

# **Combating Human Trafficking in the Context of European Security – Interdisciplinary and Cross-sectoral Anti-trafficking Policies in South East Europe**

*Nadya Dimitrova*

Trafficking in human beings is an increasing concern in a Europe aspiring to be an area of freedom, security and justice.

The voyage towards West, crossing the boundaries of the European Union, the possibility of settling in the country which is the final destination, have become for such reasons precious goods, a commodity to be paid at a high price to those who can provide it, even if it is necessary to undergo forms of subjection or abuses similar and very close to slavery.

To the increased demand for irregular entry, thus, the organized criminality has appeared as the unique “enterprise” capable of guaranteeing a range of services aiming at shifting – and subsequent settlement – of thousands of people from their original country to their new destinations.

Trafficking of human beings has allowed (often originated/linked to SEE) criminal organizations, to carry out illegal activities even on the European Union territory and to establish business and cooperation relations which contribute to their illegal enrichment together with the local criminal and affiliated to the Mafia organizations.

These organizations have gradually mainly specialized – at least in this historical phase – on women sexual exploitation, in the majority adults and, to a smaller extent (but not for this less serious and alarming), towards more complex forms of forced work exploitation (especially minors and men, but also women). Together with these serious exploitation practices, other forms can be identified: forced begging

mainly concerning minors, domestic slavery and marriages imposed or forced for money or for servile and abusive relations.

Hence today the term trafficking implies different forms of exploitation and different types of victims, as there is no one “typical” trafficking case.

Trafficking is often referred to as a form of gender-based violence, as it is a common observation that unemployment, underdevelopment and poverty have more effect on women than on men, conditions that provoke the risk of falling victim to false promises of a better future, to exploitation and to the acceptance of inhuman working conditions. Most legal migration schemes appear also less favorable for women. Trafficking moreover is also mostly reported regarding sexual exploitation, which, according to today’s knowledge affects women almost exclusively, in Europe.

Responses to trafficking require a gender-sensitive approach.

Likewise vulnerable are children, who are often totally unprotected at the mercy of unconscionable criminals. It is necessary not to forget that men and boys are victims as well, though left out in most data collections - also men can fall prey to the traffickers.

### **The role of restrictive migration and labor regulations**

The European Commission has recommended that there should be a realistic approach to facilitate legal and fair migration possibilities for third country-nationals, considering economic and demographic necessities within the European Union.

Many governments, however, continue to respond with a restrictive approach to migration and immigration a policy, which has not decreased migration veritably, but rather has left migrants more vulnerable to trafficking and labor exploitation. Trafficking for forced labor purposes may be very much ascribed to the disparity between labor supply and the availability of legal work in the country of destination.

Also between the lately acceded and the long-established EU countries exist restrictions with regard to the labor markets, resulting in trafficking flows from less to more affluent countries even within the European Union.

Many governments have sought political advantage by promoting more restrictive immigration policies, disregarding that such policies reduce the opportunities for regular migration, thereby providing greater opportunities for traffickers in SEE to operate.

Instead, a common and better coordinated approach and a unified migration policy should be established within the EU based on well-balanced restriction in immigration and asylum policies. Greater opportunity should be given to the new Member States, acceding and candidate states who should be equally interested in a proper migration management within a future enlarged Union. Western Balkan countries should also be involved in the migration management discussions.

With the increasing informalisation of the global economy there is greater flexibility of labor markets – both the movement and deskilling of labor. Yet governments in developed countries are often reluctant to publicly recognize their dependency on both skilled and unskilled migrant labor.

### **Organized crime involvement in the region**

The spectrum of offenders being involved in the different stages of the crime, recruitment, transport and/or exploitation, range from colluding individuals like acquaintances or relatives, to highly complex, international, organized criminal networks. The different groups can be categorized as follows:

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

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

### *Large-scale organized criminal networks*

Large-scale organized criminal networks control every phase of the trafficking process. The traffic functions like a business with different “departments” managing the different stages of the business, from recruitment, the procurement of documents and the transport to the execution of management of the workplaces and the exploitation of the trafficked persons. Traffickers take their job very seriously and professionally and often use extreme violence to maintain order. The victims procured are regarded as merchandise or commodities to be traded, much as in a traditional slave trade.

Such organized crime networks originate mainly in Ukraine, Belarus, Russia and Bulgaria but extend throughout Eastern and Central Europe. Often these networks run brothels and prostitution rings through agents in Western Europe and may use other countries only as a point of transit to obtain false documents or as a "training ground" before moving westward.

