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e-notes
European NGOs Observatory on Trafficking, Exploitation and Slavery

E-notes

Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008 and 2009)

On the Road

ACCEM
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ALC

La Strada International

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FOREWORD

In recent years, trafficking in human beings has become a well-known phenomenon throughout the European Union (EU) and beyond. Anti-trafficking legislation and mechanisms are in place at national level in almost all 27 EU Member States, as well as at EU level. Social protection programmes for presumed and/or identified trafficked persons are provided by public and non-governmental organisations (NGOs) everywhere in Europe. A great variety of identification and referral procedures have been set up and relatively well honed skills have been developed on how to assist and support trafficked persons from the moment they first come into contact and throughout the process of supporting them in a country of destination, origin or transit.

Are these anti-trafficking legislation, mechanisms and support measures really effective? Do they meet the needs of the trafficked persons who are assisted? Do they fully protect their rights as established by European and international human rights standards? Is legislation providing for the prosecution of human traffickers enforced and are the offenders convicted? Do victims have access to justice and compensation? Do States make significant efforts to prevent this hideous crime? These are just but a few questions that need proper answers in order to assess the efficiency and the effectiveness of the anti-trafficking work that is daily carried out by governments, NGOs and other actors in the field. Notwithstanding, the answers to these questions are rather difficult to find because no comprehensive, reliable, regular and independent monitoring and evaluation system is in place either in most EU Member States or at the EU level.

Acknowledging the crucial role played by monitoring and evaluation of the anti-trafficking frameworks in place in each EU Member State to ensure the full protection of trafficked persons' rights, Associazione On the Road (Italy), ACCEM (Spain), ALC (France) and La Strada International (Netherlands) – NGOs with long-standing experience in the anti-trafficking field – decided to lay the first foundation stones to define a shared and comparable methodology for NGOs to monitor and report on progress. The eventual aim of this work is, to establish a Europe-wide, permanent reporting mechanism that would allow the situation in different countries to be compared and which would be implemented by the NGO community, focussing on policies and interventions intended to stop human trafficking, exploitation and slavery in Europe and intending to enhance and support policies linked to the protection of and assistance for trafficked persons.

This report is, then, the first result of a challenging undertaking and has to be regarded as a work in progress to guide and orient the future work of the E-notes Observatory and, in general, of any monitoring and evaluation exercise focusing on anti-trafficking policy and practice. In spite of the tremendous work carried out in the last twenty years in Europe, it is very clear that much remains to be done by the EU, its Member States, NGOs and all the actors concerned with fully protecting the rights of trafficked persons at any stage during which they are protected, assisted or supported. The adoption of sound and independent monitoring and evaluation systems can help overcome current gaps in the anti-trafficking framework and ensure that all the rights of trafficked persons are respected. The E-notes Observatory has laid the first foundation stone, with the support of NGOs based in all 27 Member States. We hope that the establishment of this new "building" will soon be completed, both to contribute to stopping human traffickers and, most of all, to provide better proper support to their victims.

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ACRONYMS

CCEM	*Comité contre l'esclavage moderne*
DAC	Development Assistance Committee
EU	European Union
ICMPD	International centre for Migration Policy and Development
ILO	International Labour Organization
IOM	International Organization for Migration
MoU	Memorandum of Understanding
NAP	National Action Plan
NGO	Non-governmental organisation
N°	Number (of)
NRM	National Referral Mechanism (see Glossary)
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OECD	Organisations for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
Q	Question
SOPs	Standard Operating Procedures
UK	United Kingdom
UN	United Nations
UNHCR	UN High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

GLOSSARY OF TERMS

A8/A2 EU Member States

A8: countries which joined the EU in 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia). A2: countries which joined the EU in 2007 (Bulgaria and Romania). Governments of EU countries allowed restrictions for up to seven years to the imposed on the right to work for citizens from these ten countries, after which they are to have same rights to work in other EU States as other EU nationals (by April 2011 for A8 nationals and December 2013 for A2 nationals).

Best interests of the child

Article 3.1 of the UN Convention on the Rights of the Child (in force in every European country) stipulates that, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The Committee on the Rights of the Child has stated that a formal 'best interests determination' must take place whenever a child is identified as separated or unaccompanied (i.e., is found in a foreign country without family members or guardian). See Committee on the Rights of the Child, General Comment No. 6 (2005), 'Treatment of unaccompanied and separated children outside their country of origin', paragraph 19 ("In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life"). In the case of an asylum application, "The assessment process should comprise a case-by-case examination of the unique combination of factors presented by each child, including the child's personal, family and cultural background. The guardian and the legal representative should be present during all interviews" (paragraph 72). The General Comment can be accessed at www.unhchr.ch/tbs/doc.nsf/(symbol)/-CRC.GC.2005.6.En?OpenDocument

Boy Child

Refers to children under age of 18 only, not to young adult men. The word child is used in accordance with the definition contained in Article 1 of the UN Convention on the Rights of the Child: "…a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier".

Coercion or coercive means

Any of the means mentioned in Article 4(a) of the Council of Europe Convention in relation to the recruitment of adult trafficked persons: "means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".

For details on forms of coercion recognised during recruitment and exploitation, see the ILO publication, *Operational indicators of trafficking in human beings*, accessible at www.ilo.org/-wcmsp5/groups/public/—-ed_norm/—-declaration/documents/-publication/wcms_105023.pdf

Competent authority

The *Explanatory Report* (paragraph 129) explains that "By 'competent authority' is meant the public authorities which may have contact with trafficking victims, such as the police, the labour inspectorate, customs, the immigration authorities and embassies or consulates". The Convention "requires that the authorities collaborate with one another and with organisations that have a support-providing role" (*ibid.* paragraph 130).

Council of Europe Convention

The Council of Europe Convention on Action against Trafficking in Human Beings, adopted in Warsaw on 16 May 2005 (sometimes referred to as 'the Warsaw Convention'). Published in the Council of Europe Treaty Series (ETS) No. 197, accessible at wcd.coe.int/-wcd/ViewDoc.jsp?Ref=CM(2005)32&Language=lanEnglish&Ver=add1final&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

Debt bondage

Also known as 'bonded labour'.
"The status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined" (Article 1 {a} of the UN *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, 1956). The Supplementary Convention calls debt bondage a 'servile status', rather than a form of servitude. It is also a form of forced labour and either slavery or servitude.

Domestic trafficking

See internal trafficking

Durable solution

Long-term arrangements made for a child who has been trafficked (*UNICEF Reference Guide*).

Exploitation

Partially defined in article 4 of the Council of Europe Convention: "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."
The EU Council Framework Decision of 19 July 2002 on combating trafficking in human beings refers to the exploitation of a "person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude" and also

to "the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography" (article 1.1).
With regard to the purpose of "exploitation of prostitution and other forms of sexual exploitation" it is important to note that both the Council of Europe Convention and the EU Council Framework Decision (2002) on combating trafficking in human beings make a clear distinction between trafficking and prostitution as such. Although the Protocol explicitly mentions the exploitation of the prostitution of others and other forms of sexual exploitation as one of the purposes of trafficking, neither instrument implies a specific positive or negative position on (voluntary, non-coerced adult) prostitution as such, leaving it to the discretion of individual States how to address prostitution in their domestic laws.

Explanatory Report Council of Europe Convention on Action against Trafficking in Human Beings *Explanatory Report*, Council of Europe Committee of Ministers document CM(2005)32 Addendum 2 final, 3 May 2005. Accessed on 4 January 2010 at wcd.coe.int/ViewDoc.jsp?id=-828773&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

Forced labour Article 2.1 of the ILO Convention on Forced Labour (Convention No. 29, 1930) defines the term "forced or compulsory labour" to "mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

Framework Decision of 19 July 2002 The EU Council Framework Decision of 19 July 2002 on combating trafficking in human beings (Official Journal of the European Communities Official Journal L 203, pages 1 to 4, 1 August 2002.).

Girls Refers to children under age of 18 only, not to young adult women.

Guardian (temporary legal guardian) In its General Comment No 6 (see 'best interests of the child' above) the Committee on the Rights of the Child has stated, "…States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State in compliance with the Convention and other international obligations. The guardian should be consulted and informed regarding all actions taken in relation to the child" (paragraph 33).

Human rights approach A human rights approach integrates the norms, standards and principles of the international human rights system into legislation, policies, programmes and processes. The concept of a 'right' means that it is a legally enforceable entitlement, which the government is obliged to respect, promote, protect and fulfil. This concept means that those not enjoying their rights (such as people who have been

trafficked) must be given an opportunity to claim them. It also means that, if their rights are violated (as they are when trafficked persons are under the control of a trafficker), they are entitled to restitution – the State takes action to put them back into a situation that is at least as good as it was before their rights were violated.
A human rights approach places people and their human rights at the centre of the agenda.
The UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2002) (accessed at www.ohchr.org/english/-about/publications/-pap-ers.htm) outline the key elements of a human rights approach in the context of anti-trafficking initiatives.

Ibid. An abbreviation of *ibidem*, used in footnotes and meaning that the reference is to the same publication, chapter, passage etc.

Indicator The authorities in many EU States have prepared lists of 'indicators' to help identify trafficked persons, i.e., tell-tale signs that an individual is being trafficked. These are intended for use by so-called frontline agencies, including immigration officials, police, health workers and NGOs.
NB This word is used by many NGOs in the context of projects, to monitor whether projects are delivering intended results. In the context of anti-trafficking, this is not the intended meaning!
The International Labour Office (ILO) and the European Commission carried out a 'Delphi consultation' in 2008 and 2009 and in May 2009 published *Operational indicators of trafficking in human beings*, and other documents listing "Indicators of Deceptive Recruitment", "Indicators of Coercive Recruitment", Indicators of Recruitment by Abuse of Vulnerability", "Indicators of Exploitation" and "Indicators of Coercion at Destination". This can be accessed on Internet at www.ilo.org/wcmsp5/groups/public/—-ed_norm/—-declaration/documents/publication/wcms_105023.pdf Separate ILO explanations define the various terms used in this document. Among the "Indicators of Coercion at Destination" listed in the context of sex-related trafficking are the following: "Forced to lie to authorities, family, etc; Confiscation of documents; Debt bondage; Isolation, confinement or surveillance ; Threat of denunciation to authorities; Threat to impose even worse working conditions; Threats of violence against victim; Threats to inform family, community or public; Under strong influence; Violence on family (threats or effective); Violence on victims; and Withholding of wages".

Internal trafficking Cases of trafficking in human beings in which the trafficked person is recruited or moved within their own country, rather than across international borders. In more complicated cases, a migrant who has already left their own country is entrapped by traffickers once in another country and is moved within that country. Technically

this could also be called internal trafficking, but this usage requires extra explanation.

Labour-related trafficking

Trafficking for the purpose of exploitation of a person's labour or services in forced labour or services, slavery or practices similar to slavery, or servitude, according to the 2002 Framework Decision.

National Referral Mechanism (NRM)

Title used for a procedure designed by the OSCE's ODIHR for ensuring the identification of trafficked persons and appropriate coordination between ministries, NGOs and others involved in caring for trafficked persons and making decisions affecting them (see ODIHR/OSCE, *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook,* Warsaw, 2004, accessed on 4 January 2010 at www.osce.org/odihr/item_11_13591.html).

With respect to a national coordination structure or mechanism, the Council of Europe Convention requires States Parties to "take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings" (article 5) and to "adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments' departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies" (article 29.2). It also calls for "Co-operation with civil society" (article 35), requiring States Parties to "encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention". Paragraph 353 of the Explanatory Report points out that "Such strategic partnerships may be achieved by regular dialogue through the establishment of Round-table discussions involving all actors. Practical implementation of the purposes of the convention may be formalised through, for instance, the conclusion of memoranda of understanding between national authorities and non-governmental organisations for providing protection and assistance to victims of trafficking".

Non-discrimination principle

Article 3 of the Council of Europe Convention reiterates the same principle as many other human rights treaties, specifying that implementation of the provisions of the Convention by States Parties, "in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". Paragraph 63 of the Explanatory Report confirms that this principle refers in particular to the measures to protect and promote victims' rights and that the meaning of "discrimination" in Article 3 is identical to that given to it

under Article 14 of the [European] Convention on the Protection of Human Rights and Fundamental Freedoms.

Pimping The act of procuring clients for a sex worker/prostitute and/or living off the earnings of a sex worker/prostitute or brothel.

Presumed trafficked person Because *trafficked persons* are often initially unable or reluctant to identify themselves as such, the term "presumed" trafficked person (or presumed victim) is generally used to describe persons who are likely to be victims of trafficking and who should therefore come under the general scope of anti- trafficking programmes and services.

Protection The notion of protection reflects all the concrete measures that enable individuals at risk to enjoy the rights and assistance foreseen them by international conventions. Protecting means recognising that individuals have rights and that the authorities who exercise power over them have obligations.

Reflection period The Convention specifies that, "Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities" (Article 13.1).

Risk assessment Any decision to deport or return a trafficked person, including trafficked children, should be preceded by a risk assessment, that is to say an assessment regarding the safety and well-being of the trafficked person and her/his children and family members during and after return, to ensure that trafficked persons are not sent back to a situation that endangers their life, health or personal freedom and/or would submit them to inhuman or degrading treatment. Under Articles 2 and 3 of the European Convention of Human Rights, States have a positive obligation to protect individuals. Protection offered to trafficked persons should be on the basis of individual risk assessment and need.

Secure accommodation Article 12 of the Council of Europe Convention requires presumed trafficked persons to be provided with "appropriate and secure accommodation". The use of the word 'secure' does not imply that the accommodation is 'closed' and that those living there are not allowed out (as if they were detained). Paragraph 154 of the Explanatory Report specifies that, "As a guarantee of victims' security it is very important to take precautions such as keeping their address secret and having strict rules on visits from outsiders, since, to begin with, there is the danger that traffickers will try to regain control of the victim". In this context, the Convention is concerned about the safety and security of those in the accommodation; in effect, the Convention requires the accommodation to be 'safe'.

Servitude According to the Explanatory Report accompanying the Council of Europe Convention (paragraph 95), "The ECHR [European Commission of Human Rights] bodies have defined 'servitude'. The European Commission of Human Rights regarded it as having to live and work on another person's property and perform certain services for them, whether paid or unpaid, together with being unable to alter one's condition...Servitude is thus to be regarded as a particular form of slavery, differing from it less in character less than in degree. Although it constitutes a state or condition, and is a 'particularly serious form of denial of freedom'…it does not have the ownership features characteristic of slavery".

Sexual exploitation The terms "exploitation of the prostitution of others" and "other forms of sexual exploitation" are not defined in the Council of Europe Convention, "which is therefore without prejudice to how States Parties deal with prostitution in domestic law" (paragraph 88, Explanatory Report). Similarly, no definition of "sexual exploitation" was agreed while the UN Trafficking Protocol (2000) was being prepared. However, the UN Secretary-General subsequently defined the term as, "Any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another" (see [UN] Secretary-General's Bulletin, *Special measures for protection from sexual exploitation and sexual abuse*, section 1, 'Definitions', UN document ST/SGB/2003/13, 9 October 2003).

Sex-related trafficking Trafficking for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation (defined in the Framework Decision of 2002 to include exploitation in pornography).

State Party or States Parties States which have ratified a particular convention or treaty, such as the Council of Europe Convention.

Third country Reference to any country outside the European Union. The term 'third country nationals' applies to people who come from a country outside the EU into an EU Member State.

Trafficked person The term "trafficked person" is used as a general term, referring to those who have been trafficked and are entitled to assistance and protection on the very basis of that fact, whereas the term "victims of trafficking" is used in its judicial meaning and specifically refers to those who are recognised in criminal proceedings as victims in a specific case of trafficking in relation to identified perpetrators.

Trafficking in human beings Article 4.a of the Council of Europe Convention states: "'Trafficking in human beings' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of

deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".
Article 4.c specifies that, "The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in human beings' even if this does not involve any of the means set forth in subparagraph (a) of this Article".
Thus, "trafficking in human beings" is defined as the recruitment, transport, transfer, accommodation or receipt of persons (adults or children or both);

- in the case of adults, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- in the case of children, it refers to the recruitment, transport, transfer, accommodation or receipt of children, whether or not any such abusive means are used.

In both cases (of adult and children), it is for the purpose of exploitation, which includes 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.

Victim The Council of Europe Convention specifies that "'Victim' shall mean any natural person who is subject to trafficking in human beings as defined in this Article" (Article 4 of the Convention). The term thus refers to a victim of crime, who is also considered to be a victim of his or her trafficker(s). The Convention uses the term "victim of trafficking in human beings" (Article 10.2). The term "victim of trafficking" is used by some organisations to refer to anyone who has been trafficked. Other organisations assert that use of the term 'victim' hinders the recovery of people who have been trafficked and prefer to refer to them as 'trafficked persons'. Some organisations which assist women or girls who have been trafficked for commercial sexual exploitation prefer to refer to them as 'survivors'.

Web Word-wide web or Internet.

EXECUTIVE SUMMARY

(translations of this Executive Summary in other languages are to be found in Chapter 8)

Four non-governmental organisations (NGOs) agreed in 2009 to take part in a joint project entitled 'European NGOs Observatory on Trafficking, Exploitation and Slavery' (abbreviated to E-notes), with the broad goal of monitoring what governments throughout the European Union (EU) were doing to stop slavery, human trafficking and the various forms of exploitation associated with trafficking. An Italian NGO, Associazione On the Road,[1] coordinated the project, along with one regional anti-trafficking network, La Strada International, and two national NGOs, ACCEM,[2] based in Spain, and ALC,[3] based in France.

