



La Strada Foundation Against Trafficking in Persons and Slavery

**MONITORING OF THE OBSERVATION OF HUMAN RIGHTS WITH REGARD TO
VICTIMS OF HUMAN TRAFFICKING**

REPORT SUMMARY

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“MONITORING OF THE OBSERVATION OF HUMAN RIGHTS WITH REGARD TO VICTIMS OF HUMAN TRAFFICKING”

PROJECT OBJECTIVE

The aim of the Project was to prepare a report describing the situation of victims and victims / witnesses of trafficking in human beings in Poland.

The other objective of the report was to promote law changes as well as in treating victims of phenomenon.

The monitoring consisted in the collection of information at three levels: an analysis of court files (26 cases = 58 injured persons), files of the cases which ended in a decision to discontinue the proceedings or to refuse to institute the proceedings (24 cases = 33 injured persons) by the prosecution service, and interviews with persons who decided not to lay an information on the commitment of the crime, concerning the reasons behind those decisions (17 people – we used our own resources – victims who asked for assistance to the Foundation against Trafficking in Human Beings and Slavery “La Strada”).

For the purpose of the study we used the files of the cases that had been concluded with a final verdict in the years 1995-2006 all over Poland. They were human trafficking cases, under Article 253 and Art. 204 §4. of the Criminal Code

The data has been grouped according to several criteria – violations of Polish and international law: human rights, violation of specific provisions and recommendations as well as hardship for the victims.

SUMMARY

The most numerous group of people offended by a trafficking in human beings are women at the age of 16-25. At the moment of becoming a victim of the crime, most of them had primary or secondary education. A number of them were foreigners residing illegally in the territory of the Republic of Poland.

Interviews with the victims who decided not to testify

Out of the 17 women surveyed, 3 were Polish citizens who gave their testimony in countries other than Poland. Each of them testified at a police station, and one of them, additionally,

gave her testimony before the court. All three of them knew that it was possible to testify in Poland, but they decided not to do so.

Two persons indicated that they had received support on time. One mentioned the interpreter and the La Strada Foundation, the other – the police and a non-governmental organisation.

Out of the interviewed persons, 4 attempted to report the crime to the police in Poland but eventually did not. In 3 cases, the respondents had been assessed by a police officer as not credible and, as a result, had been mistreated. In one case, the key factor was the fact that the respondent did not know the official language of the country in which she was staying.

In reply to a question whether they had been aware of their victim status, 13 respondents gave a negative answer.

In 14 cases, the perpetrators had threatened the respondents with the use of violence, thus discouraging them from reporting the crime. Another issue that worried the respondents was the fact that the perpetrators knew the individual persons details and the persons' addresses. The women were also afraid of blackmail, violence, verbal abuse as well as financial consequences and disclosure of compromising material.

In four cases, the respondents had been in a relationship with the perpetrator before the crime was committed. For five people, the perpetrator was someone they had known. For the four people who had been in contact with the perpetrator before the crime was committed, that relationship was a decisive factor in their decision not to report the crime to the law enforcement bodies.

The people who did not inform their relatives and friends about the crime (crimes) feared gossip and rejection.

More than ten respondents talked about their situation to their neighbours or friends. Four of them received support, understanding and commitment. Whereas the majority experienced negative reactions of their environment, such as aggression, rejection, exclusion, derision, gossip.

The reactions that the respondents mentioned most often as the response they had expected from the police/the court are contrary to what they needed as injured persons. They feared that they would be treated as not credible, that the perpetrators would be notified – “because the police cooperate with them”, they were afraid of inconvenient questions, bringing up the intimate details from their life and meeting the perpetrators.

In reply to the question, what conditions should be fulfilled for them to report the crime to the law enforcement bodies, the respondents listed the following:

- ensuring safety and protection by the police,
- being kept away from the perpetrators,
- anonymity during various proceedings,
- being covered by the witness protection programme – including the change of appearance, personal details, place of residence,
- better efficiency of the justice system.

Discontinued cases

Half of the people whose situations we have studied, instituted the criminal proceedings themselves by laying an information about the crime. In the remaining cases, other people acted as informants, including a mother-in-law, a husband, other injured persons, as well as institutions such as the Passport Department of the Voivodship Office or the Consul General in Köln.

What should raise concern is the fact that only half of the foreigners were interrogated with the participation of an interpreter – theoretically the other half had the command of written and spoken Polish. However, a case is known when further on in the proceedings, it appeared that the victim did not know Polish well enough to be able to testify in that language. Another worrying fact is multiple hearings, which must have been particularly oppressive for the victims, especially as not even once did an expert psychologist participate in them and none of the injured persons had the assistance of an attorney.

