafficking depend so heavily on identifying and responding to signs that it is occurring. It is therefore essential to raise awareness. It is crucial that signs of possible abuses are recognised. Employees of the police forces and of various government inspectorates are being trained in this. However, numerous other professionals can also encounter situations involving exploitation. It is vital to find ways of informing these professional groups about the problem and how they can identify the signs.

This summary follows the order of the chapters in the report: legislation (§15.2), international developments (§15.3), victims and help for victims (§15.4), B9 and continued residence (B16/7) (§15.5), victims as offenders and the non-punishment principle (§15.6), the administrative and integrated approach to human trafficking (in the sex industry) (§15.7), investigation (§15.8), suspects and offenders (§15.9), the public prosecution service and prosecution (§15.10), case-law on exploitation in the sex industry (§15.11), exploitation in sectors other than the sex industry (§15.12) and human trafficking with a view to organ removal (§15.13).

## 15.2 Legislation

### 15.2.1 Sentences

The sentences for human trafficking were increased with effect from 1 July 2009. Since then the maximum prison sentence for human trafficking without aggravating circumstances has been eight years. Persons convicted of any aggravated form of human trafficking face a sentence of at least a imprisonment for up to twelve years.

Chapter B9 of the Aliens Act Implementation Guidelines (the B9 regulation) has also been amended in several respects. For example, in April 2009 a new description of the target groups appeared, which was intended to reflect more clearly that the B9 regulation applies identically to (potential) victims of human trafficking who work or have worked in the sex industry and (potential) victims of human trafficking subjected to other forms of exploitation (article 273f of the Dutch Criminal Code). The period of reflection is now also available to victims and potential victims who enter the country through Schiphol airport. These most recent amendments to the B9 scheme apply with retroactive force from 1 January 2009. Chapter 5 contains a summary of the operation of the current B9 regulation and the rules for continued residence (Chapter B16/7 of the Aliens Act Implementation Guidelines).

### 15.2.2 Bill to regulate prostitution and tackle abuses in the sex industry

An important development in the legislative field was the publication of the draft bill to regulate prostitution and tackle abuses in the sex industry. Under the terms of this bill, every sex business must be licensed. At the time this report went to press it was not yet known when the bill would be sent to parliament. Although the advisory report of the National Rapporteur on Trafficking in Human Beings (NRM) on the bill is attached as an appendix (see appendix 5) and still applies in full, this section also refers to some of the issues and problems raised in that report which still need to be addressed.

A positive aspect of the bill is that it creates a national framework within which every municipality must adopt rules governing sex businesses and independent prostitutes. This will reduce the discrepancies between municipal policies on prostitution, and hence the differences in supervision and enforcement that human traffickers can take advantage of. However, uniform rules and consistent policy are also crucial in tackling human trafficking and from that perspective municipalities are still given too many options, with all the risks that entails. The proposal to link licences to activities rather than to an establishment will greatly help in the fight against human trafficking. The proposal corresponds to a large extent with the recommendation in the NRM's Fifth Report (2007) calling for the formulation of a national legislative framework for prostitution policy based on the principle that every municipality *must* set rules for *all* establishments where commercial sexual transactions are undertaken or where commercial facilities are provided for such transactions to be undertaken with or for a third party.

The scope of application of the bill is not yet entirely clear. For example, the scope of the term 'sex businesses' is very wide when seen in the context of the draft explanatory memorandum. At the same time, the current title of the draft bill seems to be restrictive ('to regulate prostitution and *some* other forms of sex-related business activity'). The title of the bill should itself reflect the fact that it also encompasses new and future forms of commercial sexual activity, of which webcam sex, where sexual acts are performed commercially for a third party on the Internet, is just one example.

Furthermore, an independent prostitute is defined as a prostitute who does not work exclusively for a prostitution business. This definition, and the explanatory note to it, raises a number of questions relating, for example, to the definition of 'prostitution business'. For example, how can it be determined that a person is working only for a prostitution business and not at least partially for themselves? This distinction is particularly important in light of the proposal to make registration mandatory. That requirement is currently confined to prostitutes who work independently. The distinction would be less relevant if all sex workers had to register.

According to the proposal, the register of sex workers will include their names and addresses, a telephone number and a copy of their passport. The question is whether this is enough. A comprehensive system should also include a passport photograph and a record of the type of sex work performed (for example, at home or as an escort) and the workplace if the sex work is performed at a specific location. Given the sensitivity of these details, access to and use of this information must be accompanied by sufficient safeguards for the privacy of the individuals concerned.

The bill does not provide for an intake interview during the registration process, even though besides generating information this would provide an opportunity to identify possible signs of human trafficking. Holding such an interview would meet the obligation of government bodies to investigate the relevant facts before taking action.

The introduction of a national register will make it possible to enforce tighter supervision of the escort service industry and make it easier to regulate companies that advertise on the Internet. The register should also include a record if a licence, or an extension of a licence, is refused, together with an explanation of the reasons for the refusal. Other licensing authorities and regulatory authorities (municipalities) should also have access to this information. Supervisory authorities should have round-the-clock access to the register.

Under the terms of the bill it is an offence for a prostitute to work for a prostitution business that does not have a licence or to work independently as a prostitute without being registered or to advertise without a registration number. Making it a punishable offence for sex workers to work without being registered or to advertise without a registration number is in itself correct as the logical cornerstone of the duty to register. However, it should not as a matter of course be a criminal offence for a prostitute to work in an unlicensed establishment. It would seem more logical for the municipality to deal with this offence with an administrative fine, which is more in line with the policy principle that criminal law will not be used unnecessarily against victims.

One problem that remains is that the bill says nothing about the obligation of local authorities to take action or about the allocation of tasks between the local authority and the police. This vacuum increases the risk that the provisions of the law will not be adequately supervised and enforced. However, it is worth noting here that the Human Trafficking Task Force is preparing a strategy document on this point.

### 15.2.3 Other legislation

Chapter 2 also discusses the Police Data Act and Police Data Decree, the Aliens Employment Act, an amendment to the Housing Act, the Public Nuisance (Administrative Fine) Act and the Closed Youth Care Act.

Pending legislation includes bills to implement relevant international law, such as the Council of Europe’s Convention on Action against Trafficking in Human Beings (2005) and the Council of Europe’s Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention, 2007). Other relevant pieces of legislation are bills to enhance the standing of victims in criminal proceedings, a draft bill to expand the possibilities for confiscating illegally obtained profits and a bill on the liability of companies for temporary employees that they hire.

## 15.3 International developments

Human trafficking also remains an important theme in various international forums. The activities of international governmental organisations – the United Nations (and the International Labour Organisation), the European Union (EU), the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE) – highlight particular concerns on a number of topics, including exploitation in sectors other than the sex industry, the root causes of human trafficking and the demand side of human trafficking. Vulnerable groups such as women and children also receive special attention at the international level. Child pornography is also being addressed in the development of instruments to tackle sexual and other forms of exploitation of children. Continued attention is also being given to combating human trafficking in connection with the deployment of troops and civilians to areas of conflict.

Various international organisations, in particular the EU and OSCE, have explicitly referred to the importance of countries adopting a national action plan against human trafficking. There are growing calls for states to appoint a national rapporteur or create a similar mechanism to monitor measures that have been taken and to evaluate policy.

During Sweden’s EU presidency, the first steps have already been taken to establish a network of national rapporteurs and similar mechanisms with meetings in Stockholm and Vienna in 2009. It is not yet clear how the network will evolve in the future. A similar meeting was also held in Brussels.

A crucial aspect of efforts to tackle international human trafficking is the collection of reliable data. Various international initiatives have been taken in this context, including steps to formulate international standards for data collection. To this end, a set of indicators about which national governments should provide information for the purposes of international comparison is being developed. There is not yet a single formal international standard. Moreover, many of the standards that have been developed up to now require the collection

of a lot of data, much of which is difficult to gather, with the likely consequence that the information supplied is incomplete and of poor quality. This creates the impression that while various international organisations are engaged in developing international data-collection systems different standards are being developed because of inadequate cooperation.

On paper, the international legal instruments are now very extensive. However, many countries are not yet party to instruments such as the UN Protocol against trafficking in persons and the underlying UN Convention against transnational organised crime. But these instruments form an important basis for international cooperation in criminal law, particularly with countries outside the EU, including countries whose nationals have also been registered as victims of human trafficking in the Netherlands, such as China and India.

The EU should also continue to highlight the importance of ratifying these instruments, for example in the context of the external dimension of the justice and home affairs policy. A third of UN member states are still not parties to the UN Protocol.

Although most countries have made human trafficking in the sex industry a criminal offence, few have done so with respect to human trafficking in other sectors (trafficking for forced labour) or human trafficking whose victims are men. Even states that have ratified the UN Palermo Protocol generally lag behind in its implementation due to the absence of comprehensive national legislation, a lack of resources for law enforcement and a lack of political will.

The Council of Europe's Convention on Action against Trafficking in Human Beings (2005) has also not been widely ratified. Even the Netherlands has not done because of its intention to amend the law to expand jurisdiction over human trafficking.

The European Commission's evaluation of the EU Action Plan on Trafficking in Human Beings shows that tackling human trafficking must remain high on the EU's agenda. On a positive note, the Netherlands is continuing to press strongly for this (see also recommendation 58 in the NRM's Fifth Report), since the evaluation of the EU's action plan shows that there is a wide gap between current legislation and its implementation in practice in Europe.

In March 2009, the European Commission presented a proposal for a new Framework Decision on Combating Trafficking in Human Beings. However, the adoption and implementation of the proposal for the new framework decision should not be at the expense of the ratification of the Council of Europe's Convention on Action against Trafficking in Human Beings (2005). Provisions concerning help for and protection of victims in the proposal must not curtail what has been reached in the Council of Europe's Convention. The proposal for a new EU framework decision must also not weaken the willingness to implement the provisions of the Council of Europe's Convention.

The EU Directive providing for sanctions against employers of illegally staying third-country nationals, which entered into force on 20 July 2009, is also important for efforts to tackle human trafficking. This directive prescribes a number of minimum standards for sanctions



and measures against employers of subjects of third countries living illegally in a country. These minimum standards will probably require an amendment of Dutch law.

It is nowadays clear, both nationally and internationally, that human trafficking has to be regarded as a violation of human rights. This is also reflected in the work of the various bodies, including those of the UN, that supervise enforcement of human rights. It is a mark of progress that tackling human trafficking is now an explicit element of the Netherlands' foreign policy on human rights. The human rights strategy in Dutch foreign policy should, however, more clearly reflect the fact that human trafficking also affects adults who are exploited in sectors other than the sex industry.

It is important for countries, like the Netherlands, that address human trafficking as a human rights issue to anticipate the potential effects of measures to prevent human trafficking on those same human rights and to avoid collateral damage as far as possible. A strategy needs to be formulated for achieving this. A relevant factor in this context is that a number of international bodies that monitor compliance with human rights argue, also with respect to the Netherlands, that the provision of help to victims should not depend on their cooperation with the investigation, criminal or otherwise, of human trafficking.

## **15.4 Victims and help for victims**

### **15.4.1 Shelter**

There is a shortage of capacity to provide shelter for victims. It is not always possible to provide immediate shelter, not just for specific categories of victims of human trafficking such as men (usually victims of exploitation other than sexual), minors and victims suffering from particular problems such as psychiatric disorders or addiction, but even for female victims of exploitation in the sex industry. The waiting time can range from several days to weeks and even months.

Everyone concerned agrees in principle on the importance of providing shelter specially tailored to the specific circumstances of the different groups of victims. The Human Trafficking Task Force's Action Plan proposed a pilot project on this topic, but unfortunately it has been delayed. The progress report on the action plan published on 9 September 2009 stated that in principle the pilot project is intended for all victims – women, men, any accompanying children and minors – whether they are Dutch or of another nationality. This leaves open the question of whether a distinction will be made between the sexes and between the various age groups in the facilities provided for category-based shelter. Category-based shelter does not mean that the distinction will no longer be made in these shelters. However, minors are not regarded as the primary target group of the pilot scheme, as is apparent, for example, from the fact that the tender for the project refers primarily to adult victims and does not cover essential aspects of care for minors, such as providing education and a pedagogical climate.

The purpose of the project is in fact to determine how a system of shelter and care can be designed for each individual group of victims, specifically including closed or protected facilities for underage victims, within an overall system of open and enclosed facilities. The project can incorporate the experience that has already been gained with facilities established for specific categories of victim such as Asja and MEISSA and in the Secured Care pilot project. It is important in this context that the pilot project should also explicitly be for underage victims, including girls for whom shelter in a closed or protected facility is most appropriate. Incidentally, it is unclear why agreement between the Ministry of Justice and the Ministry of Health, Welfare and Sport is required for underage victims. Primary responsibility for them would seem to rest with the Minister for Youth and Family. Another aspect requiring attention is the capacity, or lack of it, for enclosed youth care.

Examples of facilities established for particular categories of victim are the Asja van Fier Fryslan centre for girls aged between of 14 and 24, and De Roggeveen and MEISSA centres run by the Amsterdam Human Trafficking Coordination Centre, which possess specific expertise and employ special methods. The two-year Secured Care pilot project started in January 2008. This project represents an attempt to offer protection for underage aliens who may be at risk of disappearing and being exploited. This is also a small-scale shelter.

There is also a trend towards the creation of private care accommodation, particularly for underage victims of human trafficking. There are risks associated with these initiatives however praiseworthy they may be. Shelters of this type demand specific expertise and a professional context. A lack of expertise can cause a lot of additional harm for this target group.

#### **15.4.2 Groups at particular risk**

Chapter 4 discusses several groups that are particularly at risk of becoming victims of human trafficking. They include women from the ‘La Strada’ countries, women and girls in asylum-seeker centres and the mildly mentally handicapped.

Special attention is devoted to Roma children. It is not easy to respond adequately to indications of human trafficking involving this group of children, partly because of the specific cultural context, the legal complexity of the problem, the risk of stigmatising the Roma as a group, the possible involvement of the parents in the exploitation and the absence of a body to coordinate the activities of the various agencies concerned with the problem. One thing that is clear is that the problem can only usefully be addressed proactively and from a European perspective.

#### **15.4.3 Registration**

The responsibility for keeping a national register of (suspected) victims has been delegated to the Coordination Centre for Human Trafficking (CoMensha). However, the registration is incomplete and needs to be improved. The Ministry of Justice has provided CoMensha

with additional funds for this purpose. As part of the Human Trafficking Task Force’s action plan, CoMensha has already submitted a plan for a project to improve the registration of victims. Together with the agencies that provide information, CoMensha will explore what information needs to be registered. CoMensha will also press for a commitment that the data will actually be supplied.

#### **15.4.4 Care coordinator**

The care coordinator manages the care providers and other partners in the chain and is responsible, among other things, for arranging suitable shelter and care.

Many regions still do not have a care coordinator. The task force says in its action plan that it will encourage municipalities to appoint a regional care coordinator.

#### **15.4.5 Compensation**

When the court makes an order for the payment of compensation in criminal proceedings it is collected for the victim by the Central Fine Collection Agency (CJIB). Between 2000 and 2003 the CJIB was involved in between three and five human-trafficking cases annually. That number has risen significantly since 2003 to between nine and seventeen cases.

Chapter 11 also illustrates the difficulty of actually *recovering* damages for victims. Although an order to pay compensation does mean that the victim does not personally have to chase the perpetrator to recover the money, the procedure offers no guarantee of an early settlement or even that the money will ultimately be recovered.

It is important in this context that the bill designed to strengthen the position of the victim in criminal proceedings makes provision for the payment of an advance on compensation by the Violent Offences Compensation Fund. The Minister of Justice has explained that this provision is intended for victims of violent crimes and sexual offences. The offences actually covered by the scheme will be specified in a later Order in Council but it stands to reason that the scheme will also apply for victims of human trafficking.

#### **15.4.6 The Violent Offences Compensation Fund**

In assessing applications from victims (at present only victims of sexual exploitation), the Compensation Fund mainly considers the extent to which the applicant was so dependent as to be persuaded to perform sexual acts with third parties. Circumstances that can influence the decision are: the victim’s passport was confiscated; the victim had to surrender all or most of the earnings, the victim was under constant supervision or locked up, the victim’s freedom of movement was constrained or the victim was intimidated or assaulted. The Fund received 25 applications from victims of human trafficking in 2007, 18 of which were

awarded. In 2008, 19 applications were submitted, one of which was rejected because the Fund found on the basis of statements by the victim and further investigation of its own that human trafficking had not been shown to be a case of human trafficking.

In its action plan, the task force proposes measures to increase the use of the compensation fund.

