

LSI - La Strada International

La Strada International (LSI) is a European NGO network against trafficking in human beings comprising eight member organisations in Belarus, Bulgaria, Czech Republic, Macedonia (FYROM), Moldova, The Netherlands, Poland and Ukraine and an international secretariat based in Amsterdam, The Netherlands. La Strada started its work in 1995. La Strada International coordinates the LSI NGO platform - United against trafficking in human beings, that currently comprises 20 NGOs in Europe, including KOK - German NGO network against trafficking in women and violence against migrant women.

La Strada International works from a human rights perspective in support of trafficked persons to ensure a world without trafficking in human beings where human rights are respected. La Strada's primary goal is empowering trafficked persons, improving their position through promoting their universal rights, including the right to choose to emigrate and work abroad and to be protected from violence and abuse.

The secretariat, based in Amsterdam, focuses on international networking, lobbying and public relations on behalf of the member organisations and partners, producing common policies and action plans and harmonised lobby and advocacy programmes. The secretariat maintains and expands the relations of the La Strada network with national and international organisations, national governments, European institutions and UN bodies. The secretariat supports capacity building of the members and provides a forum for NGOs on the issue of human trafficking. Further the organisation works on provision of and assessment of information, data collection and research. Several international projects on issues related with human trafficking, are further coordinated by the International Secretariat.

Collection of statistical information & data available on trafficked persons

Question 1.1: Little statistical information is available on the number of human trafficking cases and victims in Germany; the available statistics are mainly collated by the Federal Criminal Police Office (BKA) and the Criminal Police Offices in the Länder. The annual Trafficking in Human Beings Situation Report produced by the BKA is based on reporting from the Criminal Police Offices in the Länder on police investigations completed in the relevant year pursuant to Sections 232, 233 and 233a of the Criminal Code. Yet many cases of trafficking are never reported to the police and are thus not included in the statistics. Many experts (social workers, police officers, etc.) confirm the existence of a large number of unreported cases. Are you aware of any reliable figures which would be helpful in this context? What criteria would you propose for a study to accurately assess the existence of unreported cases both in qualitative and quantitative terms? (CDU/CSU).

The EU countries use different methods and bodies to collect and analyse information on human trafficking. Research from 2010¹ confirmed that nine out of the then 27 EU - now 28 countries - had a National Rapporteur on human trafficking², while 16 did not. In several Member States³ a different state institution is involved in monitoring and reporting on anti-trafficking responses.

However, all over Europe, limited statistical information is available, including on the number of human trafficking cases and many cases of human trafficking are not reported and excluded from

¹ E-notes, European NGOs Observatory on Trafficking, Exploitation and Slavery

² Cyprus, Czech Republic, Finland, Latvia, Lithuania, Netherlands, Portugal, Romania and Sweden

³ Such as Belgium and Spain

national statistics, even though serious attempts are made to collect adequate data. Germany is not an exception. Moreover figures on identified and reported human trafficking cases differ significantly in the different Member States.

In April 2013 the European Commission presented its first report at the EU level on statistics on trafficking in human beings⁴, which included data for the years 2008, 2009 and 2010, from all - then - 27 EU countries and Croatia, Iceland, Montenegro, Norway, Serbia, Switzerland and Turkey. The report includes statistics on the total number of identified and presumed victims disaggregated by gender, age and form of exploitation, and also contains statistics on victims' citizenship and type of assistance and protection received. According this report 23.632 persons were identified as (presumed) victims of trafficking in the EU in the 2008-2010 period, of which 6,309 in 2008; 7795 in 2009 and 9,528 in 2010.

A 2012 study of the International Labour Organisation (ILO) estimates that 880,000 people in the EU might be victims of forced labour, including forced labour in the sex industry. The Eurostat report also refers to this ILO estimation. If we look at this estimation of 880.000 cases and the number of 9.528 cases reported in 2010 for the whole European Union in the Eurostat report, then only 1% of the total presumed trafficked persons in the EU was identified in 2010.

