AWARENESS-RAISING OF JUDICIAL AUTHORITIES CONCERNING TRAFFICKING IN HUMAN BEINGS

COUNTRY REPORT

THE NETHERLANDS

2005

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The project as coordinated and implemented by IOM in the Netherlands was financed by the European Commission, the Netherlands Ministries of Justice and Foreign Affairs and IOM.

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1.1 Trafficking in Human Beings[1]

1.1.1 Parliamentary History

Until 1 January 2005 Article 250a of the Dutch Penal Code (Pc) was applicable and defined trafficking in human beings (THB) in terms of exploitation for prostitution and other forms of sexual services.[2] With this provision the Netherlands did not comply with their international obligation because they in fact adopted broader definitions of THB on the international level.[3] In order to make national legislation correspond to international obligations, an extension of the definition of THB was required and translated into a legal provision, i.e. Article 273a Pc which entered into force 1 January 2005.[4] In conformity with the advice of the National Rapporteur THB (National Rapporteur) the crime of THB is transferred from the title on 'Crimes against morality' to the title on 'Crimes against personal freedom', because THB must be considered a violation of personal freedom, integrity or, in the words of the rapporteur, 'both a limitation of the freedom of movement as well as of the freedom of conduct'.[5] According to the ratio of the trafficking protocol to the UNCTOC, each form of excessive exploitation of a human being is a violation of human dignity and a person's fundamental rights.[6]

Given the new Article 273a, all forms of criminal conduct (sexual as well as socio-economic exploitation of a person) are criminalised in one provision and labelled as THB, in accordance with the advice of the National Rapporteur, the Dutch Association for Jurisdiction and the Council for Jurisdiction.[7]

Since October 2000 the replaced Article 250a did not define the described criminal conduct as THB, this following the legalisation of brothels in October 2000.[8] As a consequence of the limited view of THB in the Netherlands, i.e. to bring or keep someone into prostitution against his or her will and the aim of Article 250a, i.e. the fight against illegal exploitation in prostitution, the qualification of THB was removed from the Dutch Pc. With the adoption of Article 273a the qualification appears again in the Pc.
As Article 273a is an overall article in the sense that it covers all forms of THB, a separate provision on illegal sexual exploitation as in Article 250a becomes superfluous.[9] However, the

[1] We would like to thank dr. Y. Baaijens-van Geloven for her comments on earlier versions of this report.
[2] Parliamentary Documents II 2003-2004, 29291, no. 3, p. 9.
[3] See annex 6; Framework Decision on Trafficking in Children, Framework Decision on Trafficking in Human Beings, Directive on Smuggling, Protocol to the Child Convention, Protocols on THB and Smuggling to the UN Convention on Transnational Organised Crime.
[4] See annex 2
[5] BNR THB I, 2002, p. 26-27.
[6] BNR THB I, 2002, p. 194, NRTHB III, 2004, p. 230, point 3 preambule Framework Decision on THB, Parliamentary Documents II 2002-2003, 28638, no. 1, p. 2.
[7] Parliamentary Documents II 2003-2004, 29291, no. 3, p. 13.
[8] With an amendment on Article 250a the scope of this article was extended to the exploitation of all forms of sexual services on 1 October 2002. Furthermore, the Netherlands have extended their jurisdiction for THB as they have dropped the requirement of double criminality in some cases, see also BNR THB III, 2004, p. 22.
[9] Parliamentary Documents II 2003-2004, 29291, no. 3, p. 17.

government recognised that sexual exploitation, together with the removal of organs for ecomonic purposes, is one of the most serious forms of THB.
Although all forms of slavery fall within the scope of Article 273a, the Dutch government do not want to give up the separate articles on slave trade and related crimes in Articles 274 to 277, because they give effect to international obligations following the Slavery Conventions[10] which are not replaced by the trafficking protocol. A second argument for the Dutch Government for not to abolish the provisions on slavery in the Dutch Pc, is the specific character of slavery, namely 'the complete ownership of one person over the other'. The government wants to see 'how this new provision on THB will be applied in practice. If there is some experience in applying this new provision the continuance of the articles on slavery will be evaluated,' according to the Memory of Understanding.[11]

1.1.2 The Definition

Article 273a can be seen as a sythesis of Article 250a Pc, Article 3 trafficking protocol, and Article 1 Framework Decision (FD) on THB.[12] The definition in the trafficking protocol is broader than the definition in the FD. The latter, although based on the protocol, does not criminalise the commercial removal of organs.[13] In accordance with the broader definition in the trafficking protocol, the Dutch government have adopted in paragraph 1 of Article 273a both the sexual and socio-economic exploitation of as well as the trafficking in persons for the removal of organs.
According to Article 273a paragraph 1 sub 1, THB is primary an activity involving the exploitation or the removal of organs. This activity may consist of the conduct of recruitment, transferring, harbouring or receiving by using some form of force, such as violence, extortion, fraud, and deception, for the purpose of exploitation or the removal of organs.

In accordance with Article 3 of the trafficking protocol, paragraph 2 of Article 273a gives a non exhaustive list of forms of exploitation which fall at least within the definition of exploitation: exploitation of the prostitution of others or other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices similar to slavery and servitude. This includes all forms of slavery, according to the Memory of Understanding, such as 'forced labour or the abuse of a vulnerable person who, under the given circumstances, has reasonably no other choice than getting involved in the exploitation. An example is an extreme long working week for disproportionately low salary and under bad working conditions'.[14] The Scientific Research and Documentation Centre of the Ministry of Justice has commissioned a inventory literature study in order to get a clear idea about modern forms of slavery in the Netherlands. One of the results of this study is a working definition of 'slavery-like exploitation' which is tailored to the Dutch situation; i.e. 'exploitation of a person by forced or compulsory labour or services with a strong limitation of the free choice of that person'.[15] In line with the trafficking protocol, the

[10] Slavery Convention of 1926, 25 September 1926, 60 LNTS 253, entered into force on 9 March 1927, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 Secptember 1956, 226 UNTS3, entered into force on 30 April 1957.
[11] Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 13, National Action Plan THB 2004, p. 9.
[12] Article 3 trafficking protocol see annex 4, Artilce 1 Framework Decision on THB see annex 5.
[13] Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 11, BNR THB III, 2004, p. 22.
[14] Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 18.
[15] Literature Study 2004, p. 44.

researchers stress that only in case of excesses, (especially with regard to socio-economic exploitation), one can speak of slavery-like exploitation.[16]

The trafficking protocol uses the clause 'forced labour or services' whereas the FD uses 'forced and compulsory labour or services'. 'Compulsory' must be interpertred as compulsory and imposed', which means that the term force is only partly covered. This was the reason for the Dutch government to adopt the clause 'forced and compulsory labour or services' as one of the possible forms of exploitation, this in line with the FD, but different from the UN definition.[17]

Trafficking in children is criminalised separately in Article 273a paragraph 1 sub 2. The conduct and the purposes of the trafficking are copied from sub 1 but the means of force are not required for trafficking in children, this in conformity with Article 3 sub c of the trafficking protocol. Thus, the exploitation of children is a criminal offence at all times, even if the child has agreed to the exploitation without being forced or deceived. Sub 2 does not refer to a child or a minor but uses the phrase 'a person who has not yet reached the age of eighteen'. The term of minor, which was previous used in Article 250a, does not always give the protection to children, which is provided in the trafficking protocol according to the Memorandum of Understanding.[18] The trafficking protocol concerns as children all persons under the age of 18. The Dutch Civil Code has a similar provision for minors, but excludes married persons and persons aged 16 and 17 that have a registered partnership from this definition of minors.[19]

Sub 3 of paragraph 1 criminalises the transnational prostitution of persons, regardless of the person's consent. The territorial border of the Netherlands determines whether the case is transnational or not, which means that, when a person is recruited in other EU countries, this provision can also be applied. Basis for this provision is the Convention of Geneva of 1933.[20] Article 1 of this Convention states that the transnational recruitment, transport, and kidnapping of women of age with the purpose of bringing her into prostitution, is punishable. According to the Minister of Justice neither the trafficking protocol nor any other international instrument replaces this convention from 1933. In the authors' view this is questioned. Besides, the Minister agrees that this provision is a welcome article in the combat of trafficking for sexual exploitation, and should therefore be maintained in Article 273a.[21] In the authors' view sub 3 seems to be in contradiction with the Dutch policy as regards prostitution, since voluntary prostitution of persons of age has become legitimate (see below). However, the Minister of Justice accepted this inconsistency for the sake of the combat against THB.[22] Someone who has been recruited in a far away country for prostitution in the Netherlands, does not have the same freedom of choice as a Dutch prostitute, according to the Dutch legislator. The Minister states that, the former can never consent voluntarily to work as a prostitute because of her social and economic circumstances, whereas the latter is expected to have this freedom of choice, which is

[16] Literature Study 2004, p. 31-32, 46.
[17] Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 19.
[18] Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 16.
[19] Article 31 paragraph 2 jº Article 80a paragraph 6 jº Article 233 Book 1, Dutch Civil Code.
[20] International Convention for the Suppression of the Traffic in Womenof Full Age, 11 October 1933, 150 LNTS 431, as amended by the Protocol signed at Lake Success, New York, 12 November 1947 and which entered into force on 24 April 1950.
[21] Parliamentary Documents II, 1998-1999, 25437, no. 17, p. 4-5, Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 9.
[22] Parliamentary Documents II, 1998-1999, 25437, no. 17, p. 4.

required for voluntary prostitution.[23] Although this seems to neutralise the inconsistency between sub 3 and the Dutch policy on prostitution, it does not take into account the fact that social and economic circumstances may differ enormously between states and between individuals.[24]

Sub 4 of paragraph 1 of Article 273a concerns forced labour, services or removal of organs by using any of the means set forth under sub 1. The Memorandum of Understanding refers to Article 250a paragraph 1 sub 1, which penalises the bringing of a person into prostitution. In conformity with the case law this also includes restraining a person to stop with prostitution.[25] With the addition to the predecessors of Article 273a it seems that the legislator has made the developed point of view on sexual exploitation applicable to other forms of exploitation. Consequently, the keeping of a person in a situation of labour, the services or removal of organs by using any of the means set forth under sub 1, may fall under sub 4.

Sub 5 penalises the bringing of children into prostitution or the commercial removal of organs of children. In line with sub 2 the use of any of the means set fort under sub 1 is not required. The protection of children is the main purpose of this provision.
The exploitation of all forms of sexual services by minors, the exploitation of unvoluntary sexual services by persons of age, and the profit from these forms of exploitation was penalised under Article 250a after it has been amended in October 2002. With the inclusion of the profit from penalised exploitation the definition in the Dutch Pc was and is broader than the definition in the trafficking protocol, as the profit is not included in the protocol.[26] An effective fight against THB requires the prosecution of those persons who play a role behind the scene as well. The possibilities regarding conspiracy in the Dutch Code of Criminal Procedure seem to be insufficient. Only an explicit penalisation of those criminals operating behind the scenes can fill this gap, if we want to fight THB more effectively.[27]

The provisions sub 6 to sub 9 penalise the profit from different forms of THB. Sub 6 concerns the intentional profit for exploitation, sub 7 the deliberate profit from the removal of organs under the circumstances set forth under sub 1, while sub 8 concerns the intentional profit from exploitation or removal of organs of children. In order to prevent acts of negligence from coming under the description, the legislator requires the existence of the intent to make a profit. It is not required that the perpetrator himself exploited the person.[28] Finally, sub 9 concerns the profit from involuntary sexual services and forced removal of organs.
By using the phrase ‘to make himself available to’ in sub 3, 4 and 5, the legislator indicated that for the requirements to be fulfilled it is not necessary for the sexual act (in sub 3 and 5) or the concrete labour, services, or removal of organs (in sub 4) to have taken place. All the elements may have been fulfilled and thus the acts can be qualified as THB, even before the victim has executed the intended activities or before the organs have been removed.

[23] BNR THB III, 2004, p. 23-24.
[24] Also BNR THB III, 2004, p. 24
[25] BNR THB I, 2002, p. 5.
[26] BNR THB III, 2004, p. 40.
[27] Parliamentary Documents II, 1996-1997, 25347, no. 3, p. 9, Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 18.
[28] Parliamentary Documents II, 1996-1997, 25437, no. 3, p. 9.

1.1.3 Sanction

The first paragraph of Article 273a states that a person guilty of THB is liable to a term of imprisonment of not more than six years or a fine of the fifth category.[29] In comparison with the sanction for smuggling, which is four years, the penalty is not strict enough according to some parliamentarians, because, according to them, THB is a more serious crime than smuggling, and the gravity of a crime must be reflected in the sanction.[30] However, an amendment to create a higher penalty was rejected on 29 June 2004. The Minister of Justice stated that the articles on THB and smuggling provide sufficient opportunities to punish the perpetrators with a penalty that is in accordance with the gravity of their activities.

In the paragraphs 3 to 6 the aggravating circumstances are adopted. According to paragraph 3 the offender is liable to eight years imprisonment or a fine of the fifth category if he committed THB jointly with one or more persons or if the victim of THB has not reached the age of sixteen. According to paragraph 4 the offender is liable to a term of imprisonment of ten years or a fine of the fifth category, in case of a combination of the two circumstances as described under paragraph 3. Paragraph 5 imposes a term of imprisonment of a maximum of 12 years (or a fine of the fifth category) for THB with serious bodily harm or fear for a person's life. Paragraph 6 introduces a new aggravating circumstance, namely if death ensues as a result of the THB, a term of imprisonment of not more than fifteen years or a fine of the fifth category shall be imposed. Finally, paragraph 7 completes the sanctions by applying Article 251 analogously, which means that the execution of certain rights can be denied to the offender.

1.2 Smuggling of Persons

1.2.1 Connection with THB

The confusion between THB and smuggling of persons is caused by the fact that the crimes overlap to some extend, but at the same time, differ fundamentally.

THB is per se a crime involving victims whereas smuggling, strictly speaking, is a victimless crime.[31] The fundamental human rights of victims of THB are gravely violated whereas smuggling only violates the territorial integrity of a state. The penalisation of the former seeks the protection of the (potential) victim whereas the penalisation of the latter seeks to protect the interest of a state which implies that within the territory of a state no other persons stay on the territory than those who are legitimised to do so.[32] Core of the smuggling is the illegal border crossing whereas the core of THB is the exploitation. Therefore, smuggled persons never stay on a legal basis in the country of destination. Force in the broadest sense of the word is, following the trafficking protocol and the FD, the key element of the crime of THB, but not a prerequisite for smuggling. Under certain circumstances smuggling can be justified on humanitarian grounds, but trafficking can never be justified. Humanitarian THB is a '*contradictio in termini'*.

Confusion between the two crimes exists where they overlap. The Memorandum of Understanding states that victims of THB in Europe are often illegal immigrants.[33] This means that during the three phases of THB the crime of smuggling can commence. From the

[29] According to Article 23 of the Dutch Criminal Code a fine of the fifth category is a fine of 45 000 Euro. Following paragraph 7 a legal person is liable to a fine of the sixth category which means a fine of 450 000 Euro.

[30] Parliamentary Documents II, 2003-2004, 29291, no. 13.

[31] It can be said that the state whose boarders are illegaly crossed is the victim of smuggling, BNR THB 2002, p. 4, Rijken 2003, p. 73.

[32] Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 2.