## **15.5 B9 and continued residence (B16/7)**

### **15.5.1 Clarification of the B9 regulation and associated agreements**

The B9 regulation gives certain rights to victims of exploitation in the sex industry, but equally to victims of exploitation in other sectors. However, the terms of the regulation were not entirely clear with regard to the identification of victims of ‘other forms of exploitation’. In April 2009, the relevant passages were clarified without revising the policy. This is a significant improvement since, particularly in the case of exploitation in sectors other than the sex industry, government agencies do not always seem able to recognise signs of human trafficking and do not always know how the B9 regulation should be applied. Obviously, it is not only the police and special investigative services that have to immediately inform an alien of the rights laid down in the B9 regulation. The Labour Inspectorate must also do so if it discovers aliens who are not living legally in the Netherlands in a workplace. The Instructions on Trafficking in Human Beings for the public prosecution service and the police further state that victims of human trafficking must be reported to CoMensha for the purposes of arranging shelter and coordinating care. However, it should also be clear to other agencies such as the Labour Inspectorate and the Social Intelligence and Investigation Service (SIOD) that they have to report victims to CoMensha and what the procedure is for doing so. The B9 regulation recommends that in preparing actions targeted at illegal aliens the police should expressly consider the possibility of human trafficking and make preparations for providing care for possible victims. This can be done by contacting CoMensha before the actions take place. However, this is not mentioned in the public prosecution service’s Instructions on Trafficking in Human Beings.

To avoid any misunderstanding on this point, it should be clear that all government agencies must report all victims of all forms of human trafficking to CoMensha. In other words:

- not only the police and OM must report victims, but also all other relevant agencies;
- not only victims of sexual exploitation should be reported, but also victims of other forms of exploitation;
- not only aliens should be reported, but also Dutch victims.

It is very important that all relevant government agencies are aware of the policy rules and associated agreements and pursue the same policy. Naturally, there has to be agreement on which government agency is responsible for (potential) victims. This can be achieved by making firm agreements in which tasks, powers and responsibilities are clearly allocated.

There is sometimes also confusion about the differences in the B9 regulation between victims and witnesses, for example over the period within which the IND has to decide on an application for residence.

There is regular overlap between criminal law and immigration law. A striking feature in this respect is the serious gaps in the knowledge of the other area of law among practitioners in each of these domains.

### 15.5.2 ‘Chanceless’ B9 applications

There are victims who provide so little information when they report an offence that the case cannot ultimately be solved. The police and public prosecution service devote a lot of capacity to these complaints because every human-trafficking case has to be investigated. There is a suspicion that some individuals who are not actually victims seize on the B9 regulation as a last resort to secure continued residence. Every complaint must be treated with care, however, quite simply because it is so often difficult to recognise victims. There is no ready-made solution for the problem of balancing the need to respect the substantial interests of genuine victims on the one hand and the strain imposed on resources, including the accompanying use of facilities for shelter and assistance, by possible abuses of the regulation on the other. What could prove very useful would be to explore all of the circumstances surrounding the reporting of human trafficking in more detail. In that context, it is regrettable that the public prosecution service’s research department (WBOM) has discontinued the study ‘Human Trafficking: Chain, Victim and Knowledge Perspective’. The public prosecution service in The Hague has done the right thing by drawing up a practical plan describing precisely what has to be done at each step of the process from the time of an informal interview to the decision not to prosecute or to investigate the case further.

The introduction of shelter for specific categories of victims and arranging adequate legal advice can be expected to increase the willingness of victims to report offences.

### 15.5.3 Linking of right of residence to reporting of offence/cooperation with criminal proceedings

Their cooperation with a criminal investigation is a precondition for granting a (temporary) residence permit to victims and witnesses in human-trafficking cases.

Aliens are informed that they can report an offence or otherwise cooperate with the investigation immediately, but that under the B9 regulation they can also do so after a period of reflection, during which they have up to three months to *calmly* consider their decision.

It is important to make a distinction between the likelihood of a possible prosecution for human trafficking and the possibility that a person is a victim of human trafficking. Even if a report does not provide any good leads and the investigation does not lead to a prosecution,

the complainant may still be a victim. An unbelievable story does not necessarily mean that the individual concerned is not a victim of human trafficking. The human trafficker may have instructed the victim to apply for B9 status and provided her with a story for that purpose. The victim may also be reluctant to provide specific facts out of fear of the human trafficker. In deciding whether there is too little evidence of human trafficking, therefore, what needs to be considered is not just whether there is sufficient evidence for an investigation but also whether there are indications that the individual concerned is a victim.

#### **15.5.4 Objections**

An alien must inform the police within fourteen days of being notified that a case will not be prosecuted further whether he or she will object to the appeal court against that decision pursuant to article 12 of the Dutch Code of Criminal Procedure. It is unclear how this can be reconciled with the fact that no period is stipulated for filing an objection as such in article 12 of the Dutch Code of Criminal Procedure (except in the case of a notification that a prosecution will not proceed, in which case the period is three months). The period of two weeks prescribed in the B9 regulation for informing the police of whether or not an objection will be lodged is only relevant in connection with the consequences for entitlement to residence. The deadline says nothing about the period within which an objection actually has to be submitted.

BNRM's survey of objections relating to human trafficking shows that the objection was rejected in 43 of the 44 cases investigated. Although many of the complaints contained no leads or insufficient grounds for an investigation, according to the appeal court the police nevertheless often conducted a detailed investigation. The appeals court therefore found that the police had generally done their work well.

Since the middle of 2008 the appeals court in Amsterdam has explicitly considered whether or not the case was reported to the Expertise Centre on Trafficking in Human Beings and People Smuggling (EMM). Other appeal courts could follow that example.

The average period that elapsed between the receipt of an objection and the decision of the appeal court ranged from six to nine months.

#### **15.5.5 Continued residence (Chapter B16/7 of the Aliens Act Implementation Guidelines)**

The changes that have been made since August 2006 to the rules for continued residence after the termination of a residence permit under the B9 regulation are largely connected with observed shortcomings in the rules and a desire to relax the policy. The revised policy simplifies the rules both for the Immigration and Naturalisation Service (IND) and for victims and it seems legitimate to expect that the changes will shorten the period of uncertainty for victims. Nevertheless, there do seem to be some problems with the implementation of the policy in practice. One problem concerns the flow of information between the

authorities involved in the criminal investigation of human trafficking (the police and public prosecution service), the IND and the alien or her authorised representative. IND officials sometimes have to take a great deal of trouble to discover the status or the outcome of the investigation or the trial in a human-trafficking case. That information can be crucial for victims given the potentially serious implications for their residence status. Both the Aliens Act Implementation Guidelines and the Instructions on Trafficking in Human Beings of the Council of Procurators-General require the public prosecutor to notify both the IND and the victim as soon as a decision is made not to proceed with the prosecution or the final judgment is rendered. This rule is not always followed. There is often miscommunication, particularly when it is decided to discontinue a prosecution for human trafficking. The cases indicate that there is confusion about the notification to the individual concerned and the conditions attached to filing an objection. This is an area where the care coordinator could perform a useful role.

An alien who wishes to invoke ground a in the B16/7 regulation (a conviction for human trafficking or for another offence in an indictment that included human trafficking as a result of which there is an assumption in law that there are risks attached to repatriation to the country of origin) must personally submit a copy of the court's judgment to show that he or she qualifies for continued residence. However, the victim is not a party to the proceedings and therefore does not have a copy of the judgment and may not even be aware of it.

Since the amendment of the B16/7 provision, the prime responsibility for deciding whether a person is a victim has shifted from the judge to the public prosecutor, since even acquittal on a charge of human trafficking but a conviction for other offences constitutes grounds for continued residence. In practice, victims remain uncertain about the decision on a request for continued residence for an extended period, even though it is already clear at the time of the prosecution that the public prosecution service regards them as victims. The victim would be spared a lot of time and uncertainty if the rule were amended to allow an application for continued residence to be submitted as soon as the public prosecution service decides to summons a suspect. This practical amendment might also encourage victims to make a report of the crime with sufficient leads to launch a prosecution. It would then be necessary to create sufficient guarantees to ensure that the victim remains available and willing to cooperate with the investigation and prosecution.

To help improve the method of assessing whether a victim should be granted continued residence for reasons of safety, in 2005 the partners in the chain agreed to start preparing 'safety files' on registered victims. However, in practice no safety files have yet been compiled. Nor is there any evidence that the IND regularly performs a risk analysis of its own before deciding whether a victim can be required to return to his or her country of origin.

The IND's decisions to allow continued residence for urgent reasons of a humanitarian nature generally provide no insight into the considerations on which they are based.



## 15.6 Victims as offenders and the non-punishment principle

International legislation devotes a lot of attention to the problem of victims of human trafficking who have also committed or are suspected of committing a criminal offence and the associated principle that under certain circumstances they should not be prosecuted or punished (the non-punishment principle). At the same time, it is clear that the scope of this principle has not yet been clearly defined, as is apparent from the varying definitions of the principle in different international instruments. Non-punishment provisions in international instruments relating purely to migration-related crime are very limited and do not cover the problem of victims of human trafficking who may be involved in various types of criminal activity in a human-trafficking situation. Cases studied in the Netherlands and in several other countries show that victims of human trafficking can be involved in a variety of offences in a human-trafficking situation.

The Netherlands has chosen not to adopt a specific non-punishment provision for victims who are also suspects. There are, however, various grounds in the Netherlands on which it may be decided not to prosecute or not to punish these victims who are also suspects. The non-punishment principle can be applied in Dutch legal practice with reference to the interpretation of the principle in the various international legal instruments. To avail of the possibilities arising from the non-punishment principle, however, it is important that victims are also identified as such by all of the relevant agencies in the chain. In practice, it is difficult to identify victims of human trafficking, particularly when those victims are initially suspected of a criminal offence committed in the human-trafficking situation. Furthermore, the risk of prosecution can cause victims of human trafficking who are suspected of offences to think of themselves more as offenders than victims and so not make a complaint. Even if a person is identified as a victim, it seems that in practice the relevant actors are not always aware of the existence of the legal possibilities of refraining from punishing or prosecuting the victim. Awareness of the problem and knowledge of the legal possibilities are therefore crucial for applying the options for victims ensuing from the non-punishment principle in practice.

Exploitation of victims in criminal endeavours is a form of human trafficking that is still not always recognised as such. In the case of exploitation in criminal activity, BNRM is particularly aware of offences against the Opium Act committed under compulsion or pressure in a human-trafficking situation. For example, victims of loverboys and other human traffickers are sometimes forced to commit drug-related offences. Minors are particularly vulnerable to exploitation in crime; victims in this category seem to commit theft and drug offences more often than other offences. This may be connected with a different system of sanctions for minors.

It is important to be aware that offences committed by victims are not always carried out under compulsion by the human trafficker. Victims will sometimes commit a crime, such as shoplifting, as a way of escaping from the human trafficker, as has occurred in the UK. There

was a case in Austria where a victim destroyed her passport for the same reason. How to deal with this problem is an issue that needs to be addressed.

Quite apart from the consequences under criminal law, offences committed by victims in a human-trafficking situation can have consequences for their status under immigration law. For example, BNRM is aware of a case of a convicted victim who did not receive a B9 residence permit although she cooperated fully with the criminal investigation into her human traffickers, who were in fact also convicted of the offence.

Another problem is that victims who are also convicted offenders run the risk of being declared undesirable aliens and consequently being placed in aliens' detention and deported. The possible consequences under immigration law for the residence status of victims who are also offenders are therefore an area of concern.

## **15.7 Administrative and integrated approach to human trafficking (in the sex industry)**

There have been several positive developments in this area. As part of the efforts of the Human Trafficking Task Force to improve supervision of the prostitution sector, a protocol/manual on 'supervision of the licensed prostitution sector' is being written in consultation with the Ministry of the Interior and municipalities.

### **15.7.1 Prostitution sector**

Since the legalisation of prostitution, there are now three sectors: the illegal, the legal licensed and the legal unlicensed. The idea that has been put forward of curtailing the licensed sector is in itself (in other words, without additional measures) an ineffective way of preventing human trafficking and abuses, since it could cause a shift to illegal forms of prostitution, which are more difficult to monitor and regulate through policy.

Prostitution, legal and illegal, takes many forms, and developments in the sector follow in rapid succession. To deal effectively with the effects of this in the form of human trafficking, an integrated approach incorporating administrative measures as well as criminal sanctions is required. One aspect that shows the need for this is the fact that in many places exploitation in (illegal) prostitution is sometimes unconsciously facilitated, for example by hotels. New measures could be taken to address this, although experience shows that a crack down on one form of prostitution almost immediately causes activities to shift to other segments of the prostitution sector.

It is generally accepted that one of the aims of the policy should be to increase the ability of prostitutes to control their own lives so that they are less likely to become victims of human trafficking. However, it has to be noted in that context that this scarcely follows in those cases where human traffickers use severe means of coercion.

A point that needs to be considered in any measures that are taken is that many prostitutes do not speak Dutch.

### **15.7.2 Prostitution policy and administrative enforcement**

The aforementioned effect – that dealing with forms of exploitation in prostitution quickly leads to the relocation of illegal activities – is reinforced by the fact that municipalities are allowed to formulate their own policy on prostitution. Consequently, there is no uniform policy towards the prostitution sector. For example, certain forms of prostitution are licensed in one municipality but not in another. Many municipalities also fail to adequately formulate and monitor the prostitution policy and its administrative enforcement. This is not helped by the hands-off approach of the Association of Netherlands Municipalities (VNG). Smaller local authorities in particular are sometimes reluctant to tackle human trafficking, either because they do not realise the urgency of the problem or because they do not feel they have sufficient powers.

The municipalities are responsible for pursuing an adequate prostitution policy. The police play an important role in the supervision and prevention of illegal prostitution. But in many municipalities there is no clear division of tasks between the local authority and the police. The powers to exercise supervision can differ from one local authority to another, and in some cases no powers have been delegated at all. This encourages human traffickers to be calculating in planning their activities.

Other agencies besides the local authority itself also have a role in supervision, including the fire brigade, the tax authorities and the Labour Inspectorate. There are numerous indications that not all of them perform their supervisory duties in the prostitution sector properly. These additional ‘eyes and ears’ are sorely missed. That is regrettable in a sector which is very sensitive to human trafficking, tackling which depends very much on identifying the signs. Illegal prostitution is often difficult to identify simply because it is difficult to prove that sexual acts are being performed commercially with third parties.

Oversight is particularly difficult in the case of forms of prostitution that occur outside clubs, as in the case of escort services and prostitution offered on the Internet. The effectiveness of the labour-intensive ‘hotel procedure’ in controlling escort services appears to have weakened, perhaps because the method has become too well known. It is questionable whether the escort-service industry can be controlled at all. The control of licensed prostitution businesses does not in fact guarantee that human trafficking can be eradicated from them. Nor are the administrative controls in the prostitution sector always carried out properly. The superficial inspection of a prostitute’s papers, for example, will not expose exploitation. It requires holding interviews in a safe setting.

The Erotic Advertisements Covenant, under which anyone placing advertisements for erotic services must give their licence number or VAT number in the advertisement, has scarcely

any effect in curbing exploitation since its scope is too narrow (it only covers some printed media) and because the numbers are not checked.

### **15.7.3 Administrative approach to organised crime/human trafficking**

The instrument of the administrative report (the written notification from the police to the executive of a municipality that in the course of their duties they have discovered facts and circumstances relevant for the municipality's enforcement of human-trafficking policy) does not work properly. The police do not seem to have sufficient capacity to write good reports. The reports usually contain no information on which the municipalities can base specific action. For their part, municipalities also sometimes fail to pass on useful information to the police.

### **15.7.4 Integrated approach**

The programmatic approach, which involves systematic cooperation between chain partners, is useful and necessary, but a number of pilot projects revealed that in terms of execution it needs to improve. In practice, the partner organisations do not cooperate, or at least not in the envisaged manner. Organisations are often unclear about what precisely they are required to do, or what they are expected to do does not match their priorities. Consequently, scarcely any information has been gathered about companies or agencies that unconsciously play a role in human trafficking. The integrated approach to human trafficking is not universally followed, partly because the partners concerned do not perceive human trafficking to be a problem and are therefore not willing to invest in a joint approach. Even partners that do adopt the integrated approach are sometimes hesitant. There is in fact no overview of how widely the integrated approach is followed; it is not known how many municipalities have adopted a chain approach to human trafficking, what similarities and differences there are between them and how effective they are.

A care coordinator for victims of human trafficking is sorely missed in various police regions.

## **15.8 Investigation**

### **15.8.1 Policy and organisation**

In practice, police forces do not all give the necessary priority to human trafficking. The Reference Framework on Human Trafficking (2008) published by the police's National Human Trafficking Expert Group (LEM) contains useful guidelines for the police in how to handle human-trafficking cases and it is highly recommended that all forces adopt these guidelines. However, it is unclear whether and how the forces can be obliged to do so. This subject may be addressed in the next Police Force Monitor on Prostitution and Trafficking in Human Beings (2009/2010).

The various forces share information about their strategies and policies in the LEM. Since 2007, meetings of the LEM have not been attended by experts from all the forces but only by a select few (alternately with and without external partners). As a result, the LEM is in danger of losing its usefulness in prompting and motivating police forces.

### 15.8.2 Identifying and investigating signs

It is often difficult to identify victims of human trafficking as such. It is in any case important that any visible signs of human trafficking are spotted. It is quite possible that this does not always happen, but it is unclear on what scale. To identify signs of human trafficking properly it is important that both members of the public and employees in every level of organisations that may be confronted with human trafficking (including the police) know what it involves, can recognise victims and know how to act on a suspicion of human trafficking. That situation has not been reached yet. There is still room for improvement in the capacity of various agencies, including municipalities, the IND, chambers of commerce, the police, doctors, operators of sex establishments, social workers and others to identify signs of human trafficking.