It is difficult to state how reliable these figures are. As figures lack and it is difficult to report about 'unknown cases', nobody knows the size/the amount of unreported cases. Moreover reported cases might not be correct, or cases might overlap. In general we should be careful about the data presented, not only because of the different systems used at national level for collecting figures and for reporting, but also because there is different legislation and different interpretation of legislation in the EU countries. For example, what in one country may be qualified as human trafficking might be qualified as pimping in another country. Moreover, we may safely assume that cases of forced labour in other sectors than the sex industry are probably underrepresented because attention to these sectors is relatively new (only started after the Palermo Protocol) and adequate identification mechanism are still lacking in many countries.

Most countries try to involve and ensure that all stakeholders share data. In several countries the issue of a common data base is being discussed. But concern has been raised related to privacy and protection/safety issues. Moreover regardless of the system in place, there are reasons why cases remain unreported, partly because persons do not identify themselves or are not regarded by others as trafficked persons, or trafficked persons do not want to come forward, because of the difficult situation they are in, and because they have no guarantee that, once identified, they receive the protection and support they need, not only during criminal proceedings but also afterwards.

LSI is involved with KOK in the "dactACT" project, which focuses on data collection and data protection for trafficked persons. Currently KOK is preparing a follow up programme, which includes the establishment of a national database for service providers that might contribute to the collection of more complete information for Germany.

KOK and LSI believe that protecting the privacy of affected persons must be central to all data collection and processing measures, not only to comply with EU privacy legislation, but also to protect the privacy and safety of trafficked persons and not expose them to danger. On no account should the range of data collected on trafficked persons allow any identification of individual trafficked persons. Specialised counselling centres should in no way be pressured to reveal any information on clients or their counselling work⁵.

A possible study to assess the existence of unreported cases should take into account privacy and protection criteria and involve all possible stakeholders.

⁴ Eurostat trafficking in human beings report, presented on 15 April 2013 by the European Commission

⁵ KOK statement in favour of the establishment of a national Rapporteur on Trafficking in Human Beings or an equal mechanism in Germany

Residence rights & unconditional support for trafficked persons

Question 1.2 - What is the legal situation regarding residence rights for victims of human trafficking/forced prostitution in the different European countries (requirement for victims to cooperate in criminal proceedings, necessary access to comprehensive assistance and protection, access to language courses, education and training and jobs)? Are there countries in Europe or beyond which provide a positive example in this context? (The Left Party)

Question 2.3 - Many experts and NGOs are calling for the victims of human trafficking to have a right of residence on humanitarian grounds due to the human rights violations suffered and independent of their status as witnesses, as well as for them to be given access to sufficient education and training measures. How do you view this demand? (The Left Party.)

In practice, in nearly all European countries, trafficked persons only obtain (temporary) residence rights on the condition that they agree to cooperate with the authorities, often meaning to cooperate in criminal proceedings - and receive only unconditional support during the time of the reflection period. The length of the reflection period differs, minimum one month, often 2- 3 months, sometimes longer.

After the reflection period countries issue renewable residence permit to victims, mainly - as required by law -when the authorities consider that their stay is necessary for the purpose of the prosecution of the perpetrators, and sometimes when the authorities consider that their stay is necessary due to their personal situation. In a number of countries trafficked persons can apply for a long-term residence permit on humanitarian grounds after having been granted temporary residence. A trafficked person might have the legal right to residence until the end of a civil procedure, for a residence or for claiming compensation, like for example in Austria.

As stated, the assistance provided is usually conditional. For example, in Belgium, assistance is routinely conditional on those identified agreeing to: (a) provide information to criminal justice investigation or prosecution; (b) end contacts with their former trafficker; and (c) be supported by a specialised reception centre.

However the EU Directive of 2011⁶, states in Article 11.3 on Assistance and support for victims of trafficking in human beings, that 'Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules'.