[33] Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 2.

perspective of smuggling it can be stated that an activity that started as smuggle can end up in THB if at a certain moment a situation of exploitation exists.[34] As the two crimes are related they often coincidence, which makes an indictment including both crimes obvious. In case THB cannot be proved, smuggling can serve as a sort of safety net in case of overlap.
Both crimes are often conducted by an organised crime group but can also take place outside organised crime structures. For both crimes the offenders run a relatively low risk of being caught although they can make enormous amounts of money.[35]

Article 273a paragraph 1 sub 3 is responsible for the greatest risk of overlap between THB and smuggling as a transnational element is required but concrete sexual exploitation not.
THB and smuggling are distinguishable but can not always be separated. However, with regard to the protection of victims of THB, it is evident that the distinction between the two crimes is made and that THB is not considered as part of smuggling. If THB is seen as part of smuggling, then the position of the victim could be in danger because smuggling is primarily a victimless crime.[36]

1.2.2 Profit and the humanitarian clause

Smuggling is penalised in Article 197a Dutch Penal Code.[37] In order to prevent those who help others leave a country with humanitarian motives from falling within the definition of Article 197a, the element of profit was adopted in the definition as one of the prerequisites for smuggling. The new article 197a entered into force on 1st January 2005 and made the Dutch provision on smuggling in accordance with international law.[38] The element of profit remained only for illegal stay (Article 197a (2)) but was abolished for the illegal entering and transit (Article 197a(1)). According to the Minister of Justice the abolishment of the element of profit for entering and transit was necessary following the provisions of the European Directive on Smuggling.[39] The Netherlands together with some other states proposed an optional humanitarian clause in order to compensate for the abolishment of the element of profit, which was adopted in Article 1 paragraph 2 of the directive: 'Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.'
Although the proposal for a new Article 197a included the humanitarian clause, the latter was not included in the final version of the article, following the advice of the Dutch Society for Justice, the Council for Justice and the Dutch Prosecution. They were, on the one hand, afraid it would be problematice to prove crime, because they had experienced huge problems in proving the element of profit in the past, and, on the other hand, they were of the opinion that the ordinary possibilities in Dutch Code of Criminal Procedure (ground for exclusion of guilt and grounds for justification) were sufficient.[40] The humanitarian clause was rejected in the end, as it was considered too general, therefore involving a serious risk of abuse. The Minister of Justice stressed that the rejection of the element of profit and the humanitarian clause would not change

[34] Rijken 2003, p. 89, Parliamentary Documents ii, 2003-2004, 29291, no. 3, p. 2.
[35] Struensee 2000, p. 1.
[36] Rijken 2003, p. 73.
[37] See Annex 2.
[38] Framework Decision on Smuggling, OJ, L 328, 5.12.2002, p. 1, and Smuggling Protocol to the UNCTOC.
[39] Council Directive on Smuggling, OJ L328, 5.12.2002, p. 17, Parliamentary acts II, 2003-2004, no. 84, p. 5399.
[40] Parliamentary Acts II, 2003-2004, no. 89, p. 5704.

the aim of the provision, as the combating of smuggling would remain the purpose and not the prosecution of persons or organisations who provide help to an illegal person on pure humanitarian grounds.[41]

1.2.3 Definition

With the implementation of the Council Directive of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence by Article 197a Pc, the definition of smuggling is broadened to include one form of smuggling, namely facilitation of unauthorised transit. In Dutch the term 'transit' is translated by the term 'doorreis' or ' doortocht', meaning the period between entry and residence.[42] Furthermore, following the smuggling protocol and the Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, the territorial jurisdiction of Article 197a is largely extended. Before 1 January 2005 the application of Article 197a was limited to the Netherlands and the so-called Schengen countries, after 1st of January 2005 the Article has become applicable to all the EU Member States plus Norwegian, Iceland and the states that are parties with regard to the smuggling protocol.[43] Consequently, the jurisdiction of the Netherlands in smuggling cases has been extended enormously. Such a development fits within the current debate on the evolution of jurisdiction, which shows that solidarity between states and good division of jurisdiction are the grounds to grant jurisdiction.[44]

Because the Directive allows the element of financial gain only for the facilitation of unauthorised residence, the element of profit under Article 197a that was adopted as one of the core element in the provision on smuggling before 1 January 2005, had to be abolished with respect to entry and transit.
Paragraph 1 of the current Article 197a penalised the facilitation of unauthorised entry and transit. The qualification smuggling as such is adopted in the paragraph, distinct from the Directive and the Framework Decision. The smuggling of persons from the Netherlands as such is not penalised, but given the wording of this article, 'Entry or transit across', and the extended territorial jurisdiction of this provision, smuggling from the Netherlands is also penalised in case the receiving state is an EU Member State, and a party with respect to the smuggling protocol or Norwegian or Iceland.
Paragraph 2 concerns the unauthorised residence for financial gain.

1.2.4 Sanctions

According to Article 3 of the Council Directive each Member State shall take the measures necessary to ensure that smuggling is subject to effective, proportionate and dissuasive sanctions.

Under the current Article 197a the sanction for the acts under both paragraphs 1 and 2 remain a penalty of a maximum of four years or a fine of the fifth category. The government thought the current penalties sufficient and indicated that the current articles provide enough possibilities to punish the perpetrators.[45]

[41] Parliamentary Documents I, 2004-2005, 29291, no. C, p. 2.
[42] Parliamentary Documents II, 2003-2004, 29291, no.3, p. 16.
[43] Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 16.
[44] Sjöcrona & Orie 2002, p. 41-43.
[45] Parliamentary Documents I, 2004-2005, 29291, no. C, p. 3.

Paragraphs 3 to 6 include the aggravating circumstances. Paragraph 3 imposes a term of imprisonment of not more than six years or a fine of the fifth category for smuggling of persons in the exercise of one's profession. In addition it provides the possibility to impose two additional sentences: expulsion from office or exclusion from certain rights and publication of the verdict.

According to paragraph 4 smuggling as one's profession or habit or committed jointly by one or more persons, is liable to a term of imprisonment of not more than eight years or a fine of the fifth category. The latter punishment also applies to smuggling committed by an organised crime group, according to the Memorandum of Understanding.[46]
Paragraphs 5 and 6 introduce new aggravating circumstances. Smuggling of persons ensuing serious bodily harm or death, is included in Article 197a, following the advice of the National Rapporteur and the Prosecution. The sanction that can be imposed under paragraph 5 is a term of imprisonment of not more than twelve years for smuggling resulting in serious bodily harm or fear for a person's life. In contradiction to the Framework Decision, paragraphs 4 and 5 do not require the element of profit and these paragraphs can be applied to all forms of smuggling (entry, transit and residence).[47] If death ensues as a result of the smuggling the term of imprisonment is not more than fifteen years or a fine of the fifth category.

1.3 Prostitution

1.3.1 Decriminalisation

The taci approval policy (*gedoogbeleid*) as regards sexual exploitation in the Netherlands was legally adopted with the legalisation of the exploitation of voluntary prostitution of persons of age on 1 October 2000.[48] The adopted legislation, on the one hand, legalises the exploitation of voluntary prostitution of persons of age and, on the other hand, strengthens the fight against involuntary prostitution, child prostitution, and the prostitution of persons without a residence permit. The Netherlands aim to realise several goals with the new policy:[49]

- control and regulation of the exploitation of prostitution
- improvement of the fight against the exploitation of involuntary prostitution
- protection of minors against sexual abuse
- protection of the position of prostitutes
- disentanglement of prostitution and criminal activities
- reduction of the scale of prostitution of persons without a residence permit

With the adoption of this new policy, Article 250a PC (on sexual exploitation and profit from it) replaces Article 250bis PC (prohibition of brothels), Article 432 sub 3 PC (pimping) and Article 250ter PC (Trafficking in Human Beings). According to the Memorandum of Understanding, the common goal of these provisions and the judicial practice justify the combination of these provisions in one article, namely Article 250a PC.[50] With the introduction of exploitation of legal prostitution *(sexuele uitbating*) the fight against sexual exploitation changed. Supervision and regulation of the legal sector became the responsibility of the municipality and the fight of

[46] Parliamentary Documents II, 2003-2004, 29291, no. 3, p. 16.
[47] Parliamentary Documents II, 29291, no. 3, p. 17.
[48] Bulletin of Acts and Decrees 2000/38, Bulletin of Acts and Decrees 1999/464
[49] Parliamentary Acts 1999/464; Parliamentary Acts 2000/38
[50] Parliamentary Documents II, 1996-1997, 25347, no. 3, p. 8

punishable forms of exploitation of prostitution remained the responsibility of the central government.

1.3.2 Current state of the play

In the first round of evaluation of the legalisation of the exploitation of voluntary prostitution of persons of age as conducted by the Scientific Research and Documentation Centre, and in following debates in parliament some bottlenecks became visible. First of all, there are problems with the supervision on the local level because, especially those forms of prostitution that are not bound to a certain location, are difficult to monitor. The working relation between prostitutes and exploiters, the image of the branch, the investigation and prosecution of punishable forms of exploitation (again especially in those areas that are not bound to a certain location), the loverboy cases and the distribution of information, are mentioned by the Minister of Justice.[51] Notwithstanding these problems there is still a great sympathy for this policy among the general public, politicians, the prostitution branch and related organisations. However, the government has adopted an action plan, ordering and protection of the prostitution sector to improve the policy.[52] In this plan the major problems are addressed and measures to combat these problems are formulated in order to fulfil the goals that were formulated with regard to the legalisation of exploitation of some forms of prostitution.

1.4 Conclusion

With the recently adopted laws of 1 January 2005 the crimes of THB and Smuggling remain closely linked to some extent. This may benefit the investigation and prosecution (investigation from two starting points, common indictment), but can be a disadvantage from the perspective of the victim (as smuggling is a victimless crime, there is no protection for victims in the case of smuggling and therefore the two crimes should be distinguished). Because of the fundamental difference in the interests to be protected, the Netherlands persist in the penalisation of the two crimes in two separate provisions. The extension of the crime of THB requires a change in the prevention, investigation, prosecution, and protection of victims, which is reflected in the 'National Action Plan THB'.[53] As regards the possible duplication with the provisions on slavery the Dutch government will await developments in the near future before it evaluates the existence of a provision on THB as well as on slavery.[54]

The legalisation of the exploitation of voluntary prostitution of persons of age has influenced the fight against THB in a positive and a negative way. The positive effect is that the regulated branch of the prostitution sector is almost free of criminal involvement. One of the negative effects is the transference of THB to parts of the prostitution branch which are less visible, such as the escort service. In order to tackle these negative effects the government has adopted additional measures in the Action Plan Ordering and Protection Prostitution Sector.[55] The inequality and the difficulties with the former policy of tacit approval (*gedoogbeleid*), and the broad support in society and among politicians for the legalisation of prostitution made the chosen way for a liberal policy on prostitution the most viable option.[56]

[51] National Action Plan THB 2004, p. 4; Parliamentary Documents II, 2003-2004, 25437, no. 46, p. 1
[52] National Action Plan THB 2004.
[53] National Action Plan THB 2004,
[54] Parliamentary Documents II, 29291, no. 3, p. 13
[55] Action Plan Ordering and Protection Prostitution Sector
[56] Parliamentary Documents II, 2004-2005, 25437, no. 51, p. 9; Daalder 2002, p. 47

2. CRIMINAL CO-OPERATION IN TRAFFICKING CASES

2.1Provisions on international co-operation

In recent years smuggling of migrants and trafficking in human beings for sexual exploitation and slave labour have increasingly become two of the main problems that occur world-wide.[57] In most of the trafficking cases more countries are involved, which makes co-operation in fighting THB obvious.[58] As THB causes a direct and grave violation of one's fundamental human rights, the international community is determined to tackle this crime.[59] Fighting THB can be found on the top of the agenda of international organisations.
The legally binding instruments on criminal co-operation and/or fighting THB that are adopted by the most important international organisations and that affect the criminal co-operation in the Netherlands will pass in review below.

2.1.1 The UN

On 29 September 2003 the UN Convention against Transnational Organised Crime (UNCTOC) entered into force.[60] Three protocols supplement this convention, namely the trafficking protocol,[61] the smuggling protocol,[62] and the protocol on the trafficking in firearms.[63] As Dutch legislation had to be amended before ratification could take place, this convention and its protocols has not yet been ratified by the Netherlands but will be ratified in the near future, because new legislation on trafficking and smuggling has been in force since first of January 2005.[64] For the first time an internationally agreed definition could be adopted in the trafficking protocol.[65] Besides, the protocol also obliges states to take preventive measures,[66] and measures for the protection of victims.[67] It, furthermore, includes provisions on criminal co-operation and co-operation with (N)GOs.
The protocol on trafficking in Children of the Convention on the Rights of the Child entered into force on 18 January 2002.[68] For the Netherlands this protocol has not yet entered into force for the same reasons as the UNCTOC convention. It is expected to be ratified later this year. This

[57] www.unodc.org, Consulted on 18 May 2005
[58] Rijken 2003, p. 241.
[59] BNR THB III, 2004, p. 38
[60] United Nations Convention on Transnational Organised Crime, ratified by the Netherlands on 26 May 2004
[61] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, signed by the Netherlands on 12 December 2000, (Treaty Bulletin, 2001/69 see Annex 6)
[62] Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, signed by the Netherlands on 12 December 2000 (Treaty Bulletin, 2001/70; see Annex 6). According to the expectations the parliament will approve the protocol this year (Parliament Documents II, 2004-2005, 29800 V, no. 94, p.4)
[63] Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, Treaty Bulletin, 2004/37
[64] BNR THB III, 2004, p. 39.
[65] Article 5 Trafficking Protocol
[66] Artcile 9 paragraph 1 sub a, Trafficking Protocol
[67] Articles 6 to 8 Trafficking protocol.
[68] Signed by the Netherlands on 7 September 2000 (Treaty Bulletin, 2001/63; see Annex 6).

protocol obliges state parties to protect children against sexual exploitation as well as against economic exploitation, especially forced and dangerous labour. It furthermore incites to co-operate in the prevention, investigation, prosecution and adjudication of child labour with other states.[69]

The Netherlands ratified the ILO Worst Forms of Child Labour Convention of 17 June 1999, on 14 February 2002.[70] States are called upon to take the required measures immediately and without delay, this to guarantee the prohibition of the worst forms of child labour.[71] According to Article 3 the gravest forms of child labour shall at least include 'all forms of slavery and slavery-like practices, such as selling of and trafficking in children, forced and compulsory labour, forced and compulsory recruitment for armed conflict, but also labour that is harmful to the health, safety or morality of children, because of its nature or the circumstances under which the labour has to be performed. Victims of child labour must be provided with sufficient and immediate assistance and with re-socialisation and re integration programmes. States are entitled to co-operate in the field of socio-economic development, poverty reduction and universal education.[72]

Article 6 of the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW) obliges states to adopt all suitable measures, such as legislative measures, to combat all forms of trafficking in women and the exploitation of prostitution of women. This convention was ratified by the Netherlands on 23 July 1991. Since the legalisation of voluntary prostitution in the Netherlands, the voluntary prostitution must be considered as labour and falls outside the scope of Article 6 CEDAW.[73] The CEDAW Committee in its reaction to the second report from the Netherlands, stressed that in general prostitution increases the risk of the use of violence against women and the risk of being exploited, but does not condemn the Dutch policy. Because the CEDAW Committee did not determine Dutch policy, contrary to the CEDAW convention, the legalisation of voluntary prostitution in the Netherlands seems to lie outside the scope of Article 6 CEDAW.