There are many different manifestations of human trafficking (including sexual exploitation, non-sexual exploitation and the loverboy problem). Each of them requires, partially at least, a different approach. Efforts to address human trafficking outside the sex industry in particular are still in their infancy and call, in some cases, for a change of attitude on the part of the relevant organisations (aliens police, the IND and the Ministry of Justice's Repatriation and Departure Service (DT&V)). It is still not universally accepted that very serious forms of human trafficking can also occur in sectors outside the sex industry and that just as much priority should be devoted to identifying and investigating them. The police forces constantly have to make choices in establishing priorities. The decision on where to deploy capacity is not always made in favour of tackling human trafficking. The administrative supervision of the prostitution industry also requires manpower and is not always – as has been agreed – facilitated by municipalities. The result is that some warnings of human trafficking are not investigated and investigations are dropped.

Many police forces have formed specialist teams to investigate human trafficking, but other divisions (such as the regional criminal investigation teams) also conduct investigations. It is evident that they sometimes lack knowledge and expertise of human trafficking. In regions without a specialist human-trafficking team, information about human trafficking is not always gathered properly and investigations seem to be more difficult to conduct. Detectives trained in dealing with human-trafficking cases are not always available to hear complaints. It is not only identifying victims of human trafficking that is difficult, but also securing their cooperation with investigations and prosecutions. Victims are unwilling to report offences and their reports sometimes contain very few leads for an investigation. For successful investigations it is also important to use alternative solutions and strategies, such as accumulating

evidence from other sources. As stated in the Instructions on Human Trafficking, all investigating teams should include detectives specialising in financial crime.

Human trafficking is always a local phenomenon but is frequently organised by international gangs. Cooperation with the police in other countries is therefore vital but little is known about this. There are also problems with international cooperation, for example because of differences in legal systems and interests. International cooperation is also very time-consuming.

### 15.8.3 Information and follow-up

It is important for the investigation of human trafficking to make use of information available to other partners in the chain, although naturally the provisions of the Personal Data Protection Act have to be observed. Nevertheless, the sharing of information seems to raise various obstacles for investigations into human trafficking. Some of these barriers are technical in nature and relate, for example, to computer systems. But others can be traced to attitudes. These obstacles must be removed as far as possible in view of the importance of the information and the need to share it.

The EMM, which acts as the national repository of information about human trafficking provided by all of the agencies involved in its supervision, control and investigation and in providing assistance to victims, does not function satisfactorily. On the one hand not all of the information is supplied, and on the other the information that is available is not properly analysed and processed. The disappointing output then undermines the motivation to provide information. The Human Trafficking Task Force commissioned a study into the exchange of information between police forces and the EMM. The resulting report, ‘Trade; you’ll pay for this’, led to the decision to start a pilot project with the Regional Information and Expertise Centres (RIECs) in Rotterdam and Groningen designed to improve the flow of information between the RIECs and the EMM.

The importance of the exchange of information between international police forces is growing all the time. By merging and analysing operational information from different countries it is possible to learn more about the methods used by human traffickers and how they are tackled. In the EU this is a task for Europol but the exchange of information through Europol is not optimal. The Netherlands can play its part by adhering to the agreements on the provision of information to Europol.

### 15.8.4 Victims

The police naturally have a duty of care towards any victims of human trafficking they encounter during investigations. The victims must be given shelter. A practical problem facing the police is the shortage of places in (suitable) shelters and the occasional difficulty of reaching the relevant aid agencies. The police are also required to clearly inform victims of their options and their rights and to give them the opportunity to report the offence. There

are quite a few indications that victims who wish to report an offence are not always given the opportunity to do so by the police and that victims are not kept properly informed of progress with the police investigation.

## 15.9 Suspects and perpetrators

### 15.9.1 Striking figures

Dutch people comprised (in 2007) the largest group of suspects (95 out of 280 suspects) and the largest group of convicted persons (24 out of 73 convicted human traffickers). This illustrates once more that human trafficking does not necessarily have an international dimension. Interestingly, 30% of the suspects and 28% of convicted perpetrators were not in custody at the time of their trial.

### 15.9.2 Loverboy method

Human traffickers are quick to adapt their methods in response to changing circumstances or a crack down by the government. The so-called loverboy method provides an example of this. The popular image of a young man seducing vulnerable young Dutch girls into forming such a deep commitment that he can then get them to work in prostitution for him is no longer so clear cut. The practice is no longer confined to young men, nor exclusively to vulnerable young girls nor even only to seduction techniques; the methods are also used in transnational human trafficking and in exploitation outside the sex industry. The changeability of human trafficking practices calls for an awareness of the changes that can occur in the group of victims. It is regrettable that it is not possible to derive sufficient information from the data of the public prosecution service about the extent to which loverboy methods are used.

### 15.9.3 Facilitators

Efforts to tackle human trafficking depend not only on receiving signals from individuals and agencies that are, coincidentally or otherwise, confronted with human trafficking. Another important factor is that numerous individuals and institutions consciously or unconsciously assist human trafficking by directly or indirectly facilitating it. In the well-known *Sneep* case, a 'consultancy firm' handled the defendants' administrative affairs and a real estate company organised cars, mobile phones and accommodation. Doctors performed breast enlargements and abortions. Tattooists applied tattoos to the women involved.<sup>1</sup>

Professional groups that may become entangled with organised crime include taxi drivers, lawyers, civil-law notaries, employees of travel agencies and hotels and builders of websites. Culpable involvement in the narrow sense (intentional) occurs rarely, by contrast with the

<sup>1</sup> KLPD, *Schone Schijn* [Keeping up Appearances] (2008).



failure to observe standards of care (culpable involvement in the wider sense). Besides these private parties, employees of social services, municipalities, chambers of commerce, the IND, the Labour Inspectorate, the tax authorities and the police can also play a role.

The so-called barrier model could be used to explore ways of removing the basic conditions for human trafficking, while at the same time identifying the conscious and unconscious facilitators.

#### **15.9.4 Internet**

A special effort is needed to devise methods of preventing the many possibilities that the Internet affords to human traffickers to commit their offences while easily avoiding detection.

#### **15.9.5 *Pekari* and *Koolvis***

The *Pekari* project and the ensuing *Koolvis* case were innovative in several respects. For example, the scale of the international cooperation was unprecedented and for the first time there was successful cooperation with the country of origin of the perpetrators and the victims (through the organisation NAPTIP). This probably ensured that the entire criminal organisation was identified rather than just a part of the organisation that could be replaced. Furthermore, the cultural context in which human trafficking in Nigeria occurs was anticipated by employing the services of a Nigerian priest. However, the ‘waterbed effect’ remains a persistent problem in human trafficking, in Nigeria and elsewhere. Human-trafficking organisations do not recognise borders so cross-border cooperation is essential if they are to be tackled effectively.

### **15.10 The Public Prosecution Service and prosecutions**

The public prosecution service has been very ambitious in its use of criminal law to tackle human trafficking in recent years. However, human-trafficking cases do not automatically reach the public prosecution service. To realise its ambitions, the public prosecution service must actively pursue cases. This is why human trafficking is one of the areas in which the public prosecution service has decided to intensify its policy. In the new regions established by the public prosecution service prosecutors have been appointed who can devote 50% of their time to human-trafficking cases. These regional officers will also have a role in securing human-trafficking cases. The Office for Financial, Economic and Environmental Offences recently assigned the human-trafficking portfolio to a prosecutor and an advocate-general has also been assigned the human-trafficking portfolio. Coordination on cases in the public prosecution service takes place in the ‘portfolio owners meeting’.

Aspects that demand attention are the need to safeguard continuity in the public prosecution service, especially where there is a rapid turnover among the specialist officers, and to ensure

there is sufficient capacity. There still seems to be too little time in terms of practical implementation. It is important that there is sufficient expertise and capacity at the local level to support the regional officers.

The Instructions on Human Trafficking were amended and clarified on several points on 1 January 2009.

Since 2005, exploitation in sectors other than the sex industry and certain activities relating to the removal of organs have also been made criminal offences under the heading of 'human trafficking'. It has therefore become relevant to gather statistics on the occurrence of these forms of offence. The text of article 273f of the Dutch Criminal Code makes it impossible to distil this information from the OM data on the individual sections and subsections of that article. What is known is that several cases in 2006 and 2007 involved exploitation in sectors other than the sex industry and that no cases involving the removal of organs have yet been brought.

In 2007, 61% of the prosecutions for human trafficking led to a conviction for at least human trafficking. Between 2003 and 2007, there was a noticeable downward trend in the number of unconditional prison sentences of more than four years. This trend seems to contradict the growing political awareness of the seriousness of human trafficking, which led among other things to the raising of the sentences from 1 July 2009.

For the first time, this report presents the data on appeals. Of the 265 appeals heard in cases involving human trafficking between 1997 and 2007, the defendants were convicted wholly or partially for human trafficking in 237 cases (89%). Over the entire period, a prison sentence of more than four years was imposed in 19% of the appeals. In 5% of the cases in first instance in 2007 prison sentences of more than four years were imposed.

The figures presented in Chapter 10 relate to the public prosecution service's performance in a particular period (2003-2007). A constraint of this system is that it provides no insight into how cases were handled from beginning to end. A cohort analysis should therefore be conducted to provide this information.

The Council for the Judiciary is considering the question of whether cases of a particular type should be concentrated in specific courts. Human trafficking is one of the areas mentioned in this context.

## **15.11 Case law concerning exploitation in the sex industry**

Article 273f of the Dutch Criminal Code is not a straightforward article. It is multilayered. The history of international treaties and knowledge of the methods used by perpetrators and the problems facing victims are also relevant for the interpretation and application of this provision.

The investigation into Dutch case law on human trafficking in the sex industry shows discrepancies in how various legal aspects are interpreted and a lack of uniformity in the evalu-

ation of the context of violence, coercion, deception and the possibility for victims to escape from their situation. Statements by victims, and above all their internal consistency, play an important role in weighing the evidence. It is noteworthy in this context that judges sometimes actively look for an explanation for inconsistencies in the statements by victims. This suggests that in these cases the judges have recognised the specific problems associated with the statements of victims in human-trafficking cases. The impression to emerge from the almost 200 judgments since January 2007 that were studied is that even where there is a finding that coercion has been proved, the Dutch prostitution policy sometimes seems to play a role in the evaluation of whether a victim could reasonably have made a different choice. This is perhaps explicable on the grounds of the explanatory memorandum of the original proposal for article 273a of the (old) Dutch Criminal Code, in which the comparison was made with the ‘articulate Dutch prostitute’. However, this comparison can only refer to the situation where the prostitute is *already working* in prostitution and cannot be a factor in assessing the ‘freedom of choice’ to *enter* prostitution. The number of acquittals in human-trafficking cases is high, even by comparison with the number of acquittals in rape cases for example. Contrary to what might be expected, the study showed that this is only partially due to the absence of reliable statements by victims and witnesses.

For some years now there has been talk of establishing a training course on human trafficking. The Training and Study Centre for the Judiciary (SSR) has already produced a basic and an advanced course. The original idea was for a course made up of six modules covering international legislation, the immigration law background, the social context and the legal problems and concluding with a professional forum. The course has not yet been launched, however, and judges only sporadically attend the existing courses.

There is no specialisation in human trafficking in the judiciary, although the public prosecution service has now started appointing specialist regional public prosecutors.

The number of human-trafficking cases brought before the district courts annually has ranged from 100 to 150 in the last few years. The accumulation and retention of sufficient specialist knowledge and expertise is not promoted by allocating them among nineteen courts. The creation and retention of expertise would be enhanced by concentrating human-trafficking cases in a single court.

BNRM study showed a variation in both the sentences demanded and the sentences imposed in human-trafficking cases. There seems to be a need for guidelines. Basic principles for the appropriate sentence for human trafficking were formulated for the first time in the *Sneep* case. These were a prison sentence of eight to ten months for each victim, depending on the duration of the exploitation, the level of violence used and the role of the suspect. In that context, a period of exploitation of nine months was regarded as ‘relatively short’. Interestingly, aggravating circumstances are seldom explicitly mentioned either by the public prosecution service in the indictment or by the judge in the particulars of the offence. BNRM’s study did not encompass provisional custody. What the judgments did show is that 30% of the

defendants and 28% of those convicted were not being held in custody at the time of the trial. BNRM intends to study this subject in more depth.

Studying the judgments in criminal trials yields a lot of information. For example, most of the judgments in 2007 involved human trafficking cases in which victims were forced to work in prostitution in the Netherlands. Almost three-quarters of the convicted perpetrators were pimps. Half were involved in recruiting victims and 35% escorted victims to the Netherlands from other countries. Roughly a quarter had to guard the victims and slightly fewer than a fifth were responsible for transporting the victims to and from the workplace. A minority of the perpetrators, 5%, operated a sex business. These perpetrators often performed several different roles. It is impossible to tell whether the sex businesses were licensed, unlicensed or illegal.

The judgments that were studied show that it is particularly difficult for victims to secure compensation for material damage. This is often loss of income. In the majority of the judgments these claims (or this part of the claim) were felt to be too complicated and the victims' claims were declared inadmissible. Nevertheless, a slight change has been apparent in the more recent judgments, particularly when a financial report has been prepared for the claim for the confiscation of illegally obtained profits and it is available at the time of the trial. A problem, however, is that the claim for confiscation of criminal assets is often not raised at the time of the main trial. There is room for improvement there. The financial report could also be submitted to the judge for the purposes of the decision on the injured party's claim. Finally, the injured party's claim, submitted for the hearing of the main trial, could also be adjourned to be dealt with at the same time as the later claim for confiscation of criminal assets. The law would have to be amended to allow this.

The study of the case law shows that in cases where the court declares that attempted human trafficking has been proved the offence was in fact committed. Scarcely any prosecutions for 'attempted human trafficking' as such were found. Nevertheless, the jurisprudence of the Supreme Court on attempted human trafficking does provide scope to press this charge more often.

A successful prosecution at an earlier stage could have a preventive effect.

## **15.12 Exploitation in sectors other than the sex industry**

### **15.12.1 Identification and perception of exploitation in other sectors**

Growing attention is being devoted to identifying forms of exploitation outside the sex industry. For example, the Ministry of Social Affairs and Employment produced a fact sheet entitled 'Labour and Exploitation' to raise awareness among potential victims. However, although Dutch legislation makes no distinction between sexual and other forms of exploitation, in practice there are differences in how they are identified, investigated, prosecuted and tried. These discrepancies are mainly related to the perception and recognition of situations of other forms of exploitation. The impression is that other forms of exploitation are seen as

‘less serious’ than sexual exploitation. In principle, the seriousness of the exploitation does not depend on the sector in which it occurs.

It also seems that care for victims of other forms of exploitation creates or could create practical problems, especially since the numbers involved are sometimes substantial. Victims of other forms of exploitation are not always reported to CoMensha.

Other forms of exploitation obviously occur and every relevant actor should therefore respond adequately to excesses.

### **15.12.2 Investigation and prosecution of other forms of exploitation**

In practice, however, investigative agencies still know relatively little about the problem of other forms of exploitation. There is no clear picture of the scale of the problem, the conditions under which people are forced to work and the extent to which criminal organisations are involved. The other forms of exploitation are described as a ‘blank spot’ in the National Threat Assessment 2008. The relevant agencies (the Labour Inspectorate, the Social Intelligence and Investigation Service (SIOD), the police) do not always notify one another of indications of exploitation. The Labour Inspectorate only occasionally reports signs to the SIOD. Furthermore, combinations of different indications of exploitation are not always recognised as potential instances of human trafficking. The circumstances are more usually regarded as a series of isolated instances of breaches of labour and administrative law. Because the various agencies fail to make the connection between the various events, either internally or through consultation with other agencies, they fail to see them as a possible case of exploitation.

The public prosecution service’s Office for Financial, Economic and Environmental Offences does not always act on information from investigations or does not always conduct an investigation into human trafficking, even though the public prosecution service has made human trafficking a priority. The failure to act on indications of human trafficking is also connected with the fact that the scope of the element ‘exploitation’ has not yet been clearly defined in case law. This makes it difficult for investigative services and the public prosecution service to assess which situations the courts will regard as human trafficking.

The public prosecution service has started a pilot project to encourage the adoption of the integrated approach towards other forms of exploitation with the police in the Zuid-Holland-Zuid region.

Training courses in human trafficking have been provided for employees of various departments in the Labour Inspectorate. The SIOD has made the fight against other forms of exploitation a priority and it recently established an internal ‘Programme to improve efforts to tackle human trafficking’.

Certification of SIOD investigators had not yet been introduced when this report was written. Although working-conditions inspectors can also come across evidence of human trafficking,

such as poor working conditions, the responsible division of the Labour Inspectorate has also not yet received any training in identifying human trafficking. On the other hand, Aliens Employment Act inspectors and the Labour Market Fraud inspectors have received training.