### *Criminal distribution networks*

Networks of criminal groups recruit and transport victims from one country and sell them another country. One may call these "wholesalers" or “distributors” who sell to local "retailers". Victims of sexual exploitation may be sold several times to different brothels or to gangs in different cities or countries, or they may remain within one ring and be circulated to new markets.

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

However, though expert sources suggest that organized crime widely controls the criminal trafficking market, still much about the traffickers remains unknown. The presumption that the “typical” trafficker is male is out-dated, as also women are involved as offenders in trafficking cases. Often female perpetrators have been victims of trafficking themselves.

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

Offenders’ nationalities vary, offenders can be nationals of the country of origin or the country of destination or other countries, antagonized nationalities can even act in collusion, also ethnicity can become irrelevant when it comes to colluding for trafficking.

Trafficking in human beings is not an isolated crime. The following listed crimes are often related to human trafficking: forced abortion, forced pregnancy, slavery, forced marriage, torture, sexual assault rape, bodily injury, murder, kidnapping, unlawful confinement, labor exploitation, forgery of documents, corruption, debt bondage, involuntary servitude./Source: UN Office on Drugs and Crime/.

But trafficking, if committed by highly organized criminal organizations, may also be part of other organized crime schemes and as such be a threat not only to European but also to global security. The proceeds made through human trafficking may also feed terrorist activities.

## **How does human trafficking work?**

### *The phases of the trafficking process*

Trafficking in human beings is a complex process, starting with the improper and /or abusive recruitment of persons from different vulnerable groups, going on with the transportation of these people to various destinations, resulting in the ruthless exploitation of these people, under severe violations of human rights and the exertion of control. The methods of traffickers and stages of trafficking are outlined below. However, trafficking techniques frequently change, as traffickers tend to quickly adapt to the latest means of communication and to obstacles, obstructing the traffickers' movements.

### *Recruitment – improper means used*

The first phase of the trafficking process is commonly referred to as the 'recruitment stage' during which traffickers target and acquire individuals in order to ensnare them into the trafficking scheme. The term recruitment in the context of trafficking in human beings refers to the hiring of people, using improper means such as force, deception, abduction, etc. The respective methods of recruitment of persons used by traffickers are varied and depend on the modus operandi and level of organization of traffickers.

Common methods include:

- Recruitment via informal networks of families, friends, or acquaintances;
- Advertisements offering work or study abroad;
- Agencies offering work, study, marriage or travel abroad;
- False or arranged marriages;
- Purchasing of children from parents;
- Advertisement over the Internet
- Individual recruiters searching bars, cafes, clubs and discos for targeted persons.

In many cases the victim knows the recruiter who in some cases may be a relative.

Traffickers seek to exploit the 'push and pull' factors and focus on individuals who are searching for new opportunities abroad and who often have difficult economic and social situations at home.

Especially women are offered well-paid jobs abroad in restaurants, in the agriculture, in the textile industry, in the child or adult care sector, etc. Also international marriage agencies can be involved in the trafficking businesses.

Often, it is only when these women arrive in the country of destination that they realize the deceptive nature of the original agreement with the trafficker and find themselves in exploitative, inhuman situations. In some cases, relatives, "boyfriends" or state institutions such as orphanages may sell women and girls directly to recruiters without their consent. In other cases, women and teenage girls are forcibly abducted from their home surroundings and trafficked internally or externally. In some cases victims may have an idea of the clandestine nature of their employment abroad, but are not aware of the working conditions. There exists a continuum of recruitment means ranging from mere force to less severe means of deception.

The four basic means of recruitment are:

- Complete coercion through abduction or kidnapping;
- Selling a person, typically a child, to the traffickers by someone having control of him or her, typically the parents or an orphanage;
- Deception by promises of legitimate employment/entry;
- Deception through half-truths;
- Deception about the exploitative, controlled and coercive working conditions.

The recruitment methods also depend very much on the type of targeted victim: In the case of child trafficking it is not necessarily organized crime that is involved in the recruitment. Very often even parents

themselves hand over their children to exploiters, but often enough in the good faith that they will improve their children's life.

It is an often-watched phenomenon that even "former" victims act as recruiters and at times turn into traffickers. This is surely also due to a lack of social reintegration perspectives for trafficked individuals and the persisting push and pulls factors.

### *Transportation*

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

Many victims have never left their country of origin before and therefore are completely dependent on the traffickers. Some might leave their home country without an international passport, being told there is no real need for one or that they will receive one later. If they do hold a passport, it is often taken from them and held by the traffickers as a way of securing the compliance of the victim.