2.1.2 The Council of Europe

The Netherlands ratified the European Convention on mutual Assistance in Criminal Matters on 14 February 1969[74] and are obliged to mutually assist other states that are parties to the convention in the broadest sense possible (Article 1 (1). The first additional protocol to the European Convention on Mutual Assistance in criminal Matters was ratified by the Netherlands on 12 January 1982.[75] This protocol creates the possibility to exchange information on sentences.

[69] BNR THB III, 2004, 42.
[70] Entered into force on 19 November 2000, Treaty Bulletin, 2000/52; approved on 14 February 2002, Treaty Bulletin, 2002/96
[71] Article 1 ILO Worst forms of Child Labour Convention
[72] Article 8 ILO Worst forms of Child Labour Convention
[73] Parliamentary Acts II, no. 878, 2002-2003, p. 1839.
[74] ETS- No. 030, European Convention on Mutual Assistance in Criminal Matters, entered into force on 12/6/1962; Treaty Bulletin, 1965/10; 1996/63
[75] ETS- No. 099, Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, entered into force on 12/4/1982

The second additional protocol which entered into force on 1 February 2004, has been signed but not ratified by the Netherlands.[76]
The European Convention on Extradition[77] entered into force for the Netherlands on 15 May 1969 and creates the possibility to extradite suspects to another country for a criminal procedure. The first and second additional protocols[78] to this convention have been ratified by the Netherlands and amend the convention as regards the grounds for refusal and the procedure to be followed. According to the second protocol the communication between the states involved in the extradition takes place on ministerial level.

The European Convention on the International Validity of Criminal Judgements[79] entered into force for the Netherlands on 1 January 1988 and is a next step towards the ultimate goal of ensuring full international co-operation in criminal matters between Member States of the Council of Europe. The basis of this convention lies in the mutual recognition of criminal judgements.

The European Convention on the Transfer of Proceedings in Criminal Matters[80] creates the possibility to transfer a criminal proceeding to another state that is a party to the convention, this in the interest of fair trial or finding the truth, and entered into force for the Netherlands on 19 July 1985.

The Netherlands ratified the Convention on the Transfer of Sentenced People[81] on 30 September 1987 and its additional protocol[82] on 18 June 2002. Both instruments formulate the requirements for the procedure to be followed for the transfer of the execution of sentences. The aim of this form of mutual assistance is the social reintegration of the sentenced person.
In accordance with the European Convention on the Compensation of Victims of Violent Crimes[83] which entered into force on 1 February 1988 for the Netherlands, states are obliged to offer compensation to victims of violent crimes that have taken place on the territory of that state.

The recently adopted European Convention on action against trafficking in human beings[84] is the latest instrument on European level to fight THB. According to the explanatory text to the

[76] ETS- No. 182, Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, entered into force on 1/2/2004
[77] ETS- No. 024, European Convention on Extradition, entered into force on 18/4/1960
[78] ETS- No. 086, Additional Protocol to the European Convention on Extradiction, entered into force on 20/8/1979; ETS- No. 098, Second Additional Protocol to the European Convention on Extradiction, entered into force on 5/6/1983
[79] ETS- No. 070, European Convention on the International Validity of Criminal Judgements, entered into force on 26/7/1974; Treaty Bulletin 1971/137
[80] ETS- No. 073, European Convention on the Transfer of Proceedings in Criminal Matters, entered into force on 30/3/1978, Treaty Bulletin 1973/84; 1992/89
[81] ETS- No. 112, Convention on Transfer of Sentenced Persons, Entered into force on 1/7/1985, Trb. 1983/74, rectified Treaty Bulletin 1995/193
[82] ETS- No. 167, Additional Protocol to the Convention on the Transfer of Sentenced Persons, entered into force on 1/6/2000
[83] ETS- No. 116, European Convention on the Compensation of Victims of Violent Crimes, entered into force 1/2/1988.
[84] ETS- No. 197, Council of Europe Convention on Action against Trafficking in Human Beings, signed by 14 Member States on 16 May 2005, except the Netherlands. The treaty will enter into force after 20 ratifications.

convention its additional value must be sought in its human rights approach, the protection of victims and the adoption of a independent monitoring mechanism. This instrument is based on the EU Framework Decision on THB the Directive on residence permit for victims of THB that co-operate with the authorities, and the trafficking protocol to the UNCTOC.
The Convention on Cybercrime[85] is relevant as it includes a provision penalising child pornography and aims at strengthening the protection of children.

The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime[86] of 8 December 1990 is relevant for the confiscation of the profits of THB.

2.1.3 The European Union

In this section a list of the relevant legal instruments adopted within the EU will be given. A description of these instruments can be found in the European report and will therefore not be discussed in this section.
In the field of penal law the EU aims at the creation of a high level of safety within the area of freedom, security, and justice, by preventing and combating all forms of crime among which THB is explicitly indicated as one of such crimes.[87] According to Article 29 a closer police and judicial co-operation, either directly or via Europol or Eurojust, is the way to achieve this aim.

The Convention on Mutual Assistance in Criminal Matters between the Member States of the EU[88] of 26 may 2000 aims at facilitating mutual assistance between EU Member States. This convention has been signed by the Netherlands but has not yet entered into force.
The Convention on Extradition between the Member States of the EU[89] creates far reaching provisions on the mutual recognition of criminal judgements to facilitate extradition. The Framework Decision on THB[90]obliges states to take all necessary measures to penalise THB, especially THB for sexual exploitation and labour exploitation.
The Framework Decision on sexual exploitation of children and child pornography[91] aims at harmonising national legislation of EU Member States in this area.
After two drafts the EU finally adopted the Council Directive on residence permit for victims of THB who co-operate with the authorities,[92] on 29 April 2004. The Directive will have to be implemented by the Member States on 6 August 2006.

The Framework Decision on the status of victims in criminal procedures[93] aims at providing a high level of protection to victims of crimes within the EU. Both during and after the procedure the victim has a right to juridical (advice, legal aid) and social (relief, care) assistance. Extremely

[85] ETS- No. 185, Convention on Cybercrime, entered into force on 1/7/2004. rectified by 32 Member States. Except the Netherlands
[86] ETS- No. 141, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, entered into force 1/9/1993
[87] Article 29 EU (Treaty Bulletin 1992/74, lately modified Treaty Bulletin 2004/10)
[88] OJ C 197/1, Treaty of Convention on Mutual Assistance in Criminal Matters between the Member States of the EU, Council Act of 19 May 2000
[89] OJ C 191 (23-6-1997), Convention relating to Extradition between Member States of the European Union
[90]Council Framework Decision on combatting THB 2002/629/JHA of 19 July 2002, OJ L 203 (1-8-2002)
[91] Voetnoot toegevoegd: Council Framework Decision on on sexual exploitation of children and child pornography, 2004/68/JHA of 22 December 2003, OJ L 013 (20-1-2004)
[92] Council Directive on residence permit of victims of THB 2004/81/EG of 29 April 2004, OJ L 261/19 (6-8-2004)
[93] Council Framework Decision on the standing of victims in criminal proceedings 2001/220/JHA of 15 March 2001, OJ L 082 (22-03-2001)

vulnerable victims shall receive specific treatment tailored to their situation (Article 2(2)). Victims of THB must be accommodated in this category of victims when they have not yet reached the age of sexual majority, according to the Framework Decision on THB. According to the National Rapporteur victims under the age of 16 should receive such a treatment.[94]
The Framework Decision on the European Arrest Warrant[95] was implemented by law of 29 April 2004 and replaces earlier conventions on extradition as far as provisions of the EAW concern the same issues.
The Framework Decision on execution of decisions on seizure of objects and evidence[96] makes the mutual recognition of an order to seize certain objects within the EU possible. This instrument can be applied to THB, sexual exploitation of children, child pornography and the illegal trafficking in human organs and tissues.

In addition to these specific instruments some more general instruments on police and judicial co-operation can be listed here. These are:

- The Europol Convention[97] aiming at increased solidarity and co-operation between Member States by improving interstate police co-operation.
- The Council Decision setting up Eurojust[98] aiming at a common judicial combating of serious forms of crime by facilitating, supporting and co-ordinating common efforts.
- The Charter on fundamental rights as part of the Constitutional Treaty[99] gives a catalogue of all the rights, freedoms and principles adopted within the EU. Included is the prohibition of THB, slavery and forced labour as well as the prohibition of child labour and an obligation to protect minors against economic exploitation. The human rights approach of THB is reflected in these provisions.
- The Schengen Convention applying the Schengen Agreement of 14 June 1985.[100]
- The Benelux convention on extradition and assistance in criminal matters[101] of 27 June 1962.
- The Benelux convention on transfer of criminal proceedings[102] of 11 May 1974.
- The Benelux convention on the execution of criminal judgements[103] of 26 September 1968.
- The Benelux convention on Cross-Border police operations[104] of 26 May 2004.[105]

[94] BNR THB III, 2004, p. 54
[95] Council Framework Decision on the European arrest warrant and the surrender procedures between Member States 2002/584/JHA of 13 June 2002, OJ L 190/1 (18-7-2002)
[96] Council Framework Decision on the execution in the European Union of orders freezing property or evidence 2003/577/JHA of 22 July 2003, OJ L 196/45 (2-8-2003)
[97] Council Act drawing up the Convention on the establishment of a European Police Office (Europol Convention) of 26 July, OJ L C 316 (27-11-1995)
[98] Council Decision setting up Eurojust with a view to reinforcing the fight against serious crime 2002/187/JHA of 28 February 2002, OJ L 63/1 (6-3-2001)
[99] Charter on Fundamental Rights of 7 December 2000, OJ C 364/1 (18-12-2000)
[100] The Schengen Convention applying the Schengen Agreement of 14 June 1985 (Treaty Bulletin 1990/145, Joined by the Netherlands: Treaty Bulletin 1994/155, 1998/262)
[101] The Benelux convention on extradition and assistance in criminal matters of 27 June 1962Trb. 1962/97
[102] The Benelux convention on transfer of criminal proceedings of 11 May 1974 (Treaty Bulletin. 1974/184, Parliamentary Acts 1985/116, 1985/131, never entered into force)
[103] The Benelux convention on the execution of criminal judgements of 26 September 1968 (Treaty Bulletin, 1969/9)
[104] The Benelux convention on Cross-Border police operations of 26 May 2004, OJ L 239 (22-9-2000) (Treaty Bulletin. 2005/35)
[105] Besides a vast number of bi-lateral and multilateral conventions have be adopted such as;

2.2 National law on judicial co-operation

Treaties play a crucial role in the transnational co-operation in criminal matters. Article 2 of the Dutch Constitution states in paragraph 3: Extradition is only possible on the basis of a treaty. Further requirements will be given by law.[106] Article 94 of the Constitution concerns the precedence of international law with respect to national law. It states that national legal provisions shall not be applied if they are incompatible with binding provisions in a treaty of other decisions of international organisations. This implies that the Netherlands are obliged to comply with a request for mutual assistance. In the first place the relation between a treaty and national law determines that if a treaty rules the interstate co-operation, national law is only additional to the treaty provisions in ruling the procedure and prerequisites of the co-operation. Secondly, a request can only be refused on the basis of one of the recognised grounds for refusal. Thirdly, the compulsory effect of a provision can be withdrawn by making a reservation. Reservations are only allowed if a treaty explicitly gives this possibility. The Netherlands, for instance, made such a reservation on Article 2 European Convention on Mutual Assistance which led to the adoption of the grounds for refusal in Article 552l Code of Criminal Procedure.[107] Furthermore, the applicable treaty on mutual assistance determines the aim and form of the assistance the Netherlands have to provide.

Generally, the interstate co-operation has five means: extradition, police co-operation, judicial co-operation, transfer of criminal proceedings, and transfer of the execution of criminal judgements. The extradition and the transfer of the execution of criminal judgements must have its basis in a treaty at all times. The other forms of co-operation can be conducted without a treaty basis.

Requests for assistance that are not based on a treaty, must be checked to establish whether they can be executed or not, following Articles 552h-552q Code of Criminal Procedure. Requests based on a treaty are to be checked first on their compliance with the treaty provisions and the with Articles 552h-552q.

For the combating of transnational THB, especially those provisions concerning police and judicial co-operation are important. Co-operation always concerns the exchange of information or the execution of operational tasks necessary for the investigation of or the prosecution of a suspect in the requesting state. The most relevant national legislation can be found in the Code of Criminal Procedure (CCP), the Police Register Act and in directives and decisions.

2.2.1 Judicial co-operation

The main rule in criminal co-operation implies that treaty precedes national law. If a request is not based on a treaty, and the request is reasonable and not in contradiction with any national law or directive of the minister, the request can be executed (Article 552k(2) CCP).
Article 552h(2) CCP lists four categories of requests:

- the execution of operational acts for the investigations (together or not)
- sending of documents, files, evidence
- exchange of intelligence
- sending of writs

[106] Article 552k paragraph 1 CCP
[107] Sjöcrona & Orie, 2002, p. 204.

Other forms of judicial co-operation are:

- transmission of a transcript from a penal register (Law on the judicial documentation, decision registration, foreign criminal records).
- Temporary transfer of sentenced persons
- Exchange of information on the sentencing of own nationals

The Minister of Justice formally holds the final responsibility for interstate judicial and police co-operation. Formally the transmission of requests takes place on the central level. Only in case of emergency direct contact between judicial authorities is allowed. The final settlement of the request must be conducted by the Ministry. In case of emergency the Interpol channel may also be used for the transmission of requests (Article 15(5), European Convention on Mutual Assistance). The national Interpol bureau is located at the Criminal Investigation Department (Divisie Recherche) of the KLPD.

Foreign requests to the Netherlands are to be marginally checked by the Bureau International Assistance in Criminal Matters (BIRS) at the Ministry of Justice. If the request seems to be suitable for execution, and is clearly formulated, it will be immediately sent to the responsible prosecutor for execution. (Article 552i(1) jº Article 552j CCP). Only in three cases does the minister need a further check: in case of suspicious of discriminatory prosecution, (Article 552l(1) CCP), in case of requests concerning a fiscal or political offence (Article 552m(1)sub3 CCP), and the fear of absence of reciprocity. In these cases the Minister is allowed to refuse mutual assistance.

According to Articles 552i-552j CCP the prosecutor is the central authority in judicial co-operation and handling of requests. He decides on the execution of the request. According to Article 552i(1) CCP the prosecutor in the district in which the requested act must be conducted or in which the request has been received has jurisdiction. In other cases the Office of the National Prosecutor has jurisdiction. The prosecutor decides who and how the execution of the request takes place (Article 552j CCP). When the request concerns the exchange of intelligence or information and coercive measures are not required the prosecutor may forward the request to the police. (Article 552i(2) CCP). In other cases he may transmit the request to the investigative judge (Article 552n CCP, see below). In general the requests are send to the National Centre for International Legal Assistance (*Landelijk Internationaal Rechtshulpcentrum)* or one of the six regional centres. These centres closely co-operate with the police and prosecution for a smooth and efficient handling of requests. They co-ordinate and distribute the received requests.

The investigative judge can be approached to handle requests by the prosecutor (Article 552n(2) CCP). The prosecutor is obliged to do so if:

- a person needs to be heard and does not want to appear voluntarily
- the request concerns a video conference with a foreign authority to hear a person
- the request explicitly requires a declaration under oath or a declaration made in the presence of a judge
- pieces of evidence must be confiscated

After the investigative judge made his report he returns the request, including the reports, to the prosecutor (Article 552p(1) CCP). Confiscated pieces of evidence can be send to the prosecutor only after the permission of the court has been granted (Article 552p(2) CCP). Besides this the investigative judge must be involved in case of recording of confidential communication (Article

126l CCP), investigation of telecommunication (Article 126m CCP), recording of confidential communication in case of organised crime (Article 126s CCP), investigation of telecommunication in case of organised crime (Article 126t CCP). The prosecutor may undertake these activities following a treaty based request only after the authorisation of the investigative judge.