### **15.12.3 The text of the law**

Not for the first time, the question has arisen of whether the text of article 273f of the Dutch Criminal Code should be amended to clarify the scope of other forms of exploitation. The text of the law is certainly not straightforward. One reason for this is that the text is taken almost verbatim from international provisions. The explanatory memorandum to article 273f of the Dutch Criminal Code provides little help for the courts, to whom further interpretation was consciously left. A survey of the legislation and case law in a number of other countries shows that the legal practice in those countries faces similar problems and that the legislation in the various countries, although always based on the Palermo Protocol, differs in certain respects. Countries in which forms of exploitation outside the sex industry have long been punishable (such as Belgium and the US) have meanwhile gained a lot of experience in prosecuting these forms of human trafficking. Judges in the Netherlands could perhaps learn from similar cases abroad. An international database of judicial rulings might be a solution. Amending the act would not solve the problems relating to the interpretation and appreciation of what constitutes other forms of exploitation.

### **15.12.4 Case law on exploitation in sectors other than the sex industry**

Although the scope of the offence of human trafficking involving forms of exploitation in sectors other than the sex industry has not yet been clearly defined in case law, a number of trends have emerged in the jurisprudence. Three of the twelve cases involving these forms of exploitation to date have led to convictions for human trafficking. In the judgments studied, the elements most often found not to have been proved were (the intention of) exploitation and coercion through ‘abuse of a vulnerable position’. It is possible that the workplace (behind the front door or at a business location that is part of the formal economy) and the degree to which the relationship between the perpetrator and victim is commercial influence where the judge draws the line between bad employership and exploitation. It is also possible that convincing evidence of exploitation is easier to supply if the victim’s bodily integrity is violated by physical violence than by, for example, physically harmful work or an exhausting working regime.

As regards the criterion that the victim does not or does not reasonably feel that he or she is free to escape from the working situation, the subjective perception of a lack of liberty raised complications in a number of judgments. Judges still seem to deal differently with the question of whether the worker had a reasonable alternative to becoming involved in this situation of exploitation. Judges in other countries seem to be more willing to assume that the victim had no real alternative to working for the exploiter.

In four of the twelve cases studied in the Netherlands the victims/employees were involved in criminal offences closely related to the situation of exploitation. In two of these cases the victims were prosecuted for those offences. This fact is interesting in the context of the possibilities provided by the non-punishment principle (see Chapter 6). In the two judgments that led to acquittal on charges of human trafficking, the court, in finding that there was no question of exploitation, did mention the criminal nature of the work, but it was not apparent from the judgment that the court had attached any weight to the fact that the work the workers had to perform was punishable.

In half of the cases that were examined, according to the indictment sexual services were also performed by the employees/victims. One case involved commercial sexual services with a third party; in the five other cases the employees/victims were sexually abused by the defendants themselves. The question that arises is whether the performance, under compulsion, of sexual services with a single person, outside the sex industry, can fall within the scope of article 273f of the Dutch Criminal Code. No court has yet ruled on this issue. A similar discussion has arisen in Belgium.

Practice also seems to confirm that there is an increased risk of exploitation in certain forms of ethnic entrepreneurship and that exploitation also occurs within relationships and/or families. There is little certainty about the extent to which cultural background can be taken into account in a judgment in a case involving other forms of exploitation.

#### **15.12.5 Risk sectors and risk groups of other forms of exploitation**

Several groups at risk of other forms of exploitation are discussed in Chapter 12. What stands out is that people from Central and Eastern European countries and people living illegally in the Netherlands often work through male fide employment agencies. This makes them vulnerable to exploitation. Although certified employment agencies are guilty of fewer abuses than non-certified companies, the percentage is still relatively high. This is therefore another area of concern.

Domestic staff employed by diplomats face an additional risk of exposure to exploitation because the immunity of diplomats complicates prosecution in the event of abuses. The Ministry of Foreign Affairs has taken various steps to improve the position of the domestic staff of diplomats. For example, domestic workers are given instructions, which include pointers on human trafficking. The instructions are given verbally. There is no written information, such as telephone numbers of social workers, the police or the ministry. A domestic worker is therefore perhaps unable to contact the appropriate agencies if he or she experiences a situation of exploitation.

Exploitation within marriage is another area of attention. There are no details available on its nature and scale.



### **15.13 Human trafficking with a view to organ removal**

There is interest in the subject of organ removal in the Netherlands. The news media regularly report on it. It is also an important topic at the international level. There is scarcely any information about the actual occurrence of the phenomenon in the Netherlands. The Fifth Report of the National Rapporteur on Trafficking in Human Beings already noted the urgency of remaining alert. That still applies.

For example, there is evidence that persons from the Netherlands travel to organ-exporting countries. With a view to possible abuses in relation to human trafficking it is important for facilitating, support and executive agencies, such as medical personnel and health insurers, to remain alert to the origins of organs for organ donations, particularly in the case of medical tourism.

Further research into the trade in bodily organs, organ tourism and human trafficking with a view to organ removal in the Netherlands may be helpful in this regard.

In her letter concerning the policy on Ethics on 7 September 2007, the State Secretary for Health, Welfare and Sport stated that she intended to ratify the Council of Europe's Bio-medical Convention. This has not yet been done.



## **Appendix 1a**

### **Article 273f of the Dutch Criminal Code** **(valid until 1 July 2009)**

Article 273f of the Dutch criminal code (non-official translation)

- I. Any person who:
  - (a) by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;
  - (b) recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
  - (c) recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
  - (d) forces or induces another person by the means referred to under (a) to make himself/herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
  - (e) induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
  - (f) 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\*, or either of these penalties:

2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.
3. The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine\*, or either of these penalties:
  - (a) offences as described in the first paragraph if they are committed by two or more persons acting in concert;
  - (b) offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.
4. The offences as described in the first paragraph, committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 under (b), shall be punishable with a term of imprisonment not exceeding ten years and a fifth category fine\*, or either of these penalties.
5. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine\*, or either of these penalties.
6. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine\*, or either of these penalties.
7. Article 251 is applicable *mutatis mutandis*.

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

## **Appendix 1b**

### **Article 273f of the Dutch Criminal Code** **(valid from 1 July 2009)**

#### **Article 273f of the Dutch criminal code valid from 1 July 2009 (non-official translation)**

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

val of that person's organs; shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding eight years and a fifth category fine\*, or either of these penalties:

2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.
3. The following offences shall be punishable with a term of imprisonment not exceeding twelve 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. 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 fifteen years and a fifth category fine\*, or either of these penalties.
5. 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 eighteen years and a fifth category fine\*, or either of these penalties.
6. Article 251 is applicable *mutatis mutandis*.

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

## Appendix 2

### Explanation of research methods used

For this report, BNRM conducted its own research on a number of subjects. This appendix explains the objectives of the research, the research questions and the research methods used. The subjects studied were:

Criminal case law on exploitation in the sex industry

1. Criminal case law on exploitation outside the sex industry
2. The non-punishment principle
3. Shelved cases
4. The PPS data research
5. Information about the B9 regulation
6. Possible abuse of the B9 regulation
7. Objections pursuant to Article 12 of the Dutch Code of Criminal Procedure
8. Continued residence

#### **1. Criminal case law on exploitation in the sex industry**

##### *Objective and research questions*

The aim of this research was to acquire a more complete picture of recent Dutch case law on human trafficking in the sex industry. Case law on exploitation in other sectors ('other forms of exploitation') is not covered.<sup>1</sup>

A number of subjects were studied in more depth', including the assessment of judges of the reliability of the statements made by victims, the grounds for sentencing, the sentences and compensation claimed by and awarded to victims.

The research questions were formulated as follows:

- what factors play a role in deciding whether a statement by a witness is or is not reliable?
- how is human trafficking punished and what reasons are given for the sentences imposed?

##### *Research method*

The study embraced a quantitative and a qualitative element. The quantitative part of the study covered only judgments rendered in first instance in 2007. The qualitative part encompassed all judgments rendered since then that have been published on [www.rechtspraak.nl](http://www.rechtspraak.nl). With the cooperation of the LOVS, BNRM received all judgments rendered in 2007 that had not been anonymised. A so called 'LJN' number is given for all judgments that were also published on [www.rechtspraak.nl](http://www.rechtspraak.nl).

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<sup>1</sup> On this point, see Chapter 12.



To answer the research questions, BNRM studied the 108 judgments in first instance in 2007, as well as the judgments that were published on [www.rechtspraak.nl](http://www.rechtspraak.nl) from 2007 up to and including 30 June 2009. This was a total of 184 rulings, including judgments of appeal courts and the Supreme Court.<sup>2</sup>

The quantitative analysis is limited to judgments in first instance in 2007. This approach was chosen because BNRM had access to all judgments rendered in first instance in 2007, as was shown by a comparison with the public prosecution service's national database, which contains information about the prosecution of suspects from the 19 district offices.<sup>3</sup> The dataset for the quantitative analysis was a collection of 108 judgments in criminal cases against suspects of human trafficking in the sex industry.

According to the data from the public prosecution service in the Netherlands, in 2007 the courts dealt with 120 criminal cases involving human trafficking in first instance (see Chapter 10). BNRM ignored 12 criminal cases for this study, for example because a number of cases involved human trafficking relating to other, non-sexual, forms of exploitation.<sup>4</sup> The quantitative part of the study is therefore based on 108 judgments rendered in human trafficking cases relating to sexual exploitation.

#### *Reservations about the quantitative part of this study*

The quantitative part of the study sketches a single year of human-trafficking case law; it covers judgments rendered in first instance by the district courts in 2007. Not all of the 108 judgements that were analysed are, or were at the time of the study, final and irrevocable.

The 108 judgments do not necessarily involve 108 different cases of human trafficking or sets of facts. On a particular date, the same district court might have rendered judgment in human trafficking cases against different defendants who were involved in the same set of facts. In that sense, there were ultimately 65 different human trafficking cases, involving between one and seven suspects, and a total of 108 suspects.

Not all district courts rendered judgments in a human trafficking case in 2007. The 108 judgments studied were rendered by 13 district courts.<sup>5</sup>

In the quantitative part of the study, facts are noted insofar as they were explicitly mentioned in the judgments. Consequently, the absence of a factor or a fact in a judgment does not necessarily mean that the judge did not take it into account.

<sup>2</sup> These are 108 judgment rendered by district courts in 2007, seven judgments of appeal courts and the Supreme Court in 2007 that were published on [rechtspraak.nl](http://rechtspraak.nl), and 69 judgments of district courts and appeal courts from 1 January 2008 to 30 June 2009 that were published on [rechtspraak.nl](http://rechtspraak.nl).

<sup>3</sup> It also showed that one judgment received by BNRM was not included in the PPS data: Groningen District Court, 3 April 2007 (unpublished).

<sup>4</sup> For the purpose of the analyses, 12 criminal case were ultimately ignored for the following reasons: seven cases concerned human trafficking in relation to other, non-sexual exploitation; one case concerned people smuggling rather than human trafficking; and one case was not heard because the PPS was declared inadmissible. Three case were joined with other cases at the hearing; the substance of the judgments is included but they are not counted separately, so these three cases are not to found in the figures.

<sup>5</sup> The district courts in Assen, Breda, Dordrecht, Maastricht, Roermond and Zutphen rendered no judgments in human trafficking cases in 2007.

The 108 judgments that were analysed fall into one of the following categories: abridged judgments – with or without grounds for conviction or acquittal –, abridged judgments with detailed evidence on the grounds of the filing of an appeal, promiss judgments and judgments of the police court. The results are summarised in the following table:

*Table B2.1 Analysed judgments in 2007*

Type of judgment	N	%
Abridged judgments without further findings on evidence/acquittal	26	24
Abridged judgments with further findings on evidence/ acquittal	47	44
Abridged judgments with detailed evidence <sup>7</sup>	14	13
Promis judgments	18	17
Police court judgments	3	3
<i>Total</i>	<i>108</i>	<i>100</i>

Not all judgements contained findings on the evidence, nor were all judgments detailed.

## 2. Criminal case law concerning exploitation outside the sex industry

### *Objective and research questions*

The study into case law concerning other forms of exploitation was divided into two parts. First, all Dutch case law relating to other forms of exploitation was studied and analysed. Also was examined how other countries deal with the prosecution of other forms of exploitation. The aim of the study of Dutch case law was to gain an impression of the development of the jurisprudence and identify the problems relating to the prosecution of human trafficking outside the sex industry. On the basis of the identified problems, was then analysed how other countries have criminalised human trafficking, where problems arise in the prosecution of the offence in other countries and how they could be solved. The aim of the comparative international legal survey was to learn what legislation other countries have adopted with respect to other forms of exploitation and how that legislation is applied by the courts.

### *Research method*

All of the judgments concerning other forms of exploitation that have rendered up to now in the Netherlands were studied (see §12.6). In most cases, the public prosecutor's closing speech, the pleadings, the record of the court proceedings and the summons were also studied. A number of hearings were also attended and in a few cases the public prosecutor or judge was interviewed.

<sup>6</sup> Two of these judgments also contained a separate finding with the evidence.

The countries selected for the international comparative survey was based in part on the fact that – like the Netherlands – they are parties to the UN Palermo Protocol and/or are bound by the EU Framework Decision (2002). Both instruments require countries to criminalise human trafficking on the basis of similar definitions. This part of the survey covered Belgium, France, Norway and the United States.

In the international comparative survey the place of the criminalisation of other forms of exploitation in the national legislation was reviewed and was investigated which forms of human trafficking are included in national legislation. Also the definitions of offences relating to other forms of exploitation were studied. Where possible, a number of judgments in cases involving other forms of exploitation in each country was studied and analysed, with the emphasis on aspects that had caused prosecutions to fail in the Netherlands, such as the definition of the component (intention of) exploiting and the (coercive) means of the misuse of a vulnerable position. Various experts in the different countries were consulted by telephone and e-mail for an explanation of the interpretation of judgments and legislation. The information about legislation and case law in the US is largely based on research carried out by Anje van Delden at BNRM's request.

#### *Reservations to the study*

The international comparative survey was not intended to provide a comprehensive overview of international case law. By studying legislation and a number of judgments, an attempt was made to indicate how courts in other countries deal with possible problems in some areas. One criterion used to select countries was the availability of judgments in English, French and German. The selection made might mean that interesting legislation and case law in other countries has been ignored. The fact that no judgments at all were available from Germany and the United Kingdom meant that these countries were not covered in the study. BNRM was only able to secure a very small number of judgments from France and Norway.<sup>7</sup> This was connected with the fact that little or no use has been made of the central articles on human trafficking in the legislation of these countries in recent years. In addition, judgments in these countries are not published and available. Requests for judgments from agencies in these countries ultimately proved difficult. For the description of case law in a number of countries, therefore, some secondary sources in the sense of comparative legal surveys, were used. The ILO's *Casebook of Court Decisions* in 2009 was useful for France, although it does not include the precise terms of the court judgements.<sup>8</sup>

Part of the survey of Belgian case law was taken from the annual report of the Centre for Equal Opportunities and Anti-Racism, which has also published a number of (original) judgments on its website that were used for this exploratory study. A drawback of making

7 According to the Trafficking in Persons Report 2009, there was one case in Norway concerning other forms of exploitation. Three cases were studied for France: *Cour de Cassation Chambre criminelle, 3 decembre 2002, N de Decision: 97/8641, ECHR – Siliadin versus France (which was reported on in NRM5)* and *Cour d'appel Poitiers, 26 fevrier 2001, N de pourvoi: 02-81453 (Procureur de la Republique v. Monsieur B.)*

8 However, the original judgments were studied.

such a pre-is that it can give a distorted impression. Third, it is unclear what influence these judgments will have on future exploitation cases in Norway and France. Another obstacle is the Norwegian language. In this chapter, an unofficial English translation of the texts of the law made by the University of Bergen was used, which was approved by the Norwegian Ministry of Justice.<sup>9</sup> A drawback of this is that some English equivalents of Norwegian legal terms are more an approximation than a precise translation.<sup>10</sup>

### 3. The non-punishment principle

#### *Objective*

To gain an impression of the nature of the problems facing victims who are also perpetrators of criminal offences connected with the human trafficking situation, BNRM investigated cases in the Netherlands and abroad. BNRM also studied national and international legislation and literature to explore the possibilities of the non-punishment principle. The aim was to use the results to describe the problems and recommend solutions.

#### *Research method*

Besides studying national and international legislation and literature, BNRM looked for cases. In the Netherlands, the cases were acquired from the police, social services, the legal profession and the public prosecution service. Most of the information was retrieved from written documents such as official reports of the police and judicial rulings. The cases studied were also explained verbally by the person who had brought the case.

The cases in other countries were acquired through personal interviews with the public prosecution service, the police, NGOs and other relevant organisations. Most cases in the comparative legal survey came only from a verbal source, without underlying documentation. The information on legislation in the various countries came from the interviews, supported by a study of the text of the law and additional documents. For the study of the problems in other countries, it was decided to focus on neighbouring European countries. Because the role of the legality principle plays a fairly prominent role in the international debate about the non-punishment principle, three countries (Germany, Italy and Austria) in which prosecution is based on that principle were studied. The selection of countries was also based on the fact that some countries have already ratified the Convention of the Council Europe (2005), which contains a legally binding provision on the non-punishment principle.