Rather than setting up a permanent institution to monitor government action, the E-notes project set out to collect information about what was happening in each of the EU's 27 Member States. This meant developing a research method and finding NGOs and researchers in each of the 27 countries to take part. The project started by putting an emphasis on the role of **indicators** to measure the progress of each EU Member State's anti-trafficking responses (i.e., the various laws, policies, measures and practices which are expected to reduce levels of trafficking and to protect and assist anyone who has been trafficked). This was translated into a research tool by identifying a list of more than 200 standard questions about these responses, which, it was hoped, would help assess progress in the anti-trafficking responses initiated in each EU country.

1. The standards on which the monitoring exercise sought information

The research process started at the beginning of 2010, just as the European Council appeared near to finishing its consideration of a new EU instrument to standardise anti-trafficking responses in the EU's Member States (to replace a *Council Framework Decision on combating trafficking in human beings*, adopted in July 2002). In 2009 the European Commission presented a proposal for a new Framework Decision on human trafficking. Due to the entry into force of the Lisbon

1. Associazione On the Road provides a wide range of services and protection to trafficked persons, asylum seekers, refugees, and migrants in general in three Italian regions (Marche, Abruzzo, Molise). It is also engaged in awareness raising, community work, research, networking and policy development initiatives at the local, national, and European level.
2. ACCEM provides social services and takes action in the social and legal domain to benefit asylum seekers, refugees, people who are displaced and migrants in Spain.
3. ALC stands for *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (Accompanying [people], Reception centres, Educational and Social centres). ALC coordinates the national network for secure housing for trafficked persons, known as "Ac.Sé").

Treaty, which interrupted all ongoing legislative procedures, negotiations at the Council about the adoption of the new Framework Decision could not go ahead. The European Commission consequently tabled a *new proposal for a Directive of the European Parliament and of the Council on Preventing and combating trafficking in human beings, and protecting victims*, repealing the Framework Decision of 2002. In March 2010 this was referred for consideration by the European Parliament. In September 2010, two of the Parliament's committees proposed a series of amendments to the draft Directive and the process of establishing agreement between the Council, the Commission and the European Parliament began. It was expected that the Directive would be adopted before the end of 2010.

While the broad outline of the provisions in this new directive seem fairly clear, at the time that the E-notes monitoring exercise was carried out, in May and June 2010, the Directive had still not been adopted (nor had it been by the time this report was finalised in October 2010). When deciding what legal obligations to refer to in identifying standards to monitor in each EU Member State (i.e., obligations concerning the State's responses to human trafficking), the project opted to use a different regional instrument, the Council of Europe's *Convention on Action against Trafficking in Human Beings*. This was adopted in May 2005 and entered into force in February 2008. Although ratified by numerous States outside the EU, by August 2010, all but one EU Member State (the Czech Republic) had either ratified the Council of Europe Convention (19) or signed it (seven) and thereby expressed their intention to enforce it.

2. Methods used

The monitoring exercise was designed by a consultant at the beginning of 2010. Attention was paid to previous publications which had suggested appropriate 'indicators' for EU Member States to use in assessing their progress in bringing their laws and practices into line with regional and international standards (all of which are based on the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,* adopted in 2000 to supplement the UN *Convention against Transnational Organized Crime* (2000). Attention was also paid to comments made in various European Commission publications[4] about weak-

4. Such as: European Commission, Communication to the European Parliament and Council on "*Fighting trafficking in human beings -an integrated approach and proposals for an action plan*" (European Commission reference COM(2005) 514 final of 18 October 2005); and European Commission Working Document (European Commission reference COM(2008) 657 final), *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, October 2008.

nesses that had been noted in the way that EU Member States reported on their actions to stop human trafficking or to protect and assist people who are presumed[5] to have been trafficked. Some publications noted that it was difficult to obtain information from Member States (sometimes up-to-date information, sometimes any information) about their anti-trafficking practices. Some referred to a lack of "harmonised data collection", suggesting there was no consistent use of terminology or common reporting mechanisms by EU Member States. All these problems were confirmed during the E-notes exercise.

A European Commission document issued in 2006[6] noted that Member States provided little information about their rules and practices concerning protection or assistance for trafficked persons. In 2008 a Working Document[7] repeated that it was difficult to get information from Member States about the numbers of trafficked persons receiving assistance but noted that by 2006 the States that had provided information to the Commission had revealed that just over 1,500 trafficking cases had been investigated in 23 Member States in the course of the year. It reported that most EU Member States had introduced a reflection period to allow presumed trafficked persons to remain in their country and recover, before being asked to give evidence to the authorities. However, only five countries reported how many people had benefited and the total came to only 26 individuals in a whole year!

To NGOs that specialise in anti-trafficking work (either providing services – assistance – to presumed trafficked persons, or engaged in initiatives to prevent trafficking), the lack of accuracy or precision in the data provided by EU Member States to the European Commission was troubling. On the one hand it suggested that no-one, even in the European Commission, was in a position to find out what was going on throughout the EU. On the other, it also suggested that many of the provisions of regional or international treaties concerning human trafficking or other human rights issues were being ignored by States (despite the fact that they had agreed them) and going unimplemented.

5. The term 'presumed' trafficked person refers to someone who is suspected of having been trafficked while definitive information about their experience is not available.
6. European Commission report on the implementation of the 2002 Council Framework Decision of 19 July 2002 on combating trafficking in human beings (European Commission reference COM(2006) 187 final of 2 May 2006).
7. See footnote 4 above.

Some EU Member States have appointed a National Rapporteur on trafficking in human beings to inform their government (and others) about the progress that is made in the country's anti-trafficking responses and to recommend what can be improved. Nine out of the EU's 27 Member States were reported in the mid-2010 monitoring exercise to have such a National Rapporteur, but not all publish regular reports and some focus on trafficking for specific purposes (such as trafficking women into prostitution) without reporting on action taken against trafficking that is for other purposes. In the long term, if National Rapporteurs were appointed in all EU States, they would be in a good position to introduce standard definitions of terms and ways of measuring statistics related to human trafficking, so that meaningful comparisons could be made between the anti-trafficking responses of different EU States.

Against this background, the E-Notes monitoring exercise set out to find out what information was available in all EU Member States about their laws, policies and practices on the topic of human trafficking, how many people were being identified as 'trafficked' and benefiting from some form of protection, how many were receiving assistance, etc. As the exercise was carried out in May and June 2010, the initial intention was to collect information about the situation in each country during 2009. However, it soon became clear that in many countries information was either not available about 2009, or only incomplete information, while rather more definitive information was available for 2008.

The NGOs that were asked to identify a researcher to collect and write up information for the E-notes monitoring exercise were mostly ones whose expertise related to adults who were trafficked (particularly women). They also compiled information about child trafficking, though many found it difficult to get hold of much information about trafficked children. In many EU States, adults who have been trafficked receive services from NGOs, whereas state-run agencies responsible for child protection have of a monopoly of the care of children who have been trafficked.

Each researcher was asked to fill in a 60-page research protocol, to provide additional free text on numerous points on which "Yes" and "No" answers were not appropriate, and to draft a short 'profile' on their country, reporting on the pattern of trafficking cases in their country and on their government's responses. The information prepared by 27 researchers was processed and entered into a simple data base in July 2010. It was analysed by the same consultant who had prepared the research protocol, to identify possible patterns

– particular failings by EU Member States to respect their obligations to protect and assist trafficked persons – and prepare a report on the findings.

Researchers were asked to comment on whether their particular country was principally a country of origin, transit or destination, or a combination of several of these. This categorisation did not focus on cases of internal trafficking. Relatively few were categorised as only one of the three categories (two, France and Portugal, were described as principally countries of destination). The other 25 were considered to be a combination: one as both origin and destination; ten as both transit and destination; and nine as all three.

3. Findings of the monitoring exercise

The 230 questions in the research protocol sought information on numerous different topics, making it difficult to produce a 'black and white' profile of whether EU Member States were abiding by the commitments and respecting the human rights of trafficked person. However, on five particular issues it was possible to assess the degree of progress that was being made. Even in these cases, however, the information available was either so incomplete or unavailable that none of the statistics mentioned can be regarded as reliable. These five issues are summarised in the table below.

Table 1: Progress in the EU on key points for anti-trafficking responses

Issue	Situation noted in May 2010
Coordination of anti-trafficking responses at national level	A national structure to coordinate anti-trafficking responses is reported to have been established in 22 out of the 27 Member States. The countries without national coordination structures are reported to be France, Germany, Greece and Malta. In Germany and Italy anti-trafficking responses are not organised at national or federal level, but this did not mean they were inadequate. Sweden has appointed a National Coordinator with the task of developing a coordination structure to combat trafficking, but only for cases involving trafficking for sexual purposes.
Identification of presumed trafficked persons	Eleven out of 27 Member States reportedly have a single government agency or structure responsible for making a formal identification of anyone who is presumed to have been trafficked, whereas 16 do not. Six of the countries where there is no national-level process for identification do not have any standard procedure in use throughout the country for formally identify someone who is presumed to have been trafficked (Austria, Bulgaria, France, Germany, Italy, Malta).

Availability of a reflection period of at least 30 days

In 25 out of the 27 Member States there is reported to be provision for a period for reflection and recovery for adults who are presumed to have been trafficked – a good proportion of States seeming to adhere to minimum standards on this point. In Italy there is no provision for a reflection period, but in practice it is sometimes available. In Lithuania a similar situation was reported. For 2008, information was available from 11 countries about a total of 207 people who were granted reflection periods. For 2009, information was available from 18 countries and far more were reported to have benefited: 1,150 trafficked persons. This appeared to reflect a significant increase.

Procedures surrounding returns to make them safe and, if possible, voluntary

Six countries were mentioned by researchers as having formal agreements with other EU Member States or third countries to govern the process of return of a trafficked person to her or his own country (France, Latvia, Portugal, Spain and the UK; Greece has a bilateral agreement that is restricted to trafficked children), although the existence of agreements seems to have been little guarantee that abuses would not take place. When the authorities plan to return a presumed trafficked adult to her or his country of origin, the researchers observed that in only three out of the 17 EU Member States for which information was available were risk assessments carried out as a matter of routine (Italy, Portugal and Romania) prior to return; i.e., assessments of the possible risks to the individual or members of her/his family.

Access to redress and compensation

In 12 countries (out of 22 for which information was available) a trafficked person was reported to have received a payment in damages or as compensation during 2008, and in 12 countries (out of 20) during 2009, either as a result of court proceedings or from a different source. The nine countries in which compensation payments were reported to have been made in both years were Austria, Denmark, France, Germany, Italy, Netherlands, Spain, Sweden and the UK.

Judged on these five points, it would be inappropriate to try and rank the performance of each State (as an annual report issued by the United States Department of States does), for in the first three categories it is different countries, for the most part, which are identified as having weaknesses, while in the last two there is variety in States which are doing the right thing. For example, Italy is the one country mentioned in relation to all five points, performing well on many issues, but with an anti-trafficking system which is quite different to most other EU countries.

Alongside these five key points, the exercise set out to monitor many other developments. It set out to check whether **the law in each country** addressed all the various categories of exploitation associated with trafficking (i.e., for the purpose of "exploitation of prostitution and other forms of

sexual exploitation", for the purpose of exploitation of a person's labour or services in forced labour, servitude, slavery or practices similar to slavery, or for the purpose of removing body organs). The conclusion was that generally it did. Two countries – Estonia and Poland – are reported to have started revising their legislation, but not yet finished doing so, and in one other, Spain, legislation bringing the penal code's definition of trafficking in line with EU and Council of Europe standards only comes into effect in December 2010.

The exercise also intended to find out if the **definitions of human trafficking** in each country are sufficiently similar for information about people described as 'traffickers' or 'trafficking victims' to be comparable. On this point much more variation was found. For example, in France the offence of trafficking is defined widely so that it applies to virtually anyone suspecting of pimping. As a result, it appeared initially that more than 900 individuals had been convicted in France of trafficking in a single year (2008). On closer scrutiny, however, it was apparent that slightly over half (521) were convictions for "aggravated pimping" (an offence nearer to that defined as trafficking in other EU States) and just 18 convictions related to offences that are recognised as 'trafficking' under the regional definitions adopted in the EU's 2002 Framework Decision and the Council of Europe Convention. In Finland the situation is opposite – cases that according to regional standards should have been treated as trafficking have been considered as ones only involving procuring or pimping.

The exercise asked what the process for **identifying people as 'trafficked'** was and whether they were routinely granted a reflection period or other forms of protection or assistance. The findings suggested that both identification processes and the criteria for assessing whether a particular individual has been trafficked vary tremendously among the countries of the European Union, as if no common standard was available.

A **national structure to coordinate anti-trafficking responses** was reported to have been established in 20 out of the 27 Member States. A National Action Plan to Combat Trafficking in Human Beings or a similar plan was reported to have been adopted in 22 out of the 27 Member States (though some focus exclusively on trafficking for the purpose of sexual exploitation). Most countries have a police unit that is specialised in anti-trafficking work. In some countries there is a procedure recognised at national level that specifies the roles to be played by different organisations in providing protection or assistance to trafficked persons and for referring them to appropriate services – a

National Referral Mechanism or System. A total of 17 countries have such a system, while nine do not.

In 11 out of 27 Member States a single government agency or structure is responsible for making a formal identification of anyone who is presumed to have been trafficked, whereas in 16 this is not the case. Seven of the countries where there is no single process for identification do not have any standard procedure used throughout the country for formally identifying someone who is presumed to have been trafficked. This does not, however, imply that identification (and the resulting availability of protection) is more effective in countries with a single system. When it comes to identification procedures, both the detail of the procedures to be followed, the extent to which these are respected and the effectiveness of the procedures were reported to vary widely between different countries.

Researchers were only able to obtain partial information about **the numbers of presumed trafficked persons identified over a 12-month period in 2008 and 2009** – a total of 4,010 in 16 countries (though some of these individuals may have been double-counted, i.e., identified first in a country of destination and again, subsequently, in their country of origin). In slightly over half (55 percent) the cases, presumed trafficked persons were subsequently confirmed definitively by the authorities as having been trafficked. Similarly, information about the number of presumed **trafficked persons who were the subject of referrals (to services) in 2009**, available from 16 countries, concerned a total of 3,800 people.

In the case of both adults and children who were presumed victims, some went **missing** in 2008 or 2009 before the identification process was completed. Presumed trafficked children were reported to have gone missing in 10 countries. A different set of 10 countries reported that adults who were provisionally identified as 'trafficked' had gone missing.

Researchers collected information about various aspects of **protection**, notably:
- Reflection and recovery periods;
- Risk assessments; and
- Returns (i.e., repatriation to a trafficked person's country of origin).

Researchers obtained information that was incomplete in some countries about the **numbers of people who were granted a reflection period**. For **2008**, information was available from 11 countries about a total of 207 people who benefited. For **2009**, information was available from 18 countries about 1,150 peo-

ple. In 2008, 1,026 residence permits were known to have been granted in a total of nine countries. The average of more than 100 permits per country gave an inaccurate impression, however, for 664 of these were issued in Italy alone (and a further 810 in 2009), along with 235 in the Netherlands, meaning that in 2008 the seven other countries reportedly only issued a total of 127 residence permits between them to trafficked persons (i.e., averaging less than 20 each). This suggests the laws or policies determining which trafficked persons are granted residence permits vary substantially between different EU countries.

Trafficked children were reported to have been granted leave to remain[8] in six countries in these two years: France, Poland and the UK, where they were granted temporary leave only until shortly before they reached the age of 18, and Austria and Denmark, where the leave to remain was considered permanent. In Italy, foreign children, trafficked or not, are allowed to stay until reaching 18 years of age. However, also trafficked children can obtain a residence permit on the same basis as trafficked adults (under a regulation known as "article 18"). In Netherlands children were granted leave to remain, but the relevant data made it difficult to assess whether they could remain on a permanent basis.

On the issue of return (or repatriation), researchers set out to find out whether returns were voluntary or forced, how many presumed trafficked persons had been returned and in what conditions. They confirmed that six EU Member States have formal return agreements with other States (as five of the six are countries of destination, agreements are mostly with other States that are perceived to be countries of origin).

Information was available from 15 countries about **returns of adults in 2008**: 194 were returned to their country of origin from 12 countries (Austria, Cyprus, Czech Republic, Denmark, France, Greece, Italy, Latvia, Netherlands, Poland and Slovenia). In this year (2008) the largest number of returns was reported from the Netherlands (37), with Italy next (31), followed by Cyprus (24), Germany (23) and Denmark (21). Information about **returns in 2009** was available from fewer countries, just 10. In this case 171 individuals were reportedly returned to their country of origin from 10 countries, with one country, Greece, accounting for well over half all the returns. Elsewhere, 22 returns were reported from Austria and 23 from Poland, with the seven other countries reported to account for a total of only 19 returns. Evidently, the

8. 'Leave to remain' is a generic term for describing the legal entitlement given to non-nationals to remain in a country on either a temporary or permanent basis.

numbers of returnees represented quite different proportions of the total number of referrals or presumed trafficked persons in each of these countries. However, again, the data suggests there are quite different criteria in each country for deciding on whether to return a presumed trafficked person and the numbers of returns were not proportional to the numbers of presumed trafficked persons reportedly identified or granted reflection periods.

In 2008 or 2009, **citizens of other EU Member States who were identified in a country as presumed trafficked persons** were provided with protection and assistance in 19 Member States on the same basis as nationals from so-called 'third countries' outside the EU. However, in six Member States (Germany, Hungary, Latvia, Lithuania, Romania and Spain), citizens of other EU States who were identified as trafficked were reportedly not provided with as good a level of protection and assistance as nationals from 'third countries'. Some citizens of other EU States are reported to have experienced difficulties in being identified as 'trafficked' or in obtaining assistance. This nevertheless means that, in most West European countries to which citizens of EU countries in Central Europe were trafficked, they were able to get assistance. In 14 out of 25 EU countries, EU citizens were identified and assisted in 2008 and 2009 on the same basis as trafficked persons from outside the EU.