Prolonged proceedings are particularly difficult for the victims, as the lack of a decision on the case does not allow them to close that difficult chapter of their lives. Among the cases under study, the majority were concluded within a year, but some lasted from 5 to 10 years.

It is also worrying that not a single potential injured party submitted a complaint against the decision to discontinue the proceedings. And even though some of them did not necessarily feel harmed, statistically the motivation could have included fear of the perpetrators, lack of faith that the proceedings would be successful or simply lack of knowledge that they could file such a complaint.

The most frequent reason for discontinuance of proceedings is failure to detect the perpetrators.

Court cases

In most cases, the information about the crime was laid within 90 days from its commission. However, we have noted a case, when such a fact was reported almost 3 years after its occurrence.

In 50% of the cases the preparatory proceedings were instituted within 10 days from the date of laying an information, in the cases concerning further 19 victims, the proceedings were instituted within 30 days from that date. The longest time from laying an information to instituting the proceedings was 660 days.

The fact that most of the injured persons were interrogated only once or twice shows that those who carried out the proceedings had the right skills to handle such cases. There were, however, exceptions: one respondent was interrogated 7 times. Unfortunately, most of the women victims were interrogated only by men (that is, all the interrogating officers, the interpreters, psychologists and other people present during the interrogation were male).

The institution of an “incognito witness” was applied only to one injured person. The addresses of 6 injured women were protected.

Almost half of the injured persons had a direct contact with the perpetrator – a confrontation was carried out.

The injured women were passive during the preparatory proceedings. Only two filed motions for evidence. They had not submitted any other motions. That may have been caused e.g. by fear of deportation or fear of revenge of the defendant’s associates, but it could have also been a result of not being aware of their rights. Only 32 respondents had been given guidance as to their rights and obligations.

Only one injured person had her own attorney representing her during the preparatory proceedings (appointed by the court).

In the evidence material, no evidence was disclosed that would testify to the fact that physical violence had been used against the victims. Only one of them presented documents confirming her testimony.

During the preparatory proceedings no security on property order was issued against any of the defendants in order to secure possible financial claims of the injured women.

The most frequently applied preventive measure was the provisional custody, in a few cases a bail was required.

There were criminal proceedings instituted against 12 of the injured women related to the human trafficking case (that is the case in which they were the injured party). In case of

10 of them the charge was an illegal border crossing, in 1 case – using a false document. 5 of them were convicted (3 people received a suspended prison sentence).

In our study, 11 injured persons were between 16 and 18 years of age. The parents / guardians of the minors had not been informed of the proceedings in progress. In case of further 3 persons, their parents / guardians had been prevented from participation in the particular acts of the preparatory proceedings. 7 minors had been interrogated without the presence of a psychologist.

Preparatory proceedings lasted, on average, 7.5 months. The shortest one lasted 1.5 month, the longest took - 78 months.

In cases involving 47 injured persons, the court hearings were held within 6 months from filing the indictment, in cases of the further 6 injured persons, the court hearings were held between 6 months to 1 year from the indictment. The shortest time from filing the indictment with the court to holding the court hearing was 4 days, the longest – 60 months.

In case of 26 injured women, the first verdict in a given case was issued within 6 months from the date of the first court hearing, from 6 months to 1 year – in the further 20 cases, from 1 year to 2 years – in 7 cases. In case of 4 injured persons, the verdict was returned during the first court hearing, in case of 2 injured women — after 69 months.

Appeals were filed in cases involving 36 injured persons. The soonest, the appellate court decision was issued after 2.5 months after the date of issuing the lower instance verdict, the latest – after 17 months. Within 6 months after the lower instance verdicts, the appellate court issued their decisions in cases involving 14 injured persons, within 6 months to 1 year – in cases involving 20 injured parties.

We have noticed that during the judicial proceedings, in many cases, the injured women were not given information about their rights in judicial proceedings, which reinforced their passive attitude at that time. Only 11 people were informed, in a documented way, about the possibility to act as a civil claimant or an auxiliary prosecutor in the judicial proceedings. A civil suit under Art. 62 of the Code of Criminal Procedure was brought by 2 respondents, whereas the motion for a permission to act as an auxiliary prosecutor - by 5. Only 4 injured women had been informed that, until the conclusion of the testifying phase, they could file motion for remedy of the damage they had sustained. (Art. 46 of the Criminal Code). Such a motion was submitted by 2 people. Such a motion had never been submitted by a prosecutor, even though, while giving their testimony, the injured women indicated that that they were intending to claim damages from the suspect.

Only one injured person was represented by an attorney (appointed by the court). Motions to that effect had been submitted by two injured persons, but they were rejected on the grounds that granting them would not be in the interest of the administration of justice.

None of the injured persons submitted a motion to present additional evidence.