We wish to express our special thanks to interviewees in the Netherlands and abroad who provided these cases for us.

<sup>9</sup> The text of this law can be found at <http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf>

<sup>10</sup> Furthermore, a relevant '*Odelstingsproposisjoner*' (*Ot. Prp* – explanatory note to a bill from a ministry to parliament) is only available in Norwegian and was therefore of only limited use in this study. *Ot. Prp. No. 62 2002-2003*, at: [www.regjeringen.no/Rpub/OTP/20022003/062/PDFS/OTP200220030062000DDDPDFS.pdf](http://www.regjeringen.no/Rpub/OTP/20022003/062/PDFS/OTP200220030062000DDDPDFS.pdf), website last visited on 4 June, 2009. Relevant extracts from this document are partially cited in English in *Jaeren District Court: The Public prosecution Authority vs Daniel D., Case no. 08-069332MED-JARE, 4 July 2008*.

*Reservations to the study*

The study was not intended to provide a comprehensive overview of cases in which victims of human trafficking were involved in the commission of criminal offences. That is also not possible, since there is no agency in the Netherlands or in other countries that keeps records of all victims who are involved in a criminal offence. Because the cases often came from a single source, much of the information was provided verbally and a lot of information was not recorded in writing by the organisations from which the information came, it is possible that the descriptions of the cases do not all give a complete and faithful account of the events. However, this does not detract from the objective of the survey, which was to provide an insight into the nature of the problems facing victims who are also offenders.

To find respondents for the interviews in the various countries, BNRM attempted, in any case, to interview respondents in the public prosecution service and NGOs in each country. However, in Germany, only one public prosecutor was interviewed and no respondents from NGOs were available. There was no response to requests for interviews from Sweden. For this reason, it was decided not to include Sweden in the study. A number of respondents were interviewed in the other countries. It has to be noted that every respondent has a personal view of the problems, which could colour the information.

#### 4. Shelved cases

*Introduction*

For years BNRM has been hearing of human trafficking cases that were not or could not be dealt with by the police, so-called ‘shelved cases’.<sup>11</sup> Reasons given for this include a lack of resources and the failure to give priority to human trafficking. An unknown number of shelved cases are eventually dropped because the time limit for prosecuting them has lapsed. This information from the police, the public prosecution service and the social services, among others, led us to conduct this study.

*Objective*

To gain an insight into the number and nature of human trafficking cases shelved by the police.

*Research questions*

Questions about indications of human trafficking received by the police:

- What indications were received during a period of two months?
- Which of these indications contained leads for an investigation?

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<sup>11</sup> Shelved cases are cases that are not dealt with immediately. However, there is not yet a clear definition of shelved cases. Police offices use the term in different ways. In this study, the term shelved cases refers to indications that do provide sufficient leads for an investigation but are not followed up or do not lead to an investigation. A case can be shelved at various stages of an investigation.

Questions about the timing of decisions:

- What indications do or do not lead to follow-up action, and what action is taken?
- What factors are taken into consideration?
- Where and how is the decision made?
- How are decisions taken on whether to start or continue an investigation?

Questions about how efforts to tackle human trafficking are organised:

- How are efforts to tackle human trafficking organised within the region?

### *Research method*

For practical reasons, eight police forces were selected for this study. The selection is not entirely representative of all police regions, but the regions were chosen to reflect various features and circumstances in different regions. For example, factors taken into account in the selection of the police forces were:

- the number of indications of human trafficking received in 2006 (source: Police Force Monitor 2007 – underlying questionnaires). The selection included, in any case, one police forces with almost no indications of human trafficking and one force that was unable to provide this information;<sup>12</sup>
- the number of indications that did or did not lead to an investigation (source: Police Force Monitor 2007 – underlying questionnaires);
- the assessment of the approach to human trafficking (green, orange, red) (source: Police Force Monitor 2007);
- the size and location of the police region.

The regions selected on the basis of these criteria were: Amsterdam-Amstelland, Gelderland-Midden, Groningen, Limburg-Noord, Noord-Holland-Noord, Rotterdam-Rijnmond, Twente and Zuid-Holland-Zuid.

The number of indications/complaints received by the selected police forces in the period from 1 January 2007 to 1 March 2007 (two months) was determined and the cases were analysed in terms of the nature of the indication and the existence of leads for investigation.<sup>13</sup> Then was examined which indications were dealt with (and how) and which were not, including the times at which relevant decisions are made. What decision were made? Why was it decided to conduct an investigation or not? By whom?

<sup>12</sup> This complies with a request from LEM (on 20 February 2008).

<sup>13</sup> In principle, this was done with the relevant officials in the region. There may in fact be some debate about whether there are leads for an investigation. In those cases, the advice of an objective, external expert can be sought.

## 5. The PPS data research

### *Introduction*

At BNRM's request, analyses are carried out each year on part of the PPS national database devoted to 'human trafficking', which contains information provided by 19 district offices of the PPS about the prosecution of suspects.<sup>14</sup> The analyses give an impression of the course of the proceedings in first instance. PPS data contain information about cases and offences. By contrast with police investigations, for the purpose of prosecution a (criminal) case is understood to mean the case against a single suspect. Criminal cases against individual suspects may involve multiple offences. The results of the research are presented in Chapter 9 (Suspects and offenders) and Chapter 10 (The Public Prosecution Service and prosecution).

### *Objective and research questions*

The objective of the study was to provide insight into the prosecution of suspects of THB in the Netherlands. The research questions were:

- How many cases relating to THB were registered with the PPS?
- How often are under-age victims involved?
- What is the breakdown of the suspects in terms of gender, age and country of origin?
- What is the breakdown of persons convicted of THB in terms of gender, age and country of origin?
- What offences other than THB are those persons suspected of?
- How did the PPS deal with cases?
- How did the courts settle cases?
- How often do the various parties lodge an appeal against judgments of the court?
- What trends have occurred over time with respect to THB?

### *Research method*

The cases in which THB is registered (as one of the offences) were selected from the overall PPS database. The analyses do not follow a particular cohort. Instead, the analysis reviewed how many cases were registered and how many were dealt with by the PPS or settled by the courts.<sup>15</sup>

### *Additional remarks*

The PPS data only include the principal charges in the indictment. Furthermore, if there are several principal offences in the charges only the first offence is registered in the PPS data. This means not only that the PPS data provide only a limited impression of the total number of THB offences (namely that portion that comes to the attention of the police and is referred to the PPS) but also that the portion of the information that does reach the PPS and that may play a role in the course of the prosecution is not to be found in the PPS data. It is not known how much information may be lost in this way.

<sup>14</sup> The analyses are carried out by the Statistical Data and Policy Analysis Division (SIBA) of the Ministry of Justice's Scientific Research and Documentation Centre (WODC).

<sup>15</sup> This means that they are not necessarily always the same cases.



## 6. B9 data

### *Objective and research questions*

In principle, every year BNRM analyses the databases supplied by the IND containing the records of all applications for and awards of residence permits under the B9 regulation (B9 residence permits). For various reasons, this report only covers the granting of permits. This decision is explained below, together with the research method.

The research questions are:

- How many victims/witnesses were granted a B9 residence permit?
- What are the (background) characteristics of persons with a B9 residence permit?
- How many B9 residence permits were granted in each police region?

### *Research method*

At BNRM's request, the IND – the agency where requests for a residence permit under the B9 regulation are submitted – provided databases with records of all contacts in which the B9 regulation played a role. These databases contain records of all B9 residence permits that were granted (even if this was only done at a later stage, for example, after an objection or an appeal procedure and where a permit was granted on other grounds). BNRM aggregated all the files at a personal level.<sup>16</sup> This database was further analysed. Because of omissions in the system, caused by the transfer of the administrative system for aliens to the IND, the report only covers the period from 2005 onwards.

### *Reservations to the study*

Several additional reservations need to be expressed about the database used in the study. First, the IND does not consistently and/or uniformly register whether applications for and awards of residence permits are linked to the B9 regulation. Consequently, it can occur that a person who applies for a B9 residence permit is registered as receiving a residence permit on other grounds (for example 'residence with partner', or 'working in the EU'). The reverse also occurs: persons who do not apply for a B9 residence permit but are granted one at the time of their first registration. Assuming that persons who were given a B9 classification either in the application or in the granting of a permit invoked the B9 regulation, all these persons are included in the analysis. Since the IND has no special procedure for automatically and mandatorily registering an appeal to the B9 regulation as a ground for a residence permit, it is possible that not all victims who invoke the B9 regulation were traced (and included in the database).<sup>17</sup> Second, the B9 regulation provides for a temporary residence permit for both victims and witnesses of human trafficking who make a complaint of human trafficking. The IND does not register whether a person receives a B9 residence permit as a victim or a witness. In fact,

16 After all, a person can have more than one procedure with the IND, and have multiple contacts with the IND during each procedure.

17 Persons who were counted in this study could in fact have been categorised differently by the IND, because there were, at some point and possibly together with other grounds for residence, linked to B9 regulation, because the IND classifies persons according to the *first mentioned* purpose of residence.

a witness could just as easily be a victim, since it is clear from various sources (including Van Dijk, 2002) that victims of human trafficking are more likely to make a statement as a witness than a complaint as a victim.

Third, the B9 data only relate to victims and witnesses of human trafficking living illegally in the Netherlands, since only they need to have their residence in the Netherlands legalised for the purposes of the investigation and prosecution. Furthermore, the IND databases only contain details of persons who qualify for a temporary residence permit because they have made a complaint of human trafficking. Victims who are still making use of the reflection period are not registered by the IND.

## 7. Possible abuse of the B9 regulation

### *Introduction*

Foreigners who have to leave the Netherlands or have no prospect of securing residence status sometimes claim – at the last moment – to be victims of human trafficking or are recognised as such, for example by lawyers or social workers. They make a complaint of human trafficking, but these complaints contain few if any leads and investigations based on them can therefore seldom be successfully completed. However, resources (sometimes considerable) have to be devoted to these cases, because according to the Instruction on Human Trafficking they must be investigated. Some of those concerned suspect that the B9 regulation is abused in order to secure a temporary residence permit. BNRM has researched this problem and organised a (computer-supported) expert meeting to brainstorm on possible solutions.

### *Objective*

To gain an insight into the factors that lead to suspicions of abuse of the B9 regulation and to explore possible solutions.

### *Research questions*

Description of case:

- How did the police become aware of the case?
- What did the claim of human trafficking involve?
- What was the previous history of the (possible) victim of human trafficking?
- Were there indications of human trafficking in the victim's previous history?
- Were there leads for an investigation or indications of human trafficking?

Course of the case:

- What follow-up actions were taken by the police?
- How did the case end?
- What was the role of the public prosecution service?
- Were there omissions on the part of the police?

Doubts:

- Why are there doubts or suspicions of abuse of the B9 regulation?
- What were the effects of these doubts?
- Solutions:
- What possible solutions are there for dubious cases?

### *Research method*

For this study, every case in which the police suspected abuse of the B9 regulation were examined. This produced 88 cases in 2007 and in 2008 in 13 police regions. Sixteen cases were selected at random to be studied in more detail. The following table shows the origin of the victims, their gender and the nature of the (planned) exploitation.

*Table B2.2 Characteristics of dubious cases*

Origin	SE		OFE		Unknown		Total
	♀	♂	♀	♂	♀	♂	
Africa	10	1	–	–	–	1	12
China	2	–	1	1	–	–	4
<i>Total</i>	<i>12*</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>–</i>	<i>1</i>	<i>16</i>

\* In two cases, the complainant had not yet actually worked in the sex industry. The suspect had announced that this was the intention.

In 12 of the 16 cases, the complainants were from Africa (seven of them from Nigeria), in four the complaints were from China. The complainants included 14 women and two men. The research questions were answered for these 16 cases.

### Expert meeting

BNRM organised an interactive, computer-supported expert meeting with 14 representatives of the police, the public prosecution service, social services, the legal profession and the IND to further discuss the nature of the problem and to brainstorm on possible solutions. This meeting took place on 10 February 2009.

### Additional research

Another six cases of former unaccompanied underage aliens who made complaints of human trafficking in 2006 were also studied. There were complaints from the social services about how these cases were handled. We therefore examined how these cases had been handled by the police and public prosecution service in accordance with the principle of hearing both sides: the social workers explained the complaints they had and the police then explained how the investigation was conducted and responded to the complaints. The social workers then gave their response. The descriptions of cases resulting from this study are included in this report where relevant. We also discussed cases they had complaints about with social workers at conferences and meetings.

## 8. Objections pursuant to Article 12 of the Dutch Code of Criminal Procedure

### *Objective*

The aim of the study was to gain an insight into:

- the characteristics of human trafficking cases in which it was decided not to prosecute and against which decision an objection was made under Article 12 of the Dutch Code of Criminal Procedure;
- the settlement of these cases.

### *Research method*

For this study was looked at the judgments (final decisions) and underlying files of the Article 12 proceedings relating to human trafficking that were dealt with by three of the five appeal courts from 1 January 2007 and in which a decision was made before April 2009. The three selected appeal courts (Amsterdam, Den Bosch and The Hague) are considered to be representative of all five appeal courts.<sup>18</sup> The judgments and files were analysed on the basis of a questionnaire.

This study encompassed a total of 44 judgments (final decisions).<sup>19</sup> The following table gives a summary of the number of judgments of each appeal court that was studied, broken down by the year in which the objections were heard.<sup>20</sup>

Table B2.3 *Number of judgments and underlying files studied, by appeal court*

Year of handling	Amsterdam	Den Bosch	The Hague	Total
2007	8	3	4	15
2008	3	14	7	24
2009	1	–	4	5
<i>Total</i>	<i>12</i>	<i>17</i>	<i>15</i>	<i>44</i>

The length of the objection procedure from the time the notice of objection was received to the time the appeal court rendered judgement ranged from two and a half months to fourteen months, and averaged nine, seven and a half and six months in Amsterdam, Den Bosch and The Hague respectively.

18 It is impossible to give a complete picture of all objections relating to human trafficking before all five appeal courts because in Leeuwarden, at the time of the study, it was not possible to filter out only objection proceedings relating to human trafficking.

19 The documents in these files could include: the written notice of objection, an official report from the public prosecutor stating the reasons for the decision not to prosecute, the written report of the Advocate General and the official reports of the police.

20 Because the objection procedure can take more than a year, this means that the objections reported as being handled in a particular year could include objections that were already submitted the year before.

## 9. Continued residence

### *Objective*

The most important objective of this study was to examine, from a comparative perspective, how the new rules on continued residence after B9 work in practice and to what the objectives of the changes in the rules have been achieved.

Having observed that few applications were made for continued residence, with an earlier policy change the Minister for Immigration Affairs and Integration had intended to make a number of improvements: to make it easier to decide on an application for continued residence, to accelerate decisions and to clarify and improve the position of the victim. The expectation was that these changes would lead to more applications. It was also the intention to bring the policy more into line with the policy on continued residence in general (Article 3.51 of the Aliens Decree).

### *Research questions*

- By whom is continued residence after the B9 procedure requested?
- The following characteristics of the applicants were investigated as far as possible: the country of origin, the type of exploitation (including sector), gender, age, length of stay in the Netherlands, duration of the exploitation, length of stay with B9 status, status in the criminal investigation (complainant /witness), any special circumstances (psychological problems, for example).
- How often is the permit granted and on what grounds, and how often is an application rejected and why?
- What circumstances and factors are put forward by the applicant and which are taken into account by the IND (a possible conviction for an offence other than human trafficking in the trial, for example)?
- Was reference made to an official report on the subject, a so-called safety file and/or a letter from the public prosecutor in the file, and if so, what value was attached in practice to this documentation in estimating the risk of repatriation?
- Are considerations concerning the burden of proof included in the procedure and are general grounds for refusal applied?

### *Research method*

This study consisted largely of a study of the files. BNRM asked the IND – the agency to which requests for residence permits under the B9 regulation and B16/7 regulation are submitted – to supply the files relating to applications for continued residence on expiry of the B9 regulation in 2006. There were 34 files. Lawyers and IND officials were also asked for additional information (in writing or in an interview).

### *Reservation to the study*

The study concerned applications for continued residence in 2006.

The policy on continued residence after B9 was revised again during BNRM study.



## Annex 3

### Notes to tables and statistics

#### 1 Notes to tables

This report contains many tables. These notes contain some remarks that are important for the interpretation of the tables.

The tables do not always come to precisely 100% because figures are rounded off. To make the tables easier to read, however, the totals are always given as 100%.

If a column in a table contains numbers, the letter N is used at the top of the column to denote the word 'number'.

In the tables a dash (-) is used to represent the number zero and to indicate that the associated percentage is 0%. If the number is higher than zero, but the percentage after rounding off is 0%, 0% is used instead of a dash.

#### 2 Note to the statistics used

##### *Standard deviation*

Averages are sometimes given in this report, for example the average age of suspects in human trafficking investigations. In that case, the number (N, see above) and the standard deviation (SD) are also sometimes given. The standard deviation expresses the range of the numbers over which the average is calculated. The higher the standard deviation, the greater the range.