Moreover also the Council of Europe Convention⁷ specifies in article 12 on Assistance to victims point 6 that 'Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.'

There are some exceptions in some European countries, where persons not willing to testify, are also provided with support after the reflection period. Often this only applies to persons who are legally residing in the country concerned. For example in the Czech Republic, if persons do not need a permission to stay, services can be provided to them on the basis of the Czech 'Social Service act'. These services are only for nationals and foreigners with a legal status.

⁶ EU Directive of 2011 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

⁷ Council of Europe Convention - CETS No. 197 - Action against Trafficking in Human Beings, 16.V.2005

The degree of protection and support provided in Italy is relatively comprehensive in comparison to some other EU countries. Rather than requiring a reflection period to entitle presumed trafficked persons to both assistance and a temporary right to remain in the country, Italian procedures allow them both, once an accredited NGO or a local authority identifies them as trafficked and before they agree to enter into a social assistance and integration programme.

LSI continues to lobby for unconditional support for trafficked persons, including the right to residence permit on humanitarian grounds and independent of their value for the prosecution. This would be in accordance with the obligation of states to provide an adequate and effective remedy in case of human rights violations.

The Council of Europe Convention sets out minimum standards concerning assistance and protection measures which States Parties must take to protect and respect the rights of trafficked persons. These include, among others the requirement to unconditionally ensure to persons reasonably believed to have been subjected to trafficking to provide: • what it calls "appropriate and secure accommodation"; • access to emergency medical treatment; • translation and interpretation services; • counselling and information on their legal rights; and • legal assistance. In this context, "unconditionally" means that these forms of assistance may not be made conditional on a presumed trafficked person's willingness to act as a witness. Access to education, vocational training or employment, which can support the trafficked person to take control of his /her life again, is essential.

Role of clients of sex workers in the prosecution of the perpetrators, in human trafficking and impact prosecution of clients

Question 1.3 - What role do the clients play in prosecution of the perpetrators in human trafficking and forced prostitution cases and what impact might prosecution of clients have on this role? (Alliance 90/The Greens)

Question 2.2 - The coalition agreement states that: "In future, convictions should no longer fail due to the victim not giving evidence. Taking into account victims' contribution to investigations, cooperation in criminal proceedings and personal situation, we will improve the situation regarding the right of residence, as well as providing intensive assistance, support and advice." In your view, what measures need to be taken to achieve this goal? (SPD)

In general clients of sex workers can play an important role in identifying trafficking cases, enlisting help and supporting victims to escape. This is confirmed by the experience in the Netherlands based on the evaluation of a campaign of Crime Stoppers, predominantly directed towards clients of prostitutes who recognise possible indications of trafficking. The report figures of 2012, showed that anonymous reporters give almost 5 times a week important signals about possible cases of human trafficking and illegal prostitution. Moreover it was shown that the number of reports on forced prostitution has increased by 76% since the start of the campaign in June 2012 - 1 of 4 reports concern possible minor victims. With the tips perpetrators have been taken out of anonymity and the several victims have been freed.

There seems no information available about whether clients in practice play a role in the prosecution of perpetrators in Europe; neither are our members aware of such practices; it is expected that only at rare occasions they testify, although in theory they can act as a witness in a court case. As their role of 'reporters of human trafficking' is acknowledged and regarded as valuable, criminalisation of clients is to be avoided. This will diminish the chance that clients will report human trafficking cases. Rather they should be encouraged to report if they suspect someone to work under coercion.

In general it would be good to improve witness protection. In about half the EU Member States measures to protect victim witnesses are available. The in-court protection includes victim witnesses being able to give evidence at a preliminary hearing (e.g. before an investigating judge) and not having to appear at a public court hearing, and victim witnesses giving evidence by video link or being shielded from the view of the accused (i.e., do not have to look at him/her and could not be seen by the accused, even if they could be seen by others) Some countries have separate waiting areas in court available (or in other places where witnesses testify) for prosecution and defence witnesses.