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

It should be remembered that the majority of victims of trafficking voluntarily leave their homes in search of a better life. However, the voluntary movement is, as shown above, not opposed to the occurrence of human trafficking, depending on the means used for the recruitment and the traffickers' intention.

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

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

It is worth noting that during the transport phase trafficked victims often will not be aware that traffickers have ensnared them. This is an important point, especially in connection with recognizing the limitations of law enforcement's ability to recognize and intervene in trafficking cases during this phase, including at borders.

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

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

### *Exploitation*

Trafficking in human beings is not confined to sexual exploitation of the victims, though this is most commonly discussed topic and also predominantly displayed in Western media. Adults and children are trafficked for a variety of exploitative purposes, with just recently the issue of forced labour exploitation has come to the forefront. Sexual exploitation receives more attention also due to the fact that prostitution in itself is regarded as something more “exceptional” or scandalous.

Forced labor on the other hand is often regarded simply as illegal employment. In times of high unemployment, exploited trafficked laborers are likely to be seen as perpetrators on the local labor market rather than victims of traffickers.

According to the UN Trafficking Protocol, exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

As trafficking does not necessarily require the crossing of international borders, all forms of exploitation can also take place within the home country of the victim.

### **Forced labor or services**

Bound labor – to use a term suggested by Kevin Bales – can be said to be the condition in which immigrant workers can find themselves in the European countries when their survival is subject to their total submission and under the total control of their employers. Hence the essential characteristic of this condition is the lack of liberty, i.e. the absence of any form of negotiation and collective agreement on working conditions with the exception of the means for basic survival and retaining the physical condition which will allow for continued exploitation if “slavery” ceases to be profitable there is no purpose in practicing it.

As a rule, this kind of labor relations – which involves practices of violence and radical exploitation – encounter social and legal repercussions in Europe when detected. It is therefore camouflaged as practices that are close to acceptance, e.g. moonlighting, under-paid labor, extended working hours and over exploited work that characterize the status de facto of significant parts of the migrant population. This first migration phase is often characterized as a period of legal vulnerability (lack of residence permit), of socio-existential weakness (lack of relations), of political absence (no participation in institutional decision-making mechanisms) and economic crisis (unemployment).

These different dimension of vulnerability push the immigrants into a particularly significant area of social and economic marginalization, as the tendency to carry out any kind of work that can guarantee however basic survival becomes an absolute must; a condition difficult to escape,

especially for those groups and individuals whose encounter with the recipient society produces bewilderment and a strong feeling of uprooting.

It is now undeniable that in the margins of the European societies moonlighting – in its most negative meaning – is almost essential for the survival of the productive enterprises (not only the small ones) that otherwise would not stand a chance to remain in business. The production sectors where it is possible to find these forms of quasi slavery labor are those where the underground labor is in force, i.e. labor which does abide by national legislations.

From this perspective the quasi slavery labor represents the most extreme form of moonlighting, i.e. the one where the free will to make choices is lacking – both for entering and leaving the relation – is the main feature.

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

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

A balance should occur once the involved actors reach (involuntarily) a kind of mutual advantage: on one side in not suffering further violence and on the other in not making the negative effects of the compulsory repression process irreversible. On the contrary if the relation remains

unbalanced (and the reason is that it is a quasi slavery relation) the standards of intensive wealth are guaranteed only by the continuous proceeds of the victims respectively of those who accept submission due to their vulnerability to a relation of quasi slavery exploitation (generally for a medium to long period of time) and the role of those who voluntarily accept such a relation (generally for a short time)<sup>6</sup>. In the first case there is a total lack of free will, whereas in the second, at least in the initial phase, free will still exists and above all it is possible to assume a minimum level of negotiation and ability to end the professional relationship.

### *Forms of forced labor*

Labor exploitation often occurs within the agricultural, the catering and the construction sector and also within the clothing industry, where adult and child victims of both genders are coerced into working under ruthless and exploitative conditions.

Children and young adults are moreover forced into street begging, recruited and trafficked to earn money for others by begging or selling goods on the street. In some cases, beggars are maimed in order to arouse pity and increase charity. It is not unusual for victims in the cases of forced labor to be subjected to sexual abuse as well.