##### *Index figure*

Some tables include an index figure. The index figure shows by how many the number – of suspects, for example – in a particular year has changed in relation to a reference year. The reference year is mentioned at the top of the table. The figure for that year is 100. An index figure higher than 100 indicates an increase in relation to the reference year and an index figure lower than 100 indicates a decline.





## Annex 4 Additional tables

Table B4.1 presents a complete list of the nationalities of (possible) victims registered by Co-Mensha. This table supplements the information on this subject in Table 4.2, §4.2.2.

*Table B4.1 Nationalities of (possible) victims registered by CoMensha, by year*

Country	2004		2005		2006		2007		2008	
	N	%	N	%	N	%	N	%	N	%
Afghan	1	0%	–	–	–	–	–	–	1	0%
Albanian	8	2%	2	0%	1	0%	–	–	2	0%
Angolan	2	0%	8	2%	2	0%	1	0%	5	1%
Antiguan and Barbudan	–	–	1	0%	–	–	–	–	–	–
Armenian	3	1%	–	–	4	1%	2	0%	2	0%
Azerbaijani	–	–	–	–	1	0%	–	–	–	–
Belarusian	12	3%	3	1%	–	–	2	0%	1	0%
Belgian	–	–	2	0%	1	0%	–	–	–	–
Bengalese	1	0%	–	–	3	1%	–	–	–	–
Beninese	1	0%	2	0%	–	–	–	–	1	0%
Bolivian	–	–	–	–	–	–	1	0%	–	–
Bosnian	–	–	1	0%	–	–	2	0%	1	0%
Brazilian	5	1%	8	2%	17	3%	4	1%	13	2%
British	2	0%	–	–	–	–	–	–	–	–
Bulgarian	55	14%	52	12%	39	7%	50	7%	32	4%
Burkina Fasoan	–	–	–	–	–	–	1	0%	–	–
Burundian	–	–	2	0%	1	0%	3	0%	–	–
Cameroonian	11	3%	4	1%	4	1%	6	1%	11	1%
Canadian	1	0%	–	–	–	–	–	–	1	0%
Cape Verdean	–	–	–	–	–	–	1	0%	1	0%
Chilean	–	–	–	–	2	0%	2	0%	2	0%
Chinese	9	2%	5	1%	29	5%	33	5%	78	9%
Colombian	4	1%	1	0%	–	–	1	0%	5	1%

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Country	2004		2005		2006		2007		2008	
	N	%	N	%	N	%	N	%	N	%
Comorian	–	–	–	–	1	0%	–	–	–	–
Congolese	–	–	3	1%	5	1%	5	1%	3	0%
Croatian	–	–	–	–	1	0%	–	–	–	–
Cuban	2	0%	–	–	–	–	–	–	–	–
Czech	2	0%	18	4%	3	1%	4	1%	7	1%
Danish	–	–	–	–	–	–	1	0%	–	–
Dominican	2	0%	1	0%	–	–	–	–	1	0%
Dutch	59	15%	98	23%	146	25%	270	38%	320	39%
Ecuadorian	1	0%	–	–	–	–	–	–	–	–
Egyptian	–	–	–	–	–	–	1	0%	2	0%
Eritrean	1	0%	–	–	–	–	–	–	–	–
Estonian	1	0%	–	–	1	0%	1	0%	–	–
Ethiopian	2	0%	1	0%	1	0%	1	0%	–	–
Finnish	1	0	–	–	–	–				
French	–	–	–	–	–	–	1	0%	1	0%
Gambian	–	–	–	–	–	–	–	–	4	1%
Georgian	–	–	–	–	2	0%	–	–	3	0%
German	1	0%	2	0%	–	–	3	0%	7	1%
Ghanaian	6	1%	2	0%	1	0%	8	1%	9	1%
Greek	–	–	1	0%	–	–	1	0%	–	–
Guinea-Bissauan	5	1%	4	1%	–	–	–	–	1	0%
Guinean	3	1%	4	1%	8	1%	15	2%	20	2%
Hungarian	3	1%	9	2%	13	2%	15	2%	45	5%
Indian	–	–	–	–	7	1%	3	0%	13	2%
Indonesian	–	–	–	–	2	0%	–	–	1	0%
Iraqi	2	0%	–	–	–	–	–	–	–	–
Iranian	5	1%	–	–	3	1%	1	0%	1	0%
Irish	–	–	1	0%	–	–	–	–	–	–
Italian	–	–	2	0%	1	0%	1	0%	–	–
Ivorian	2	0%	–	–	–	–	2	0%	3	0%

Country	2004		2005		2006		2007		2008	
	N	%	N	%	N	%	N	%	N	%
Jamaican	–	–	–	–	1	0%	–	–	–	–
Kenyan	2	0%	1	0%	3	1%	3	0%	3	0%
Latvian	1	0%	3	1%	3	1%	2	0%	–	–
Lebanese	–	–	–	–	1	0%	–	–	–	–
Liberian	1	0%	1	0%	–	–	2	0%	3	0%
Lithuanian	3	1%	3	1%	6	1%	3	0%	8	1%
Luxembourgese	1	0%	–	–	–	–	–	–	–	–
Macedonian	1	0%	–	–	–	–	–	–	–	–
Malaysian	1	0%	–	–	–	–	–	–	–	–
Mauritanian	–	–	–	–	1	0%	–	–	–	–
Mexican	1	0%	–	–	–	–	–	–	–	–
Moldavian	6	1%	2	0%	3	1%	–	–	–	–
Mongolian	–	–	2	0%	1	0%	4	1%	4	1%
Moroccan	11	4%	11	3%	9	2%	13	2%	10	1%
Namibian	–	–	1	0%	–	–	1	0%	–	–
Nicaraguan	–	–	–	–	–	–	1	0%	–	–
Niger	–	–	–	–	–	–	1	0%	–	–
Nigerian	39	10%	28	7%	86	15%	104	15%	64	8%
North Korean	–	–	1	0%	1	0%	–	–	–	–
Norwegian	–	–	1	0%	–	–	–	–	–	–
Pakistani	1	0%	–	–	–	–	–	–	–	–
Philippine	2	0%	–	–	–	–	2	0%	6	1%
Pole	8	2%	13	3%	27	5%	14	2%	6	1%
Portuguese	–	–	1	0%	–	–	–	–	2	0%
Romanian	45	11%	23	5%	34	6%	28	4%	19	2%
Russian	14	3%	13	3%	12	2%	9	1%	5	1%
Rwandan	1	0%	–	–	–	–	2	0%	–	–
Senegalese	2	0%	1	0%	–	–	1	0%	–	–
Serbian	–	–	–	–	–	–	–	–	1	0%
Sierra Leonean	6	1%	14	3%	20	3%	29	4%	44	5%

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Country	2004		2005		2006		2007		2008	
	N	%	N	%	N	%	N	%	N	%
Slovak	3	1%	10	2%	2	0%	3	0%	7	1%
Somali	–	–	–	–	2	0%	5	1%	3	0%
South African	–	–	–	–	2	0%	–	–	–	–
Sri Lankan	–	–	–	–	–	–	1	0%	–	–
Sudanese	2	0%	1	0%	2	0%	2	0%	2	0%
Surinamese	3	1%	1	0%	2	0%	6	1%	4	1%
Syrian	–	–	–	–	–	–	1	0%	–	–
Taiwanese	–	–	–	–	–	–	–	–	4	1%
Tanzanian	–	–	–	–	1	0%	–	–	1	0%
Thai	2	0%	2	0%	3	1%	9	1%	12	2%
Togolese	2	0%	2	0%	2	0%	2	0%	1	0%
Trinidad and Tobagoan	–	–	–	–	–	–	–	–	1	0%
Tunisian	–	–	–	–	1	0%	–	–	–	–
Turk	2	0%	2	0%	5	1%	8	1%	1	0%
Ugandan	–	–	4	1%	–	–	3	0%	1	0%
Ukrainian	8	2%	10	2%	10	2%	4	1%	5	1%
Uzbek	2	0%	1	0%	–	–	–	–	–	–
Venezuelan	–	–	–	–	–	–	2	0%	2	0%
Vietnamese	3	1%	1	0%	–	–	–	–	2	0%
(former) Yugoslavian	2	0%	5	1%	1	0%	6	1%	1	0%
Zambian	–	–	–	–	–	–	1	0%	–	–
Zimbabwean	–	–	2	0%	–	–	–	–	1	0%
Unknown	16	4%	27	6%	38	7%	2	0%	6	1%
<i>Total</i>	<i>403</i>	<i>100%</i>	<i>424</i>	<i>100%</i>	<i>579</i>	<i>100%</i>	<i>716</i>	<i>100%</i>	<i>826</i>	<i>100%</i>

Source STV/CoMensha (databases).<sup>1</sup>

<sup>1</sup> The information in this table differs slightly from the figure presented by the STV/CoMensha in its annual reports. BNRM used a database supplied to it by the STV/CoMensha after its annual report was published, in which STV/CoMensha had made a number of corrections.

Table B4.2 includes all nationalities of underage victims registered by CoMensha. This list supplements the information in Table 4.5, §4.2.2.

Table B4.2 Nationality of underage victims registered by CoMensha, by year

Country	2006		2007		2008	
	N	%	N	%	N	%
Angolan	–	–	–	–	2	1%
Armenian	1	1%	–	–	–	–
Beninese	–	–	–	–	1	1%
Brazilian	–	–	–	–	1	1%
Bulgarian	5	5%	6	3%	1	1%
Cameroonian	–	–	1	1%	2	1%
Chinese	6	6%	4	2%	14	8%
Congolese	2	2%	2	1%	–	–
Colombian	–	–	–	–	1	1%
Dutch	35	35%	100	50%	104	62%
German	–	–	–	–	1	1%
Ghanaian	–	–	2	1%	–	–
Guinea-Bissauan	–	–	–	–	1	1%
Guinean	1	1%	3	2%	11	7%
Hungarian	–	–	–	–	1	1%
Indian	–	–	2	1%	1	1%
Indonesian	–	–	–	–	1	1%
Iranian	–	–	1	1%	–	–
Italian	1	1%	–	–	–	–
Lithuanian	1	1%	–	–	–	–
Mongolian	1	1%	–	–	2	1%
Moroccan	2	2%	3	2%	1	1%
Nigerian	32	32%	50	25%	7	4%
Philippine	–	–	1	1%	–	–
Romanian	4	4%	10	5%	1	1%
Russian	1	1%	1	1%	1	1%
Serbian	–	–	–	–	1	1%

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Country	2006		2007		2008	
	N	%	N	%	N	%
Sierra Leonean	6	6%	4	2%	8	5%
Slovak	–	–	–	–	4	2%
Somali	–	–	1	1%	1	1%
Surinamese	2	2%	2	1%	–	–
Taiwanese	–	–	–	–	1	1%
Turkish	1	1%	3	2%	–	–
Ugandan	–	–	2	1%	–	–
Ukrainian	–	–	1	1%	–	–
<i>Total</i>	<i>101</i>	<i>100%</i>	<i>199</i>	<i>100</i>	<i>169</i>	<i>100</i>

Source CoMensha (databases).<sup>2</sup>

The information in Table B3 supplements the figures in Table 4.15, §4.2.3.

Table B4.3 Nationality of persons with B9 permit (2005-2008)<sup>3</sup>

Nationality	B9 permits							
	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
Albanian	1	2%	1	1%	–	–	–	–
Angolan	–	–	2	1%	–	–	–	–
Armenian	1	2%	2	1%	1	1%	2	1%
Azerbaijani	–	–	–	–	–	–	2	1%
Belarusian	1	2%	–	–	–	–	1	0%
Bengalese	–	–	2	1%	–	–	–	–
Bolivian	–	–	–	–	1	1%	–	–
Brazilian	–	–	1	1%	4	3%	4	2%
British	1	2%	–	–	–	–	–	–
Bulgarian	11	18%	18	12%	10	7%	8	3%

2 The information in this table differs slightly from the figures presented by CoMensha in its annual reports. BNRM used a database supplied to it by CoMensha after its annual report was published, in which CoMensha made a number of corrections.

3 These are probably persons who one arrived in the Netherlands as undocumented asylum seekers and whose nationality was later established.



Nationality	B9 permits							
	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
Burundian	1	2%	1	1%	1	1%	–	–
Cameroonian	–	–	2	1%	4	3%	10	4%
Cape Verdean	–	–	1	1%	–	–	–	–
Chinese	1	2%	9	6%	16	11%	42	18%
Congo-Kinshasan	–	–	2	1%	–	–	2	1%
Croatian	–	–	1	1%	–	–	–	–
Czech	2	3%	3	2%	–	–	1	0%
Dominican	1	2%	1	1%	–	–	–	–
Estonian	–	–	1	1%	–	–	–	–
Ethiopian	–	–	–	–	2	1%	1	0%
French	–	–	–	–	–	–	3	1%
Gambian	–	–	–	–	1	1%	–	–
German	–	–	–	–	2	1%	1	0%
Ghanaian	–	–	–	–	1	1%	7	3%
Guinean	–	–	3	2%	5	4%	14	6%
Hungarian	1	2%	2	1%	4	3%	11	5%
Indian	–	–	3	2%	–	–	6	3%
Indonesian	–	–	–	–	–	–	1	0%
Iranian	–	–	–	–	1	1%	–	–
Italian	1	2%	–	–	–	–	–	–
Ivorian	–	–	–	–	1	1%	1	0%
Latvian	1	2%	1	1%	–	–	–	–
Lebanese	–	–	1	1%	–	–	–	–
Liberian	–	–	–	–	1	1%	1	0%
Lithuanian	–	–	–	–	1	1%	1	0%
Mauritanian	–	–	1	1%	2	1%	–	–
Moldavian	–	–	3	2%	–	–	–	–
Mongolian	–	–	–	–	–	–	2	1%
Moroccan	1	2%	1	1%	6	4%	2	1%

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Nationality	B9 permits							
	2005		2006		2007		2008	
	N	%	N	%	N	%	N	%
Niger	1	2%	–	–	1	1%	1	0%
Nigerian	4	7%	33	22%	34	24%	54	23%
North Korean	–	–	1	1%	–	–	–	–
Norwegian	1	2%	–	–	–	–	–	–
Philippine	–	–	–	–	–	–	3	1%
Pole	3	5%	2	1%	5	4%	–	–
Romanian	6	10%	24	16%	5	4%	3	1%
Russian	5	8%	3	2%	4	3%	2	1%
Senegalese	1	2%	–	–	–	–	–	–
Sierra Leonean	8	13%	10	7%	17	12%	23	10%
Slovak	2	3%	–	–	2	1%	2	1%
Somali	–	–	–	–	–	–	2	1%
South African	–	–	1	1%	–	–	–	–
Sudanese	–	–	3	2%	–	–	–	–
Surinamese	–	–	–	–	–	–	2	1%
Taiwanese	–	–	1	1%	–	–	1	0%
Tanzanian	–	–	1	1%	–	–	–	–
Thai	1	2%	1	1%	3	2%	4	2%
Togolese	–	–	1	1%	2	1%	–	–
Tunisian	–	–	–	–	1	1%	–	–
Turkish	–	–	–	–	2	1%	1	0%
Ugandan	1	2%	1	1%	–	–	3	1%
Ukrainian	1	2%	4	3%	1	1%	2	1%
Uzbek	2	3%	–	–	–	–	–	–
Yugoslavian	–	–	–	–	1	1%	2	1%
Stateless	–	–	1	1%	–	–	–	–
Unknown	1	2%	1	1%	1	1%	7	3%
<i>Total</i>	<i>61</i>	<i>100%</i>	<i>150</i>	<i>100%</i>	<i>143</i>	<i>100%</i>	<i>235</i>	<i>100%</i>

The information in Table B4.4 supplements the figures in Table 4.1, §4.2.2.

Table B4.4 Country of origin of complainants

Country	Amsterdam	Den Bosch	The Hague	Total
	N	N	N	N
Angola	–	1	–	1
Belarus	–	1	–	1
Cameroon	1	–	2	3
China	1	2	–	3
Congo	–	1	–	1
Ethiopia	–	–	1	1
Gambia	–	1	–	1
Ghana	–	–	2	2
Guinea	1	1	1	3
Iran	–	1	–	1
Kenya	–	–	1	1
Mauritania	1	–	–	1
Moldavia	1	–	–	1
Nigeria	1	1	3	5
Romania	–	1	–	1
Russia	–	–	1	1
Sierra Leone	4	3	3	10
South Africa	–	1	–	1
Surinam	1	–	–	1
Uganda	–	1	–	1
Ukraine	1	–	1	2
Unknown	–	2	–	2
<i>Total</i>	<i>12</i>	<i>17</i>	<i>15</i>	<i>44</i>

The information in Table B4.5 supplements the figures in Table 9.5, §9.2.