In general we do see from NGO experience that the better trafficked persons are protected and assisted, and receive protection during court cases, the more they are willing to testify. Moreover in cases they have been granted a reflection period and had access to adequate assistance and support and a residence right, they feel safer - and are more willing - to testify.

However this does not take away the need to develop more proactive investigation methods rather than make prosecution fully dependent on the statements of the victim. As defined in Article 9, of the EU directive on Investigation and prosecution, ad 1, Member States shall ensure that investigation into or prosecution of human trafficking is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.

Protection of sex workers in legislation, support to victims and punishment of perpetrators

Question 2.1 In practice, the 2001 Act Regulating the Legal Situation of Prostitutes has not improved the situation of prostitutes; instead, it has ultimately played into the hands of those who earn money in related areas of criminal activity. Where do you see the need for legislative changes in order to better protect women against human trafficking and forced prostitution, help victims more effectively and punish perpetrators more rigorously? (CDU/CSU)

Question 2.6 - What would be the effect on the victims of human trafficking and forced prostitution of a general ban on prostitution? (Alliance 90/The Greens)

Question 2.7 - Do you see the need for amendments (if so: what amendments) to Sections 232 and 233 of the Criminal Code and/or the Act Regulating the Legal Situation of Prostitutes in order to better protect the victims of human trafficking and forced prostitution? (Alliance 90/The Greens)

European countries have different legislation on prostitution. There is currently no reliable empirical evidence on the impact of different legislative systems that proves that certain legislation is best protecting the rights of sex workers. Available research is often biased. Moreover it is difficult to define the effects of certain legislation, as often no research was done prior to the new situation. However, we do know that criminalising sex workers adds to the stigma, gives traffickers and other abusers an extra instrument to threaten their victims and makes it more difficult for sex workers to protect themselves against abuse and report to the police, as they might face prosecution themselves - or in the worst case even abuse by the police itself.

La Strada International has always called for the protection and promotion of the human rights of sex workers. Globally, sex workers face many forms of violence. Due to the often criminalised status of sex work and the stigma that sex workers face, violence against sex workers remains nearly always unpunished. We believe that violence against sex workers needs to be addressed by protecting their rights and investigating and prosecuting all violent offences against anyone working in the sex sector. However, this approach to end violence against sex workers is hard to put into practice if sex work itself is considered as violence against women.

Equating sex work with violence against women leads to criminalising their clients and sometimes even sex workers themselves. As a consequence sex workers are not recognised as rights holders and

are deprived of the tools to protect themselves from violence and seek redress⁸. Moreover, if all sex work is violence, the actual violence committed against sex workers disappears from sight.

A ban on prostitution or criminalisation deprives them of their income without offering an alternative and stigmatises and marginalises both domestic and migrant sex workers. It drives the sex industry even more underground, which results in less access to health, social and legal assistance for sex workers, and significantly lower chances to identify individuals who have trafficked.

The members and partners of La Strada International have supported many women and men who were trafficked in the sex industry in the past nearly two decades. We know from experience that criminalisation does not solve any of the problems that our clients face, nor does it prevent or stop human trafficking. On the contrary, criminalisation creates only more barriers to seek help in case of trafficking or other abuses. We do recognise that the sex industry is one of the economic sectors in which human trafficking occurs, as it does in other sectors, in particular those where workers are invisible and unprotected. We call for effective implementation and monitoring of legislation and clear criteria and standards to ensure adequate working conditions in the sector. In addition we believe that sex workers are the first who have an interest in a sector without violence and abuse. They should be viewed as important allies in combating such abuses and should be closely involved in the design, implementation and evaluation of anti-trafficking measures and policies.