Initially the Netherlands can execute a request that is not based on a treaty although there are seven exceptions to this rule, namely, in case;

a. a person needs to be heard and does not want to appear voluntarily (Article 552n(1) sub a CCP)
b. the requesting state wants a person to be heard under oath or in the presence of a judge (Article 552n(1) sub c CCP)
c. pieces of evidence must be confiscated (Article 552n(1) sub d CCP)
d. of recording of confidential communication (Article 126l CCP)
e. of investigation of telecommunication (Article 126m CCP)
f. of recording of confidential communication in case of organised crime (Article 126s CCP), and
g. of investigation of telecommunication in case of organised crime (Article 126t CCP)

In case a treaty base is not available the request cannot be executed.
Three imperative grounds for refusal exist in Dutch law namely: in case there are strong indications that the request concerns a discriminatory prosecution (Article 552l(1) sub a CCP), in case of a violation of the principle of *ne bis in idem* (Article 552l(1) sub b CCP), and in case a criminal case is pending against the suspect in the Netherlands (Article 552l(1) sub c CCP).
For a non-treaty based request there is only one imperative exception namely in case the request concerns a political or fiscal offence (Article 552m(1) and (3) CCP).

2.2.2 Police co-operation

In Dutch law three forms of transnational police co-operation can be found:[108] pure technical co-operation for equipment and education, co-operation for prevention and maintenance of public order,[109] and transnational co-operation in investigative measures. This latter competence is especially important. Police co-operation may never concern coercive measures. In case such measures are requested, direct police co-operation is not allowed. (Article 39 Schengen Convention, Article 552i(2) CCP. In addition imperative grounds for refusal for police co-operation are written in Article 552l CCP and the facultative grounds for refusal in Article 552m CCP. The latter are compulsory for non-treaty based co-operation (Article 552m CCP).

The police may provide assistance to a transnational investigation in various ways. It may provide their foreign colleagues spontaneous with information if coercive measures are not required for the collection of information.[110] Article 13 of the Decision on Police Act[111] in

[108] Sjöcrona & Orie 2002, p. 256.
[109] Article 46 Schengen Convention, Sjöcrona & Orie 2002, p. 265.
[110] Article 39 and 46 Schengen Convention, Articles 552i(2-4), 552o CCP, guideline on mutual assistance 1994, Governmental Gazette 1994/242 and 2004/246.
[111] Governmental Gazette 1999/549.

combination with Article 18 Police Register Act[112] govern the exchange of police data with foreign police authorities. In general the exchange takes place through the authorised central unit, the Division Criminal Investigations (*Divisie Recherche)* of the KLPD, but in case of emergency it can be exchanged directly. With the approval of the Minister of Justice or the Minister of External Affairs agreements can be made with foreign police officers for a different way of communication. An example of such an agreement can be found in the Memorandum of Understanding of 17 April 1996 on police co-operation in the border area between the Netherlands and Germany.[113] For transnational observation and hot pursuit the Netherlands follow the criteria adopted in the Schengen Convention. Within the Benelux the possibilities are extended enormously with the adoption of the SENN Convention.[114] The Netherlands has created the possibility in the Act on special Investigative Measures and its accompanying decision to endow a foreign state authority with a request for observation, infiltration, pseudo-purchase and pseudo-services or systematic observation. These provisions must be considered an addition to the relevant provisions in the Schengen Convention and can only be applied in exceptional cases.[115] The Decision on Co-operation has formulated criteria that must be fulfilled before a foreign authority can be endowed with these operational powers.[116] The person must;

a. be in office of the public service of a foreign state
b. be authorised to investigate criminal acts;
c. and there must be a positive decision of the prosecutor after an advice of the division National Co-ordination Police Infiltration of the KLPD.

To facilitate the transnational police co-operation with a particular state the possibility exists to second a liaison officer to the territory of the other state for advice and assistance.[117] A liaison officer in the Netherlands has a diplomatic status and is often accommodated at the Embassy of his home country.[118] He is not empowered to execute operational powers independently[119] and exchanges information with the police and prosecution through the central unit of the Division International Networks (DIN) of the KLPD. Direct exchange of information is only possible after a separate agreement with this division.[120] DIN functions under the supervision of the head of prosecution of the National Prosecution Office. A vast number of international (bilateral and multilateral) agreements contain provisions on liaison officers. It is therefore quite possible that co-operation with liaison officers and Dutch police and judicial authorities is shaped in another way in a particular case.

[112] Police register Act Bulletin of Acts and Decrees 1990/414, latest amendment Bulletin of Acts and Decrees 2004/107.
[113] Sjöcrona & Orie 2002, p. 270.
[114] The SENN convention governs the cross-border police co-operation for the investigation, maintenance of public order and protection of goods and persons.
[115] Memory of Understanding, Bulletin of Acts and Decrees, 1999/549, p. 5.
[116] Article 5 of the Decision on Co-operation Special Investigative Measures (Bulletin of Acts and Decrees 1999/549, p. 3).
[117] For instance on the basis of Article 47 Schengen Convention.
[118] Sjöcrona & Orie 2002, p. 264.
[119] Article 6(1) Guideline on Liaison Officers.
[120] Article 7(2) Guideline on Liaison Officers

2.2.3 Joint Investigation Teams (JITs)

Different international agreements provide the possibility for a new and more intensive form of operational, transnational co-operation in criminal matters.[121] The Dutch legislator has created a separate legal basis for the establishment for JITs as the co-operation by participating in a JIT cannot be seen as legal assistance.[122] It is remarkable that in Dutch law a treaty basis is required for the establishment of a JIT and can only be established after a request.[123] In general all cases on certain forms of transnational organised crime such as drug trafficking, terrorism, smuggling and trafficking in human beings are eligible for the establishment of a JIT.[124] According to Dutch law, the prosecutor in who's district the largest part of the investigation is expected to take place is empowered to initiate a JIT. His request will be registered at the Centre for International Co-operation working in his district and be forwarded from there to the National Prosecution.[125] In the Netherlands the prosecution fulfils a central role in the establishment and operation of a JIT.

An agreement establishing a JIT must be written and include all details of the JIT. For this purpose a model agreement has been adopted.[126] In accordance with Dutch implementation law the seconded members of a JIT are obliged to testify in Dutch court or before a Dutch investigative judge if required.[127] Article 552qb concerns the operational powers of the seconded members in JIT on Dutch territory. It is not clear how this provision must be interpreted and whether seconded members have operational powers similar to their Dutch colleagues or whether this article must be seen as a consolidation of the competencies that already existed for foreign authorities on Dutch territory.[128] Dutch seconded officers do not have operative powers on foreign territory unless the law of the guest state provides these powers.[129] For the implementation of international provisions on JITs an amendment of the Dutch Police Registers Acts was required, providing that the exchange of data with members of a JIT takes place on the same basis as the exchange of data with Dutch colleagues.[130] An official police report drafted by one of the seconded members has the same evidential value as an official police report made by Dutch officers, although it may never exceed the value such a report would have had in his home country.[131]

Under the Dutch EU presidency in the second half of 2004, two initiatives were taken to set up a first JIT within Europe, one on THB from and through Bulgaria and one on drug trafficking. In the latter case a JIT between the UK and the Netherlands became operational in January 2005 and the case will be decided on in a Dutch court in June. Some of the difficulties that were raised above might be brought before the judge to be decided upon. A scientific study ran parallel to both initiative the results of which will be published in Autumn this year.[132]

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[121] Article 13 EU Convention on Mutual Assistance, Article 20 Second additional protocol to the European Convention on Mutual Assistance, Article 29 SENN Convention.
[122] Parliamentary Acts II, 2001-2002, 28351, no. 3, p. 7.
[123] Article 552qa(1) CCP.
[124] Guideline of the Board of Prosecutors General, p.3.
[125] Guideline of the Board of Prosecutors General, p.4.
[126] OJ, C 121, 23.5.2003.
[127] Article 552qa(3) CCP.
[128] These powers are arresting in case of transnational pursuit (Article 54(4), CCP) and systematic observation (Article126g(9) CCP).
[129] Article 539a(3) CCP.
[130] Article 13d Police Registers Act.
[131] Article 552qc CCP.
[132] The editors of this publication will be Prof. Gert Vermeulen and Dr. Conny Rijken.

3. THE PROSECUTION OF TRAFFICKING IN HUMAN BEINGS

3.1 Modus Operandi

According to the persons interviewed[133] for this report the practice on THB in the Netherlands is similar to the situation of 2002 described by the National Rapporteur in its third report.[134] Therefore, this third report together with the information from the interviews will be the basis for this section.

As a consequence of the fact that until 1st of January this year THB concerned only the involuntary sexual exploitation of persons of age this section only concerns this form of trafficking. The majority of the persons interviewed do not exclude economic exploitation from the definition of THB but has no idea of the scale of this form of exploitation.[135] None of the persons interviewed know of examples of trafficking in organs or know a person who does know. It seems that this form of THB does not play a role in the Netherlands.

THB can be divided into three phases: recruitment, transport and exploitation. The first phase; recruiting, receiving or kidnapping can take place in or outside the Netherlands. The relation between the interstate and transnational forms of THB is 1 to 3. About 80% of all victims registered were approached by a recruiter. In 48% of the cases the victim knew the recruiter (as partner, family, friend, acquaintance).[136] A minority, around 10%, contact the recruiter on their one initiative. The hopeless situation of these persons and the promise for a better future makes them decide to do what the recruiter asks even if this is to work in prostitution. Most of the victims know in advance that they are going to work as a prostitute according to the judges and prosecutors interviewed, but they do not know about the bad working conditions and the gravity of the exploitative situation. Some of the victims are more inclined to accept such working conditions as 'everything is better than being at home'. Others who do not accept these working conditions are often forced by threatening (including threat to their family and friends in the country of origin) and the use of violence to work in prostitution.
Remarkable in cases of transnational THB is the connection between the place of birth of the trafficker and the area in which he undertakes the activities. The trafficker who was born outside the Netherlands is more often recruiter and exploiter than the trafficker who was born in the Netherlands. The latter is often merely the exploiter, which means that he limits his activities to the third phase of THB; he brings or keeps the victim in prostitution. However, this does not mean that the trafficker who was born in the Netherlands does not have any connection with the country or place the victims originate from. This is confirmed by the closed cases on transnational THB in 2000 and 2001 where in more than 50% of the cases the victims and the

[133] A list of the persons interviewed can be found in Annex 12.
[134] BNR THB III, 2004.
[135] The scale is dependent from the definition of punishable economic exploitation as a form of THB. As the term THB in Article 273a is not clearly defined (BNR THB III, 2004, p. 69) the range of the crime THB is unclear.
[136] BNR THB III, 2004, p. 152, 162.

suspect had the same country of origin.[137] In the phase of transport (the second phase) the route that is most logical geographically is taken, although the traffickers also take the risk of being caught into account when choosing their route. The majority of the victims (67%) enter the Netherlands by land through Germany, and a much smaller part via Schiphol airport (17%). The number of victims entering via Belgium has dropped enormously (40% in 1999 and 12 % in 2002) probably as a consequence of the increase of victims originating from the Balkan-area.[138]

The use of forged documents has become less popular, although in 40% of the cases forged passports are used. In 2002 forged documents were found in 14 cases: 6 Greek, 3 Bulgarian, 2 Nigerian, 2 Lithuanian, 1 Italian and 1 Dutch passport. Victims originating from a country with a visa requirement, travel more often without a visa (18%in 200 and 50% in 2002) or with forged visa (1% in 2000 and 25% in 2002).[139] In one third of the cases traffickers make use of 'professional' forger. Apart from the fact that victims are forced into prostitution during the transport, either to finance the transport or because they have been sold several times, the sexual exploitation of the victims mainly takes place in the Netherlands (40% of the cases).

Typical for the third phase is the mobility, meaning that victims are exploited in different places in the Netherlands. In more than half of the cases in 2002 the victims were exploited in more than one police district. This mobility frustrates the investigation and prosecution, fulfils the desires of consumers and maintains the dependency of the victims on the traffickers. Apart from contact with consumers, victims are often deprived of contact with the outside world. They are not able to build a relationship of trust with anyone as they move frequently from one place to another. To increase the dependency of the victim the trafficker has the factual power over the bank accounts and passports of the victims and they decide on the accommodation, local transport, etc. The exploiter uses all means to isolate the victim and to increase her dependency. Three persons interviewed stated that victims are often completely ignorant of the Dutch language and habits such as using a multi-journey ticket and using a cash-point machine, even if they have been 'working' in the Netherlands for years. By using secret place to accommodate victims and by exploiting them in different places in the Netherlands the traffickers minimise the risk of being caught. In case were victims are also exploited outside the Netherlands, they are mainly exploited in Belgium or Germany.

Taking into account the differences between the regions in the Netherlands and some large cases that are running at the moment, the countries of origin of the victims fluctuate but the regions remain largely the same: the main source region is the Balkan-area (46%) with Bulgaria, Romania, Albania, Croatia, Serb and Montenegro, Bosnia & Herzegovina, Macedonia and Slovenia, and Eastern Europe (24%) with Ukraine, Moldavia, Russia, Belarus, and Azerbaijan, followed by Central Europe 18% (Poland, Czech Republic, Slovakia, Hungary) and the Baltic States 11%.[140] The countries of origin of 183 suspects of THB in 2002 were the Netherlands (49), Bulgaria (40), Albania (35), and Turkey (17).

[137] BNR THB III, 2004, p. 173, 162.
[138] BNR THB III, 2004, p. 164.
[139] BNR THB III, 2004, p. 164-165.
[140] BNR THB III, 2004, p. 177.

Remarkable is the decrease of the number of suspects of THB per investigation. This might be an indication that THB to, through and in the Netherlands is less organised in large networks but takes place more often in smaller networks. It might also be an indication that the investigation and prosecution is mainly focussed on the cases that can be solved more easy or that the investigation and prosecution is limited to activities that have taken place on Dutch territory. However, this latter possibility is refuted by the increased number of arrests of recruiters in transnational THB-cases. In 57% of the cases all recruiters in the country of origin as well as in the Netherlands have been arrested. A possible explanation to this is that the number of traffickers that recruit victims outside the Netherlands use the 'loverboy'-technique in which the loverboy is both the recruiter and the exploiter.[141]

According to two persons interviewed, the scale of organisation of the trafficker depends on the country of origin of the traffickers. They state that trafficking from the Asian region is organised more hierarchically in one big criminal network while trafficking from the Balkan-area seems to be a co-operation between cells that are specialised in part of the trafficking chain which is based on family- and regional ties. National THB is mainly conducted by persons that operate solely or by smaller groups. Criminal networks focus more on transnational THB.[142]

Another striking phenomenon is the involvement of female traffickers; one out of four traffickers is a woman. In most cases they were victims of trafficking themselves before they became a trafficker motivated by the motto 'if you can't beat them joint them' according to one of the prosecutors. Female traffickers are more often involved in transnational than in national THB.[143] One third of the female and two thirds of the male traffickers are not only recruiter, but also exploiter. Almost half of the male, and one fifth of the female traffickers use physical violence.[144] According to three persons interviewed, the group of victims in the Netherlands is not homogeneous and ranges from highly educated specialist, to victims without any diploma or education.