Table B4.5 *Countries of birth of suspects, by year of registration*

Country of birth	2003	2004	2005	2006	2007
	N	N	N	N	N
Afghanistan	–	–	1	–	–
Albania	5	–	–	–	5
Angola	–	–	1	1	–
Australia	–	–	–	1	–
Belgium	1	2	–	–	1
Brazil	1	–	–	1	1
British Borneo	–	–	–	1	–
Bulgaria	19	14	4	13	23
Cameroon	1	–	–	–	1
Cape Verde	–	–	2	–	–
China	–	–	2	1	–
Colombia	–	1	1	–	–
(former) Czechoslovakia	–	2	5	3	1
Dominican Republic	–	–	–	–	2
Egypt	–	–	–	1	1
France	–	1	–	–	4
(Federal Republic of) Germany	1	5	1	–	9
Ghana	–	–	2	–	2
Great Britain	–	1	–	–	–
Greece	–	–	–	1	–
Hong Kong	–	–	–	1	1
Hungary	–	–	6	1	2
India	–	–	–	7	1
Indonesia	–	2	–	1	–
Iran	–	2	–	2	2
Iraq	–	2	–	2	–
Ivory Coast	–	–	–	–	1

Country of birth	2003	2004	2005	2006	2007
	N	N	N	N	N
Korea	–	1	–	–	–
Kuwait	–	–	1	–	–
Lebanon	–	–	–	–	1
Liberia	2	–	–	–	–
Libya	1	–	–	–	–
Lithuania	–	–	–	1	–
Malaysia	1	–	–	–	–
Morocco	3	9	17	13	12
Netherlands	46	91	54	74	95
Netherlands Antilles	2	7	3	4	12
Niger	–	–	–	1	–
Nigeria	5	4	–	2	19
Pakistan	–	–	–	2	–
Poland	–	3	3	3	7
Portugal	–	1	–	1	1
(former) Portuguese Indies	–	–	–	1	–
Romania	22	23	6	14	15
Saudi Arabia	–	–	–	–	1
Sierra Leone	1	–	–	1	5
Somalia	–	–	–	–	1
South Africa	–	–	–	–	1
(former) Soviet Union	11	8	2	7	1
Sudan	–	–	–	–	1
Surinam	10	9	6	11	12
Thailand	2	–	1	–	3
Turkey	16	24	15	18	29
Uganda	–	–	1	–	–
United States of America	–	1	–	–	–
Venezuela	–	–	–	1	–
(former) Yugoslavia	3	3	4	6	1

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Country of birth	2003	2004	2005	2006	2007
	N	N	N	N	N
(former) Zaire	–	1	–	–	1
Unknown	2	2	–	1	5
N. a. (legal entity)	1	1	–	1	–
<i>Total</i>	<i>156</i>	<i>220</i>	<i>138</i>	<i>199</i>	<i>280</i>

The information in Table B4.6 supplements the figures in Table 9.6, §9.2.

*Table B4.6 Countries of birth of suspects convicted of human trafficking, by year of conviction*

Country of birth	2003	2004	2005	2006	2007
	N	N	N	N	N
Albania	9	2	–	–	–
Angola	–	–	–	1	–
Belgium	2	1	2	–	–
Brazil	–	–	–	–	1
Bulgaria	15	11	4	4	4
Cape Verde	–	–	–	1	–
Colombia	–	–	1	–	–
(former) Czechoslovakia	–	–	–	6	3
(Federal Republic of) Germany	–	1	1	–	–
Ghana	–	–	–	1	–
Great Britain	–	–	–	1	–
Greece	1	–	–	1	–
Hungary	–	–	2	4	1
India	–	–	–	–	2
Indonesia	1	–	1	–	–
Iran	–	–	1	–	2
Iraq	–	–	–	1	–
Ivory Coast	–	–	–	–	1
Korea	–	–	1	–	–
Kuwait	–	–	–	1	–

Country of birth	2003	2004	2005	2006	2007	
	N	N	N	N	N	
Lithuania	–	1	–	–	1	
Morocco	2	7	3	13	2	
Netherlands	26	37	36	21	24	
Netherlands Antilles	–	2	3	–	4	
Nigeria	–	5	–	–	–	
Pakistan	–	–	–	–	1	
Poland	1	–	–	1	2	
Romania	7	18	3	3	13	
Sierra Leone	–	–	–	1	–	
(former) Soviet Union	5	7	5	–	1	
Sudan	–	1	–	–	–	
Surinam	1	7	8	1	4	
Thailand	1	1	–	1	–	
Turkey	7	14	9	6	5	
United States of America	–	–	1	–	–	
(former) Yugoslavia	–	1	–	1	2	
(former) Zaire	–	–	1	–	–	
Unknown	1	–	–	1	–	–
<i>Total</i>	79	116	82	70	73	





## Annex 5

# Reaction of the NRM to the advisory report of the Advisory Committee on Migration Affairs

Ministry of Justice

16 March 2009

Dear Mrs Albayrak,

In February, the Advisory Committee on Migration Affairs (ACVZ) published a report entitled 'Protect victims and tackle human trafficking'.

I have a few remarks I would like to make about that report. I will confine myself to the recommendations relating to proposed changes to chapters B9 and B16/7 of the Aliens Act Implementation Guidelines, since these recommendations go to the heart of efforts to tackle human trafficking.

In the first place, I am pleased that the ACVZ is also considering the fate of victims of human trafficking and their protection, and in doing so stressing the human rights approach.

In an earlier report, my predecessor also recommended that reception and help, which was at that time only provided for under the B9 regulation, should not be available only to victims who are cooperating with investigation and prosecution or are considering doing so (Recommendation 12 NRM3, 2004).

*Recommendation 12: '[...] We recommend making shelter and assistance available not merely to victims who cooperate with investigation and prosecution or are considering doing so. Although a more or less formal assessment of victim status remains desirable in order to prevent the misuse of the regulation, there are victims about whom there is little or no doubt regarding their victim status, even though they do not have the courage to report it or consider doing so. This applies, for example, to victims found by the police with a high score based on a list of signals of human trafficking designed by public prosecution service and used by the police. Even without a complaint, useful information for investigation and prosecution may emerge from these victims' stories. Furthermore, there is the chance that they will, once they have come to themselves, have the courage to cooperate after all with an investigation and prosecution.'*

In assessing an individual's status as a victim as referred to above, the opinion of organisation that provide assistance to victims should also be significant factor.

However, unlike the ACVZ, I do not see the need to amend the B9 regulation in the proposed manner. The recommended changes would certainly not improve the position of all victims of human trafficking. For example, victims who decide to make a complaint or otherwise cooperate with the criminal process, either immediately or during the reflection period, will be in a worse position than they are now and will remain in uncertainty longer. In my view, the ACVZ report would not, in fact, lead to any fundamental change; it would only extend

the period of temporary residence status – and hence also the period of uncertainty. It is, furthermore, unclear what ‘cooperation’ as referred to in recommendation 4 of the ACVZ report should actually involve in order to qualify for continued residence.

In addition, investigation remains of fundamental importance and I feel – as does the public prosecution service – that the proposed measures for investigation and prosecution will have negative consequences.

The ACVZ’s advisory report makes a distinction between three phases. As regards the first phase, it recommends that if individuals have not personally identified themselves as victims of human trafficking, but there are other indications, the police should establish as soon as possible whether those indications should be regarded as a ‘slightest indication’. The ACVZ assumes that the police should be able to make the assessment within a relatively short period of no more than five working days. It is questionable whether they can, and such an assessment would represent a negative step; it would introduce an additional obstacle that does not exist at the moment and could therefore also erode the effect of the term ‘slightest indication’. This idea also raises the question of what benefit this proposal would have in practice: what is it the police should investigate, where will the victim remain during this time (in a shelter?), what is his or her residence status, and when will he or she be informed of his or her rights? This first phase also commences if a complaint or statement is made, but it is not clear what is meant by ‘statement’: cooperation with a criminal investigation or also a first intake interview with the police?

Under the current regulation, a complaint or cooperation by a victim constitutes an *ex officio* application for B9 status. The first recommendation in the ACVZ report (‘Grant a temporary residence permit for six months whenever there is the ‘slightest indication’ of human trafficking or where a victim has cooperated with an investigation and prosecution’) means that the person has to wait six months (or 12 months in the case of an extension) before the next temporary permit will be granted. It is unclear why. Furthermore, it is not clear whether provisions currently included in the B9 regulation will apply during these six months, such as the possibility of performing work. That seems unlikely, in fact, since in this period the individual’s status as a victim has not yet been established. The advice also fails to address facilities for victims who decide within this period to cooperate with the criminal investigation, for example by making a complaint. In this phase, and the second phase, no distinction seems to be made between victims who do cooperate with the criminal investigation and victims who do not.

The second phase starts after three months and consists of a period of three to nine months within which the IND makes a decision and a residence permit for one year on the grounds of victim status.

The ACVZ proposes allowing the IND to assess, after the reflection period, whether the individual is actually a victim of trafficking and then, on the basis of that assessment, granting a second temporary residence permit if it decides that the individual is a victim. I fear that this proposal could lead to far more proceedings under immigration law on individuals’ victim status than are necessary under the current system.

As described above, the first part of the second phase represents three to nine months of uncertainty for the victim regarding the IND's decision. It is, in fact, unclear what the IND's own role in that should be. Would a victim who has made a complaint on which an investigation has started face the risk that the IND will nevertheless conclude that he or she is not a victim? That seems so (p. 39 under recommendation 4), since the ACVZ excludes victims who have made a complaint or have cooperated, but who are not likely to be victims (to be decided by the IND?) are excluded from continued residence.

The willingness of victims to make a complaint of human trafficking is not great. Although human trafficking is an offence that can be prosecuted without a complaint, the cooperation of victims (in the form of a complaint or otherwise), remains important, especially in terms of being able to start an investigation. I am therefore seriously concerned about a deterioration in the position of those victims who are willing to cooperate with the criminal investigation in the ACVZ's proposal.

Like the ACVZ, I also observe a problem with complaints that provide few leads for an investigation. In response to reports that reached me, from both the police and organisations that help victims, I decided to conduct further research into this problem and to organise an expert meeting on the subject (which took place on 10 February 2009). The results will appear in the 7<sup>th</sup> report. I can at this point say that the police and the public prosecution service are frequently confronted with this problem, that it takes up a lot of their time and often leads to nothing, but that they do not rule out the possibility that in such cases the individuals are genuine victims. Victims can sometimes not provide more information (due to factors such as their cultural background, a loss of memory as a result of a trauma, because they do not trust government agencies or because they do not dare to and consequently say just enough, but still as little as possible, to secure a B9 residence permit). It is also known that the police find it very difficult in such cases to decide whether a person is genuinely a victim.

In the third phase, the continued residence, in the ACVZ proposal only recognised victims who cooperate will ultimately qualify for continued, permanent, residence. In this phase, the victim's cooperation with the police and the public prosecution service will therefore quickly play a decisive role, although there is no definition of what that cooperation precisely involves. This cooperation must have taken place at some point in the second phase, a phase that lasts 18 to 24 months. This lengthy time span means, in my view, that leads for an investigation will be lost, which will frustrate efforts to tackle human trafficking even more.

I find this regrettable.

Victims of human trafficking must be protected. It is also important to provide victims with certainty as quickly as possible.

In one of the most recent amendments to the regulation on continued residence in the Aliens Act Implementation Guidelines (Government Gazette 2008, 37), you adopted my recommendation (8) in the fifth report on human trafficking to the effect that the ground for continued residence under (a) in B16/7 of the Implementation Guidelines (the victim has made a complaint for a criminal case that has led to a conviction) should not be confined to criminal cases that have led to a conviction for human trafficking but should also extend to a conviction for

an offence related to human trafficking. Even if human trafficking is included in the indictment and the defendant is *not* convicted of human trafficking but *is* convicted of another offence related to the human trafficking, there is currently a legal presumption that the repatriation of the victim involves risks. With this amendment, the assessment of whether a person is in fact a victim is to a large extent transferred from the judge to the public prosecution service.

This assessment could therefore be left entirely to the public prosecution service without any actual change in the policy.

In my view, the IND should already grant a victim continued residence when the public prosecution service decides to prosecute, although measures must be taken to ensure that it is possible for the victims to remain available to the police and public prosecution service. However, whenever the public prosecution service decides *not* to prosecute for technical reasons (for example, because the offender cannot be found), the public prosecution service should always issue a statement concerning the victim's status to the IND.

This naturally is without prejudice to the possibility, set out in B16/7 of the Aliens Act Implementation Guidelines, of granting continued residence if the State Secretary considers that there are special individual circumstances demanding that the victim should not be required to leave the Netherlands. Following recommendation 12 in NRM<sub>3</sub>, this possibility should also be open to this latter category of victims. I agree with the ACVZ that organisations that provide assistance should play an important role in the assessment of those applications.

Without having addressed all of the ACVZ's recommendations, therefore, I concur with the ACVZ's conclusion that shelter and help should be available for identified victims who cannot or dare not make a complaint or otherwise cooperate with the police and public prosecution service and I repeat recommendation 12 in NRM<sub>3</sub>.

But unlike the ACVZ, in my opinion this should be arranged in addition to the current B9/B16 regulation. Amendment of the B9 regulation as proposed by the ACVZ would constitute an unacceptable deterioration in the position of victims who do cooperate with the criminal investigation.

Furthermore, amendment and refinement of a regulation that has greatly improved in recent years is greatly preferable to an entirely new regulation in which the pitfalls have still to be discovered, with the associated uncertainty for the victim.

Finally, I recommend that you transfer the assessment for continued residence under (a) in B16/7 from the judgment of the court to the decision to prosecute by the public prosecution service. Given the wording of the current regulation, this will require little if any change in the policy and would significantly shorten the period of uncertainty for victims regarding their residence status. After all, the public prosecution service's decision to prosecute provides an objective criterion on a person's status as victim.

Yours sincerely,

C.E. Dettmeijer-Vermeulen

National Rapporteur on Trafficking in Human Beings

c.c.: Minister of Justice.

## Annex 6

# Reaction of the NRM to the advisory report of the Advisory Committee on Migration Affairs

Ministry of Justice

16 March 2009

Dear Mrs Albayrak,

In February, the Advisory Committee on Migration Affairs (ACVZ) published a report entitled 'Protect victims and tackle human trafficking'.

I have a few remarks I would like to make about that report. I will confine myself to the recommendations relating to proposed changes to chapters B9 and B16/7 of the Aliens Act Implementation Guidelines, since these recommendations go to the heart of efforts to tackle human trafficking.

In the first place, I am pleased that the ACVZ is also considering the fate of victims of human trafficking and their protection, and in doing so stressing the human rights approach.

In an earlier report, my predecessor also recommended that reception and help, which was at that time only provided for under the B9 regulation, should not be available only to victims who are cooperating with investigation and prosecution or are considering doing so (Recommendation 12 NRM3, 2004).

Recommendation 12: '[...] We recommend making shelter and assistance available not merely to victims who cooperate with investigation and prosecution or are considering doing so. Although a more or less formal assessment of victim status remains desirable in order to prevent the misuse of the regulation, there are victims about whom there is little or no doubt regarding their victim status, even though they do not have the courage to report it or consider doing so. This applies, for example, to victims found by the police with a high score based on a list of signals of human trafficking designed by public prosecution service and used by the police. Even without a complaint, useful information for investigation and prosecution may emerge from these victims' stories. Furthermore, there is the chance that they will, once they have come to themselves, have the courage to cooperate after all with an investigation and prosecution.'

In assessing an individual's status as a victim as referred to above, the opinion of organisation that provide assistance to victims should also be significant factor.

However, unlike the ACVZ, I do not see the need to amend the B9 regulation in the proposed manner. The recommended changes would certainly not improve the position of all victims of human trafficking. For example, victims who decide to make a complaint or otherwise cooperate with the criminal process, either immediately or during the reflection period, will be in a worse position than they are now and will remain in uncertainty longer. In my view, the ACVZ report would not, in fact, lead to any fundamental change; it would only extend

the period of temporary residence status – and hence also the period of uncertainty. It is, furthermore, unclear what ‘cooperation’ as referred to in recommendation 4 of the ACVZ report should actually involve in order to qualify for continued residence.

In addition, investigation remains of fundamental importance and I feel – as does the public prosecution service – that the proposed measures for investigation and prosecution will have negative consequences.

The ACVZ’s advisory report makes a distinction between three phases. As regards the first phase, it recommends that if individuals have not personally identified themselves as victims of human trafficking, but there are other indications, the police should establish as soon as possible whether those indications should be regarded as a ‘slightest indication’. The ACVZ assumes that the police should be able to make the assessment within a relatively short period of no more than five working days. It is questionable whether they can, and such an assessment would represent a negative step; it would introduce an additional obstacle that does not exist at the moment and could therefore also erode the effect of the term ‘slightest indication’. This idea also raises the question of what benefit this proposal would have in practice: what is it the police should investigate, where will the victim remain during this time (in a shelter?), what is his or her residence status, and when will he or she be informed of his or her rights?

This first phase also commences if a complaint or statement is made, but it is not clear what is meant by ‘statement’: cooperation with a criminal investigation or also a first intake interview with the police?

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The ACVZ proposes allowing the IND to assess, after the reflection period, whether the individual is actually a victim of trafficking and then, on the basis of that assessment, granting a second temporary residence permit if it decides that the individual is a victim. I fear



that this proposal could lead to far more proceedings under immigration law on individuals' victim status than are necessary under the current system.