On the question of what forms of **in-court protection were available to trafficked adults** or children who were victim witnesses, it was reported that in about half the EU Member States measures to protect victim witnesses were available. The in-court protection that researchers inquired about included 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. Nevertheless, in five countries (Czech Republic, Denmark, France, Portugal and the UK) cases were reported in 2008 or 2009 in which a trafficked adult or child whose identity was supposed to remain confidential had their identity made public in the course of criminal proceedings.

Recent research from Anti Slavery International[9] and OSCE[10] concluded that although there is a right to compensation for trafficked persons and despite the existence of several compensation mechanisms, the actual receipt of a compensation payment by a trafficked person is, in practice, extremely rare. Neverthe-

9. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
10. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

less, in 12 countries (out of 22 for which information was available) a trafficked person was reported to have received a payment in damages or as compensation during 2008, and in 12 countries (out of 20) during 2009, either as a result of court proceedings or from a different source. The nine countries in which compensation payments were reported two years running were Austria, Denmark, France, Germany, Italy, Netherlands, Spain, Sweden and the UK.

The research did not explore the numerous **prevention methods** in detail but focused on finding out what information was available to migrants before and after their arrival in a country where trafficked persons are reported to have been exploited.

The Council of Europe Convention requires States to "consider appointing **National Rapporteurs** or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements". Although the provision only requires States to "consider" making such an appointment, there is every reason to suspect that the forthcoming EU Directive will be significantly stronger on this point, making it a requirement that EU Member States establish an independent National Rapporteur or another equivalent mechanism. In March 2009 a conference hosted on the issue of National Rapporteurs suggested that 12 EU States had already appointed a National Rapporteur (or equivalent mechanism) to monitor national responses to human trafficking. Researchers confirmed that nine of the EU's 27 countries had a National Rapporteur on trafficking (Cyprus, Czech Republic, Finland, Latvia, Lithuania, Netherlands, Portugal, Romania and Sweden), while 16 did not. Several (such as Sweden) were reported to pay attention primarily to cases involving trafficking for sexual purposes. In several States (such as Belgium and Spain) a different state institution is involved in monitoring anti-trafficking responses. In three of the nine with a Rapporteur (Latvia, Lithuania and Sweden) the role of the Rapporteur was not fully independent from those involved in anti-trafficking operations, limiting their independence and potentially reducing their ability to monitor in a strictly independent way.

4. Conclusions and recommendations

The E-notes project has showed that there are substantial discrepancies between EU Member States on fundamental aspects of anti-trafficking policy and practice within the EU, such as national legislation to prohibit human trafficking and definitions (or interpretations by relevant government agencies) of what constitutes trafficking, the existence of coordinating bodies and

the process to identify trafficked persons. It also showed that several provisions of international and national legislation that are intended to secure the protection of the rights of trafficked persons still exist on paper alone and their implementation has hardly begun in the majority of EU Member States. The organisations taking part in E-notes believe that more effort should be made by the European Union, by EU Member States themselves and by civil society to strengthen the basis of the policy framework, at national and EU levels, that is intended to stop human trafficking.

While substantial improvements are needed with respect to the implementation of many aspects of anti-trafficking policies in the EU, the following recommendations prepared by the E-notes project focus on the protection of the rights of trafficked persons, as we are convinced that this should be the core of any State's efforts to counter trafficking in human beings. However, it is with respect to prevention of trafficking and protection of trafficked persons that relevant provisions are implemented the least.

Identification and referral of trafficked persons

The protection of the rights of trafficked persons can only be secured when all presumed victims (irrespective of their cooperation with the authorities) are identified as such. The E-notes findings show that identification is still a very weak link. In order to improve the identification process in the Member States we consider that it is essential that:

- Member States develop checklists and/or indicators, in cooperation between law enforcement, prosecutors' offices and service providers, to assist in the identification of presumed victims of trafficking for any form of exploitation. Additional indicators should be identified for every form of exploitation, such as labour exploitation, domestic servitude, sexual exploitation, forced begging, forced involvement in illicit activities etc. Specific indicators for the identification of child victims should be developed;
- Identification is not the responsibility of a single government agency but should be carried out by multidisciplinary teams that including organisations providing services to trafficked persons;
- The national structures that are in place for referral, either National Referral Mechanisms (NRM) or others involved in implementing Standard Operational Procedures (SOPS), should be based on close and regular cooperation between law enforcement officers, immigration officials, labour inspectors, relevant trade unions, child protection agencies, prosecutors' offices and NGOs or other service providers;
- Access to justice for trafficked persons, including for claiming compensation, is improved by guaranteeing free legal aid to all identified trafficked persons;

- All Member States ensure that an individual risk assessment is conducted for all trafficked persons when it is proposed that they return to their home country.

Monitoring

Further monitoring is essential, both at EU and national level, so that all relevant stakeholders have a better understanding, not only of what exists on paper in terms of what is supposed to be done in each country to stop trafficking, but what is actually occurring in reality. For a good understanding of the implementation, the effects and the impact of anti-trafficking policies in the European Union, it is urgent that:

- National Rapporteurs or other equivalent mechanisms should be independent bodies (as agreed in The Hague Declaration, 1997), so as to guarantee independent and comparable monitoring of results of anti-trafficking actions. It is also important that the impact and the unforeseen or even negative effects of anti-trafficking measures should be identified and reported;
- There should be more standardisation on relevant terminology, statistics and ways of measuring (e.g., numbers of individuals prosecuted for trafficking);
- There should be close cooperation between the EU and its Members States and the members of GRETA, the independent monitoring body of the Council of Europe Convention on Action against Trafficking in Human Beings, in order to avoid unnecessary overlap in monitoring activities.

Legislation

- Further monitoring is needed to ensure that all national legal frameworks incorporate the definition of trafficking agreed in the 2002 Framework Decision and the 2005 Council of Europe Convention.
- There appears to be a significant need for a better understanding in many EU Member States of the notion of "exploitation" and the various offences linked to illegal exploitation, both when people are trafficked into exploitation or for the purpose of exploitation and when people are subjected to illegal exploitation without having been trafficked.

Coordination of anti-trafficking policies at national level

- All Member States that have not done so yet should create a coordination structure and a national action plan to give more coherence to their anti-trafficking policies. Appropriate allocation of human and economic resources is crucial for the efficient functioning of both of these. It would consequently be appropriate for any future monitoring exercise to check what resources are allocated in each EU Member State to finance a national coordination structure and to support coordination activities.

1. INTRODUCTION

This report sets out to monitor and measure progress in the anti-trafficking responses of the 27 countries which form the European Union (EU). Such responses comprise the various laws, policies, measures and practices which are expected to reduce levels of trafficking in human beings and to protect and assist anyone who has been trafficked. It reviews previous attempts to monitor such progress and to identify suitable indicators to be used in assessing whether EU Member States are meeting their international or regional commitments to take action to stop human trafficking and to protect and assist people who have been trafficked.

1.1 Responsibility for this report

In 2009 an Italian non-governmental organisation (NGO), Associazione On the Road,[11] contacted NGOs in three other European countries and proposed to establish with them a 'European NGOs Observatory on Trafficking, Exploitation and Slavery' (abbreviated to E-notes). This report describes the initiative they took together to monitor what governments throughout the EU are doing to stop slavery, human trafficking and the various forms of exploitation associated with trafficking, later associating NGOs in all the other 23 countries of the EU in this monitoring exercise.

The three other NGOs are: ACCEM (in Spain), ALC (in France) and La Strada International (an eight-country network with an office in the Netherlands). ACCEM is a not-for-profit organisation working in the field of migration, based in Spain.[12] ALC is also a not-for-profit organisation, but based in France.[13] It provides services to both trafficked persons and any person working in prostitution, chiefly in the cities of Nice and Cannes. It coordinates France's national network for secure housing for trafficked persons, known as "Ac.Sé".[14] La Strada International (or LSI) is a European network against trafficking in human beings, based in the Netherlands, to which eight human rights NGOs belong, located in countries both in and outside the EU[15]. Together the four NGOs formed a steering group which oversaw the project.

11. www.ontheroadonlus.it
12. www.accem.es
13. www.association-alc.net
14. www.acse-alc.org
15. www.lastradainternational.org. The countries include: Belarus, Bulgaria, the Czech Republic, the former Yugoslav Republic of Macedonia, Moldova, the Netherlands, Poland and Ukraine.

The NGOs were aware that individual governments, the European Commission and the Council of Europe were all engaged in distinct efforts to assess the adequacy of anti-trafficking responses, but suspected that civil society, in the form of NGOs and professional researchers working with NGOs, had an important contribution to make and might be able to obtain or collate information that other institutions would not. In part this is because the responses to human trafficking in different EU Member States vary so much and, in some instances, the authorities of different countries use identical terms to mean different things or different yardsticks to measure the same things. This has been an obstacle in particular to finding out how many people who have been trafficked (i.e., 'trafficked persons') are identified, protected or assisted each year in EU countries, and likewise how many traffickers are investigated, prosecuted or convicted each year in EU countries.

As the establishment of any sort of Observatory costs a great deal of money, the four organisations started out by working together on a project basis and secured funding from the European Commission's Directorate-General for Justice, Freedom and Security (Prevention of and Fight against Crime Programme) to monitor the progress that EU Member States were achieving in their efforts to stop slavery, human trafficking and the exploitation associated with trafficking, and in particular to monitor whether they were meeting the commitments that, as Member States of the EU or as States that have ratified particular anti-trafficking treaties, they have made to protect and assist people in EU countries who have been trafficked, whether the individuals concerned are nationals of an EU Member State or a country outside the EU (known in EU jargon as "third countries").

The project started by putting an emphasis on the role of indicators to measure the progress of each EU Member State's anti-trafficking responses. This was translated into a research tool by identifying a long list of standard questions about these responses, which, it was hoped, would be relevant in assessing anti-trafficking responses in every EU country.

1.2 The significance of 'indicators'

Both the International Labour Organization, together with the European Commission, and the authorities in many EU States have prepared lists of 'indicators' to help identify trafficked persons, i.e., to detect the tell-tale signs that an individual is being trafficked. These are intended for use by so-called frontline agencies, including immigration officials, police, health workers and NGOs.

However, the word 'indicators' is also used to signify other things. Many government agencies and NGOs use indicators in the context of their projects, to monitor whether projects are delivering intended results. For example, the Organisations for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC) *Glossary of Key Terms in Evaluation and Results Based Management* defines an 'indicator' as a "Quantitative or qualitative factor or variable that provides a simple and reliable means to measure achievement [emphasis added], to reflect the changes connected to an intervention, or to help assess the performance of a development actor". Some indicators are used specifically to measure performance: a 'performance indicator' is defined by the DAC Glossary specifically as, "A variable that allows the verification of changes in the development intervention or shows results relative to what was planned".

The present project set out to identify and use indicators that would show whether an individual EU Member State was fulfilling its obligations at regional and international level to take action to stop trafficking in human beings, to provide trafficked persons with appropriate protection and assistance and to do so while respecting the human rights of the people involved, or using a so-called "human rights approach" (see the *Glossary* for an explanation of this term). It did so by identifying a series of standards among the many the EU Member States are expected to respect and developing a set of questions which were intended to assess whether these standards were being respected.

1.3 Results

Chapter 2 of the report summarises previous attempts to collect information on anti-trafficking responses in all 27 EU countries. Chapter 3 reviews the minimum standards that EU Member States have agreed to respect.

Chapter 4 explains the method used. The E-notes monitoring exercise developed a research tool that included a list of more than 200 standard questions about anti-trafficking responses. Researchers who were identified by NGOs in each of the EU's 27 countries collected the information and submitted a large volume of responses (more than 1,600 pages of answers to a standard research protocol and many hundreds of pages of free text describing anti-trafficking responses in each country).

Chapter 5 of the report summarises some of the findings of the monitoring exercise, although it is only a précis of the substantial information that was

collected about each country. It explores whether it is feasible or desirable to present a general ranking of EU Member States in terms of the adequacy of their any-trafficking responses.

Chapter 6 presents brief conclusions, noting that this report represents 'work in progress'. The E-notes initiative has collected baseline information on many different issues, against which it should be possible to measure changes in future years. It also confirmed that there are significant obstacles to collecting standard information about anti-trafficking responses throughout the EU, due to inconsistent use of terminology and a lack of standardisation in the responses.

Chapter 7 consists of a set of country-by-country profiles of individual countries, summarising what is known about the pattern of human trafficking and the anti-trafficking responses organised by the Government and its institutions or NGOs in each of the 27 EU Member States. Chapter 8 contains translations of the Executive Summary into the EU's principal national languages. An appendix lists the questions used in the research protocol (Appendix 1).

More details of the information collected by E-notes can be found on the E-notes website: www.e-notes-observatory.org.

2. PREVIOUS EFFORTS TO MONITOR OR MEASURE ANTI-TRAFFICKING RESPONSES IN EUROPEAN UNION MEMBER STATES

A number of reports have been published already that attempted to describe either patterns of human trafficking or responses to trafficking in all the Member States of the European Union. The scope of such reports changed in 2004, when the number of countries involved increased from 15 to 25 (before reaching the present total of 27 countries).

2.1 Reports addressing the whole of the European Union

Soon after the adoption of the *Council Framework Decision of 19 July 2002 on combating trafficking in human beings*,[16] the European Commission organised, together with the International Organization for Migration (IOM), a "European Conference on Preventing and Combating Trafficking in Human Beings (Global Challenge for the 21st Century)". At the time of the conference in September 2002, various estimates were suggested of the number of people who were trafficked in the European Union each year. None of the estimates were based on much evidence. The largest estimate – 500,000 women trafficked each year – was attributed to the IOM, though it is unclear where or when this estimate was made.[17] Despite its vagueness, this estimate was still being repeated in 2010 as if it had a factual base.[18]

More recently, in September 2010 two European Parliament committees reported that 43 percent of those trafficked in Europe are exploited in pros-

16. The text of the Framework Decision was published in the Official Journal of the European Communities, Official Journal L 203, pages 1 to 4, 1 August 2002, accessed at eurlex.europa.eu/LexUriServ/site/-en/oj/2002/l_203/l_20320020801en00010004.pdf

17. The IOM has not made any estimate of this type in recent years, but has restricted itself, in public statements and documents, to mentioning the numbers of trafficked persons of which it has specific knowledge, mainly those assisted by the IOM. In an article published in November 2002, the IOM's head of research reported that the European Commission had made an estimate in 2001 that "an estimated 120,000 women and children are being trafficked into Western Europe each year", but he had been unable to discover on what basis this the number was calculated (Frank Laczko, *Human Trafficking: The Need for Better Data*, November 2002, accessed on 13 September 2010 at www.migrationinformation.org/Feature/display.cfm?ID=66).

18. In a review of the implementation of Sweden's 1998 law prohibiting the purchase of sexual services, the current Attorney General of Sweden, Anna Skarhed, reported that, "According to estimates by the International Organization for Migration (IOM) there are around 500,000 women trafficked to one of the EU Member States each year". *Förbud mot köp av sexuell tjänst. En utvärdering 1999-2008*, SOU 2010:49, (Stockholm: 2010), accessed on 6 July 2010 at www.regeringen.se/content/1/c6/14/91/42/ed1c91ad.pdf.

titution and 32 percent in menial labour, but did not provide an estimate of what the total figure was.[19]

The European Council published a set of "*Conclusions*" in May 2003 (European Commission reference 2003/C 137/01 of 8 May 2003) on the basis of the Brussels Declaration that was issued at the end of the September 2002 European Conference. The annex to the Conclusions contained a set of "recommendations, standards and best practice" for Member States to take note of, covering four topics ('Mechanisms for Cooperation and Coordination', 'Prevention of Trafficking in Human Beings', 'Victim Protection and Assistance' and 'Police and Judicial Cooperation'), and containing recommendations on 19 points.

An additional result of the September 2002 conference was that the European Commission established a European Experts Group to provide it with advice. In December 2004, the European Commission published a report by this Group, *The Report of the Experts Group on Trafficking in Human Beings*. This was not a country-by-country analysis of Member States' responses to human trafficking, but rather a commentary on the responses by governments that were considered necessary. This contained a total of 132 recommendations, most for action by Member States and some for action at European level.

In October 2005 the European Commission issued a Communication to the European Parliament and Council on "*Fighting trafficking in human beings - an integrated approach and proposals for an action plan*" (European Commission reference COM(2005) 514 final of 18 October 2005). This asserted that, "The persons concerned [i.e., individuals who have been trafficked], their

19. *Tougher penalties to prevent and combat trafficking in human beings*, European Parliament, Justice and Home Affairs press release, 2 September 2010, accessed on 8 September 2010 at www.europarl.europa.eu/news/expert/infopress_page/01980646-242-08-36-902-20100830IPR80645-30-08-2010-2010-false/default_en.htm The estimated proportions referred to people being trafficked in the world as a whole, not just in the EU. These estimates were quoted in a general *Memo* announcing in March 2010 that the draft Directive had been referred by the Council to the European Parliament (Memo/10/108)). They were published initially in 2005 by the International Labour Organization (ILO) in Patrick Belser, Michaelle De Cock and Fahrad Mehran, *ILO Minimum Estimate of Forced Labour in the World*, ILO, Geneva, April 2005. This 2005 report estimated that 360,000 people were in some form of forced labour in all the industrialised countries of the world (i.e., not only Europe, but North America, Japan, Australia and New Zealand, etc.), of whom 270,000 had been trafficked. Of the total of 360,000 in some forms of forced labour, 200,000 were reportedly subjected to commercial sexual exploitation (i.e., 55 percent of the total) and 84,000 (23 percent of the total) to economic exploitation (and 58,000 to mixed forms of exploitation and 19,000 to state-imposed forced labour). Based on these estimates and in the absence of data that disaggregated EU countries from other industrialised countries, it would be reasonable to estimate that a significantly higher proportion of those trafficked in Europe than 43 percent are exploited in prostitution (i.e., at least 55 per cent and probably more).

needs and rights shall be at the centre of the EU policy against human trafficking. This means first and foremost a clear commitment of EU institutions and Member States to follow a *human rights centred approach* and to promote it in their external relations and development policies". It recommended that,

> "The Council, in close cooperation with the Commission and on the basis of an in-depth dialogue with civil society, should hold at least once a year a political debate on the EU anti-trafficking policy and assess its compliance with human rights standards and the need for further action, e.g. improving schemes for assistance, protection and social inclusion" (Part II).