With regard to the use of violence the interviewed persons give a varied picture. Five of them trace a development in the use of more subtle forms of violence while seven others indicate an increase in the use of harsh and grave violence especially in the exploitative phase of transnational THB. However, according to the National Rapporteur violence is more often used by suspects of national THB than by suspects of transnational THB. A possible explanation for this is that in case of transnational THB there are more possibilities to use non-violent means of force and the victim is already in a more vulnerable situation.[145]

The reason for starting an investigation differs between the national and transnational cases. In 62% of the national cases, the investigation starts on the basis of a notification from the victim, while in transnational cases this only counts for 27% of the cases. On the other hand, the average number of reports in a successful transnational THB case is double the number of reports in a successful national THB case. This could either mean that the police strongly focuses on the

[141] BNR THB III, 2004, p. 163
[142] BNR THB III, 2004, p. 170.
[143] BNR THB III, 2004, p. 158.
[144] BNR THB III, 2004, p. 173.
[145] BNR THB III, 2004, p. 175.

collection of testimonies, that they become more experienced in collecting testimonies or that cases in which there are testimonies are more often closed successfully.[146]
One of the interviewed police officers stated that the willingness to testify depends on the extent a victim has been mislead or violence is used; "Victims who have been mislead are inclined to testify and want to return to their home country. Victims who knew in advance that they were going to work in prostitution are often hesitant to testify because they think it is their own fault".

According to all persons interviewed, the Netherlands is mainly a country of destination. Being part of the rich Western countries and part of the EU it is a country of destination for both the victim who wants to flee her situation of poverty in her home country as well as for the trafficker looking for a market of consumers of prostitution. In those cases were the victims are also exploited in other countries one can say that the Netherlands is also a transit country in the sense that it is one of the many destinations and not an stage in the transport of the victim. In most cases the networks involved in transnational THB are not hindered by borders between states. According to four persons interviewed, traffickers use the borders instead to frustrate and complicate the investigation and prosecution.

Half of the number of people interviewed consider the Netherlands as a source country as well because 1 out of 3 cases concern THB within the Netherlands. In these national cases all three phases take place in the Netherlands and there are no international connections at all. The most well-known cases are the 'loverboy' cases but also suspicious disappearances from asylum-seekers centres can play a role in this form of THB.[147]

In conclusion it can be stated that THB in the Netherlands exists in the form of sexual exploitation and most likely also in the form of economic exploitation but probably not in the form of trafficking in organs. Two third of the victims originate from outside the Netherlands. At first instance the Netherlands must be considered a country of destination. One out of four closed cases concerns national THB, which means that the Netherlands is also a country of origin.

Typical for THB is the mobility; victims are exploited in several places in and outside the Netherlands in order to prevent that victims get to know the environment and persons and to frustrate investigation and prosecution. In cases where a person is also exploited in another country (40%) the Netherlands is also a country of transit.

Two third of the victims enter the Netherlands through Germany, 50% stay without a residence permit and almost all victims are women and from diverse backgrounds. Most of the victims know in advance that they will be working in prostitution but are unaware of the circumstances and the exploitative means. The majority is approached by a recruiter and convinced by deception. Physical violence is mainly used in the exploitative phase but not unknown in the phase of recruitment. The use of violence or the threat of violence is the most commonly used form of force in trafficking cases.

Half of the victims originate from the Balkan-area and a quarter from Eastern Europe. A quarter of the traffickers were born in the Netherlands and two fifth in Bulgaria or Albania. In transnational cases the foreign trafficker is often recruiter and exploiter. The trafficker who was

[146] BNR THB III, 2004, p. 175.
[147] BNR THB III, 2004, p. 78-84.

born in the Netherlands is more often the exploiter of the victim who has been recruited outside the Netherlands. A quarter of the traffickers are women and one third of them is exploiter. Half of the male and one fifth of the female traffickers use physical violence.
Finally, a trend is visible that THB is conducted more often by smaller groups (cells) than by large criminal networks.

3.2 Awareness of THB

The national prosecution has made the fight against THB one of its priorities.[148]
Currently the national government has adopted THB as one of its spearheads as well and recognises it as a form of organised crime has to be tackled. THB must be considered as a violent form of organised crime that deserves special attention, according to the Ministers of Justice and Internal Affairs.[149] The number of closed police investigations on THB increased enormously between 2000 and 2002, and this trend continues in 2004.[150] From 1 January to 1 October 2002, 264 indications of THB with investigative indication have resulted in 63 investigations that have been sent to the prosecution. In 2004, 604 indications led to 87 cases sent to the prosecution. The number of police investigations strongly depends on the priority given to THB and the capacity that is made available. This is not well organised in all police regions.[151] This lack of priority and capacity is confirmed in six interviews. As a consequence of competition in prioritising and a limited budget it is not obvious that an investigation on THB gets precedence. The weighing of cases is problematic in two police corps and a point of concerns in six corps, but not problematic in the 17 other police corps.[152]

The investigations increasingly focus on the escort branch and other 'cover ups' (Turkish Cafes and Massage salons[153]. According to two prosecutors, the investigation and prosecution has to follow the inventivity of the traffickers,.

The investigations are increasingly accompanied by financial investigations (in 90% of the cases).[154] In one third of the cases in 2002 a financial investigation was conducted which led to the confiscation of money in 56% of the cases. Four out of the five prosecutors interviewed starts a procedure on confiscation in all THB cases. Although the confiscation of money is seen as an effective sanction four prosecutors experience problems in the execution of the confiscation measures especially in transnational cases. However, these problems are not typical only for confiscation in trafficking cases but are experience in other cases as well. With the current legislation a financial investigation is always elaborate and time-consuming which means that it is only efficient in the larger cases.[155] According to the judges interviewed it is much easier to impose a fine than to use the procedure on confiscation. This has the advantage that the judge may decide on the height of the fine.

[148] Directive THB 2000, p.1.
[149] National Action Plan THB 2004, p. 24, Governmental Acts II, 2002-2003, 28638, no. 1, p. 5, Spearheads 2004, p. 5.
[150] BNR THB III, 2004, p. 152-153.
[151] BNR THB III, 2004, p. 246.
[152] Corpsmonitor 2004, p. 13.
[153] BNR THB III, 2004, p. 246.
[154] Corpsmonitor 2004, p. 13.
[155] Articles 36e PC j◦ 511b-i CCP, Corstens 2002, p. 783.

In 86% of all cases registered THB no other crimes or only a minor crime was indicted as well. In 2002 the prosecutor summoned 69% of the cases for THB and 7% for other crimes. 24% of the cases were dismissed most of them because of a lack of evidence.[156] In almost 90% of the case that are dealt with in court the traffickers are convicted. The average penalty was 21 months.

When a suspect was convicted for THB and sexual violence the average penalty was three years.[157] It is remarkable that the maximum penalty for rape is 12 years while the maximum penalty for THB is 6 years, or in case of aggravating circumstances, 8,10, 12 or 15 years, but no penalty of more than 10 years has been imposed since 1998.

In a quarter of the investigations and one-eight of the registered THB cases, minor victims were involved. According to two prosecutors and one police officer interviewed controlled deliveries with regard to THB is never allowed in case of minors.

In conclusion it can be stated that the awareness for THB has increased and is prioritised in most police corps, although the number of cases sent to the prosecution has relatively decreased, probably as a consequence of the limited capacity.

Financial investigations take place more often and the importance of confiscation is recognised and a need for expertise indicated.

The number of cases brought before the court increased as well and it seems that the prosecution is convinced that THB is a serious crime where basic human rights are violated in a serious way. This human rights approach is reflected in eight interviews where the persons interviewed stated that persons who have been trafficked are automatically victim regardless whether they knew that they were going to work in prostitution or not.

Compared to some years ago a penalty is imposed more often but the penalties are lower. Ten persons interviewed stated that the investigation and prosecution is frustrated by the lack of awareness of judicial authorities of the scale and gravity of THB and the consequences for the victims. In case law the imposition of the lower penalties is sometimes motivated by the judges with the statement that the victims were already working in prostitution before they were approached by the suspect. This confirms the indication of a lack of awareness of the judiciary.

Police, prosecution and government recognise in recently adopted policy documents THB as a form of (transnational) organised crime and give high priority to combating it. However, not all participants in the investigation, prosecution and adjudication are inclined to adopt combating THB as one of their main priorities.

[156] BNR THB III, 2004, p. 219.
[157] For more facts and figurs see BNR THB III, 2004, p. 224, 288-289.

In a multi-disciplinary approach the Netherlands tries to fight THB in all forms and at all levels.

3.2.1 The police; organisation of investigation

The following divisions play a role in the investigation of THB:

a. National Investigation Unit

On 1 Janauary 2004 the division National Investigation (DNR) was established within the National Police Agency (KLPD).[158] This division functions under the authority of the national prosecution and deals with issues affecting national interest[159] like all forms of (trans)national organised crime, handling complex international requests for mutual legal assistance, providing capacity for international co-operation networks, to provide expertise on certain areas of concern. According to the Board of Prosecutors General, THB must be considered such an area and consequently the DNR must invest in the collection and analysis of information and expertise.[160]

The Intelligence Unit THB (IEM) of the Division National Intelligence (dNRI) of the National Police Agency (KLPD) is responsible for the collection, registration, analysis, distribution and exchange of information from and among all levels of investigations, and provide policy advice and information. The IEM is the reference point for the police on the national and international level.[161] It has with 85 foreign requests for information in 2002 and initiated the periodical Operational Meeting on THB, which is chaired by a member of the IEM. All police regions participate in this meeting that takes place every two months to exchange operational and tactical information and to co-ordinate activities.

In the National International Assistance Centre police and prosecution work together on the co-ordination and handling of international request for mutual assistance.[162] At the Ministy of Justice the Bureau International Assistance in criminal matters is involved in this field as well.

b. Interregional investigation

On the 1st of January 2005, six Interregional Investigation Teams (IIT), were established for the fight against interregional crimes such as burglary, hold-ups, car theft etc. It concerns (organised) crime in which more regions are involved and therefore cannot be dealt with on the regional level or the national level. An interregional investigation meeting composed of two main prosecutors, two corps managers and two chiefs of corps of regional corps decide which investigations have to be dealt with by the IITs. These periodical meetings ensure an equal distribution between the IITs.[163] Besides, the chair of this meeting and the main prosecutor of the National Prosecution Unit have regular meetings to discuss the cases that could not be distributed by the interregional investigation meeting.

According to the interregional teams of Haagland/Hollands-Midden and Noord-Oost Nederland, investigations on THB must in principle be dealt with by the interregional investigation teams because of their complexity, scale, nature and impact.[164] According to one of the prosecutors

[158] National Action Plan THB, 2004, p. 25.
[159] Regulation National Investigation and Interregional Investigation
Regeling, Article 5.
[160] The areas of concern are formulated by the Board of Prosecutors General in it Action Plan Organised Crime, 2004, p. 28.
[161] BNR THB III, 2004, p. 151.
[162] Parliamentary Documents II, 2004-2005, 29911, no. 1, p. 9.
[163] Article 8 and Article 9(1-2) Regulation National Investigation and Interregional Investigation,
National Action Plan THB, 2004, p. 25, Parliamentary Documents II, 2004-2005, 29911, no. 1, p. 5.
[164] Corpsmonitor 2004, p. 41.

interviewed it is more likely that THB cases are dealt with at the regional or national level than on the interregional level although this cannot be excluded.

c. Regional investigation teams

Regional investigation teams deal with (organised) crime with a regional effect. These teams are crucial for fighting THB.[165] These teams are the source of (start)information on which the other levels of the police are dependent. Furthermore, within these teams an enormous amount of expertise is built up, for instance through the monitoring function of the prostitution sector.
One of the prosecutors stated that it is a missed opportunity that the newly established National Investigation Unit does not use this expertise while a representative of this unit states that they prefer direct contacts with the police education centre and to make use of their expertise for the national expert centre that will be established in the near future.

d. Royal Military Police

A part of the Ministry of Defence the military police can be described as a police service with military status.[166] They have a role to play in the maintenance of care for migrants, and assistance of and co-operation with the police in transnational crime.[167] Especially for the latter task the military police provides assisting investigative capacity to regional corps in the border area. After a new reorganisation in 2005 these teams will be merged with the teams of the district Schiphol, the districts East, West and South and the district National Units. This may affect the capacity of regional corps in the border areas as they are now largely dependent on the assistance of the military police, especially for cross-border investigations such as most THB cases.[168] Based on their expertise and experience the military police thinks that they can be of additional value in transnational trafficking cases in the future especially when specific expertise with regard to forged documents or aspects of migration law is required.[169] According to the National Action Plan the military police plays an important role in fighting THB because of its specific expertise and activities.[170]

e. Special investigation services

As a source of information for the police, special investigation services play an important role in fighting THB. Examples of such services are; the Fiscal Information and Investigation Service (*FIOD),* , the Economic Control Service (*ECD*), the Social Information and Investigation Service (*SIOD*), the Treasury, labour inspection, the Execution Office for Employees Insurance (*UWV*). All these services co-operate with the police.

3.2.2 Public Prosecution: organisation of the prosecution

a. National Prosecution

Since the first of October 2001, the Netherlands has nominated one national prosecutor on THB. He is part of the national prosecution and currently co-ordinates the investigation and prosecution of THB on the national level. Under his supervision the national investigation unit conducts investigations in organised THB cases exceeding the regional level. Regular meetings

[165] National Action Plan THB, 2004, p. 26.
[166] BNR THB III, 2004, p. 148.
[167] Police Act Article 6(1)d-f.
[168] Corpsmonitor 2004, p. 33, 36, 46.
[169] Corpsmonitor 2004, p. 47
[170] National Action Plan THB, 2004, p. 34.

initiated by the National Rapporteur between the national prosecutor on THB and all prosecutors responsible for THB is now organised by the national prosecutor and meets 3 to 4 times a year and is chaired by the attorney general responsible for organised crime. The prosecutors interviewed indicated that these meetings fulfil a need and are an excellent sounding board for prosecutors as well as for the Board of Prosecutors General.

b. District prosecution

Each district has appointed a prosecutor on THB. The way this function is performed varies considerably between the districts. The tasks can be divided among several persons (collection of information by one person and prosecution by another, for instance), or performed by one person. The prosecutors on THB are the point of reference for the whole district regards issues on THB, they are internally and externally the contact prosecutor THB.[171] These contact-prosecutors are not under the authority of the national prosecutor. He decides on the prosecution of THB cases autonomously guided by the priority given to THB. However, great differences exist regarding the priority given to THB cases; some of the prosecutors interviewed stated that THB had to be prosecuted in all cases while others did not share this opinion. A similar difference existed among the police officers interviewed. Limited (financial) capacity is often a compulsory reason to give priority to another case.

Different from the organisation of the investigation, the prosecution does not have an interregional organisation. The investigation and prosecution of a supra regional case is the responsibility of the contact prosecutor THB who directs a regional team or an interregional team.[172]

3.2.3 The Judiciary: organisation of the adjudication

In general there is no specialisation within the judiciary although it is common knowledge that some form of specialisation exist. This also follows from the Decision of 17 June 2004 that creates the possibility for courts to use the specialised capacity of courts in other districts in case of a shortage of such capacity in their own district.[173] In addition a special decision for 'mega' criminal cases has been adopted. On the basis of this decision, the management of a district can decide to judge the 'mega' case in another district court.[174] The "national co-ordination centre 'mega' cases" executes this power on the basis of agreements settled with the district courts. This centre distributes the cases in order to obtain a more equal division of 'mega' cases, on the basis of criteria it has developed. One of these criteria concerns the available expertise on a particular crime. It is plausible that some of the larger trafficking case fulfil these criteria and consequently that some form of specialisation in THB will occur in the future on the basis of this new policy.