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

Children and young adults are especially vulnerable to trafficking for the exploitation as criminal agents. The criminal agency traditionally means activities such as pocket picking and other forms of low-level crime. Cases are known e.g. of Roma children from SEE countries, who are circulated within Europe and committed the task to steal considerable amounts of money per day. Boys and young men are also trafficked to act as criminal operatives who carry out minor functions associated with the trafficking crime itself, acting as “look-outs” or “runners”.

Additionally, boys and young men are appointed as street runners for drug trafficking.

Also in the sports sector trafficking in human beings is not an unknown phenomenon. Especially adolescent persons are ready to leave their countries of origin in order to become rich and famous and depend on “helpers” as regards the realization of these dreams. A sport is often a very profitable business for many clubs, federations, players, private companies and individuals. The “right” athlete - the one that is cheap to “buy” and profitable to “sell” or “lease” – is recruited by use of deception, fraud, exploitation of somebody’s position of vulnerability and then treated like a commodity.

### *Domestic servitude*

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

Domestic workers are kept without residence and work permits and thus in total dependence. Thousands of domestic servants in Europe are subjected to long working hours with no holidays or decent living accommodations: those servants have to work between 15 and 18 hours a day, without ever being allowed a day off, they do not have their own rooms, and often get only their “employers” leftovers to eat. Among the perpetrators are also many diplomats who are provided with immunity from prosecution. Individuals with diplomatic status are able to import domestic staff based on their needs.

The work of domestic servants is accompanied by abuse, humiliation and confinement. Possibly existing working contracts are ignored completely.

Also so called mail order brides can end up in domestic servitude. The international "mail-order bride" industry has been proliferating in recent years, using the internet as a high-powered engine to reach an unprecedented number of clients.

International marriage or "mail-order-bride" agencies, capitalize on increasing disparities between women in economically distressed countries and men in the wealthiest nations of the world.

As domestic workers work in the privacy of the home, the abuse is usually invisible and difficult to tackle.

Trafficking for domestic servitude affects equally adults and children.

### **Slavery or practices similar to slavery (and servitude)**

#### *Sexual exploitation*

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

Experts' systemization of different national groups of women involved from the Region: e.g. the Albanian group or the Eastern women group.

### *Forced marriage*

Trafficking in human beings for forced marriage is often a combination of several forms of exploitation: sexual exploitation, forced labor, domestic servitude.

Seeking a way out of hardship and poverty, women are ready to leave their countries of origin and marry a EU citizen, in order to enter and live in the EU legally. Some of these women, however, find themselves exploited in domestic slavery and under the total control of their husbands. They have no choice but to stay even in an exploitative marriage, as a divorce may be tantamount to the loss of legal status or her being reported to police by her husband for fictitious marriage.

### *Removal of organs*

Also in the case of organ trafficking, traffickers take advantage of the demand – supply situation.

Trafficking in organs according to the UN Trafficking Protocol is a form of trafficking in human beings, however, it is not included in the EU Framework Decision against

### *Sexual and labor exploitation of children*

In general there is little information about the mechanism of trafficking of young children between 1 – 5/6 years old.

For children's psycho-physical vulnerability the deceit, the trick and the fraud assume a wider dimension. Once they arrive at their destination, children who are victims of trafficking in human beings are usually exploited in one of the following ways:

a) sexual exploitation, especially of girls, even if there are also forms of exploitation of boys, including street prostitution and, more and more,

conducted in private houses or night clubs and the production of pedophile or pornographic material;

b) begging, as far as it is a quasi slavery activity when it is based on violence, abuse and exploitation of the minor used to make profit;

c) black labor, especially in the manufacturing industry, in situations of harsh exploitation and without any possibility for the minors to leave voluntarily. This happens when their parents or relatives are involved, or when they are alone and thus are subjected to various forms of intimidation or threat of violence 20 ;

d) fictitious illegal adoption (hiding trafficking recruitment with adoption practices) or recruitment and transportation finalized to the removal and trafficking in human organs for profit.

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

## **Consequences and risks of trafficking in human beings**

Consequences and risks for the victim

### *Violation of human rights*

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

Human trafficking is a risk to the right to life, liberty and security of person, as victims face physical and psychological violence, are kept

against will, being held in slavery and servitude, being subject to torture cruel, inhuman or degrading treatment, etc.

To summarize, when each of the above control mechanisms are considered together, the outcome is a regime of actual and psychological imprisonment and torture. It is important to view the situation through the eyes of a (female) victim:

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

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

### *Shame, stigmatization and trauma*

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

When forced to return home, the victims are faced with disappointment from their families and friends, having fallen short of everyone's expectations to make a new start in the West (this can also be the case

with victims of forced labor). Others are stigmatized as prostitutes and have great difficulties re-integrating in their country of origin. In many cases, the full psychological consequences of their ordeals first become apparent months after the traumatic experiences have occurred. Frequently an intensive period of therapy is the only way to help the victims come to terms with what they have been put through.