It also commented (Part VI) that, "The EU anti trafficking policy must be based on a clear picture of the actual extent of the problem at EU and global level". However, it noted that, "[P]recise figures are not available, and law enforcement data, although important, are not sufficient." The comments made in 2005 on the paucity of data are still pertinent today and form the background to this report, so it is appropriate to quote them in greater detail. In footnotes, the Communication registered that,

> "Neither the Commission nor Europol nor any other EU mechanism, such as CIREFI (Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration, set up by a decision of the Ministers responsible for immigration on 30 November and 1 December 1992), is able to publish precise figures about the EU-wide extent of trafficking in human beings" (footnote 66).

It also noted that,

> "Data on trafficking in human beings should not only facilitate an assessment of law enforcement activities but of the entire anti-trafficking policy including measures related to prevention, to protection and support of victims or to the impact of voluntary or forced return. Therefore, it is also important to know, for example, how many trafficked persons benefited from support provided by civil society organisations, how many benefited from a residence permit and under what conditions, how many returned to their countries of origin and what happened to them after three, five or even more years [emphasis added]. Finally, it might be useful to know the financial implications of anti-trafficking measures" (footnote 67).

The recommendation made about data in this Communication was that,

> "The future European Union Agency for Fundamental Rights should – in line with its mandate and in close cooperation with the future European Migration Network (EMN) as well as with the Experts Group on Trafficking in Human Beings – collect and analyse data on human trafficking. It should develop methods to improve the comparability and reliability of data at European level, in co-operation with the Commission and the Member States".

Perhaps the fact that several of the institutions being asked to act were not yet in existence made it unlikely that this recommendation would be heeded. Nevertheless, two years later, at the request of the Experts Group, a consultant was asked by the European Commission to prepare a manual focusing on the issue of indicators and suggesting what indicators could be used to allow EU Member States to measure their own progress in the development of anti-trafficking responses,[20] in particular responses that were in line with the 132 recommendations made in *The Report of the Experts Group on Trafficking in Human Beings* in 2004.[21]

Meanwhile, at the end of 2005 the European Council published an *EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings* (European Commission reference 2005/C 311/01 of 9 December 2005). This was rather succinct, containing five key points, once again recognizing "the importance of taking forward a human rights and victims-centred approach" (Point 3), requiring the EU as a whole to "strengthen its operational response to trafficking in human beings" (Point 4) and Member States to "find more and more intensive ways of taking forward cooperation" (Point 5).

A year later, in December 2006, came the first follow-up report on how the EU Plan was being implemented (European Commission reference 16633/06 of 14 December 2006). On an objective concerning knowledge and data about human trafficking ("To improve knowledge on the scale and nature of trafficking in human beings…effecting the EU, to enable the EU to target efforts better") the report noted that the "EC [European Commission] is working on the establishment of indicators for different types of trafficking. This will be the basis for harmonised data collection."

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20. *Measuring Responses to Trafficking in Human Beings in the European Union: an Assessment Manual.* Draft prepared by Mike Dottridge for the meeting on the EU Anti-Trafficking Day (18 October 2007), Directorate-General Justice, Freedom and Security, European Commission. Accessed at tdh-childprotection.org/documents/measuring-responses-to-trafficking-in-humanbeings-in-the-european-union.
21. This report and others of the Experts Group can be accessed at ec.europa.eu/homeaffairs/doc_centre/crime/crime_human_trafficking_en.htm.

Earlier the same year the European Commission had issued a report (European Commission reference COM(2006) 187 final of 2 May 2006) on the implementation of the 2002 *Council Framework Decision of 19 July 2002 on combating trafficking in human beings.* This noted that Member States were supported to have complied with the Framework Decision by August 2004, but by that time only four States had notified the Commission of the measures they intended to implement the Framework Decision. By the end of 2005, information had been received from most States, but four had still provided "no or only preliminary information" (Portugal, Luxembourg, Ireland and Lithuania). The Commission consequently complained (diplomatically) in the report that, "It should be noted that not all Member States have transmitted to the Commission all relevant texts of their implementing provisions in a timely fashion. The assessments and conclusions of the Report are therefore sometimes based on incomplete information".

On the key question of whether their legislation had been amended to reflect the definition of trafficking ("as being for the purpose of labour or sexual exploitation") contained in article 1 of the Framework Decision, the Commission concluded that, out of the 21 States which had provided information, "a large majority of the Member States seem to comply with Article 1".

With respect to articles 4 and 5 of the Framework Decision, notably the introduction of the concept of liability of legal persons in parallel with that of natural persons for offences of human trafficking, the Commission noted that the Czech Republic, Latvia and the Slovak Republic still did not have legislation allowing that legal persons to be held liable for criminal offences.

The Commission concluded in 2006 that, "On the basis of the information provided, the requirements set out in the Council Framework Decision appear to have been largely met by Member States – either as a result of pre-existing domestic laws, or through the implementation of new and specific legislation".

On other issues the score card was more questionable:

- "[P]rotection and assistance regimes may be subject to further examination as the Commission received only limited information concerning the implementation of Article 7(2) and (3)" (of the Framework Decision).

- "As regards particularly vulnerable victims, the Commission again only received limited information, and thus cannot provide an exhaustive evaluation in this respect."

Taken in total, the remarks in European Commission documents issued in 2005 and 2006 made it clear that the Commission itself had considerable difficulty in obtaining information from Member States about their responses to human trafficking (whether legislation, prosecutions, protection of victims or other response) and that the data that was available was not sufficiently standardised to compare information on many questions. Further, next to no information was provided by Member States about the ways in which they were protecting or assisting adults and children who had been trafficked.

In October 2008 the European Commission issued a working document (European Commission reference COM(2008) 657 final), entitled *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings.*

This paper gives an overview of anti-trafficking measures in the EU area and Norway, based on the replies given by 23 EU Member States (out of the 27 which were Member States by this time) and Norway to a questionnaire circulated by the Commission. It concluded that:

- The protection of trafficked persons in national legislation from prosecution or criminal sanctions for offences committed as a consequence of their situation as trafficked persons appeared to be insufficient;
- Long-term preventive measures were still insufficient, especially measures aimed at promoting gender equality;
- The total number of cases (of human trafficking) investigated in the EU was 195 in 2001, 453 in 2003, 1,060 in 2005, and 1,569 in 2006;
- Very few countries were able to say how many trafficked persons received protection;
- Replies regarding compensation showed that there was also a gap in this field between legislation and enforcement;
- The majority of countries had adopted legislative measures in the field of victim support;
- Most countries had introduced a reflection period for presumed trafficked persons, varying from 30 days to 6 months. However, only five countries made relevant figures available. The total number of all those granted a reflection period in these five countries in 2006-2007 was 56, of which 30 cases were in Norway and only 26 in EU Member States;
- It was difficult to obtain information about the numbers of trafficked persons who received assistance and "The vast majority of countries do not even dispose of figures". However, in countries where there were relatively higher numbers of assisted trafficked persons (Austria, Bel-

gium, Italy, Bulgaria and the United Kingdom), "figures on criminal proceedings are also higher", so it might be appropriate for the European Union to develop further regulations on victim support in order to facilitate more prosecutions of traffickers;
- Little information was available about assisted return. "In many countries risk assessment by law enforcement agencies before return is not regulated, or have very limited implementation";
- In most countries an inter-agency coordinating body had been appointed, but "national machinery still seems to be inadequate as far as monitoring mechanisms are concerned".

Once again, it was clear that inadequate data was available on a range of issues. The Working Document itself concluded that, "Although the Commission and the Council have been particularly active in the field of victim assistance and protection, the factual situation shows substantial weaknesses" in these fields.

In 2009 further information became available about how anti-trafficking responses were being monitored, when the Czech Presidency organised a Conference of EU National Rapporteurs for Trafficking in Human Beings ("Joint Action, Joint Analysis") in Prague on 30 and 31 March 2009. A questionnaire circulated before the conference resulted in information being contributed by 22 out of 27 EU Member States, 12 of which reported that they had already appointed a National Rapporteur (or equivalent mechanism) to monitor national responses to human trafficking. The note on the conference that was circulated by the Council (European Commission reference 8722/09 of 17 April 2009) mentioned particular challenges that had been identified during the conference, such as the need for comparable data, information on trends and best practices.

So, by 2009, it was apparent from representatives of institutions exercising the role of National Rapporteur that insufficient information was available about patterns and trends (or human trafficking) within the European Union and that the data that was available, whether about human trafficking or responses to it, was still not sufficiently comparable.

It was in this context that the project that led to the current report was devised: a context in which inaccurate information about the number of trafficked persons continues to circulate and much information that EU Member States make available does not use common definitions or standards, with the result that the data produced are not comparable.

2.2 Other reports by governments or intergovernmental organisations

The International Centre for Migration Policy Development (ICMPD) published a report entitled *Legislation and the Situation Concerning Trafficking in Human Beings for the Purpose of Sexual Exploitation in EU Member States* in 2009.[22] The report explores how EU Member States' legislation and policies on trafficking in human beings for the purpose of sexual exploitation and other relevant areas, such as prostitution, immigration and labour, influence the situation concerning trafficking in human beings for the purpose of sexual exploitation. It is based on information from interviews with 60 experts, as well as documentary sources, in 17 EU Member States. The 17 were selected to ensure regional balance, representation of new EU Member States, size and location; and representation of various regimes regulating prostitution.

On the basis of the data that the authors obtained, the report reached the conclusions that:

> "The available quantitative data on trafficking in human beings allows for the following tentative observations: (1) there is no clear increase in the recorded number of victims of trafficking or in the number of criminal cases of trafficking in human beings over time; (2) in most countries, the majority of identified victims of trafficking were trafficked for the purpose of sexual exploitation; (3) in a number of countries the absolute number of identified victims of trafficking for labour exploitation has increased".

On the specific issue of reflection delays, this ICMPD report observed that:

> "The national legal provisions in most of the countries present some - at times significant - gaps in regulating the granting of adequate reflection periods, access to residency permits and general assistance to the victims. The research shows that often the assistance is provided to the victims of trafficking by NGOs, whereas states are less active in the field of direct assistance".

The report concludes with 13 recommendations for EU Member States and four for the European Commission or other European institutions.

The United Nations Office on Drugs and Crime (UNODC) published several different relevant reports in 2009. At the start of the year it issued a *Glob-*

22. The authors of this report are Blanka Hancilova and Camille Massey.

al Report on Trafficking in Persons that contains entries on all 27 EU Member States, as well as other countries in Europe and other regions. Each country entry was structured to cover the "Institutional Framework", "Criminal justice response", "Services provided to victims" and any extra information deemed relevant. It presents statistical information that the authorities of the country concerned provided to the UNODC. So, for example, a chart records that 92 individuals were suspected of the offence of trafficking in persons in 2005, but only seven in 2006 and 11 in 2007. It also contains information on the number of women who spent time at NGO-run shelters in Vienna between 2003 and 2007 (between 33 and 45). In other cases the details available are different. So, the entry on Belgium includes information on the country of origin of trafficked persons: however, the statistics provided by the Immigration Office in Belgium's Federal Public Service of Home Affairs included people who had been smuggled as well as those who had been trafficked, without differentiating in the statistics between them. Sometimes the information is about theoretical capacity to respond to trafficking cases, but does not reveal what happens in practice. In Bulgaria, the entry notes that there were three State-run shelters for child victims of trafficking in Bulgaria, each with a capacity to house up to ten children. The statistics for 2007 suggested that a total of 53 children were identified as victims of traffickers.

Later in 2009 the UNODC published an analysis of the data in the Global Report about countries in Europe, *Trafficking in Europe; Analysis on Europe*. Like the present report, this compared the results from different countries in Europe (whether EU Member States or not) and suggested what trends could be identified. Talking about the five-year period from 2003 to 2008, it observed that, "Belgium, Netherlands, Germany, Greece and Italy recorded decreasing trends in the number of criminal proceedings over the last five years, whereas Denmark, France and the United Kingdom reported rising trends" (page 7). This report contains an estimate that the number of people trafficked in all 38 countries in Europe was around 250,000 per year, basing this estimate on a reported IOM estimate (the source was not cited) that about 120,000 women and children are trafficked every year through the Balkans alone, along with the ILO's estimate of the number of people trafficked into forced labour in industrialised countries (which it cites as 270,000 in all industrialised countries). However, the authors did not try to base this estimate on the specific statistics published in the UNODC's *Global Report* about numbers of trafficked persons reportedly identified in each country.

The analysis emphasised that internal trafficking occurred more frequently than previously reported, but qualified this by recording that cases of inter-

nal trafficking had been "detected in at least 11 of the 38 countries considered in this study. In some countries, nationals are even the largest group of victims. This is the case for the Netherlands where Dutch victims were by far more numerous than other nationals. In 2007, the number of detected German victims in Germany was 184 of a total of 689 victims, making them the largest group of detected victims" (page 9).

As far as foreigners who were victims of traffickers are concerned, the report sought to detect patterns on the basis of information provided by individual countries, but ended up concluding that, "the available data indicate that Europe is facing a rapid diversification of the origins of its human trafficking victims. New nationalities have entered the European scene in the last few years…In addition, trafficking of nationals (internal trafficking) is rapidly and constantly increasing. Traditional human trafficking flows to Europe, such as those originating from the Russian Federation, Ukraine, Lithuania and Colombia have decreased sharply as of late" (page 16). When referring to increases, however, the report did not give consideration to the possibility that cases were being reported for the first time, rather than occurring for the first time. It formed part of a corpus of reports that have referred to "rapid" increases in numbers of trafficked persons, without questioning the accuracy of the data on which assessments are made (although it did comment that "official statistics may over-represent incidents that are more easily detected by the criminal justice systems" (page 16). Similar comments may be pertinent to other possible patterns identified in the report. For example, referring to the proportion of traffickers' victims who are children, the report noted that, "In Europe as a whole, child victims account for about 10% of the victims detected. The share of minors increased from about 5% in 2003 to more than 10% in 2008" (page 20). This estimated proportion seems remarkably low when compared to the data now available from certain countries of destination (see 2.3 below). For example, statistics collected between April 2009 and 2010 by the United Kingdom's National Referral Mechanism indicated that a quarter of all those who were the subject of referrals were children.

The US Department of State has published a Trafficking in Persons report once a year since 2001, to assess whether individual countries around the world are observing a set of minimum standards for the elimination of trafficking in persons that were adopted in the *Trafficking Victims Protection Act* of October 2000. The US authorities regard these standards as applicable to the governments of all countries believed to have more than about a hundred victims of what the Act calls "severe forms of trafficking". The Act lists ten factors to be considered as "indicia of serious and sustained efforts to eliminate severe forms

of trafficking in persons" and the annual Trafficking in Persons report (known as the 'TIP report') seeks to measure these. The report categorises countries into four groupings, from Tier 1 (fully compliant with US minimum standards) to Tier 3 (not compliant). Being categorised as Tier 3 can trigger the withholding of non-humanitarian, non-trade-related assistance from the US to the country concerned. Tier 2 is divided into two categories, with a 'lower 2' known as the "Tier 2 Watch List" threatened with demotion (and with the possible withholding of assistance that demotion might involve).

Initial editions of the US Department of State's report did not mention all EU Member States, but recent ones have done. The tier ranking in the last three reports, issued in June of 2008, 2009 and 2010 respectively, is reported in Table 1 below.

Table 2: US TIP report rankings of EU Member States, 2008 to 2010

Countries	2008	2009	2010
Austria	1	1	1
Belgium	1	1	1
Bulgaria	1	2	2
Cyprus	2WL	2	2
Czech Republic	1	1	1
Denmark	1	1	1
Estonia	2	2	2
Finland	1	1	1
France	1	1	1
Germany	1	1	1
Greece	2	2	2
Hungary	1	2	2
Ireland	2	2	1
Italy	1	1	1
Latvia	2	2WL	2
Lithuania	1	1	1
Luxembourg	1	1	1
Malta	2	2	2WL
Netherlands	1	1	1
Poland	1	1	1
Portugal	2	2	2
Romania	2	2	2
Slovakia	2	2	2
Slovenia	1	1	1
Spain	1	1	1
Sweden	1	1	1
U.K.	1	1	1

In each year one EU Member State was regarded as performing so badly that it was categorised in the "Tier 2 Watch List" (2WL), though the countries concerned differed: Cyprus in 2008, Latvia in 2009 and Malta in 2010. Otherwise, the proportions remained fairly standard: 16 to 18 States ranked in Tier 1 and 8 to 10 in Tier 2. Those which have remained continuously in Tier 2 are Estonia, Greece, Latvia (dipping further down in 2009), Malta (similarly dipping further, but in 2010), Portugal, Romania and Slovakia. However, it is important to underline that this ranking is based on criteria that the US adopted in legislation shortly before the current internationally recognised definition of trafficking in persons was adopted by the UN in November 2000.

2.3 Reports on anti-trafficking responses in individual EU countries

A wide range of publications have focused specifically on individual countries in the EU, either analysing patterns of human trafficking or reporting on the responses initiated by the Government and other relevant actors, such as non-governmental organisations (NGOs) and intergovernmental organisations (IGOs). Our researchers reported that in 21 countries, significant publications on the issue of human trafficking had been published since the start of 2009 about human trafficking in the country or about people from that country who have been trafficked elsewhere. Some of these are listed in Appendix B.