3.2.4 National Rapporteur THB

Ms. A.G. Korvinus was appointed by the Dutch government as the first National Rapporteur on THB on 1 April 2000 following the Hague Declaration of 1997.[175] The institution of the National Rapporteur has no legal basis.[176]

[171] BNR THB III, 2004, p. 203.
[172] BNR THB III, 2004, p. 202.
[173] Bulletin of Acts and Decrees, 2004, 288, p. 11.
[174] Gouvernmental Gazette, 2004, 123.
[175] The Hague Declaration, see annex 6.
[176] BNR THB I, 2002, p. 52.

One of the main tasks of the National Rapporteur is the production of an annual report on the nature and scale of THB, the mechanisms that play a role in THB, as well as the developments in this area and the effects of the measures taken. In the report she has to account for the way they have conducted their research, to present the results of the research and on the basis of these results formulate conclusions and recommendations to all organisations and persons involved in fighting THB.[177] The National Rapporteur is supported by the Bureau National Rapporteur THB that is composed of a senior researcher, a researcher, a juridical assistant and an administrative assistant and has been operational since September 2000.[178] For the performance of her research task the National Rapporteur has access to all files of the police and prosecution.[179] According to the tasks of the National Rapporteur her mandate is linked to Article 250a PC and is thus limited to THB for sexual exploitation. After the extension of the definition of THB in Article 273a PC there is a need for a formal extension of the tasks of the National Rapporteur. It was already indicated by the Ministry of Justice that the mandate of the National Rapporteur will be enlarged to the definition of THB in 273a although this has not been officially confirmed. In anticipation of the enlargement of the mandate, the Bureau National Rapporteur already investigates the new forms of THB.

3.2.5 Conclusion

The Dutch investigation is currently divided into regional, interregional and national levels. Due to the great variety in trafficking cases all levels are involved in fighting THB. Each level is supervised centrally by an authority specialised in THB: the Division National Investigation by the national prosecutor on THB, the interregional teams or the regional teams by the contact-prosecutor THB of the district under which the team resorts. Not all levels have their own intelligence on THB but they use the expertise of the Prostitution and Moral Control Teams. The interregional teams and the Division National Investigation are provided with the relevant information by the Intelligence Unit THB. However, this unit is largely dependent on input from the regions for the execution of its tasks. Furthermore, currently only three persons work at this unit which means a chronic shortage of human resources. In 'mega' cases on THB it is more likely that a judge more or less specialised in THB, is handling the case.
With the appointment and maintenance of the Bureau National Rapporteur the Dutch government recognises the importance of an independent organ that reports and gives advice on a more effective combating of national and transnational THB.

3.3 Conditions for a successful prosecution

3.3.1 Investigation

An indication for an investigation originates from a 'signal' or a report on THB. It largely depends on the knowledge and expertise of an investigator whether these signals are recognised as such. In the past the police had difficulty determining whether it concerned voluntary prostitution or not.[180] Following this lack of expertise, now all investigators involved in monitoring prostitution have attended the course 'monitoring prostitution, intake and reporting

[177] Parliamentary Acts II, 1998-1999, 26206, no. 15, p. 5.
[178] BNR THB I, 2002, p. 52.
[179] BNR THB I, 2002, p. 57.
[180] National Action Plan THB, 2004, p. 15-16, 33-34.

THB'.[181] Furthermore, the directive "victims of sexual violence" requires that every treatment of a (suspected) victim must be made by a certified investigator.[182] According to one of the interviewed prosecutors this affect the investigation capacity in a negative way.
Although THB is not a crime that can only be investigated after a complaint is filed, a report to the police is in practice often the reason to commence an investigation. This is due partly to the limited capacity and partly to the lack of priority given to THB. According to the interviews the capacity and priority goes hand in hand. One interviewed police officer stated that a well organised collection of information is a prerequisite for the investigation because less capacity is required for tactical investigation.

Twelve persons interviewed stated that an efficient and well functioning information exchange between the various investigation services is crucial for investigation in general but for the investigation of THB cases in particular. In particular the communication and co-operation between the regional and national investigations is not trouble-free. According to one of the police officers the willingness to co-operate is largely dependent on the willingness of the individual investigator. The problem is most visible in cases in which more regions are involved. In these cases the investigation can be dealt with by the regional teams, or the decision can be made to transfer a case to an interregional team or to the national investigation unit. In practice these cases are dealt with pragmatically. The concrete decision largely depends on the capacity available, the supply of case, the link of the case with the region, and the priority given to THB. It is not to be excluded that a THB case remains on the shelf because nobody feels responsible for the case. No difference exists in the way transnational cases are dealt with on the regional and on the national levels. The first step is to liase with colleagues abroad on the way to co-operate and to find out whether it is possible to transfer the case. In general the police prefers a parallel investigation which means that each country performs its own part of the investigation. According to its function the Division National Investigation is the most suitable unit in transnational cases.
For a successful transnational investigation it is crucial that all authorities involved pay equal attention to the case, according to one police officer.

Besides the problematic registration of signals and victims' lack of confidence in the police frustrates an effective investigation.[183] The building of a trusting relationship is time consuming (especially if the victim is traumatised) and is largely dependent on whether the victim feels safe and knows that her relatives are safe. This is confirmed by most of the persons interviewed who are involved in the investigation and prosecution. According to them the problematic issues are the availability of female investigators, experience in dealing with and respect for the victims (taking into account cultural differences, the home situation and the exploitation), honesty, openness, and integrity. Four of the persons interviewed stress the professional distance that has to be taken into account. 'When a person gets too involved it is impossible to investigate objectively' stated one of the investigators interviewed. Victims often cling to the first person they are able to talk to, which is often the investigator.

[181] Corpsmonitor 2004, p. 6, 13.
[182] Directive on victims of sexual violence 2001, p. 2.
[183] BNR THB III, 2004, p. 180-181, Rijken 203, p. 230-231.

To be less dependent on the testimony of the victims the police should invest in 'information led policing'.[184] For a successful application of this concept the transmission of information from the various investigation services to the police is crucial. It often concerns information form registers and from different organisations, but also 'hear say'. Some cases have been successful without a charge being made by using the concept of 'information led policing'.[185]
The transnational element makes the victim even more vulnerable. The exploiter exerts power over the victim by abusing her unfamiliarity with the Dutch language, habits, culture and her rights. Consequently, the victim becomes isolated and financially, socially and emotionally dependent on the trafficker. In such a position the victim will not be inclined to co-operate with the investigating authorities. In this way the transnational aspect strengthen the position of the trafficker. Furthermore, the police are dependent on the willingness of their foreign colleagues to co-operate in the gathering of information and evidence. Similar problems exist when a co-offender resides outside the Netherlands and the acts he has committed have occurred outside the Netherlands.

The transnational co-operation between police authorities is largely dependent on personal contacts with colleagues abroad, according to the interviews. A positive effect is the possibility to approach a colleague informally and to achieve a quick result. A negative effect is that co-operation is more difficult when these contacts do not exist.

3.3.2 Prosecution

According to Article 273a PC which extends THB to socio-economic exploitation, the Board of Prosecutors General must formulate a new Directive on THB.[186] According to some interviewed persons the legislator has not clearly defined the term THB in Article 273a and consequently the extent of THB in general and of labour exploitation in particular. They stated that the division of powers is in danger now that the prosecution has to clarify the term THB.
The willingness of victims of THB to testify is often a prerequisite for the investigation, although formally not required.[187] Whether a prosecutor is prepared to start the prosecution without a charge is dependent on the affiliation with the crime. The prosecutors interviewed differed in approach ranging from 'only prosecute in case a charge has been filed' to 'always prosecute in case of signals of THB'. Nevertheless, the charge or testimony of a victim is in many cases the core evidence. Evidence collected during investigation (from observation, telephone tapping, etc.) is more often used as additional evidence.

As stated above the willingness to testify depends on the relationship of trust with police and judiciary and whether the victim and her relatives are safe. The relatives of the victim residing in her home country cannot be protected by the Dutch prosecutor. The ordinary protection mechanisms such as the possibility to testify anonymously or join a witness protection programme are too blunt and therefore not suitable for victims of THB. The anonymous testimony can only be used in court when it is detailed which creates the risk that the identity of the victim becomes known.[188] Witness protection programmes are considered too radical for

[184] National Action Plan THB 2004, p. 30.
[185] National Action Plan THB 2004, p. 30.
[186] The old Directive on THB was in force until 1 May 2005 and linked to Article 250a.
[187] Directive THB 2000.
[188] Parliamentary Documents II, 2003-2004, 28638, no. 9, p. 7.

victims of THB.[189] In finding a way to provide safety and confidence, one of the prosecutors stated that he approaches a victim only after the suspects have been arrested in order to prevent them from undertaking reprisals. The imposition of restraints on the suspect is a signal to the victims that police and the judiciary take her serious and want to provide her with some relief. Another prosecutor stressed the importance of conducting the hearing of a female victim by a female investigator, preferably native speakers. If the prosecutor want to use the victim or witness for the case, the victim or witness must remain available to the judiciary. Almost half of the victims are in the Netherlands illegally and it seems that the criteria for expulsion are strongly upheld regardless whether the person is a victim of THB.[190] Information exchange between the immigration service and the police is crucial.

However, the testimony of the victim or witness is no guarantee for a successful prosecution. In practice the victims close the case when they have testified and start a new life, often in their home country and are often unwilling to testify again at a later stage.[191] The defence is aware of this unwillingness and often ask to hear those persons who have returned to their home countries or are unwilling to co-operate.

According to nine of the 14 persons interviewed language is an obstacle to the investigation as well as to the prosecution. The hearing through a third person is time-consuming and costly and does not contribute to the building of a relationship of trust with the victim. A prerequisite for an effective prosecution of transnational THB cases is the availability of enough reliable interpreters.

Language is a barrier to international co-operation according to four prosecutors. It is time-consuming and costly to translate all documents that are exchanged between the different countries. Direct communication is difficult or impossible because authorities involved do not speak a common language or are not prepared to make use of this common language.

Other factors affecting the criminal co-operation are: treaties on mutual assistance (in this regard two prosecutors admitted that they did not co-operate with states with whom the Netherlands has not established a convention on mutual assistance or extradition as the principle of reciprocity cannot be guaranteed), personal contacts (three persons interviewed considered the personal link with colleagues abroad as the basis for their co-operation), legislation (differences on the penalisation of acts exist between states), differences in competences and functions, cultural differences, and differences in priority.

Large profits and the relative low risk of being caught provide the main motivation for traffickers to commit the crime, justify an immediate financial investigation and an extra effort to confiscate illegally obtained money. This importance is recognised by the persons interviewed and four of the five prosecutors interviewed stressed that they always start a financial investigation in THB cases, although some of them also indicate problems regarding the execution of these rules, often as a result of lack of experience and expertise together with the duration of the procedure and the burden of prove. Therefore, some of the prosecutors only start a procedure to confiscate when there is a substantial amount of money (for instance at least 500 000 Euro). The directive on

[189] Parliamentary Documents II, 2003-2004, 28638, no. 9, p. 7.
[190] Rijken 200c, p. 207.
[191] Also rijken 2003, p. 207.

confiscation which entered into force on 1 March 2005 creates the possibility in Article 1 to start a financial investigation in case the illegally obtained profit is at least 12 000 Euro and there is an indication the profit is more.[192] In Article 3.1. of the directive the Minister of Justice advises to request a confiscation claim in case the profit is a least 500 Euro. According to the directive the Bureau legislation on confiscation Public Prosecution, has the task to facilitate the public prosecution with the confiscation of profits and to support the public prosecutor in concrete confiscation cases.

On 26 November 1999 the parliament adopted 'Motion Rouvoet'. According to this motion persons who are identified as a victim of THB can never be subject to a controlled deliveries even if the investigation so requires. Because THB is implicitly a violation of a persons integrity and therefore, immediate action is required and controlled deliveries prohibited.[193]
The strict application of this motion may have the consequence that important suspects remain unpunished. Because urgent action is required if only a slight indication exists that a person is a victim of THB the picture of the complete network is not complete. The effect of this motion in practice should be evaluated according to the National Rapporteur. According to five persons interviewed this motion takes away the possibility to act effectively against all forms of THB. When only the third phase of trafficking in fought, the network remains unpunished and the traffickers replace the arrested person with a new one and more victims are made. Some prosecutors plea for a postponed intervention except in those cases in which violence is used or the victim is a minor. It is up to the Board of Prosecutors General to decide on the matter in the Directive on THB that has to be developed.

As a result of the extension of the content of THB in Article 273a and the high prioritisation of THB, an extension of the capacity of the police and prosecution is required in order to effectuate the combating of THB adopted in many policy documents. Most of the prosecutors interviewed consider the extension of capacity a prerequisite for an effective prosecution of THB.

3.3.3 Sanctions

Two issues are remarkable when considering the sanctioning of THB: the requested penalty and the penalty imposed. According to the police the requested penalty in THB cases is rather low and some judges have an incomplete picture or knowledge of the gravity and consequences the crime has for the victims.[194] The low requested penalty and the incomplete picture are both causes of the imposition of a penalty that is too low by the judiciary. A prosecutor stressed in the interview the differences on the penalties requested in the Netherlands. "It is possible that 'loverboys' who prostitute minor girls are requested to be charged with 15 months imprisonment of which 5 conditional, while in my district the traffickers who exploits women who work voluntarily in prostitution but are nevertheless exploited are requested to be charged with 3 years imprisonment", he stated. Within the regular meetings between the contact-prosecutors THB a small group of prosecutors discuss the concept of requesting a determined penalty in THB cases, with the aim to increase the uniformity within the prosecution. Besides, it could be a signal to other (source) countries that in the Netherlands THB is threatened with a serious penalty, according to the prosecutor. Information from telephone taps show that traffickers are hesitant to

[192] Directive on confiscation 2005, Governmental Gazette 2005/22, p. 14, Corstens 2002, p. 229, BNR THB III, 2004, p. 184.
[193] Parlimentary Documents II, 1998-1999, 25403, no. 30 and no. 35.
[194] Also BNR THB III, 2004, p. 228.

use physical violence because they know it aggravates the penalty. They warn each other not to use physical violence in the false conviction that in case violence has not been used the crime of trafficking has not been committed. For the judiciary THB is seen as something that is happening in other countries, according to some of the prosecutors. Therefore, prosecutors consider it their task to educate and inform the judiciary: the file must contain more background information (social situation of the victim, habits, facilities and situation in the country of origin, origin of the trafficker etc.). This is in line with a statement of one of the judges namely that "in the Netherlands a case can be concluded without a victim or witness being heard". Without witnesses and victims in session the 'information' of the prosecutor in the file and in their pleadings during the session is an important source for the image of the victims formed by the judiciary.[195]

According to one of the judges the traffickers are more sensitive to financial penalties than to imprisonment. The National Rapporteur states in similar wording that the most effective means in the fight against THB is the confiscation of illegally obtained profit.[196]

3.3.4 Conclusion

Expertise obtained either through education and/or through experience, is crucial to the investigation of THB. In case the investigator has dealt with THB earlier or is well educated in fighting THB he will recognise (a victim of) THB. The efficiency of the investigation and prosecution increases when all persons involved in fighting THB have a good knowledge on the phenomenon. Only when the knowledge on THB grows the adopted policy to prioritise THB can be realised.