### *Complicity*

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

### *Secondary victimization*

Victims moreover face secondary victimization. Child victims involved in human trafficking cases in addition face the risk that the law enforcement and judicial authorities do not use the child friendly instruments for sexual abused children.

### Consequences and risks for the state and society

- Destabilization of existing labor markets
- Growth and diversification of organized crime
- Growth of money laundering
- Growth of corruption
- Undermining governmental action and the rule of law
- Growing number of socially excluded persons
- Growth of social problems which are weakening the society

### *Consequences and risks for the traffickers*

Trafficking in human beings is often called a “low risk high profit” crime. This term refers to the prevalent situation that traffickers hardly face criminal proceedings, as the risk of detection, arrest and adequate

punishment remains low. Yet, the profit of trafficking in person tends to surpass that made in the trafficking in drugs and arms.

Reasons for the lack of prosecution and convictions are the underground nature of the crime, the lack of testifying victims (in many European systems the investigations into trafficking cases are based on victims' complaints) be it due to fear or due to the fact that many victims are even detained/deported as illegal immigrants/criminals, the lack of adequate anti-trafficking legislation.

### *Consequences and risks for the "end user"*

As shown above the lucrative criminal business of trafficking in human beings is also determined by the demand for cheap and informal labor provided by vulnerable persons. End users, demanding cheap and vulnerable workers, could be e.g. employers in small businesses or large scale industries, but also persons that engage in the informal economy, private households, clients of prostitutes, etc.

Because countries place focus on the control of illegal migration instead of the protection of migrants from abuse and exploitation, also the end users face little to no consequences for having exploited a trafficked human being.

Some countries, however, decided to penalize the clients of prostitutes in an effort to reduce demand.

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

### **The scale of trafficking in human beings**

Trafficking in human beings is a global concern leaving no region of the world unaffected – with people usually being trafficked from the poorer regions of the world to the more affluent ones. Trafficking in human

beings and contemporary forms of slavery have progressively assumed a significant importance and social visibility in almost of all European countries and neighboring geographical areas, especially those forming its Eastern boundaries.

Based on estimates done by the EU, women in the European Union forced into prostitution under strong subdual number around 500,000 units of which less than half – around 200,000 – come from Eastern European countries. These last communities, by the way, are the most involved in trafficking for serious exploitation, followed by some African components, among which, in particular Nigerian women.

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

The European Union is a region of destination and transit for trafficked victims, but also, as regards Central and Eastern European countries, a region of origin to some extent.

### **European regulations and policy documents**

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

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

A number of documents have been adopted over the last years within the EU in order to strengthen the penal framework to fight trafficking in human beings.

However, only few of the legislative acts are binding and they are often not yet effective or fully implemented.

### *Charter of Fundamental Rights of the European Union*

According to Art. 5 of the Charter of Fundamental Rights of the European Union

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

### *The European Convention on Human Rights and Fundamental Freedoms*

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

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

The Convention applies also to violations committed by private individuals. The European Court of Human Rights clearly stated, under Art. 8 concerning the protection of private life, that the rights in the Convention create obligations for States which involve the adoption of

measures designed to secure respect for private life even in the sphere of the relations between individuals themselves.

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

*The Council Framework Decision on combating trafficking in human beings*

The definition in the UN Protocol is the basis for the Council Framework Decision of 19 July 2002 on combating trafficking in human beings.

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

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

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

## *Council Directive 2004/81/EC on the residence permit for victims of trafficking*

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

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

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

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

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

### *Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings*

The Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) has the aim to improve access to justice for victims of crime in the European Union and to protect their rights. The framework decision provides rules on the prevention of victimization, assistance to victims, standing of victims in criminal procedures and on compensation issues.

On 16 June 2005, the European Court of Justice issued a ground-breaking judgment stating that a Council framework decision concerning police and judicial cooperation in criminal matters must be respected in a national criminal court case.

### *National legislation*

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

### Trafficking in the context of the crime of slavery

Until the adoption of national legislation concerning a specific crime of trafficking, the crime of slavery can be used to punish trafficking, as slavery is envisaged by all the national penal codes. In this case a process of progressive interpretation and adaptation is needed, which is

already in place in some countries, considering that the crime of slavery should not only apply to those cases in which the right of ownership over a person is exercised, but also to slavery-like practices.