In its 3rd General Report, GRETA states: “The impact of criminalising the purchase of sexual services, seen as an anti-trafficking measure in some of the States evaluated by GRETA, must be assessed in the light of all possible consequences. This includes ensuring that the measures taken do not drive victims of trafficking for the purpose of sexual exploitation underground or make them more vulnerable, and also that they do not mobilise investigation units and prosecution authorities to the detriment of investigations of traffickers”⁹.

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Recommendations for implementation of the EU directive and Council of Europe Convention

Question 2.4 - What measures must Germany take to reinforce the rights of victims of human trafficking for sexual and work exploitation in order to implement the Council of Europe Convention on Action against Trafficking in Human Beings? (SPD)

Question 2.5 - What need for action do you see in Germany regarding the transposition into national law of the EU Directive on preventing and combating trafficking in human beings? (SPD)

As for the EU directive and the Council of Europe convention¹⁰ to be (better) implemented in European countries¹¹, it is necessary that more efforts are undertaken to adequately identify

⁸ The impact of criminalising the purchase of sexual services, seen as an anti-trafficking measure in some of the States evaluated by GRETA, must be assessed in the light of all possible consequences. This includes ensuring that the measures taken do not drive victims of trafficking for the purpose of sexual exploitation underground or make them more vulnerable, and also that they do not mobilise investigation units and prosecution authorities to the detriment of investigations of traffickers. See 3rd General Report on GRETA activities, p. 6

⁹ See 3rd General Report on GRETA activities, p. 6

¹⁰ Now 41 ratifications

trafficked persons; that there is access to a residence permit and unconditional access for all trafficked persons to adequate assistance and support, including legal counselling and legal representation. Moreover it should be ensured that they have access to remedies, including compensation - which in practice is hardly the case in almost all countries. Further it should be ensured that the non-punishment clause is implemented and that National rapporteurs or equivalent mechanisms are established. Such a national reporting body should be independent.

International cooperation

Question 3.1 - Trafficking in human beings is a transnational phenomenon. Combating it requires an interdisciplinary and cross-sectoral approach, cutting across various tiers of government. How can existing structures to combat human trafficking be used more efficiently and effectively? In what areas are new structures and approaches necessary in order to create networks in which national, supranational and subnational tiers of government and actors can better interact? (CDU/CSU)

Trafficking in human beings is indeed a transnational phenomenon. Combating it requires an interdisciplinary and cross-sectoral approach. Essential is though that the rights of trafficked persons are put central in this approach, as in practice, the protection and promotion of the rights of trafficked persons is often placed below concerns about immigration control and securing prosecutions.

Awareness raising

Question 3.2 - Do international approaches exist to reinforce the rights of women vulnerable to human trafficking and forced prostitution and to prevent human trafficking from happening, such as through awareness-raising campaigns? (The Left Party)

As for awareness raising many prevention activities are undertaken at the European level by all stakeholders to prevent human trafficking, including information and awareness raising campaigns, education and trainings to professional groups and risk groups and helplines and hotlines. However in general it is difficult to assess the impact of this work, as limited adequate impact assessment is undertaken. Next to the need for more monitoring and evaluation, it is important that adequate information is available for migrant workers, that prevention work is done in both countries of origin and destination - as also persons legally residing in a country can fall prey to trafficking and that the focus is put on safe travel and safe working conditions, ensuring that persons are aware of the risks of human trafficking and the possibilities to ask for assistance and support. Instead of limiting persons' rights to cross borders, as a preventive measure. It should be ensured that persons are aware of the risks of human trafficking, have adequate information about the right to employment and stay, and know the possibilities to ask for assistance and support. An important preventive measure is the rigorous enforcement of labour standards and the recognition of migrant workers' rights.

¹¹ In October 2013, 18 countries had notified a full transposition of the EU Directive into their national laws (Czech Republic, Sweden, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, Finland, Bulgaria, Croatia, Ireland, Greece, France, Austria, Portugal, Slovakia and UK) and 2 countries have only notified partial transposition (Belgium, Slovenia).