A well organised collection and analysis of information and intelligence is the basis for a successful investigation. Besides the collection of information, the exchange of information with the various organisations and services that might get in contact with victims of THB and between the different levels of investigation must be well organised as well.

Transnational co-operation in THB cases is most effective when equal priority is given to THB in all countries involved in this co-operation. Only under this condition all links in the chain can be combated. Furthermore, mutual confidence seems to be another prerequisite for an effective transnational co-operation together with reliable and sufficient translation facilities.
A relationship of trust with the victim, based on safety and security is a crucial condition to a successful investigation and prosecution of THB because the charge or testimony of a victim or witness is required for the investigation and prosecution. The victim must be willing and available to testify. The availability is problematic when the victim has returned to her home country and the defence wants to hear the victim.

Especially regards transnational organised THB, a strict application of the Motion Rouvoet, prohibiting the controlled delivery in trafficking cases, seem to have the opposite effect: if not all criminals involved in organising the trafficking are caught they remain in their positions and make new victims in the future.[197]

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[195] According to the National Rapporteur permanent training and education of members of the prosecution and judiciary is required, BNR THB III, 2004, recommendation no. 56.
[196] BNR THB III, 2004, p. 232 recommendation no. 17, p. 238 recommendation no. 51.
[197] BNR THB III, p. 235, recommendation no. 31.

A repressive approach requires; more expertise in financial investigations and confiscations, a nationally harmonised policy on penalties requested and imposed, and an imagination of the phenomenon at the judiciary that corresponds with the gravity and seriousness of the crime.[198] The latter might be realised by paying more attention to the crime of trafficking in the training and education of members of the prosecution and judiciary.

[198] BNR THB III, p. 196, recommendation no. 8.

4. THE ROLE OF THE VICTIM

4.1 Facts and figures

It is hard to get a complete and reliable picture of the numbers of victims and witnesses in the Netherlands. Several organisations register (possible) victims of trafficking but it is not excluded that double counting are included in these numbers. The registered numbers do not give an overall picture of the content the total number of victims trafficked to the Netherlands. The STV (*Stichting tegen Vrouwenhandel*, Alliance against Trafficking), is the national notification point for (possible) victims of trafficking. It receives the reports from the police, relief centres, private persons, refugee centres, aid services and from victims themselves. The task of the STV is to co-ordinate and organise the placement of (possible) victims in safe houses (if required) and other locations. STV registered 343 (possible) victims in the year 2002, half of which come from Central and Eastern Europe.[199]
Following the mobility of victims and the absence of an overall picture of the victims of trafficking at the police, they introduced a new system, called the 'victim monitoring system' IKP-S. In this system (possible) victims of trafficking are registered. 20 of the 25 police corps provide relevant data into this system. In the year 2002 the police registered 371 (possible) victims in its system, 29% of them originated from Bulgaria.

4.2 Legal framework for the protection of victims of THB

The main provision on the protection of victims and reporting witnesses in the Netherlands is the B9 procedure which is laid down in Chapter B of the immigration circular.[200] It is a stimulus for victims and reporting witnesses to testify in trafficking cases. Although the testimony is not a prerequisite for prosecution it is of major importance for the investigation and prosecution that victims and witnesses remain for a longer period in the Netherlands and available for the prosecutor.
According to the B9 procedure, a victim of trafficking can, eventually after a reflection period of three months, obtain a temporary residence permit for the period during the investigation and prosecution. However, her permit will be withdrawn after the proceedings in first instance and she must leave the country after all. This procedure is also open for a reporting witness although she cannot make use of the reflection period. According to the B9 procedure, a victim or reporting witness is eligible for a temporary residence permit for the time that her presence is considered necessary by the Public Prosecutions Department, this means for the duration of the investigation and prosecution of the suspect against who she filed a complaint.

After the judgement at first instance the residence permit will terminate unless the victim or reporting witness has applied in time for a residence permit for another goal, for instance 'pressing reasons of a humanitarian nature' (*klemmende redenen van humanitaire aard*), for instance because expulsion would include unacceptable consequences for the safety of the victim

[199] BNR THB III, 2004, 85-92.
[200] Bulletin of Acts and Decrees, 16 March 2005, no. 53 p. 15

or reporting witness. For granting a residence permit on this ground the following items play an important role:

- risk of reprisals against the victim or reporting witness or her family and the protection the authorities in the home country are able and willing to provide
- risk of being prosecuted in the home country for prostitution
- possibilities for social and cultural re-integration

According to the B9 procedure the victim or reporting witness is free to work. This might include work as a prostitute, as in the Netherlands prostitution is considered a form of labour. The victim of THB is temporary excluded from the requirement to have a working permit
Victims and reporting witnesses can file a complaint in case the prosecutor has decided not to prosecute or to stop the prosecution. Until the decision on this complaint is taken the victim may remain in the Netherlands.
During the latest amendment of the B9 procedure a paragraph on family reunion was adopted. It provides biological and juridical under-aged children of the victim or reporting witness with a temporary residence permit an equal permit for the same period. In this case they do not have to have the financial resources.[201]

4.3 Problems in the application of the B9 procedure

In case the police have a slight indication that an alien has become a victim of trafficking he has to inform the victim of the rights adopted under the B9 procedure. He has to offer the possible victim the possibility to use this procedure and the possibility to use the reflection period of three months. In this reflection period, the victim will not be expelled from Dutch territory. If she, after the reflection period decides not to report to the police she has to leave the country immediately. Other victims and reporting witnesses cannot use the reflection period (for instance when they report to the police themselves or victims that have been exploited outside the Netherlands). If there is no criminal procedure the alien has no right to a temporary residence permit.
The problems which are encountered in applying the B9 procedure will be discussed below.

One of the major problems with regard to the B9 procedure is that the victim or witness has to leave the country once she the criminal procedure is closed. This is not a very attractive perspective. A call for a change in this procedure and to grant a permanent residence permit to victims and witnesses of THB was not honoured by the Minister of Migration last year. She decided that the legislation itself is not the problem but the application of the procedure. She took the initiative to bring all partners involved around the table and to solve the problems in the execution of the B9 procedure.
Another problem is that possible victims of THB are not given the opportunity to use the reflection period because the police do not inform them on the existence of this possibility. One of the reasons not to inform the victims is that the police prefer an immediate file and testimony of the victims and are afraid that the victim will disappear during the reflection period. Another reason is that the reflection period takes to much time which can be harmfull for the criminal case.

[201] Governmental Gazette, 16 March 2005, no. 53 p. 15.

A major problem seems to be the recognition of victims of trafficking among the population of aliens detention.[202] The ignorance of all organisations involved in the aliens detention must be considered the major reason for this failure.
Another issue regards the B9 procedure is that if a victim or witness wants to leave the country she is at all times free to do so even if she has a temporary residence permit. This might harm the criminal case.
A related problem is that many victims who stay in safe houses disappear and consequently are not available for criminal proceedings.
The defence often argues that the testimony of the victims or witnesses using the B9 procedure is unreliable because they are promised a temporary residence permit. In the cases the victim or witness has returned to het country the defence can use the right to hear the witness which means the long procedure of mutual assistance. In this regard it is remarkable that the defence asks to hear a victim or witness more often if the victim or witness has been sent back or has travelled back to her home country or another country than if the victim or witness has remained in the Netherlands, under the B9 procedure or not, and is available to be heard.
An issue that caused major problems in the past seems to be on its return but still existing. Victims and witnesses are expelled from Dutch territory, before the prosecutor knew that (possible) victims had been arrested and before he could hear the victim. This was often due to the lack of communication between the migration police and the police and prosecution. It seems that this communication has improved over the last year.
As stated above the victim or reporting witness has the possibility to apply for a continued residence permit for pressing reasons of a humanitarian nature. Such a permit was not easily granted in the past because it was difficult to prove that the victim had to fear reprisals of the trafficker or that her family was being threathened. In addition to the improvement of the execution of the B9 procedure the Minister of Migration promised to facilitate the gathering of evidence that the victim or witness run the risk that their rights be violated when she will be expelled and returned to her home country. The Minister facilitates the building of a file with information available at the different organisations and authorities in the Netherlands.

4.4 Other protection mechanisms

Introduction
Besides the rules specifically adopted to protect victims of trafficking namely the B9 procedure discussed in the previous paragraph there are some more provisions in our CCP adopted for assistance and protection of victims and witnesses in more general.
Victim care in a criminal procedure was not a big issue until 1995. In that year the Law Terwee was adopted which gave the victim a stronger position during a criminal procedure. The most important provisions in this law concern the right of the victim to joint during trial and to make a claim for damages, the obligation to inform the victim on the progress and status of the case and on judicial aspects, and sensitivity for the interests of the victims during the procedure if not unreasonable including the treatment of the victim. To this end victim information counters are established in each district court. The practical implication of the Law Terwee are adopted in the directive Victim care which entered into force in 1999 and was renewed in 1 June 2004.[203] Surviving relatives are equated to victims in case the victim has died.

[202] A. Koopsen, Aanspraken slachtoffers mensenhandel en de B9-Regeling, Migrantenrecht, no. 1, 2005, p. 4-11.
[203] Directive of the Council of Attorneys general regarding victims care of 1-6-2004, Governmental Gazette 2004/80.

Furthermore, under the influence of the Framework Decision on the status of victims in criminal procedure some further guarantees for victims are adopted in Dutch law.[204] Two of the most important rights for victims are discussed below.

The right to speak for victims

On 1 January 2005 the new law providing victims with a right to speak during trial entered into force.[205] The provision concerning the right to speak can be found on several places in the Code of Criminal Procedure (CCP) namely in Articles 260, 288a, 302, 303, 336 and 337, and for the appeal procedure Articles 413 and 414 CCP. In short the law gives victims of severe crimes the possibility to speak about the consequences of the crime for the victim. A severe crime must be considered a crime for which a punishment of more than 8 years can be invoked or one of the crimes listed in Article 302 paragraph 2 CCP. This paragraph refers to Article 250a Criminal Code (CC) which is the old provision on trafficking in human beings. It seems to be a slip of the pen of the legislator that they did not replace Article 250a CC with 273a CC so that this paragraph must be understood as including trafficking in human beings. The consequences of this law in practice are further elaborated on in a directive of the Attorneys general.[206]

In case the victim has died the right to speak will be transferred to the surviving relative. Only one surviving relative can use the right to speak. It is not clear who decides on what grounds if more surviving relatives wants to apply the right to speak. If a victim wants to use this right he or she has to notice the prosecutor who has the obligation to summon the victim or the surviving relative for the trial. The victim or surviving relative has a separate position and an own statute, which means that they are treated different than witnesses. They cannot be questioned under oath nor are they obliged to speak the truth on the same footing as witnesses. The victim or surviving relative is free to make use of a counsellor and/or an interpreter although he or she has to pay for the cost him- or herself.[207]

In trafficking case the victims often originate from a foreign country and are often isolated from Dutch society during the period they are exploited in the Netherlands. Consequently, they do not speak the Dutch language and are often dependent from an interpreter to use the right to speak. The fact that they have to pay themselves for the services of the interpreter can be an obstacle for using this right.

The statement of the victim will be adopted in an official report that will be included in the file. Although, such a report can formally be used as evidence it was decided during the parliamentary debate that a victim must be treated as a witness in case the statement will be used as evidence. In that case the victim can be questioned by the suspect. Thus the statement of the victim cannot be used as evidence in court although it might play a role in the decision on the punishment. Besides the right to speak victims have a possibility to make a written statement to be adopted in the file. The written statement can serve as an alternative for the right to speak in case the victim does not want to appear in court.

[204] Framework Decision on the status of victims in criminal procedures, OJ, 22.3.2001, L 82/1.
[205] Law of 21 July 2004, Bulletin of Acts and Degrees, 2004/382.
[206] Directive of the Council of Attorneys general regarding the richt to speak and written statements of victims of 1-1-2005, Governmental Gazette, 2004/248.
[207] Mr. Dr. F. Fernhout en Prof. Mr. T. Spronken; Spreekrecht voor slachtoffers, aspirientjes voor de rest, [*The rigth to speak for victims, pills for the rest]* in: *NJB,* 21 January 2005, issue 3, pp. 150-156.

Compensation
Victims can make a claim for compensation during the criminal procedure. A separate civil procedure is not required (Article 36f CC) The victims information counter, established to streamline the question from and information to the victims, can advice the victims if they want to make such a claim. If compensation cannot be gained from the perpetrator a fund for damages caused by violent crimes is established on the basis of a specific law to compensate the victim if certain provisions are fulfilled. From the requests made to this fund almost 75% of the claims are honoured. Compensation may concern both material as well as immaterial damage. Preferably the case on compensation is solved before the trial with an expert as the mediator. The police can serve as a mediator between the suspect and the victim if the victim has communicated that he or she wants to make a claim for compensation in order to come to an agreement as soon as possible and preferably before trial. If this will not be possible a request for compensation, the amount of the compensation as well as the question when and how the damage must be paid, must be resolved during trial. In case of compensation summoned by the judge the prosecutor will collect the money for the victim. In case the perpetrator does not pay he can be taken in custody.

Protection of Witnesses
In addition to the provisions on victim care the provisions on the protection of witnesses must be mentioned as well. In trafficking cases victims are often the main witnesses in the case. In those situations they fulfil a double role namely as victim and as witness. This bring them in a difficult position and therefore they may feel the need to apply the protection provided to witnesses besides the guarantees offered in the B9 procedure or adopted in policy documents such as the directive of the Council of Attorneys General on the B9 procedure. These provisions on threatened witnesses can be found in the Code on Criminal Procedure (Articles 136c, 226a-f, 264(2), 290, 342, 344a, 360, 451b,) and the Criminal Code (Article 285a). The protection concerns a witness or a third person who may consider him- or herself threatened in a way that it is likely that they have to fear for their lives, health or safety, for disruption of their family lives or their social-economic lives, when they file a testimony. For this person the investigating judge has issued a warrant that in the questioning of the witness his or her identity is kept secret. The articles 226a-f CCP mainly concern the procedure concerning the threatened witness. This witness will be heard by the investigating judge who takes all measures necessary to keep the identity of the witness secret. This can mean that the suspect and/or his lawyer are not allowed to be present when the witness is heard. In that case the prosecutor is not allowed either. After the hearing the prosecutor and the suspect are given the opportunity to pose (written) questions to the witness through the investigating judge. This whole procedure takes place during the investigating phase. The report of the testimony can be used as evidence but a conviction may not be based on one or more anonymous testimonies only.
These rulings for witnesses are rather superfluous in case of trafficking cases. The testimonies of the witnesses have to be detailed otherwise they are not sufficient to serve as evidence. In the case of detailed testimonies it is nearly impossible to keep the identity secret. Therefore, additional protection measures must be provided to the witnesses. These can be sought in police protection which is provided to threatened witnesses as well as in the relocation of the witness in another country with a new identity and cut of from earlier relations. Especially this last measure is very radical for the witness.

A huge problem in trafficking cases is the threatening of the family of the victim in the country of origin. At this moment there are very limited possibilities to provide these persons with some security measures. It is stated that the responsibility and duty of the authorities in the countries of origin but often the family does not want or dare to report to the authorities.