Relatively few of the reports about individual countries have focused specifically on assessing whether a Government (or other authorities) is meeting its legal obligations under either EU instruments or under the terms of the Council of Europe Convention. The treaty-monitoring body established by the Council of Europe Convention (GRETA) reportedly started reviewing progress in individual States Parties in 2010. Their reviews will be based on information provided by States Parties themselves, but it is likely that civil society organisations will also make an unofficial contribution. For example, in June 2010 an alliance of NGOs involved in anti-trafficking work in the United Kingdom (UK), the Anti-Trafficking Monitoring Group, published a report entitled, *Wrong Kind of Victim. One year on: an analysis of UK measures to protect trafficked persons.* This assessed the UK's legislation, policies and practices in the first 12 months after the Council of Europe Convention entered into force in the UK and concluded that the UK's new anti-trafficking measures were "not fit for purpose" and the UK Government was breaching its obligations under the Council of Europe Convention.

2.4 Reports proposing indicators to assess anti-trafficking responses

Various attempts have been made to develop international and regional anti-trafficking treaties into plans of action that consist of objectives accompanied by benchmarks or standards which can be used to confirm whether or not a particular benchmark has been achieved.

One of the first was issued by the Vienna-based International Centre for Migration Policy Development (ICMPD) in 2006, *Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response*. This suggested how an anti-trafficking plan of action should be developed at national level in European countries and included an 18-page "model strategy", listing strategic goals and specific objectives and specifying the evidence that would show whether a particular objective had been achieved, i.e., an "indicator".

The following year the European Commission published a manual containing a set of indicators devised specifically to assess whether the measures outlined in the 2004 European Experts' report (*The Report of the Experts Group on Trafficking in Human Beings*) were being achieved by EU Member States. The manual was issued as a 'draft' by the European Commission, rather than a formal policy document. While the Experts' report had contained 132 recommendations, *Measuring Responses to Trafficking in Human Beings in the European Union: an Assessment Manual*,[23] presented a checklist of 55 questions asking whether particular measures had been implemented at national level, along with indicators to measure the results. The questions were divided into four sections concerned with:

1. Guiding principles for all action to stop trafficking in human beings;
2. Action to prevent trafficking in human beings;
3. Action to protect and assist trafficked persons; and
4. Law enforcement strategies.

Each of the 55 questions was accompanied by both an "Outcome Indicator" and an "Impact Indicator", the first seeking evidence on whether the action necessary to achieve a particular objective had been implemented and the

23. *Measuring Responses to Trafficking in Human Beings in the European Union: an Assessment Manual*, European Commission, Directorate General Freedom, Security and Justice, October 2007.

second to assess whether it had the desired effect. In each case, these were accompanied by a "Means of Verification", suggesting what the source of relevant evidence was likely to be.

The manual was noted politely by participants at a conference marking the European Union's Anti-Trafficking Day (18 October 2007), but little action is reported to have been taken subsequently to use it at national level to measure anti-trafficking responses. A representative of one national police force attending the conference observed that the process of obtaining all the evidence required to assess progress on the 55 questions was likely to be extremely time-consuming.

In 2009 the UNODC issued an *International Framework for Action to Implement the Trafficking in Persons Protocol.*[24] Based on the requirements of the UN Trafficking Protocol, this sets out a set of objectives associated with the UN Protocol and a set of indicators to measure whether objectives had been reached. The indicators were either called "Framework Indicators" (these set a "Minimum standard required for action against trafficking") for each Objective, or "Operational Indicators" to "Measure the implementation" and help monitor changes over time. So, for example, in relation to one particular objective – "Ensure trafficked persons have recourse to justice and their views and concerns are not excluded from the criminal justice process" – the Framework Indicators are:

1. "Legal measures in place to provide trafficked persons with information on their rights as well as on applicable administrative and judicial procedures"; and
2. "Assistance available to enable the views and concerns of trafficked persons to be presented and considered at appropriate stages of criminal proceedings against offenders".

Six measures are mentioned that are recommended to implement this objective, each of which is accompanied by its own Operational Indicators, one of which is "Number of victims having participated in criminal proceedings or in trials", and another "Number of trafficked persons having benefited from period of reflection" (Table 2, Protection/Assistance).

In these various manuals, some indicators are quantitative, while others are qualitative. The European Commission's Directorate General on Freedom, Security and Justice has offered one definition of indicators as follows:

24. The author is Georgina Vaz-Cabral.

> "A characteristic or attribute which can be measured to assess an activity in terms of its outputs or impacts. Output indicators are normally straightforward. Impact indicators may be more difficult to obtain, and it is often appropriate to rely on indirect indicators as proxies. Indicators can be either quantitative or qualitative."[25]

The apparent disadvantage of all three of the methods mentioned in this section for using indicators to measure the progress of governments' anti-trafficking legislation, policies and methods is that it is time-consuming to collect the evidence associated with indicators. Further, indicators often represent only an indirect measure of whether an objective is genuinely being pursued. They are helpful in assessing whether 'outcomes' have been achieved, but less efficient at measuring longer-term impact. In the case of government policies and other action intended to stop human trafficking, there is almost certainly no better way of finding out whether these are having their intended effect than interviewing people who have been trafficked to find out if the measures were positive for them or not. However, in government circles, in particular, there has been great reluctance to do this.

The methods to measure whether specific anti-trafficking objectives have been achieved by individual governments (i.e., action to reduce the number of people being trafficked, to prosecute traffickers and to protect people who have been trafficked) are not necessarily the same as the methods required to find out what the full impact is, both intended and unintended, of a government's anti-trafficking responses. Various publications have documented the negative or counter-productive impacts that some anti-trafficking policies have had. In 2009 and 2010 a toolkit to measure the impact of anti-trafficking policies was reportedly being developed by a group of European NGOs, Aim for human rights, La Strada Czech Republic, La Strada International and SCOT-PEP (Scottish Prostitutes Education Project).[26]

25. Definition from the Glossary contained in Annex 3, page 99, of the Communication from the Commission to the Council and European Parliament, '*Evaluation of EU Policies on Freedom, Security and Justice*', COM (2006) 332 final, 28 June 2006 (page 99).
26. *The Right guide, A tool to assess the human rights impact of anti-trafficking policies*, published in December 2010 and accessible at www.humanrightsimpact.org/themes/womens-human-rights/overview/.

3. MINIMUM STANDARDS IN ANTI-TRAFFICKING RESPONSES TO BE OBSERVED BY EU MEMBER STATES AND POSSIBLE INDICATORS FOR MEASURING THEM

3.1 European Union standards

EU Member States were required by *Council Framework Decision of 19 July 2002 on combating trafficking in human beings*[27] to ensure that their legislation defining and punishing the offence of trafficking in human beings covers trafficking committed for a variety of purposes (different forms of exploitation). The Framework Decision set minimum standards with respect to other issues, but was weak as far as protection and assistance for trafficked persons (generally referred to in Council of Europe and EU official documents as "victims") were concerned. To remedy this, in March 2009 a draft of a new Council Framework Decision (on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, EU document COM[2009] 136 final, of 25 March 2009) was issued. During 2009, discussions on the provisions in this proposal took place between the European Commission and EU Member States.

The process for adopting this new Framework Decision was affected by the entry into force of the Lisbon Treaty in December 2009, which meant that new legislation would in future be adopted by a majority of Member States at the Council, together with the European Parliament. The new instrument was tabled by the European Commission in March 2010 as a *Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA.*

As proposed by the European Commission in March 2010 and agreed by the European Parliament in September 2010, the new Directive would strengthen victims' rights in criminal proceedings and victim support and mean that sanctions would not be applied to trafficked persons. It also contains provisions on the prosecution of offenders and prevention and would require the establishment of National Rapporteurs or equivalent mechanisms to monitor anti-trafficking measures in each EU Member State.[28] As far as protecting the

27. Official Journal of the European Communities Official Journal L 203, pages 1 to 4, 1 August 2002, accessed at eurlex.europa.eu/LexUriServ/site/en/oj/2002/l_203/l_20320020801en00010004.pdf
28. *Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA*, MEMO/10/108, Brussels, 29 March 2010, accessed on 26 June 2010 at europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/108.

human rights of trafficked persons are concerned, it is the provisions concerning protection of trafficked persons in the course of criminal proceedings and concerning assistance that are novel in this Directive.

The March 2010 proposal was referred to the European Parliament. In September, the Parliament's Civil Liberties and Women's Rights committees tabled a set of amendments to the draft directive. These included the suggestion that knowingly using the sexual or other services of a trafficked person should be made a criminal offence. On the issue of protection, the draft directive as amended by the Parliament's committees would require States to provide trafficked persons with "accommodation, medical care to help them recover and witness protection so that they are not afraid to testify against the perpetrators of crime. They should have access to free legal advice and representation – 'including for the purpose of claiming compensation and asserting withheld wages' - as soon as the person has been identified as a victim of trafficking in human beings".[29]

In mid-September 2010, discussions were scheduled to start between the European Parliament and the Council over the final provisions of the directive. However, this new Directive on preventing and combating trafficking in human beings, and protecting victims had not been finalised and was not in force at the time of writing (September 2010).

Consequently, its provisions remained slightly vague and did not seem appropriate to use as the main reference point in this monitoring exercise to assess the extent to which EU Member States are respecting their international obligations, especially as the main monitoring exercise took place in 2010, between April and June.

However, clear standards which are broadly similar to those proposed in the new Directive were already adopted in 2005 in a Council of Europe Convention, which has been ratified by 19 EU Member States and signed by seven others (i.e., has been acknowledged as an appropriate regional standard in 26 of the EU's 27 Member States). The E-notes monitoring exercise has consequently used this Convention as its main point of reference in identifying standards by which EU Member States are already expected to abide. The exercise involved trying to identify questions that would act as indicators to determine whether certain minimum standards were being respected by each State.

29. *Tougher penalties to prevent and combat trafficking in human beings*, European Parliament, Justice and Home Affairs press release, 2 September 2010, accessed on 8 September 2010 at www.europarl.europa.eu/news/expert/infopress_page/01980646-242-08-36-902-20100830IPR80645-30-08-2010-2010-false/default_en.htm

3.2 The Council of Europe Convention

Ministers from Council of Europe Member States agreed the Council of Europe *Convention on Action against Trafficking in Human Beings* in Warsaw on 16 May 2005.[30] It entered into force on 1 February 2008 in the ten Council of Europe States where it had been ratified by October 2007, which included six EU Member States (Austria, Bulgaria, Cyprus, Denmark, Slovakia and Romania). By then, more than ten other EU Member States had also signed the Convention, thereby signalling their intention to ratify it.

By August 2010 the Convention was in force in a total of 19 EU Member States (Austria, Belgium, Bulgaria, Cyprus, Denmark, France, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom), along with 11 other Council of Europe States outside the EU. It had been ratified by seven other EU Member States (Estonia, Finland, Germany, Greece, Hungary, Italy and Lithuania). A further six other Council of Europe States that are not in the EU have signed but not yet ratified the Convention.[31]

This meant that, by August 2010, 26 out of 27 EU States had formally acknowledged the Council of Europe Convention as a standard to respect and implement, i.e., all EU States except the Czech Republic. For this reason it seems reasonable to regard the Council of Europe Convention as a regional standard that virtually all EU Member States now regard as appropriate to respect (and many had committed themselves to respecting by the end of 2009), notably with respect to the protection of the human rights of people who are trafficked.

3.3 Summary of the provisions of the Council of Europe Convention

The Convention contains a Preamble and ten chapters. Chapter I deals with its purposes and scope, the principle of non-discrimination and definitions; Chapter II deals with prevention, cooperation and other measures; Chapter III deals with measures to protect and promote the rights of victims, guaranteeing gender equality; Chapter IV deals with substantive criminal law; Chapter

30. *Council of Europe Treaty Series -No. 197*. The full text in English can be downloaded at www.coe.int/-T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf. It also been translated into French and Spanish, and possibly other languages.
31. www.coe.int/t/dghl/monitoring/trafficking/default_en.asp, accessed on 14 January 2010 and 15 July 2010.

V deals with investigation, prosecution and procedural law; Chapter VI deals with international cooperation and cooperation with civil society; Chapter VII sets out the Convention's monitoring mechanism; lastly Chapters VIII, IX and X deal with the relationship between the Convention and other international instruments, amendments to the Convention and final clauses".[32]

3.3.1 Definitions of human trafficking and victims of the crime of trafficking

The Convention sets out the same definition of human trafficking as that adopted five years earlier in the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000), which supplemented the UN *Convention against Transnational Organized Crime* (2000), and likewise contains the same definition as the UN Protocol of trafficking cases involving children (anyone aged under 18). The definition concerning children is slightly different to the definition concerning adults. For the purposes of the Council of Europe Convention (article 4(c)), "The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in human beings' even if this does not involve any of the means set forth in" article 4(a), which lists the abusive means that have to be used to recruit an adult if the case is to be considered one of trafficking as: "the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person".

For both adults and children, the definition of "exploitation" is the same: "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" (article 4(a)).[33]

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32. Paragraph 37, Council of Europe *Convention on Action against Trafficking in Human Beings Explanatory Report*, Council of Europe Committee of Ministers document CM(2005)32 Addendum 2 final, 3 May 2005, accessed on 4 January 2010 at wcd.coe.int/

33. The Council of Europe has adopted other agreements governing the removal of body organs, tissues and cells, notably its *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin* (2002). Paragraph 119 of the Explanatory Report to the Additional Protocol specifies the following: "As stated by Article 21 of the Convention ["The human body and its parts shall not, as such, give rise to financial gain or comparable advantage"], the human body and its parts shall not, as such, give rise to financial gain. Any trade in organs and tissues for direct or indirect financial gain, as defined by Article 21 of this Protocol is prohibited. Organ trafficking and tissue trafficking are important examples of such illegal trading and of direct financial gain. Organ or tissue traffickers may also use coercion either in addition to or as an alternative to offering inducements. Such practices cause particular concern because they exploit vulnerable people and may undermine people's faith in the transplant system".

The Convention "applies to all victims of trafficking: women, men and children and says that a victim is any person who is subject to trafficking as defined in the Convention. The consent of a victim to the exploitation involved is irrelevant. The Convention applies to all forms of exploitation: sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and removal of organs; and it covers all forms of trafficking: national and transnational, related or not to organised crime".[34]

3.3.2 Key steps that States Parties are required to take

States Parties (i.e., States which ratify the Council of Europe Convention) commit themselves to taking individual and collective action to criminalise trafficking as well as a range of other minimum steps necessary to respect and protect the rights of trafficked persons. These steps include, among others, ensuring that:

- coordination at national level is established or strengthened between agencies and organisations involved in preventing and combating trafficking in human beings (article 5). This means States Parties are required to coordinate the various "sectors whose action is essential in preventing and combating trafficking, such as the agencies with social, police, migration, customs, judicial or administrative responsibilities, non-governmental organisations, other organisations with relevant responsibilities and other elements of civil society";[35]
- a mechanism is in place for the accurate identification of trafficked persons (article 10);
- persons reasonably believed to have been trafficked are granted at least 30 days to reflect and recover in the country where they have been identified (article 13), during which time they are to be offered assistance and protection and may not be expelled, even if they have no legal right to be in the country concerned – regardless of whether they agree to participate in any proceedings the authorities may initiate against those responsible for trafficking or exploiting them;
- if a trafficked person is required to leave a country where they have been identified as 'trafficked', the departure should "preferably be voluntary" and their return to their country of origin is to be "with due regard" for their "rights, safety and dignity" (article 16), meaning that the authorities

34. 'Scope of the Convention', Council of Europe's action to combat trafficking in human beings, Ministers' Deputies, Information documents, CM/Inf(2008)28, 9 June 2008.
35. Paragraph 102, Council of Europe *Convention on Action against Trafficking in Human Beings Explanatory Report*.

have an obligation to assess the risks associated with their return and not to proceed with it if significant risks are identified; and that

- trafficked persons have access to redress, including compensation (article 15).

3.3.3 Minimum standards for protection and assistance for trafficked persons

Unlike the preceding UN Trafficking Protocol and EU instruments introduced to standardise responses to human trafficking in the EU (notably the July 2002 EU *Framework Decision*), 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. Among them are requirements to unconditionally ensure to persons reasonably believed to have been subjected to trafficking an adequate standard of living and 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.[36]

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.[37]

The Convention also calls for "effective policies and programmes to prevent trafficking in human beings" (article 5.2) and requires that, in pursuing such policies and programmes, States Parties shall "promote a Human Rights-based approach" and "use gender mainstreaming" (article 5.3).

A human rights-based approach (see *Glossary*) to combating trafficking in human beings requires that, "The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims".[38] This relates to the obligations of States to prevent, investigate and prosecute traffickers and to assist and pro-

36. Article 12.1 (a) to (e), Council of Europe *Convention on Action against Trafficking in Human Beings.*
37. Article 12.6, Council of Europe *Convention,* stating 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".
38. UN High Commissioner for Human Rights, Recommended Principles on Human Rights and Human Trafficking, Principle 1, in *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Office of the UN High Commissioner for Human Rights, New York and Geneva, 2002.

tect trafficked persons. This principle confirms that, when States consider their priorities with respect to anti-trafficking measures, taking into account issues such as migration and how to make the criminal justice system effective, as well as human rights, priority must be given to the human rights obligations accepted by the State under international human rights law.

Giving primacy to human rights also implies that anti-trafficking measures should not "adversely affect the human rights and dignity of persons".[39] This, in turn, imposes an obligation on States to evaluate the impact of their anti-trafficking measures in order to check their effects (and, if necessary, take corrective action). Article 29 of the Convention requires States Parties to "consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements", but does not make appointing a National Rapporteur mandatory (whereas the draft Directive under discussion in September 2010 stipulates that, "National monitoring systems such as National Rapporteurs or equivalent mechanisms should be established by Member States… in order to carry out assessments of trends in trafficking in human beings trends, measure the results of anti-trafficking actions, and regularly report to the relevant national authorities").