Compared to the preparatory proceedings, the number of interrogations in the judicial proceedings looks much better. 24 injured women were questioned by the court during the hearing only once. One person was interrogated twice, two people – three times.

A decision to hear the case in camera was taken only sporadically.

Three times the court ordered that the defendant should leave the court room while the injured woman was testifying (twice at the express request of the women).

In case of 9 injured persons the judicial proceedings were carried out in camera throughout the whole proceedings – mainly due to an important interest of the injured woman and decency.

Only in case of 2 injured persons a social representative participated in the proceedings.

In case of 44 injured persons, at least one defendant had a defence counsel of their own choice. Among the injured persons, only one had an attorney representing her, appointed by the court.

It should also be mentioned that 49 injured women (no data was available in case of 9 people) had not been informed about the possibility to file a request to be notified if the defendant left the penitentiary institution, were given a leave from prison or granted a break in the execution of penalty.

CONCLUSIONS

The injured persons are usually poorly educated young women from small towns and villages. Their rights would be much better protected if they had an attorney representing them from the very beginning of the proceedings. A psychological assessment and possibly the participation of a psychologist in the interrogation should be obligatory. Victims should have access to the necessary social services (advisory services and safe shelter) – at least during the time of the preparatory and judicial proceedings.

Victims practically do not have access to information that would allow them to exercise their rights.

ACTS OF INTERNATIONAL LAW RATIFIED

UNITED NATIONS

- **Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others**, ratified by Poland in 1952.
- **Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**, ratified by Poland on 26 September 2003.
- **Protocol against the smuggling of migrants by land, sea and air**, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Poland on 26 September 2003.
- **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**, ratified by Poland on 4 February 2005.

EUROPEAN UNION

- **Council framework Decision 2002/629/JHA** of 19 July 2002 **on combating trafficking in human beings** (OJ L 203, 1.8.2002).
- **Council framework Decision 2004/68/JHA** of 22 December 2003 **on combating the sexual exploitation of children and child pornography** (OJ L 13, 20.1.2004).
- **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 L 261, 6.8.2004).

INTERNATIONAL LABOUR ORGANISATION (ILO)

- **ILO Convention No 29 concerning Forced Labour or Compulsory Labour**, ratified by Poland on 28 November 1958.

- **ILO Convention No 105 concerning the Abolition of Forced Labour**, ratified by Poland on 3 June 1958.
- **ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour**, ratified by Poland on 1 March 2004.

SIGNED

COUNCIL OF EUROPE

- **Council of Europe Convention on action against trafficking in human beings** of 2005, signed by Poland at the same year.

POLISH LAW – PENAL CODE

In accordance with binding law (the Constitution), ratified international agreements constitute a part of Polish legal system and can be applied directly. However, the analysis of judicature of Polish courts in cases of trafficking in human beings has indicated that the **definition of trafficking in human beings** included in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* is not always applied in practice. Therefore, a task leading to development and introduction of the definition of trafficking in human beings to the penal code by the Ministry of Justice has been included in “*The National Programme for Combating and Preventing Trafficking in Human Beings for 2007-2008*”.

The following regulations refer directly to the crime of trafficking in human beings:

Article 253

§ 1. *Whoever performs trafficking in persons even with their consent,*

shall be subject to the penalty of the deprivation of liberty for no less than 3 years.

§ 2. *Whoever, in order to gain material benefits, organises the adoption of children in violation of the law, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.*

Article 204

§ 4. *Whoever entices or abducts another person with the aim of having him/her engage in prostitution abroad shall be subject to penalty specified in § 3 (i.e. deprivation of liberty for a term of between 1 year and 10 years).*

Crime related to trafficking in human beings:

Article 203

Whoever, by means of violence, unlawful threats, deceit or taking advantage of the dependency or critical position, leads another person to prostitution, shall be subject to the penalty of deprivation of liberty for a term between 1 year and 10 years.

Article 204

§ 1. *Whoever, in order to gain material benefits, impels another person to prostitution or facilitates it, shall be subject to the penalty of deprivation of liberty for a term of up to 3 years.*

§ 2. *Whoever gains material benefits from prostitution of another person shall be subject to penalty specified in § 1.*

§ 3. *If a person specified in § 1 or § 2 is a minor, the offender shall be subject to penalty of deprivation of liberty for a term between 1 year and 10 years.*

Article 8 of Provisions implementing the Penal Code

Whoever causes another person to become enslaved or conducts trade in slaves shall be subject to the penalty of deprivation of liberty for a term of no less than 3 years.

Other criminal offences related to trafficking in human beings:

- Forcing another person to behave in a certain way by means of violence or threat (Art. 191 (1) of the Penal Code),
- Unlawful deprivation of liberty (Art. 189 of the Penal Code).