### *Trafficking in the context of exploitation of labor*

Each of the below acts, when committed intentionally by an employer against an employee, is likely to be a criminal offence within the criminal law of most countries: Physical violence, physical restrictions on the movement of workers, forms of debt-bondage, (i.e. deliberately inducing persons into a situation of spiraling debt from which they cannot hope to extricate themselves), refusing to pay wages, retention of passports and other identity documents, or threat of denunciation to authorities, in order to avoid paying wages and social benefits for work performed. Acts of violence for example are likely to come within the scope of the criminal offence of assault. Non-payment of wages can be subsumed under the criminal law of theft. The withholding of identity documents and passports may also be classified as theft or part of the offence of deception, depending on the intention of the employer—was the intent never to return the documents or to deceive and coerce the victim into receiving little or no remuneration. And in many jurisdictions, the threat of denunciation to the authorities can fall within criminal law definitions relating to blackmail.

### *Trafficking in the context of the crime of exploitation of prostitution*

Until specific national legislation on trafficking is passed, the provisions of the penal codes concerning exploitation of prostitution can also be applied to prosecute and punish trafficking for the purpose of sexual exploitation. Harsher sentences must be applied when the trafficking is aggravated by violence, threats, coercion or deception. Even though penalties are often inadequate to the gravity of trafficking, it is possible to start combating trafficking through the provisions already existing in the majority of national penal codes. In countries where prostitution in itself is criminalized, it is necessary to understand that women will find it difficult to come forward and declare they are victims of trafficking, for fear of being prosecuted themselves. Provision prohibiting

prostitution may not be used against victims of trafficking whose prostitution has been exploited.

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

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

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

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

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

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

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

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

One of the serious obstacles of obtaining the victim's cooperation in an investigation is the fear of being prosecuted for breaking laws regarding clandestine work, prostitution, illegal border crossing, etc.

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

### **Interdisciplinary and cross-sectoral anti-trafficking response in SEE countries**

Trafficking in human beings is a complex phenomenon, which is related to different fields and interests, such as migration, organized crime, corruption, labor, prostitution, human rights, unequal international economic relationships, gender issues, violence against women, the feminization of poverty, etc. Effective counter-strategies must take this complexity into consideration in order to address the different aspects of trafficking simultaneously. To this end, it is necessary to work "interdisciplinary", which means that the knowledge and expertise of different disciplines as well as their respective methods are combined to develop measures to prevent and combat trafficking (e.g. legal instruments, educational methods, social research, economic empowerment, psychological assistance etc.). The term "cross-sectoral" indicates that interventions should be designed and implemented in a way that they cover all sectors of society (e.g. judiciary, education, labor market, etc.).

An interdisciplinary and cross-sectoral anti-trafficking response is important, because trafficking is a complex and multi-faceted phenomenon. Only a holistic approach allows tackling all aspects of trafficking at the same time.

To ensure an interdisciplinary and cross-sectoral approach the national anti-trafficking response:

- Must address explicitly different fields and sectors at both the strategic as well as the operational level.
- Must involve all relevant state and non-state actors, such as governmental authorities, law enforcement and migration authorities, judiciary, NGOs, researchers, etc.
- Must ensure a regular exchange of information between the different actors.

Hence, the anti-trafficking actors in the SEE region has to be provided with guidelines on how to develop and implement a comprehensive anti-trafficking response, by describing best practices for inclusion at both the strategic and the operational level.

It is acknowledged that SEE countries are no longer countries of origin and transit, rather also destination countries. Consequently, the approach towards the establishment of a comprehensive anti-trafficking response is very extensive and could contribute to enhance the anti-trafficking response also in other regions of the world.

## References:

Perspectives on Trafficking in Human Beings, Cote contre l'esclavage moderne, CCEM, 2002

Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe, Warsaw, 2001

Report of the Experts Group on Trafficking in Human Beings, Brussels, December 2004.

Regional Standard for Anti-trafficking Training for Judges and Prosecutors in SEE. ICMPD, November 2004.

Regional Standard for Anti-trafficking Police Training in SEE, ICMPD, 2004

Trafficking in Human Beings in South Eastern Europe, UNICEF, 2003  
Update on Situation and Responses to Trafficking in Human beings

Commission of the European Communities, Brussels, 11.1.2005,  
COM(2004) 811 final, Green Paper on an EU Approach to Managing  
Economic Migration  
<http://europa.eu.int/comm/justicehome>