States Parties are also required to take action to "discourage the demand that fosters all forms of exploitation of persons…that leads to trafficking" (article 6), i.e., identify and reduce demand for the various forms of exploitation associated with trafficking. They are required to "consider" making it an offence to use the services of a person who is being exploited "with the knowledge that the person is a victim of trafficking in human beings" (article 19). The *Explanatory Report* issued alongside the Convention comments that, "the provision is not concerned with using the services of a prostitute as such. That comes under Article 19 only if the prostitute is exploited in connection with trafficking of human beings…" (paragraph 233).

3.3.4 Measures to protect and assist trafficked children

The Convention contains various provisions which are specific to children, regarding their protection and assistance and also the prevention of child

39. *Ibid*., Principle 3, "Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylumseekers".

trafficking. With regard to identification, "When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age" (article 10.3).

On the issue of protection, "as soon as an unaccompanied child is identified as a victim" (of a crime related to trafficking), States Parties are required to "provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child" (article 10.4(a)). This requirement to appoint a temporary legal guardian to act in the child's best interests is in addition to the obligation imposed on the State itself by a separate convention, already ratified by all EU and Council of Europe Member States, the UN *Convention on the Rights of the Child*, which requires them to ensure that, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".[40]

The Convention specifies that, in the context of police investigations and legal proceedings (i.e., trials and pre-trial hearings), children who have been trafficked "shall be afforded special protection measures taking into account the best interests of the child" (article 28.3), in addition to a range of measures that are suggested to protect trafficked adults involved in legal proceedings. If they are nationals of another State, children may not be returned, "if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child" (article 16.7). The authorities are consequently under an obligation to carry out a risk and security assessment when considering a child's possible return, in addition to any prior risk assessments.

In the context of prevention, States Parties are required to "use…a child-sensitive approach" (article 5.3) and to take measures to "reduce children's vulnerability to trafficking, notably by creating a protective environment for them" (article 5.5), to make them less vulnerable to trafficking and enable them to grow up without harm and to lead ordinary lives.[41] The requirement to create a "protective environment" for children is particularly relevant for

40. UN *Convention on the Rights of the Child* (1989), article 3.1.
41. Paragraph 106, Council of Europe *Convention on Action against Trafficking in Human Beings Explanatory Report*, Council of Europe Committee of Ministers document CM(2005)32 Addendum 2 final, 3 May 2005. Accessed on 4 January 2010 at wcd.coe.int/

States from where children are known to have been trafficked, but also imposes an obligation on destination States to put "in place a system for monitoring and reporting abuse cases" and "programmes and services to enable child victims of trafficking to recover and reintegrate".[42]

3.3.5 Treaty-monitoring body

The Convention also established a treaty monitoring mechanism, an independent body of experts mandated to assist States in their implementation of this treaty, the Group of experts on action against trafficking in human beings (GRETA). Article 36 of the Convention requires the GRETA to "monitor the implementation of this Convention by the Parties".

Candidates were nominated by States Parties and 13 members were elected in December 2008. Pursuant to Article 38 paragraph 1 of the Convention and Rules 1 and 2 of the *Rules of procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties,* GRETA is to evaluate the implementation of the Convention by the States Parties following a procedure divided in so-called "rounds". GRETA decided that the duration of the first evaluation round was to be four years, starting at the beginning of 2010 and finishing at the end of 2013.

In February 2010 the GRETA published a 13-page *Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties* (GRETA(2010)1). On some questions this requires the collection of much the same information as the Protocol prepared for the E-notes monitoring exercise. The first GRETA evaluation round was initiated by addressing, in February 2010, the questionnaire to the first ten countries which became Parties to the Convention.

42. *Ibid*.

4. METHODS USED TO COMPILE THIS REPORT

4.1 The information that was compiled

The information in this report about anti-trafficking response in each EU Member State was compiled by individual researchers in each of the 27 countries. They were recruited by the NGO in each country which was identified by On the Road and invited to take part in the E-notes monitoring exercise. Each researcher used the same research protocol, though some questions were directed specifically at researchers in countries which are generally the places of origin of trafficked persons and some specifically concerned the countries which are generally the destinations where trafficked persons are exploited.

An independent consultant, Mike Dottridge, was employed to develop a research protocol that was used for collecting information about anti-trafficking responses in each of the 27 EU Member States.

The research protocol contains ten sections. An introductory section collects information about the respondent and a concluding section asks for feedback. The other eight sections ask questions about anti-trafficking responses, divided into eight topics, as follows:

1. Adequacy of national legislation to stop human trafficking, slavery and servitude;
2. Existence of a structure at national level to coordinate anti-trafficking measures and existence of a referral system;
3. Identification;
4. Protection;
5. Assistance;
6. Access to justice
7. Prevention of human trafficking (children and adults); and
8. Monitoring and Evaluation of Anti-Trafficking Measures.

When selecting these topics, the focus was put on the protection of the human rights of trafficked persons, as in general this is an aspect of anti-trafficking policies that NGOs are relatively well informed about and which State institutions responsible for anti-trafficking policy are known to have neglected.

An initial draft of the protocol contained less than 100 questions. This was reviewed by the four steering group member organisations, as a result of which the number of questions asked was increased. The research protocol

used during a pilot phase contained 178 questions. During this phase, in February-March 2010, the three NGOs in France, Italy and Spain filled in the answers to the protocol, while La Strada International asked its member in Poland to do so. The protocol was amended in the light of which questions seemed to have resulted in useful information (and which did not), and also in the light of recommendations from some of the steering group organisations that questions should be added on more issues. As a result the definitive research protocol that was eventually used was 60 pages long, contained a total of 230 questions (220 of which related to information about human trafficking). Indeed, the total number of questions was even greater, as some individual questions contained up to six or more sub-questions. The questions themselves are reproduced in Appendix A, while the original research protocol also suggested possible sources of information might be and indicated what type of answer was expected ('yes', 'no' or something different).

Almost all the researchers attended a one-and-a-half day orientation session in Rome at the beginning of April 2010, when some final changes were agreed to the draft protocol. The final version was sent to all the researchers shortly afterwards, along with a Glossary (substantially the same as the one reproduced in Appendix B, details of the standards (with respect to anti-trafficking responses) that EU Member States were expected to implement and instructions on how to use the research protocol.

In Chapter 5, which summarises our findings, there are some references to the specific question in the protocol (in brackets, e.g., "Q101" for Question number 101), in case readers wish to check in Appendix 1 what the question was. In the actual protocol, questions were listed in one column, the next column suggested where relevant information might be obtained and a final column indicated what sort of answer was required, i.e., "Yes" or "No" or "Not relevant" ("Yes/No/n/a"), or a more substantial, qualitative response.

In the hope that responses would be comparable and would reveal interesting patterns across the 27 EU countries, as many responses as possible were of the "Yes/No/n/a" variety. This evidently meant that interesting details might be lost, so researchers were requested to present extra information in free text form. Approximately 200 of the answers could be presented in "Yes/No" format.

During May and June 2010, researchers collected information in response to the questions in the protocol. They also had to provide free text answers to

several questions and to draw up a 'country profile' or summary of the main characteristics of both the pattern of trafficking cases in their country and the main anti-trafficking responses. These are presented in this report in an annex entitled 'Basic information about patterns of human trafficking and anti-trafficking responses in each EU Member State'.

The researchers were asked to monitor how much time they spent collecting the information required and preparing answers. The 19 responses received on this point indicated that researchers had taken an average of 26½ days to obtain the information necessary and to fill in the research protocol, though the amount of time varied considerably, taking less that ten days in two cases and more than 40 days in four others.

In July 2010 the information provided by 27 researchers was processed and entered into a simple data-base by an On the Road staff member, using an Excel spreadsheet to record the answers to most of the questions concerning all 27 countries. This process of data entry took about ten days. By the following month it was possible to analyse the data to see what, if any patterns were apparent, i.e., noting the numbers of countries where positive or negative answers were recorded on particular questions. The results are presented in Chapter 5 below. In addition, some researchers were able to obtain substantial extra information, unfortunately too detailed to be recorded in this report. However, collectively the information gathered by the 27 researchers represents a baseline against which it should be possible to report on future changes – both in governments' anti-trafficking responses and in the quality of data collection on the issue of human trafficking in the EU as a whole.

4.2 Limitations on the information that was collected

The research process demonstrated two weaknesses, which those organising the project were already aware of at the outset:

1. that much information about the anti-trafficking responses of government agencies is not freely available. Even government officials experience some difficulties in getting hold of it;
2. that the situation in EU Member States varies so greatly that asking standard questions in every country does not give a clear impression of what is going on, nor does it generate information about each country that makes it easy to compare developments in all EU countries.

On the first point, it seemed reasonable (but only in theory) to assume that relevant data for what happened in 2009 might be available by May 2010, for example on how many trafficked persons were formally identified in each country in 2009. In practice, data about 2009 was largely incomplete at the time of the monitoring exercise; on the other hand, data about what happened in 2008 was generally available by May 2010 (at least if relevant information was ever to become available). As significantly less EU Member States had ratified the Council of Europe Convention by mid-2008 than by mid-2010, being able to find out only what happened in 2008, and not what happened in 2009, was a distinct disadvantage. However, it implies that any similar investigations in the future by NGO researchers or others outside government should assume that quantitative data on the year that has immediately passed may not be available until 12 months later or even longer.

On the second point, many researchers found it impossible to find the answers to questions asked in the protocol. There were some specific questions on which responses were only expected from some researchers (for example, when questions were specifically about what happens in countries of origin, there were usually nine responses). On others where the question was relevant for all 27 EU Member States, answers were often left blank, with the average number of filled in questions at less than 20. This meant that, on many of the issues on which the monitoring exercise set out to find out what was happening throughout the EU, we could not reach a conclusion that applies to all countries, but only some of them.

As noted earlier, it also proved difficult for researchers to obtain details relating specifically to children who had been trafficked. As in other trafficking cases, it was apparent that there is a relatively high level of confusion about which children (particularly separated or unaccompanied children) should be regarded as 'trafficked'. While it seems relatively clear when adolescents from one country are moved to another country to earn money in the sex industry, the process of identification is significantly less clear in cases involving begging, illegal activities (such as pick-pocketing, burglary or the cultivation of cannabis) or other economic activities, such as domestic work, when there is no tangible evidence that the child concerned has been subjected to violence, threats or other forms of coercion that suggest a case of forced labour. It also seems that routine cases involving the commercial sexual exploitation of children in their own country are not regarded by the police or other authorities in most EU countries as cases of trafficking.

4.3 Indicators for assessing whether standards are being met

Early on in the project an attempt was made to identify a limited set of key issues or indicators on which it might be able to ascribe a number of points to each country in an attempt to measure the overall performance of the country's responses to human trafficking.

Five key issues were identified to measure and the next chapter (5.1.2) discusses progress across the EU as a whole on these five. However, when specific points were ascribed to each country for its performance on these or other issues, the results were not found to be meaningful. In part this was because it was clear that the lack of progress on some specific issues (such as the adoption of a National Referral Mechanism or a single national procedure for the formal identification of presumed trafficked persons) did not necessarily mean that the country concerned was performing badly: rather, that it had opted to try out different methods, some with satisfactory results.

Some EU Member States do feature regularly in references below to a lack of dedicated facilities for trafficked persons (such as Ireland and Romania with respect to accommodation) or a lack of specialised protection (such as Ireland and Latvia with respect to in-court protection for trafficked persons providing evidence in court). However, even in countries with relatively substantial experience of protecting presumed trafficked persons, some worrying weaknesses were found. Further, it was apparent that our 27 researchers were not yet assessing their country's performance in identical ways (even though the E-notes project set out what standards were expected to be achieved by States) and that some were more critical than others.

Unlike the annual US Department of State's trafficking in persons report, this report does not contain a ranking of EU Member States, starting with those performing best and ending with those performing worse, nor does it categorise them into particular tiers. However, this might be possible in the future, particularly if the number of indicators that are measured is reduced.

5. COMPARISON OF THE RESPONSES TO HUMAN TRAFFICKING IN THE EUROPEAN UNION DURING 2008 AND 2009

5.1 General characteristics of trafficking patterns and anti-trafficking responses in EU Member States

5.1.1 How the researchers categorised their countries

The priority that States and other institutions should give to different kinds of anti-trafficking responses should vary according to the types of trafficking which are reported to occur in their country, e.g., whether it is a country of "origin" (of trafficked persons), of "transit" or of "destination". In country of origin people are recruited by traffickers, but not necessarily exploited, in which case the emphasis should probably be on preventive strategies and on protection and assistance for trafficked persons who are citizens of the country upon their return to their country. In a country of destination, on the other hand, where most of those who are trafficked come from abroad and many do not have a right to remain in the country, it is particularly important that the authorities should have an adequate mechanism or procedure for identifying trafficked persons who require protection and assistance and for enabling them to remain in the country while they recover and potentially take part in legal proceedings against traffickers.

Researchers were asked to summarise whether their particular country was a country of origin, transit or destination, or a combination of several of these. This categorisation did not take account of cases of internal trafficking. Relatively few were categorised as only one of the three categories (two, France and Portugal, were described as principally countries of destination). The other 25 were considered to be a combination: one as both origin and destination; ten as both transit and destination; and nine as all three.

5.1.2 Progress towards selected key standards

Chapter 3 outlined some of the points on which States Parties are required to take action to implement the Council of Europe Convention. Most of these were the subject of our questions. When looked at altogether, these do not paint a black and white situation about which countries are making plenty of progress towards meeting their commitments and which ones are not. To throw some key issues into relief, the following table summarises the situation that our researchers noted on five particularly key points.

Table 3: Progress in the EU on a selection of key points for anti-trafficking responses

Requirement	Situation noted in May 2010
Coordination of anti-trafficking responses at national level	A national structure to coordinate anti-trafficking responses is reported to have been established in 22 out of the 27 Member States. The countries without national coordination structures are reported to be France, Germany (where anti-trafficking responses were not organised at federal level), Greece and Malta. In Germany and Italy anti-trafficking responses are not organised at national or federal level, but this did not mean they were inadequate. Some national coordination structures do not coordinate all anti-trafficking responses, but only those related to particular types of trafficking (as in Sweden, where the focus is mainly on trafficking for sexual purposes).
Identification of presumed trafficked persons	In 11 out of 27 Member States there is a single government agency or structure responsible for making a formal identification of anyone who is presumed to have been trafficked, whereas 16 do not. Six of the countries where there is no national-level process for identification do not have any standard procedure used throughout the country for formally identifying someone who is presumed to have been trafficked (Austria, Bulgaria, France, Germany, Italy and Malta).
Availability of a reflection period of at least 30 days	In 25 out of the 27 Member States there is reported to be provision for a period for reflection and recovery for adults who are presumed to have been trafficked. In Italy there is no provision for a reflection period, but in practice it is sometimes available. In Lithuania a similar situation was reported. For 2008, information was available from 11 countries about a total of 207 people who were granted reflection periods. For 2009, information was available from 18 countries and far more were reported to have benefited: 1,150 trafficked persons.
Procedures surrounding returns to make them safe and, if possible, voluntary	Six countries were mentioned by our researchers as having formal agreements with other EU Member States or third countries to govern the process of return of a trafficked person to her or his own country (France, Latvia, Portugal, Spain and the UK; Greece has a bilateral agreement that is restricted to trafficked children), although the existence of agreements seems to have been little guarantee that abuses would not take place. When the authorities plan to return a presumed trafficked adult to her or his country of origin, our researchers observed that in only three out of the 17 EU Member States for which information was available were risk assessments carried out as a matter of routine (Italy, Portugal and Romania) prior to return; i.e., assessments of the possible risks to the individual or members of her/his family.
Access to redress and compensation	In 12 countries (out of 22 for which information was available) a trafficked person was reported to have received a payment in damages or as compensation during 2008, and in 12 countries (out of 20) during 2009, either as a result of court proceedings or from a different source. The nine countries in which compensation payments were reported to have been made in both years were Austria, Denmark, France, Germany, Italy, Netherlands, Spain, Sweden and the UK.

While this table does not identify specific countries as failing to meet their commitments across the board, it does demonstrate that substantial progress still needs to be made in many EU Member States.

The next sections present our findings in more detail on a series of issues. On just a few, such as the availability of dedicated accommodation for trafficked persons and the availability of suitable in-court protection, it proved possible to rank countries in terms of the adequacy of their facilities.

5.2 Legislation

5.2.1 Standards that EU Member States are expected to observe

EU Member States are required by *Council Framework Decision of 19 July 2002 on combating trafficking in human beings*[43] to ensure that legislation defining and punishing the offence of trafficking in human beings covers trafficking committed for the purpose of a variety of forms of exploitation, including "labour exploitation" and "sexual exploitation".[44] States which have ratified the Council of Europe Convention are also required to include the issue of trafficking for organ removal in their legislation.

We wanted to check that the law in each country addressed all these categories of exploitation (as some States chose initially to focus only on trafficking for sexual purposes) and any other forms of exploitation associated with trafficking. We also wanted to find out if the definitions of human trafficking in each country are sufficiently similar for information about people described as 'traffickers' or 'trafficking victims' to be comparable.

Both the Council Framework Decision of 2002 and the Council of Europe Convention state that, in cases involving a child aged under 18, a child who is exploited is deemed to have been trafficked even if none of the coercive means have been used, which are necessarily involved in the course of recruiting adults. This implies that national legislation should spell out the difference between the offence of trafficking an adult and trafficking a child.

43. *Official Journal of the European Communities Official Journal L 203*, pages 1 to 4, 1 August 2002, accessed at eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_203/l_20320020801en00010004.pdf
44. Although the Council of Europe Convention covers the issue of trafficking for organ removal, the Framework Decision does not. Neither focuses on trafficking for the purpose of adoption (mainly of babies and young children).

It might, for example, specify that if a child was subjected to coercive means, an aggravated offence is involved.