As described above, the first part of the second phase represents three to nine months of uncertainty for the victim regarding the IND's decision. It is, in fact, unclear what the IND's own role in that should be. Would a victim who has made a complaint on which an investigation has started face the risk that the IND will nevertheless conclude that he or she is not a victim? That seems so (p. 39 under recommendation 4), since the ACVZ excludes victims who have made a complaint or have cooperated, but who are not likely to be victims (to be decided by the IND?) are excluded from continued residence.

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Furthermore, amendment and refinement of a regulation that has greatly improved in recent years is greatly preferable to an entirely new regulation in which the pitfalls have still to be discovered, with the associated uncertainty for the victim.

Finally, I recommend that you transfer the assessment for continued residence under (a) in B16/7 from the judgment of the court to the decision to prosecute by the public prosecution

service. Given the wording of the current regulation, this will require little if any change in the policy and would significantly shorten the period of uncertainty for victims regarding their residence status. After all, the public prosecution service's decision to prosecute provides an objective criterion on a person's status as victim.

Yours sincerely,

C.E. Dettmeijer-Vermeulen

National Rapporteur on Trafficking in Human Beings

c.c.: Minister of Justice.



## Annex 7

### List of activities of BNRM in 2008<sup>1</sup>

#### I Interviews, meetings and working visits (Netherlands)<sup>2,3</sup>

##### I.1 Police/Royal Netherlands Marechaussee/special investigative services

Tax and Customs Administration, FIOD-ECD
Supra-Regional Crime Squad, Noordwest & Midden Nederland
Centre of Expertise on Human Trafficking and People Smuggling (EMM)*
National Expert Group on Human Trafficking * (LEM)
Operational Consultation Group on Trafficking in Human Beings (OOM)*
Hollands-Midden police force
SIOD*
Theme Day on Crime Projection Analyses (CBAs)
Holder of Human Trafficking portfolio in the Council of Police Superintendents and the chairman of the National Expert Group on Human Trafficking

##### I.2 Public Prosecution Service

CJIB
Human Trafficking Task Force *
Eurojust
National Public Prosecutor's Office for Economic and Environmental Offences
National Consultation of Public Prosecutors for human trafficking and migrant smuggling *
National Office of the Public Prosecution Service
Procurator General with human trafficking portfolio *
Witness protection project *
SSR meeting on human trafficking*
Research department of Public Prosecution Service: consultation on other forms of exploitation

- 1 Only face-to-face meetings are listed.
- 2 Several meetings were held with various of the listed persons and agencies, sometimes in different groups, as well as in the context of other meetings.
- 3 Periodic meetings with BNRM or which are regularly attended by BNRM are marked \*. Meetings at which BNRM made a contribution in the form of a presentation are marked \*\*.

### 1.3 Judiciary

Attendance at various hearings
Council of State: Vice-president
Council for the Judiciary
Rotterdam District Court, Criminal Law Division: Lecture on human trafficking **
President of the Criminal Division of the Rotterdam District Court and chairman of the LOVS
Immigration judges of The Hague District Court

### 1.4 Social services, representative organisations and NGOs

ACM
BlinN
COA
CoMensha
MO group
Netwerk mensenhandel Rotterdam
OKIA, FNV, Vrije Universiteit Amsterdam
Platform Jeugdprostitutie *
PMW Humanitas Rotterdam
Child Protection Board
Violent Offences Compensation Fund
SOA AIDS
SKIN, INLIA, EMM
Stichting Religieuzen Tegen Vrouwenhandel
Vereniging Vrouw & Recht / Clara Wichmann, Respect.NL, AbvaKabo
Werkgroep Integrale Ketenaanpak (WIK)*

### 1.5 Government, semi-state sector and politicians

Mayor of Amsterdam
Mayor of Almere
CJIB: compensation orders, non-punishment, SIS
Repatriation and Departure Service

Municipality of Amsterdam: Van Traa team
Municipality of Amsterdam: Working Group on Integrated Chain Approach to prostitution and human trafficking
IND Hoofddorp
Ministry of the Interior and Kingdom Relations
Ministry of Foreign Affairs: Directorate for Cabinet & Protocol
Ministry of Foreign Affairs: Directorate for Political Affairs
Ministry of Defence: Directorate for Personnel and Personnel Policy, gender project manager
Minister for Youth and Family
Ministry of Justice: DRC/GC)
Ministry of Justice: Departmental consultation group on human trafficking**
Ministry of Justice: Minister of Justice
Ministry of Justice: State Secretary for Justice
Ministry of Justice: Directorate for Aliens Policy
Ministry of Justice: DGWRR/DW
Ministry of Justice: Young Development theme day, aliens chain**
Ministry of Social Affairs and Employment: director of the Labour Inspectorate
Ministry of Health, Welfare and Sport: State Secretary
Consultation group on human trafficking: Ministry of Justice, Ministry of Foreign Affairs, Ministry of the Interior and Kingdom Relations, Ministry of Social Affairs and Employment, Ministry of Health, Welfare and Sport *
Illegal Immigration Steering Group *
Supervision and Repatriation Steering Group *
CDA parliamentary party: deputy leader
Association of Netherlands Municipalities (VNG)*

## 1.6 Research/academia/advisory bodies

Advisory Committee on Migration Affairs (ACVZ)*
Supervisory Committee for Evaluation of abolition of general ban on brothels: 1) Illegality and 2) Exploitation: municipal policy *
Supervisory Group, Combating Human Trafficking Project *
Europa Institute, Law Faculty, University of Leiden
INDIAC
University of Amsterdam, department of gender and sexuality studies
University of Tilburg, AIO
University of Leiden; Journalism and new media
WODC: SIBA*

## 1.7 Working meetings (other)

AMA platform*
CoMensha: platform meeting*
Meeting of experts on raising the minimum age for prostitution
Expert meeting on categorical shelter for victims of human trafficking
Fier Fryslân working visit
IND gender contact persons meeting **
Framework law on licensing of prostitution – tackling pimps
Social witness protection*
Steering group, Registration of Youth Prostitution *
WODC round table session on social costs of organised crime

## 1.8 Visits and delegations from abroad

US embassy, Global Issues section
Australia: Victoria Police Academy
Bulgaria: MATRA Study Visit
Bulgaria, delegation with representatives of Ministry of Justice, Ministry of Interior, National Commission for Combating Trafficking in Human Beings and NGO
Croatia: delegation from ‘national coordinator for combating trafficking’, other government departments and a NGO
Council of Europe: Commissioner for Human Rights
Russia: Matra project in Russia (2008-2011) (NGO)
United States: Dutch Liaison in Washington – Police and Judicial Affairs
United Kingdom: Minister for Crime Reduction and the Minister for Women and Equality
Vienna: OSCE

## 2 Congresses, symposia and other activities (Netherlands)

### 2.1 Congresses, symposia, study days and lectures

SSR**	Course on human trafficking (Zutphen, 21-22 January 2008)
Police Academy	Expert meeting Multicultural Professionalism and Investigation (Zutphen, 31 January 2008)
Municipality of The Hague (SHOP)	Conference on prostitution policy 2008 (The Hague, 7 February 2008)
KLPD/DINPOL**	Seminar on human trafficking and information exchange in Europe (Lunteren, 21 February 2008)



Victim Support Netherlands	Symposium on three years of the right to address the court (How has it worked and has it achieved what was expected?) (The Hague, 22 February 2008)
Studium Generale **	Modern Slavery? Symposium on human trafficking, other forms of exploitation and legal developments (Tilburg, 28 February 2008)
Ministry of Justice and Ministry of the Interior and Kingdom Relations	Opening of conference Samen strijden tegen ernstige vormen van criminaliteit (The Hague, 21 April 2008)
NIK	NIK Theme Day (Ede, 24 April 2008)
Ministry of Justice	Expert meeting on raising age for prostitution (The Hague, 25 April 2008)
Fier Fryslân	Meeting: Human trafficking in Friesland (Leeuwarden, 27 May 2008)
Institute of Social Studies	Meeting: Low Pay to High Hopes: Perspectives from the Cleaners Campaign in the Netherlands (The Hague, 29 May 2008)
NIK	Recherche Vakbeurs 2008 (Utrecht, 13 June 2008)
Veiligheidshuis Eindhoven	Expert meeting on loverboys (Eindhoven, 17 June 2008)
NVK	NVK congress (Leiden, 19 June 2008)
Campbell collaboration	Systematic reviews (Leiden, 18-20 August 2008)
University of Amsterdam, Juritas centre of expertise	Seminar on Bibob Act: "Het balans tussen integriteit, effectiviteit en rechten". (Amsterdam, 19 September 2008)
Netherlands Association for Criminology (NVK), Tijdschrift voor Criminologie	Study afternoon on Supervision and Compliance (The Hague, 26 September 2008)
Pretty Woman	Congress organised by Pretty Women – Hulp aan victims van loverboys (Utrecht, 2 October 2008)
Ciroc	Seminar on Nigerian Criminal Networks (Amsterdam, 7 October 2008)
University of Amsterdam**	Guest lecture on the subject of Global Migration (Amsterdam, 14 October 2008)
BLinN	Meetings with Nigerian delegation, subject of Identification and subject of Communication with victims of human trafficking (Amsterdam, 14-15 October 2008)
Stichting OKIA and Stichting LOS	Conference Recht op Recht (The Hague, 31 October 2008)
Embassy of the United States of America	Digital Video Conference on prosecuting labor trafficking cases: US and Dutch approach (The Hague, 27 October 2008)
Sociale Network Analysis	Verborgen banden ontrafeld. De toepassing van Sociale Network Analysis bij the bestrijding van criminaliteit en terrorisme (The Hague, 30 October 2008)
Police/Police Academy	National meeting on the Police Data Act "Implementatie-effecten in de praktijk" (Wageningen, 30 October 2008)
Ministry of Justice	Lunchtime lecture by Henk Elffers on oration 'Straffer straffen' (The Hague, 5 November 2008)

University of Tilburg	Colloquium on the Future of Police and Judicial Cooperation in the European Union (Tilburg, 7 November 2008)
CoMensha	Meeting on help for foreign victims of human trafficking (Bilthoven, 11 November 2008)
International School for Humanities & Social Sciences (ISHSS) University of Amsterdam**	Guest lecture on human trafficking (Amsterdam, 25 November 2008)

## 2.2 International working meetings

OSCE-ATAU	AECT Meeting*
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## 3 International working visits, congresses and other activities

### 3.1 Congresses, symposia, study days and lectures

IOM**	UN.GIFT Expert Group meeting on Developing new approaches to the study of human trafficking (Cairo, 11-12 January 2008)
UN.GIFT*	The Vienna Forum to fight Human Trafficking. (Vienna, 13-15 February 2008)
ICMPD	Final Regional Meeting in the context of the Programme for the Enhancement of Anti-trafficking Responses in South Eastern Europe: Data Collection and Information Management (DCIM). (Skopje, 14-15 April 2008)
Eurojust, Slovenian Presidency of the European Union	Strategic Meeting on Trafficking in Human Beings and Witness Protection. (Portoroz, 19-20 May 2008)
ICMPD	Third Advisory Board Meeting in the framework of the Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe (SEE) (Rome, 21-25 May 2008)
Working visit to United States	International Visitor Leadership Program (IVLP) – European Regional Program Combating Trafficking in Persons (Washington and New York 2-20 June 2008)
Campbell Collaboration	Presentation of Stockholm Prize of Criminology (Stockholm, 14-18 June 2008)
ECPAT UK, Anti-Slavery International, Three Small Steps**	Round-table Discussion Time for an Independent Trafficking Rapporteur in the UK? (London, 18 June 2008)
Children's Rights International**	International Conference on Child Labour and Child Exploitation. (Cairns, 3-5 August 2008)
OSCE	Conference Successful prosecution of human trafficking – challenges and good practices. (Helsinki, 10-11 September 2008)

ILO, ECPAT International**	Congres Europe and Central Asia Regional Preparatory Meeting for the World Congress III against Sexual Exploitation of Children and Adolescents. (Geneva, 17-18 September 2008)
IOM**	Conference European Approaches towards Data Collection on Trafficking in Human Beings. (Brussels, 18-19 September 2008)
OSCE**	Conference on National Rapporteurs and Equivalent Mechanisms. (Vienna, 22-23 September 2008)
ICMPD**	First project team meeting in the framework of the project Trafficking in human beings: data collection and harmonised information management systems – DCIMEU. (Bratislava, 23-24 September 2008)
European Commission	Conference Revision of EU legal framework on Child Sex Exploitation and Trafficking in Human Beings. (Brussels, 6-7 October 2008)
Europäische Rechtsakademie (ERA)	Conference Combating trafficking in human beings through international cooperation in criminal matters. (Trier, 6-8 October 2008)
COATNET	2nd European Day against Trafficking in Human Beings. (Paris, 16 October 2008)
ICMPD	First Project Team Meeting of the Programme for the Enhancement of Anti-trafficking Responses in South Eastern Europe: Data Collection and Information Management – Phase II Data Processing, Maintenance and Analysis (DCIM Phase II). (Vienna, 17 October 2008)
House of Commons Londen	Pan-European Campaign to prevent mensenhandel: “All Party Group on Trafficking of Women and Children”. (London, 28 October 2008)
Political Affairs Division IV of the Federal Department of Foreign Affairs, Switzerland**	Conference on “Overlaps of Prostitution, Migration and Menschenhandel”. (Bern, 12 November 2008)
Greek General Confederation of Labour – GSEE International Relations Department**	Conference on Combating Forced Labour and Menschenhandel. (Athens 21-23 November 2008)
UNICEF, ECPAT International and the NGO Group for the Convention of the Rights for a child	World Congress III against Sexual Exploitation of Children and Adolescents. (Rio de Janeiro, 24-28 November 2008)

### 3.2 Other activities

Mama Cash WOMEN inc., La Strada	International Women’s Day. (Amsterdam, 8 March 2008)
PvdA Dordrecht	International Women’s Day: Vrouwenhandel: “Kan ik er wat aan doen?”. (Dordrecht, 8 March 2008)
Probus**	Lunchtime lecture. (Wassenaar, 12 March 2008)
University of Amsterdam**	Talk to accompany film “Recht verbeeldt”. (Amsterdam, 14 March 2008)

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Working visit by Queen	Amsterdam, 18 March 2008
P&G 292 (Shelter for prostitutes)	Amsterdam, 3 April 2008
Studievereniging Criminologie in Actie, Erasmus University Rotterdam	Discussion forum: “ Nederland, een vrijplaats voor Prostitutie?!”. (Rotterdam, 9 April 2008)
Child Protection Council **	Lecture on information about human trafficking. (The Hague, 10 April 2008)
Juridisch Genootschap**	Lecture (Zutphen, 24 April 2008)
Faculty of Law **	Forum Kinder- en Jongerenrechtswinkel. (Leiden, 7 May 2008)
Migration law working group of the Vereniging Vrouw & Recht Clara Wichmann**	Meeting on human trafficking (Amsterdam, 13 May 2008)
University of Tilburg **	Canadian Study Tour Visit. (Tilburg, 13 May 2008)
Campbell Collaboration	Presentation of Stockholm Prize of Criminology. (Stockholm 14-18 June 2008)
Ridderszaal	Ambassadors' conference. (The Hague, 1 September 2008)
Lower House of Parliament	Round table discussion with lower house of parliament on WODC report on illegal residence in the Netherlands”. (The Hague, 1 October 2008)
The Hague District Court	Pro forma hearing in case of human trafficking relating to underage victims. (The Hague, 2 October 2008)
Lower House of Parliament	Meeting of the standing committee for justice on the reaction to the WODC report on illegal residence in the Netherlands”. (The Hague, 8 October 2008)
Drew Ann Wake	Educational games for change. (The Hague, 14 October 2008)
Lower House of Parliament	Plenary debate on a Blueprint for a Modern Migration Policy (The Hague, 29 October 2008)
UNFPA/WPF	Presentation of World Population Report 2008. (The Hague, 12 November 2008)
Lower House of Parliament	Meeting on human trafficking (The Hague, 12 November 2008)
CoMensha**	Kick-off meeting for web survey on youth prostitution (Utrecht, 26 November 2008)
University of Melbourne, Brad Astbury	On understanding social and behavioral mechanisms and theory-building in Criminal Justice. (The Hague, 2 December 2008)
District Court of Utrecht	Research/data collection. (Utrecht, 5 December 2008)
Regardz Event Center Buitensociëteit	Theme day on crime analysis (Zwolle, 10 December 2008)

Meijers Committees	Permanent committee of experts in international immigration, refugee and criminal law (The Hague, 11 December 2008)
University of Tilburg**	Max van der Stoep Human Rights Award. (Tilburg, 11 December 2008)
University of Leiden	Presentation of the book <i>Illegal Migration and Gender in a Global and Historical Perspective</i> . (Leiden, 17 December 2008)
Media	Various contacts.
Students	Various contacts in relation to dissertations and other projects.
Network	Various contacts.
EU expert group*	Consultation on Trafficking in Human Beings.

## **Colofon**

Reference:

Dutch National Rapporteur on THB (2009). *Trafficking in Human Beings – Seventh Report of the Dutch National Rapporteur*. The Hague: Bureau NRM

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