ANNEX 1 – ARTICLE 250a OF THE PENAL CODE[204]
(non-official, English translation of 1 October 2002)

Paragraph 1

Any person who:

1. by force or some other physical act, by threats of violence or of any other physical act, by misuse of authority arising from the actual state of affairs or by deception, induces another person to make him/herself available for the performance of sexual acts with or for a third party for remuneration or, under the said circumstances, takes any action which he or she knows or may reasonably be expected to know will result in that other person's making him/herself available for performing those acts;

2. recruits, takes with him or her or abducts a person with a view to inducing that person to make him/herself available for performing sexual acts with or for a third party for remuneration in another country;

3. induces another person to make him/herself available for performing sexual acts with or for a third party for remuneration or takes any action which he or she knows or may reasonably be expected to know will result in that other person making him/herself available for performing those acts when the other person is a minor;

4. wilfully profits from sexual acts of another person with or for a third party for remuneration, while he or she knows or must reasonably assume that that other person is making him/herself available for performing those acts under the circumstances referred to in para. 1;

5. wilfully profits from sexual acts of another person with or for a third party for a remuneration, if the other person is a minor;

6. forces another person by violence or some other physical act or threat of violence or other physical act or by misuse of authority arising from the actual state of affairs or by deception to benefit him or her from the proceeds of his or her sexual acts with or for a third party.

shall be guilty of trafficking in persons and as such liable to a term of imprisonment not exceeding six years and a fifth category fine*, or either of these penalties.

Paragraph 2

The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine[208] or either of these penalties:

1. trafficking in persons by two or more persons acting in concert;
2. trafficking in persons in respect of a person who is under the age of sixteen;
3. trafficking in persons if force or some other physical act as referred to in paragraph 1 results in serious physical injury.

Paragraph 3

Trafficking in persons by two or more persons acting in concert under the circumstances referred to in section 2, para. 2 or 3, shall be punishable by a term of imprisonment not exceeding ten years and a fifth category fine1 or either of these penalties.

[208] A fifth category fine is a fine of maximum € 45,000,-

ANNEX 2 – TRANSLATION OF DRIFT ARTICLE 273a (non-official)

A person is guilty of trafficking in persons and is liable to a term of imprisonment of not more than six years or a fine of the fifth category where:
1º. he, by an act of force, violence or another act or by threat of violence or threat of another act or by extortion, fraud, deception, or by abusing the authority arising from existing circumstances, by abusing a position of vulnerability or by giving or receiving payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, harbours or receives a person, for the purpose of exploitation of that person or the removal of his organs;
2º. he, for the purpose of exploitation or the removal of organs, recruits, transports, transfers, harbours or receives a person while this person has not yet reached the age of eighteen;
3º he recruits, takes with him or kidnaps another person with the object of causing that person to make himself available to perform sexual acts with or for a third person for payment in another country;
4º. he, by using any of the means set forth under 1º forces or causes that person to make himself available to work or perform services or to make his organs available or, under any of the circumstances set forth under 1º, undertakes any activity where he knows or should reasonably suspect that activity to cause a person to make himself available to work or perform services or make his organs available;
5º. he, with the object of causing that person to make himself available to perform sexual acts with or for a person for payment or to make his organs available for payment, or with regard to a person undertakes any activity where he knows or should reasonably suspect that activity to cause this person to make himself available to work or perform those acts or make available his organs for payment, while this person has not yet reached the age of eighteen;
6º. he deliberately profits from the exploitation of another person;
7º. he deliberately profits from the removal of organs of another person, while he knows or should reasonably suspect that this person's organs were removed under any of the circumstances set forth under 1º;
8º. he deliberately profits from the sexual acts of another person with or for a third person for payment or the removal of his organs for payment, while this other person has not yet reached the age of eighteen;
9º. he, by using any of the means set forth under 1º, forces or causes another person to benefit him with the profits of his sexual acts with or for a third person or of the removal of his organs;
Exploitation shall at least include, at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices similar to slavery and servitude.
The offender is liable to a term of imprisonment of not more than eight years or a fine of the fifth category if:
1º. The acts described in the first paragraph are committed jointly by one or more persons;
2º. the person against whom the acts described in the first paragraph were committed has not yet reached the age of sixteen.

Two or more person who jointly commit the acts described in the first paragraph, under the circumstances specified in paragraph 3 sub 2º, are liable to a term of imprisonment of not more than ten years or a fine of the fifth category.
If, as a result of an act described in the first paragraph, serious bodily harm or fear for a person's life ensues, a term of imprisonment of not more than twelve years or a fine of the fifth category shall be imposed.
If death ensues as a result of an act described in the first paragraph, a term of imprisonment of not more than fifteen years or a fine of the fifth category shall be imposed.
Article 251 shall apply *mutatis mutandis*.

ANNEX 3 – ARTICLE 197a OF THE DUTCH CRIMINAL CODE

1. Any person who assists another person in procuring entry to, or transit through, the Netherlands, any of the other member states of the European Union, Iceland, Norway, or any other state which is a signatory to the UN Protocol against the smuggling of migrants by land, by sea, and by air (New York, 15 November 2000), additional to the Treaty against transnational organised crime, drawn up in New York on 15 November 2000, or provides this other person with the opportunity, means, or information for this, when he knows or has serious reasons to suspect that the entry or transit is illegal, will be deemed guilty of people smuggling and as such sentenced to a term of imprisonment not exceeding four years or a fine of the fifth category.

2. Any person who for pecuniary gain assists another person in acquiring residence in the Netherlands, any of the other states of the European Union, Iceland, Norway, or any other state which is a signatory to the Protocol referred to in section 1, or provides this other person with the opportunity, means, or information for this, when he knows or has serious reasons to suspect that the residence is illegal, will be sentenced to a term of imprisonment not exceeding four years or a category of the fifth fine.

3. If one of the offences described in sections 1 and 3 is committed by an individual while in the execution of any public office or profession, a prison sentence not exceeding six years or a fine of the fifth category will be imposed, and dismissal can be given from the execution of the right to hold office or to carry out the profession, and the court can order publication of this judgment.

4. If one of the offences described in sections 1 and 3 is committed by an individual who makes a profession or habit of this, or if the offence is committed in association by several individuals, a prison sentence not exceeding eight years or a fine of the fifth category will be imposed.

5. If one of the offences described in sections 1 and 3 results in serious physical harm or involves peril to another person=19s life, a prison sentence not exceeding twelve years or a fine of the fifth category will be imposed.

6. If one of the offences described in sections 1 and 3 results in a persons death, a prison sentence not exceeding fifteen years or a fine of the fifth category will be imposed.

ANNEX 4 – PROTOCOL TO PREVENT, SEPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Article 3

Use of terms

For the purpose of this Protocol:

a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring of receipt of persons, by means of the threat or use of force of 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;

ANNEX 5 – ARTICLE 1 COUNCIL FRAMEWORK DECISION OF 19 JULY 2002 ON COMBATING TRAFFICKING IN HUMAN BEINGS (OJ L 203)

Article 1

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

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

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

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

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

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

(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

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

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

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

ANNEX 6 – INTERNATIONAL INSTRUMENTS AND POLICY DOCUMENTS

Additional protocol to the Convention on the Transfer of Sentenced Persons (Treaty Bulletin 1998/202)

The Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters of 11 May 1974. (Treaty Bulletin, 1974/184; Bulletin of Acts and Decrees 1985/116, 1985/131)

The Benelux Treaty on the Execution of Judicial Decisions in Criminal Matters of 26 September 1968. (Trreaty Bulletin 1969/9)

Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters of 1962. (Treaty Bulletin 1962/97)

The European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, Council of Europe, European Treaties Series, No 30. (Treaty Bulletin 1965/10, recifications Treaty Bulletin 1969/63 and Treaty Bulletin 1996/63)

European Convention on the Transfer of Proceedings in Criminal Matters (Treaty Bulletin 1973/84, modified 29 August 1990, Treaty Bulletin 1969/63)

Treaty on European Union of 7 February 1992 (Treaty Bulletin 1997/74, modified 16 April 2004 Treaty Bulletin 2004/10)

Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Treaty Bulletin 2000/96)

Council Act of 26 July 1995 drawing up the convention based on Article k.3 of the Treaty on European Union, on the establishment of an European Police Office (Europol Convention) (Treaty Bulletin 1995/282)

Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA)

Draft Treaty establishing a Constitution for Europe, 13 October 2004 (CIG 87/1/04 Rev 1; ADD1 Rev 1; Add2 Rev 1)

European Convention on the International Validity of Criminal Judgments of 28 May 1970- entered into force on 26 July 1974 (Treaty Bulletin 1971/137)

The European Convention on Extradition of 13 December 1957 entered into force on 18 Apil 1960 (Treaty Bulletin 1965/9)

International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, Geneva

Guidelines on Human Rights and Trafficking "Principles and Guidelines on Human Rights and Trafficking 2002" published by OHCHR. (E/2002/68/Add.1)

The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation. Policy document of the Council of Europe of 26 April 1997.

The European Union Charter of Fundamental Rights, as signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000. (OJ C 364)

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Constitution of the International Labour Organization, adopted by the Peace Conference in April of 1919, Versailles. (Treaty Bulletin 1998/290)

The Framework Decision on the Freezing of Property or Evidence of 22 July 2003. (OJ, 196/47)

Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. 2002/584/JBZ, (OJ, L 190)

Framework decision on combating the sexual exploitation of children and child pornography, entered into force on 20 January 2004 (OJ, L 13/44-48)

Council Framework Decision of 19 July 2002 on combating trafficking in human beings entered into force on first of August 2002,

Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, OJ, L 328 of 5 December 2002.

Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. (OJ, L 082)

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, signed by the Netherlands on 7 September 2000. (Trb 2001/63)

Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, OJ, L 328 of 5 December 2002.

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 competent authorities. (OJ, L261/19)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, signed by the Netherlands on 12 December 2000. (Treaty Bulletin 2001/69)

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime signed by the Netherlands on 12 December 2000 (Treaty Bulletin 2001/70)

Treaty between Netherlands and Morocco regarding the Transfer of Sentenced Persons of 30 November 1999. (Treaty Bulletin 1999/198)

United Nations Convention against Transnational Organized Crime, signed by the Netherlands on 12 December 2000. (Treaty Bulletin 2001/63, 2004/34)

Council Act establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, signed on 16 October 2001

Protocol amending the Slavery Convention signed at Geneva on 25 September 1926,New York, 7 December 1953 (Treaty Bulletin 1955/33)

Treaty between Netherlands, Belgium and Luxemburg regarding Transnational Police Cooperation of 26 May 2004 (Treaty Bulletin 2005/35)

The Convention Implementing the Schengen Agreement of 19 June 1990 (Treaty Bulletin 1990/145)

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Geneva, 7 September 1956 (Treaty Bulletin 1957/118)

Second additional protocol to the European Convention on mutual assistance in criminal matters, Council of Europe, Strasbourg, 8 November 2001 (European Treaty Series, no. 182; ETS 182)

International Convention for the Suppression of the Traffic in Women of Full Age, concluded at Geneva on 11 October 1933

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Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, entered into force on 3 September 1981 and was ratified by the Netherlands on 23 July 1991.

Convention on the Transfer of Sentenced Persons, entered into force at first of July 1985. (Treaty Bulletin 1983/74; rectifications Treaty Bulletin 1987/163 and 1995/193)

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"Directive of the Council of Attorneys general regarding joint investigations teams" valid to 1-7-2008. (Governmental Gazette, 2004/143).

Directive Trafficking in Human Beings 2000
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Directive Confiscation 2005
"Directive of confiscation of criminal proceeds" validity: 1-3-2005 until 1-3-2009 (Governmental Gazette, 2005/21, p. 14)

Directive Investigation 2003
Validity: 1-3-2003 until 1-3-2007

Directive Investigation Powers 2004
"Adaptation Directive Investigation powers" validity 1-12-2004 until 1-12-2008 (Governmental Gazette, 2004/227)

Directive Victims of Sexual Crimes 2001
Directive treatment Victims of Sexual Crimes, validity 1-4-2001 until 31-3-2008 (Governmental Gazette, 1999/174, 2001/64)

Directive "mega" Criminal Cases 2004
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Regulation National Investigation and Interregional Investigation
15 January 2004, no. EA 2003/86484, DGOOV/Pol/BJZ (Governmental Gazette 2004/19, p.11)

Directive art. 552i of the Code of Criminal Procedure
Directive regarding application of article 552i SV by the Public Prosecutor and the information dissemination by the police regarding mutual assistance in Criminal Matters. (Governmental Gazette, 1994/242, Governmental Gazette, 2000/43)

Directive Foreign Liasons
"Directive Foreign Liasons in the Netherlands regarding police and judicial cooperation." (Governmental Gazette, 2002/61, p. 14)

Directive Mutual Assistance 1994
Directive regarding application of article 552i SV by the Public Prosecutor and the information dissemination by the police regarding mutual assistance in Criminal Matters. (Governmental Gazette, 1994/242) Validity until 31-12-2005 (Governmental Gazette, 2004/146 p. 13)

Ministerial Circular 2001
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Decision on Cooperation regarding Special Investigation Powers 1999
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"Act of 9 December 2004 on Implementation of International Instruments regarding the combat of Smuggling and Trafficking of Human Beings." (Bulletin of Acts and Decrees 2004/645)

Bulletin of Acts and Decrees, 2004/181
"Decision of 21 April 2004 determination of the moment of entering into force of the Law of 18 March 2004 regarding a modification of some provisions of the Code of Criminal Procedure and the Law on Police Registers and an addition to the Penal Code in view of the fact of the implementation of the Council Act establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union."

Bulletin of Acts and Decrees, 2004/107
"Act of 18 March 2004 regarding a modification of some provisions of the Code of Criminal Procedure and the Law on Police Registers and an addition to the Penal Code in view of the fact of the implementation of the Council Act establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union."

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“Act of 28 October 1999 regarding modification of the Penal Code and some other Codes and articles (legalisation of voluntary prostitution for persons of age)”

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Bulletin of Acts and Decrees, 1928/26
Slavery Convention of 25-9-1926

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Law of 9 March 1967 regarding new measures on Extradition and other forms of international legal aid in Criminal Matters. (Bulletin of Acts and Decrees, 1967/139, modified Bulletin of Acts and Decrees, 2004/195)

Migration Circular 2000
30 March 2001 (Governmental Gazette, 2001/64)

Act on International Crimes 2003
Law of 19 June 2003, regarding rules of grave breaches International Humanitarian Law. (Bulletin of Acts and Decrees, 2003/270)

The Special Powers of Investigation Act
Act of 27 May 1999 regarding a modification of the Code of Criminal Procedure including Special Powers of Investigation and a modification of some other articles. (Bulletin of Acts and Decrees, 1999/245) entered into force on first of February 2000.

Judicial Data Act 2002
Bulletin of Acts and Decrees, 2002/552, entered into force at first of April 2004 (Bulletin of Acts and Decrees, 2004/129)

Police Registers Act 1990
Act of 21 June 1990 regarding rules for the protection of the privacy in connection with Police Registers, entered into force at 17-8-1990. (Bulletin of Acts and Decrees, 1990/414, modified 2004/107)

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"Voting for proposed act Implementation international instruments regarding Smuggling and Trafficking of Human Beings" (29291).

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"Governmental Acts regarding proposed act to modification of the Penal Code regarding smuggling of Human Beings" (smuggling of Human Beings 24269).

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