5.2.2 What is reported in practice

Most countries have modified their legislation on human trafficking in the light of the definition of human trafficking contained in the UN Trafficking Protocol (2000), thereby fulfilling their obligations under the 2002 ***Council Framework Decision of 19 July 2002 on combating trafficking in human beings.***[45]

Two countries – Estonia and Poland[46] – are reported to have not yet finished revising their legislation. In Spain a new law was amended in June 2010, but only due to come into effect in December 2010. This introduces for the first time a definition of trafficking based on the definitions in both the 2002 Framework Decision and the Council of Europe Convention.[47] However, during the period reviewed by this monitoring exercise, the principle offence for prosecuting traffickers in Spain focused on the issue of smuggling clandestine migrants for the purpose of sexual exploitation,[48] excluding the other purposes of trafficking and also excluding cases in which an individual was exploited in Spain without being smuggled (e.g., someone from a country in the eastern part of the EU).

In the case of Estonia, the penal code[49] does not yet contain an explicit reference to trafficking in human beings as a criminal offence, although there are signed that it may be amended to do so in 2010. The code contains some 16 articles prohibiting activities which are linked to human trafficking (e.g., enslavement, abduction, provision of opportunity to engage in unlawful activities, pimping, illegal donation of organs, manufacturing and distributing child pornography). Although the phenomenon of human trafficking may contain elements of offences mentioned in the penal code, such cases are often more complex and do not entirely fit within the framework of articles in the current penal code.

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45. Question 7 asked, "Has your country adopted or revised its legislation against human trafficking since the EU Framework Decision was adopted in July 2002?".
46. Although the US TIP report 2010 notes that, "Poland prohibits all forms of trafficking through Article 253, Article 204 Sections 3 and 4, and Article 203 of the criminal code" (page 273).
47. In Part VII bis of the June 2010 penal code, "On trafficking in human beings", notably Article 177, accessed at www.senado.es/legis9/publicaciones/html/maestro/index_II0048A.html
48. Under Article 318.1 bis of Spain's 1995 Penal Code.
49. Accessed at www.lexadin.nl/wlg/legis/nofr/oeur/lxweest.htm

In the case of Poland, article 253 the penal code (1997)[50] contains a reference to trafficking in persons, but this is not based on the definition of human trafficking adopted in the UN Trafficking Protocol in 2000 and repeated subsequently in the Council of Europe Convention. The authorities have reported for several years that they are developing a new definition of trafficking in human beings to the penal code and a proposal on a new definition of human trafficking was referred to the National Assembly (*Sejm*) in September 2009 which would conform with the Council of Europe Convention. Various articles of the penal code making recruitment into prostitution an offence (such as 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 three years". References to trafficking in the penal code do not cover labour related trafficking, though article 8 of *Provisions implementing the Penal Code* makes it an offence to cause another person "to become enslaved".

Finally, in Hungary too the definition of what constitutes trafficking is reported not yet to conform to the definition in the Framework Decision or the Council of Europe Convention.[51]

This sounds relatively trivial to report, suggesting that most countries share the same definition of trafficking in human beings (human trafficking). However, the fact that there are still exceptions has immense consequences. The main effect is that questions concerning prosecutions or other practice to counter trafficking doe not reveal comparable data from all 27 EU Member States.

An example of one country which has modified its law on human trafficking but adopted a definition which is not in line with either the 2002 Council Framework Decision or the Council of Europe Convention is France, which is described here is some detail to illustrate the complications which occur when one EU Member State's legislation is significantly different to others'. France's anti-trafficking law was introduced in 2003, amended in 2007 and is contained in article 225-4-1 of France's penal code. This article says:

> "Human trafficking is the recruitment, transport, transfer, accommodation, or reception of a person in exchange for remuneration or any

50. Accessed at km.undp.sk/uploads/public/File/AC_Practitioners_Network/Poland_Penal_Code.pdf
51. Question 8 asked, "Does the definition of human trafficking now accord with the definition in the Council of Europe Convention, in considering cases of recruitment or movement of adults for the purpose of a form of exploitation specified in the Convention to constitute trafficking only if one of the abusive means mentioned has been used?".

other benefit or for the promise of remuneration or any other benefit, in order to put that person at the disposal of the trafficker or of a third party, whether identified or not, so as to permit the commission against that person of offences of procuring [for the purpose of taking part or being exploited in prostitution], sexual assault or attack, exploitation for begging, or the imposition of living or working conditions inconsistent with human dignity, or to force this person to commit any felony or misdemeanour.

"Human trafficking is punished by seven years' imprisonment and by a fine of €150,000" or in "10 years' imprisonment and by a fine of €1,500,000 when it is committed…against a minor" or in other aggravated circumstances.[52]

The law makes no reference to the abusive means that article 4(a) of the Council of Europe Convention requires to be used for a case involving the recruitment of an adult (whether for the purpose of sexual exploitation of labour exploitation) to constitute trafficking. While this might appear to be a liberal interpretation of both regional and international standards, in practice it has the effect of designating all cases in which someone is recruited into prostitution to be cases of human trafficking, in effect creating confusion between less serious offences, such as pimping and procuring, and acts of trafficking as defined by the 2002 Framework Decision and the Council of Europe Convention. The result is that the French authorities tends to present the number of convictions under pimping laws as evidence of their success in combating human trafficking (see 5.4 below), while most of those convicted would not be regarded as traffickers in other EU countries. However, the wording of the French law is not inconsistent with the 2002 Council Framework Decision, for this requires EU Member States to take action to "take the necessary measures to ensure that" a series of acts are punishable, listing four sets of abusive means which are associated with the recruitment, transportation, etc., of a person for the purpose of exploitation.

52. 195.83.177.9/code/liste.phtml?lang=uk&c=33&r=3717, accessed on 23 October 2010. The original text, in French, of article 225-4-1, modified by Law No 2007-1631 of 20 November 2007, says: "La traite des êtres humains est le fait, en échange d'une rémunération ou de tout autre avantage ou d'une promesse de rémunération ou d'avantage, de recruter une personne, de la transporter, de la transférer, de l'héberger ou de l'accueillir, pour la mettre à sa disposition ou à la disposition d'un tiers, même non identifié, afin soit de permettre la commission contre cette personne des infractions de proxénétisme, d'agression ou d'atteintes sexuelles, d'exploitation de la mendicité, de conditions de travail ou d'hébergement contraires à sa dignité, soit de contraindre cette personne à commettre tout crime ou délit" (accessed at legifrance.gouv.fr/affichTexteArticle.do;jsessionid=CD745608AADBF0B41C6B942ED244D936.tpdjo06v_3?cidTexte=JORFTEXT000000524004&idArticle=LEGIARTI000006400016&dateTexte=20101008&categorieLien=id#LEGIARTI000006400016).

There is no offence such as "forced labour" or "slavery" in France's penal code. The related reference in the article of the penal code quoted above is to "conditions of work incompatible with human dignity". The European Court of Human Rights judged on this issue that France was in breach with Article 4 of the European Convention on Human Rights.[53] The Court considered "that the criminal law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim". Although the definition of trafficking has changed since that judgement to ensure that the trafficker could be the same person as the exploiter (which is routinely the pattern in cases involving domestic slavery), there is still no offence that covers servitude or slavery. Regarding the offence of "Conditions of work incompatible with human dignity", a French NGO that specialises on cases involving domestic workers in slavery, servitude or forced labour, the *Comité contre l'esclavage moderne* (CCEM), Committee against Modern Slavery, has underlined at numerous occasions that the interpretation by the courts of what constitutes "human dignity" is very restrictive. However, in its last report about its activities that was available at the time of the E-notes monitoring exercise, dating from 2008, CCEM underlined that, for the first time since the NGO was founded (in the 1990s), there had been a case in which employers/exploiters had been convicted in a case of domestic servitude and sentenced to prison terms (rather than suspended sentences, as previously). The exploiters concerned were a couple sentenced to 10 and 12 months' imprisonment respectively, of which seven months were suspended.[54] The CCEM also noted that this case remained an exception and that in another case involving a child who had been exploited as a domestic worker from the time of her arrival in France at the age of 10 until her 18th birthday, the person responsible for exploiting her (for six years) had only been given a suspended sentence of six months imprisonment.[55] In many cases of domestic workers being exploited, the diplomatic immunity of the exploiter remains a major obstacle for this worker to access rights.

The provisions of the French law, omitting any suggestion that abusive means of recruitment have to be used in the cases of adults for a case to be construed as human trafficking, mean that it is consistent with the

53. Siliadin versus France, 26 July 2005. Available at cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Siliadin%20|%20France&sessionid=55518247&skin=hudoc-en
54. Activities Report of the CCEM, 2008, p. 6, available in French at www.esclavagemoderne.org/publications.php?position=1
55. Idem, p. 9.

requirements of the Council of Europe Convention definition concerning child trafficking. Article 225-4-2 lists the aggravating circumstances which might be involved in a case of trafficking, including the recruitment or exploitation of "a minor" (i.e., a child aged under 18), providing increased penalties in such cases: ordinary cases of trafficking are punishable by seven years' imprisonment and aggravated cases involving children by 10 years'.

In Finland the situation was reported to be the opposite of France - cases that according to regional standards should have been treated as trafficking have been considered as less serious offences only involving procuring or pimping. In prostitution-related court cases, the issue of consent has been interpreted differently depending on whether the victim is deceived as to the nature of the work she (or he) will be carrying out or the conditions in which s/he ends up working. If the abusive means specified in the law on trafficking are not used in the recruitment phase but occur later on, in the context of a criminal exercising control over women who have been procured in order to earn money from prostitution, cases are routinely regarded by the Finnish authorities as ones of pimping and not trafficking (or other serious offences, such as enslavement or forced labour). The present Finnish law has the effect of allowing law enforcement officials to view the limits imposed on the freedom of movement (or other rights) of prostitutes/sex workers, along with threats of violence against them or debt bondage, as mere 'rules' to which prostitutes/sex workers have given their consent when they agree to earn money from prostitution in the first place. The Finnish National Rapporteur has recommended that the situation should be clarified by removing all elements that refer to coercion or intimidation from the law's provisions on pimping.

In contrast to France, the legislation in force in other EU Member States does not always define the offence committed when children are trafficked in a way that makes it clear that no abusive means need to be used in the recruitment process for a case to be considered one of trafficking. If a young person under 18 is exploited in any of the ways specified in the Council of Europe Convention, or if there is evidence that the purpose of recruiting or transporting a young person under 18 is to subject the young person to any of the forms of exploitation mentioned in the Convention, it requires that the law define the offence involved as one of trafficking. The countries in which researchers identified the law as inadequate in this regard were Greece, Italy and Slovakia (Q23). However, it seems that laws in other EU Member States may be inadequate as well.

5.3 Coordination of anti-trafficking institutions

5.3.1 Standards that EU Member States are expected to observe

States are required to:

- Set up a national coordination structure, to ensure that governmental and non-governmental agencies involved in preventing and combating trafficking in human beings work together effectively against traffickers and to support trafficked persons. As mentioned earlier, this means States are required to coordinate the various "sectors whose action is essential in preventing and combating trafficking, such as the agencies with social, police, migration, customs, judicial or administrative responsibilities, non-governmental organisations, other organisations with relevant responsibilities and other elements of civil society";[56]
- Set up a referral system at national level, so that it is clear to all agencies how to identify a trafficked person and how to respond when one is identified and to which agency she or he should be referred. This might be called a *national referral mechanism* (NRM) with the characteristics of an NRM suggested by the OSCE (i.e., also acting as the national coordination structure), or might focus specifically on referrals and specify standard operating procedures (SOPS);[57]
- Establish an inter-ministerial governmental body that will guarantee appropriate coordination of the policies, strategies and initiatives which comprise the national response to trafficking in human beings.

5.3.2 What is reported in practice

A National Action Plan to Combat Trafficking in Human Beings or a similar plan was reported to have been adopted in 22 out of the 27 Member States. The five countries which reportedly had no Action Plan in 2008 or 2009 were France, Germany, Hungary, Italy and Malta.

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56. Paragraph 102, Council of Europe *Convention on Action against Trafficking in Human Beings Explanatory Report*.

57. The term 'National Referral Mechanism' was coined by the OSCE's Office for Democratic Initiatives and Human Rights (ODIHR). The OSCE/ODIHR handbook on the establishment of National Referral Mechanisms (*National Referral Mechanisms. Joining Efforts to protect the Rights of Trafficked Persons. A Practical Handbook*, 2004) can be accessed at www.osce.org/odihr/documents.html. The NRM model suggested in this handbook combines the role of national coordination structure with that of a referral mechanism (referring trafficked persons for particular services from specialised agencies) and consequently suggests suitable ways of identifying trafficked persons. This holistic approach was not incorporated into the Council of Europe Convention, with the result that it is mainly States in eastern and southeast Europe that have developed an NRM along this model, not States in western Europe.

A national structure to coordinate anti-trafficking responses was reported to have been established in 23 out of the 27 Member States.

Table 4: EU States which have national structures to coordinate anti-trafficking responses

EU States with a national coordination structure (20)	Institution responsible for coordination (18 responses)	EU States with no national coordination structure (7)
1. Austria	Federal Ministry of European and International Affairs	1. France
2. Belgium	Centre for Equal Opportunities and Opposition to Racism (CEOOR)	2. Germany
3. Bulgaria	National Commission for Combating Trafficking in Human Beings	3. Greece
4. Cyprus	Ministry of Interior	4. Italy
5. Czech Republic	Ministry of Interior (Security Policy Department)	5. Malta
6. Denmark	The Danish Centre against Human Trafficking	6. U.K.
7. Estonia	Ministry of Justice	
8. Finland	Ministry of Interior	
9. Hungary		
10 Ireland		
11. Latvia	Ministry of Interior	
12. Lithuania	Ministry of Interior	
13. Luxembourg	Ministry of Equal Opportunities	
14. Netherlands	Taskforce on Trafficking in human beings	
15. Poland	Ministry of Interior	
16. Portugal	Commission for Citizenship and Gender Equality (CIG)	
17. Romania	Ministry of Interior and Administration Reform, National Agency against Trafficking in Persons	
18. Slovakia	Ministry of Interior	
19. Slovenia	Ministry of Interior	
20. Spain	Ministry of Equality	
21. Sweden		

This table shows that, in nine out of 20 countries, the institution responsible for coordination is the Ministry of the Interior. In two of the countries with no national coordination structure (Germany and Italy) anti-trafficking responses were not organised at federal level. The scope of coordinating structures varied. In Spain, for example, the plan setting up an Inter-ministe-

rial Coordination Group and, in 2009, a Social Forum against Trafficking (composed of representatives of state-run agencies, NGOs and other relevant institutions) focused exclusively on trafficking for the purpose of sexual exploitation. Sweden has appointed a National Coordinator with the task of developing a coordination structure to combat trafficking, but mainly for cases involving trafficking for sexual purposes.

Most national coordination structures were reported to have procedures allowing, in theory, for the participation of representatives of civil society or NGOs in the work of the structure (as required by article 5 of the Council of Europe Convention). Two (Belgium and Malta) said they did not. Further, not all national coordination structures issued a public report about their anti-trafficking activities each year: Belgium, Cyprus, Finland, Greece, Hungary, Latvia and Slovakia were reported not to do so.

In some countries there is a procedure recognised at national level that specifies the roles to be played by different organisations in providing protection or assistance to trafficked persons and for referring them to appropriate services – a National Referral Mechanism or System. A total of 17 countries have such a system, while nine do not (Estonia, France, Greece, Italy, Latvia, Luxembourg, Slovenia, Spain and Sweden), meaning that referrals in these nine are organised at sub-national level (as in Italy) or there is no actual system governing referrals. Only for Spain did our researcher conclude that the roles and responsibilities of different organisations for making referrals presumed trafficked persons are unclear.[58] However, 11 commented that NGOs involved in the referral system in their country thought it was inadequate, while in only five countries did NGOs think it was adequate. In 20 out of 25 countries, our researcher made the subjective observation that agencies involved in the referral system lacked the funding, capacity or expertise to carry out the tasks expected of them.[59]

Most countries have a police unit that is specialised in anti-trafficking work. Only three (Finland, Germany and Malta) do not.[60] In Germany's case, this is because police efforts to stop trafficking are not organised at federal level, but

58. Question 55 asked "…is it clear what the roles and responsibilities of different organisations are for referring presumed trafficked persons, or not?".
59. Question 57 asked, "In your opinion, do the agencies involved in the referral system (whether government agencies or non-governmental or international organisations) have the funding, capacity and expertise to carry out the tasks expected of them by the referral system?".
60. Question 24 asked, "Is there at least one specialist police unit in your country focusing on human trafficking or related crimes?"

at the level of individual *Länder*. In five countries (Denmark, Estonia, Luxembourg, Netherlands and Sweden) the police specialising on trafficking were reported to focus principally on cases of sex-related trafficking. In one other, France, a specialist police unit whose title refers to human trafficking, the Office central pour la répression de la traite des êtres humains (OCRTEH), Central Office for Combating Trafficking in Human Beings, focuses its investigations on cases of procuring and pimping linked to prostitution.

5.4 Prosecutions and convictions

5.4.1 Standards that EU Member States are expected to observe

One of the purposes of the Council of Europe Convention is to "to ensure effective investigation and prosecution" (Article 1, "Purposes"). Article 27 specifies that prosecutions should not require a complaint to have been lodged by someone who has been trafficked (or information supplied by them). Article 29 requires States Parties to have "persons or entities" which are specialised in the "fight against trafficking and the protection of victims". During court proceedings, States parties are required to protect a victim's private life (and, where appropriate her or his identity), and to ensure the victim's safety and protection from intimidation.

In 2008, the European Commission commented that, "Despite the upward trend [in prosecutions], the number of criminal proceedings is still not high enough to reflect the presumed scale of the crime…". According to information provided to the Commission by just seven Member States in 2006, the total number of investigations and prosecutions of cases involved trafficking for the purpose of sexual exploitation in these seven countries had been 1,396 in 2006, an increase from 195 in 2001 and 453 in 2003.[61]

5.4.2 What is reported in practice

We received slightly more complete data than the European Commission, referring to 858 convictions in 22 countries for trafficking during 2008 and 692 convictions in 21 countries during 2009. In 2008 three countries reported

61. European Commission, *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings* (section 1.3), 17 October 2008, EU reference COM(2008) 657 final. The specific numbers of investigations and prosecutions that were noted were: Austria (128), Belgium (291), Bulgaria (291), Germany (353), Italy (214), Portugal (65), and the UK (54).

no convictions; five had between one and nine convictions; nine had between 10 and 49 convictions; two (Bulgaria and Poland) had between 50 and 99 convictions; and four (Estonia, Hungary, Portugal and Romania) reported more than 100 convictions. The Ministry of Justice in France reported 18 convictions for trafficking in 2008, among which were five cases in which trafficking was the main charge.[62] In the same year, there were 966 convictions reported for pimping and this figure was quoted by the French authorities as a sign of France's efforts to fight against trafficking. There were also 11 convictions for exploitation of begging and 184 convictions for keeping people in working conditions or accommodation that was contrary to human dignity.

France tends to blur the line between trafficking and pimping, without distinguishing those that involve trafficking as defined by the EU *Framework Decision* or the Council of Europe Convention. Similarly, before Spain's law was amended in 2010, in 2009 the country's specialist Prosecutor for Alien Affairs stated that it was "extraordinary difficult to get precise information on trafficking in human beings in Spain".[63]

For details of both the numbers of convictions reported and the types of trafficking or exploitation for which traffickers were convicted, see Tables 5 and 6 below.

Table 5: Convictions for human trafficking reported in the EU in 2008

Numbers of countries with data or with these numbers of convictions	**Number of countries with data**	**Number of countries with no data**	**Number of convictions reported in five ranges: '1-9' signifies there were between one and nine convictions for the offence listed in the column**				
			0	1-9	10-49	50-99	100-199
Total number of convictions for human trafficking in 2008	22	5	3	5	8	2	4
Sex trafficking convictions (adult or child) in 2008	16	11	3	8	2	2	1

62. Ministry of Justice, Criminal Affairs and Reprieval Directorate, in *Report on Trafficking and Exploitation of human beings in France*, CNCDH (prepared by Johanne Vernier), awaiting publication, La Documentation Française, 2010.

63. *Memorias 2009*, Vol. I. Cap. III. Actividad del Ministerio Fiscal. G) Fiscales de Sala Coordinadores y Delegados para Materias Específicas y Secciones o Delegaciones Territoriales Especializadas. 4. Fiscal de Sala Coordinador de Extranjería, page 717. (www.fiscal.es/cs/Satellite?buscador=0&c=Page&cid=-1240560251626&codigo=FGE_&language=es&newPagina=8&pagename=PFiscal%2FPage%2FFGE_buscadorArchivoDocument)

Labour trafficking convictions (adult or child) in 2008	15	12	11	5	1	0	1
Convictions 2008 for trafficking for another purpose	17	10	17	2	0	0	0
Convictions 2008 for child trafficking	16	11	12	2	2	0	0

Table 6: Convictions for human trafficking reported in the EU in 2009

Numbers of countries with data or with these numbers of convictions	**Number of countries with data**	**Number of countries with no data**	**Number of convictions reported in five ranges: '1-9' signifies there were between one and nine convictions for the offence listed in the column**				
			0	1-9	10-49	50-99	100-199
Total number of convictions for human trafficking in 2009	21	6	8	6	2	1	4
Sex trafficking convictions (adult or child) in 2009	15	12	8	4	0	1	2
Labour trafficking convictions (adult or child) in 2009	18	9	15	2	0	0	0
Convictions 2009 for trafficking for another purpose	19	8	15	1	0	0	0
Convictions 2009 for child trafficking	16	11	11	3	1	0	0

The number of convictions of traffickers for trafficking children about which our researchers learned was extremely small. For 2008, convictions were only reported in four countries. These were: Denmark (2); Estonia (17); Lithuania (3); and Netherlands (27), i.e., a total of 49 convictions. In the others, there was either no information (11) or no prosecution was reported (12). For 2009, the picture was similar: 12 countries provided no information and 11 others reported no convictions. This time the four countries in which criminals were reported convicted in 2009 for trafficking children were Estonia

(35), Latvia (7), Lithuania (1) and Portugal (3), i.e., a total of 46. This suggests that, in the entire European Union, less than 50 people were convicted in either of the years under review (2008 and 2009) of trafficking children. It is far from certain that this reflects the number of trafficking offences reported to have occurred against children.

It seems clear from the number of countries for which our researchers did not supply information on convictions of child traffickers that they had more difficulty in obtaining information about trials relating to children who had been trafficked than adults who had been trafficked. However, when a comparison is made between the number of criminals convicted of trafficking adults that our researchers learned about (809 in 2008 and 646 in 2009) with the number convicted of trafficking children (49 in 2008 and 46 in 2009 or respectively 5.7 percent and 6.6 percent of the totals), even allowing for disparities in the availability of data,[64] it suggests that the number of convictions of child traffickers is exceedingly low – possibly much lower than the proportion of trafficked persons who were children. We did not try to establish what the reasons for this were, but it suggests that, at the level of the European Union as a whole, where the rhetoric in favour of enforcing child rights is strong, more attention needs to be given to practical ways of protecting children against traffickers and securing the punishment of child traffickers.

In addition to prosecutions referring explicitly to trafficking, there were others involving forced labour or related levels of exploitation. For example, in 2008, there were trials in five countries (Austria, Belgium, France, Netherlands and Romania) for offences against domestic workers (20 countries provided answers, suggesting no such trials in 15 countries – Q39). In 2009, when data was available from 19 countries, such trials were reported in four countries (France, Portugal, Romania and UK).

Responses from 21 countries indicated that data was available about the total number of suspected criminals who were investigated (rather than prosecuted or convicted) during 2008 in relation to trafficking offences: a total of 2,871 people in 17 countries. Less information was available for 2009: in 12 it was available, but only eight countries provided estimates (a total of 984 suspects in the eight).

64. Concerning the disparities in data, for 2008 eight countries either provided no information or reported no prosecutions, where for children the corresponding number was 23; for 2009, 19 countries provided no information or reported no prosecutions, where for children the corresponding number was again 23.

All sorts of impediments to successful prosecutions were reported. For example, the Czech Republic it was reported that only a small number of persons were convicted for trafficking in human beings and that those convicted mostly received conditional sentences which did not correspond to the gravity of the offence. The possible reasons that were suggested were:

- the non-explicit definition of trafficking (in the country's legislation);
- the relative lack of preparedness of the country's judicial system to deal with complicated cases involving organised crime; and
- at all levels of the criminal justice system (police, state prosecutors and courts) in the Czech Republic (as in many other countries), a tendency to prosecute suspected traffickers for less serious offences (such as procuring, restricting a person's personal freedom, extortion etc.), which are also easier to prove in court.

5.5 Identification of presumed trafficked persons

5.5.1 Standards that EU Member States are expected to observe

The purpose of a system for identifying trafficked persons that meets the standards set by the Council of Europe Convention is to ensure that anyone who it is reasonable to suspect might have been trafficked has access to protection and assistance, in particular a so-called reflection delay to allow them to recover before being either obliged to provide information to the police (for a possible prosecution) or to leave the country (if they have no right to reside there). The Council of Europe Convention requires States Parties to ensure the necessary legal framework is in place as well as the availability of competent personnel for the identification process (Article 10). They are also required to cooperate with each other, and internally with victim support agencies, in this process. The identification procedure that is put in place has to be adequate to "ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence…has been completed by the competent authorities and shall likewise ensure that that person receives…assistance" (Article 10.2).

However, the Convention does not contain a blueprint for the identification process. It confirms the need for special procedures to be in place to facilitate the identification of trafficked children, notably a presumption, in any cases "[w]hen the age of the victim is uncertain and there are reasons to believe

that the victim is a child" (Article 10.3) that he or she is a child, who will be protected accordingly.

In 2007 the European Commission published a draft paper on the identification process (*Recommendations on Identification and Referral to Services of Victims of Trafficking in Human Beings,* October 2007). This clarified that,

> "A human rights centred approach requires early identification and assistance to victims of trafficking in human beings. Identification is crucial to ensure both the protection of the rights of trafficked persons, and successful prosecution of the traffickers. Due to the complexity of the trafficking phenomenon, the final identification of victims might require a prolonged and ongoing process. Failure in identifying victims at an early stage can result in insufficient protection of victims and violation of their rights."

So,

> "A presumed trafficked person shall be considered and treated as a victim as soon as the competent authorities have the slightest indication that she/he has been subject to the crime of trafficking.
>
> "During the identification process the presumed trafficked person shall have access to assistance and support, regardless of whether she/he is able or willing to testify.
>
> "No expulsion order shall be enforced until the identification process has been completed by the competent authorities".
>
> "A mechanism (which could be called National Referral Mechanism) must be established in every [EU] Member State, aimed at ensuring coordination of government action and co-operation with civil society organizations or other service providers such as public or private recognised and specialised centres…[W]hen a trafficked person asks for assistance from an NGO or other service provider, the mechanism must ensure that the said service provider is entitled to assist the presumed trafficked person".
>
> "Indicators concerning various forms of coercion and abuse such as the retention of [identity] documents or the debt bondage or the withholding of wages should be taken into account for any forms of traf-

ficking. Additional specific indicators should be identified for different forms of trafficking".[65]

5.5.2 What is reported in practice

In 11 out of 27 Member States there is a single government agency or structure responsible for making a formal identification of anyone who is presumed to have been trafficked, whereas 16 do not. Six of the countries where there is no single process for identification do not have any standard procedure used throughout the country for formally identifying someone who is presumed to have been trafficked (Austria, Bulgaria, France, Germany, Italy, and Malta). In Greece, where a single institution is responsible for officially identifying trafficked persons (the Public Prosecutor of the Court of First Instance), there are nevertheless no official or generally accepted guidelines on how this should be done.

In four countries which do not have any standard procedure at national level a standard procedure is nevertheless reported to have developed at local level; in France (in the city of Lyons), Hungary, Italy and Latvia. For example in Lyons a formal agreement (known as a 'Convention') has been agreed between the Courts (the judiciary), the NGOs providing assistance to trafficked persons, the administrative authorities and the police. It was set up in Lyons at the initiative of the Ministry of Justice in 2009. This initiative was a pilot project and was being evaluated in mid-2010.

Almost half the countries (13) have published details about Standard Operating Procedures (or a similar formal plan of the process which is supposed to be followed for identification, such as a flow diagram) to indicate the process to be followed by relevant state authorities/officials and NGOs in formally identifying an adult as a 'victim of trafficking' or 'trafficked person' entitled to protection. In slightly fewer countries (11), similar details have been made public about the process to be followed in identifying trafficked children.

In nine of the 18 countries where there is no formal agreement allowing various organisations (possibly including NGOs) to formally identify someone

65. Some progress is evident on some of the recommendations made in this report. However, like numerous other recommendations made by the European Commission's Expert Group, it is not binding on EU Member States.

as a trafficked person, there are nevertheless formal agreements which allow NGOs or other organisations to refer presumed trafficked persons to a government agency for formal identification. (Q 74 & 77).

In one of the countries where there is no referral mechanism coordinated by a government institution, an NGO, ALC, coordinates a referral mechanism that is intended to provide trafficked persons who face risks at local level with secure housing by relocating them to a different place. This network, called "Ac.Sé" (standing for "*accueil sécurisant*", secure accommodation) links 47 shelters all over France and also connects specialist NGOs that provide services to prostitutes/sex workers and domestic workers.[66]

In ten countries there was information to indicate that at least one trafficked person was removed from the country, in either 2008 or 2009, before the identification process was started or completed (Czech Republic, Denmark, Finland, France, Italy, Latvia, Netherlands, Poland, Spain and Sweden) (Q86).

In the case of both adults and children who were presumed victims, some went missing in 2008 or 2009 before the identification process was completed. Presumed trafficked children were reported to have gone missing in ten countries (Q88). A different set of ten countries reported that adults had gone missing. In Czech Republic, France, Ireland, Spain, Sweden and the UK both adults and children were reported to have gone missing.

How many people were identified? According to one report issued in 2010, "estimates by the International Organisation for Migration (IOM) estimate that around 500,000 women are victims of trafficking in EU Member States every year".[67] The IOM itself knows of no such estimate. We asked our researchers to find out the total number of individuals who were the subject of referrals (as 'presumed', 'possible' or definite trafficked persons) during 2009 or a 12-month period during 2008 and 2009 (Q84). In 16 countries relevant information was reported to be available, whereas in others it was not (and in one other, Spain, it was impossible to find out). Evidently the number of presumed trafficked persons who were referred is likely to have been less than the number who were provisionally identified,

66. More information can be found on www.acse-alc.org. The existence of this referral mechanism has been officially recognised in Decree N°2007-1352 of 13 September 2007 and Circular n°IMIM0900054C of the 5 February 2009.
67. Anna Skarhed, *Förbud mot köp av sexuell tjänst. En utvärdering 1999-2008* [(Prohibition of the purchase of sexual services. An evaluation 1999-2008], SOU 2010:49, Stockholm, 2010, page 121.

as some may not have wanted to be the subject of a referral (especially in countries such as the UK, where procedures introduced in 2009 meant that any case in which the residence status of a presumed trafficked person was questionable would be brought to the attention of the immigration authorities straight away).

The information concerned a total of 4,010 people who were the subject of referrals as presumed trafficked persons. It was evidently frustrating that no figures were available from other EU Member States. Nevertheless, the figures give some indication of the scale of identification (of presumed trafficked persons) going on in more than half the EU's countries, while omitting destinations where numbers may have been relatively high, such as France, Germany, Italy and Spain.

The 16 countries for which data was available about the number of people identified as presumed trafficked persons are listed in Table 6.

Table 7: The number of presumed trafficked persons identified and then the subject of a referral in 16 EU countries (during a 12-month period in 2008 and 2009)

Country	Number of referrals over 12 months	Country	Number of referrals over 12 months
Austria	165		
Belgium	774	Poland	173
Cyprus	119	Portugal	79
Denmark	118	Romania	780
Finland	42	Slovakia	57
Greece	121	Slovenia	31
Latvia	23	Sweden[68]	60
Luxembourg	2	U.K.	557
Netherlands	909	**Total**	**4,010**

It is likely that some trafficked persons were counted twice, i.e., once in a country of destination and again upon their return to the country of origin. The implication of Table 6 is that more than half the presumed trafficked persons who were identified were located in just three countries: Belgium (774), Romania (780) and Netherlands (909), while in nine countries the number reportedly identified exceeded one hundred. It is important to point out, however, that there is no evidence that more peo-

68. 60 people were reported to the police as presumed trafficked persons in 2009 (a total of 214 between 2005 and 2009).

ple were trafficked in Belgium, Romania and Netherlands than other countries. It may be that the procedures in place were significantly better at identifying trafficked persons in some countries than others, or that the procedures available encouraged people to present themselves as presumed trafficked persons.

In slightly over half (55 percent) of the cases reported in these 16 countries, presumed trafficked persons were subsequently confirmed as definitely having been trafficked (Q85). The proportions varied. In Belgium, for example, where 774 presumed trafficked persons were referred to one of the country's three specialised centres for assisting trafficked persons in 2008, only 196 of them were subsequently confirmed to have been trafficked (25 percent).

There were difficulties in finding out how many presumed trafficked persons were children. For example, in the Netherlands, where information about the number of presumed trafficked persons was based on the number of temporary or long-term residence permits given to trafficked persons, no age-segregated data was available about trafficked persons who were granted a long-term residence permit. In 2008, the Netherlands' organisation coordinating referrals and information about trafficked persons, COMENSHA, registered 826 presumed trafficked persons, of whom 169 were aged below 18: more than half of the 169 were Dutch, while 65 had foreign nationality. In this year there were 443 applications for a temporary residence permit for trafficked persons (known as a B9 permit), of which 235 were awarded. In this case 18 are known to have been given to young people below the age of 18. There were 149 applications for long-term residence on humanitarian grounds, of which 97 were granted and 52 rejected. However, no figures were available to indicate what number or proportion of the 97 long-term residence permits were granted to young people below 18.

5.6 Protection for people who were presumed to have been trafficked

We collected information about three different aspects of protection:

- Reflection and recovery periods;
- Risk assessments; and
- Returns (i.e., repatriation to a trafficked person's country of origin).

Each of these is presented separately below.

5.6.1 Reflection and recovery period

Standards that EU Member States are expected to observe

The Council of Europe Convention specifies that persons reasonably believed to have been trafficked are to be granted at least 30 days to reflect and recover in the country where they have been identified (article 13), during which time they are to be offered assistance and protection and may not, if they have no legal right to be in the country concerned, be expelled – regardless of whether they agree to participate in any proceedings the authorities may decide to pursue against those responsible for trafficking or exploiting them.

A European Council Directive (i.e., of the European Union) 2004/81/EC of 29 April 2004 *on the residence permit issued to third country nationals victims of trafficking in human beings or to third country nationals who have been subjects of an action to facilitate illegal immigration and who cooperate with the competent authorities* provides for reflection delays to be granted to both trafficked and smuggled persons. This Council Directive requires Member States to grant presumed trafficked persons a reflection period but specifies that their duration and starting point is to be determined according to national law. It is not binding on all EU Member States (and is reported to have been implemented only partially).

Substantial evidence is now available that women and girls who have been trafficked into sexual exploitation are not in a position to make informed choices about their future within a short time of being withdrawn from the control of traffickers, or for some time afterwards, while they are suffering from shock or trauma.[69] For periods up to several months, such victims of crime may not be able to provide accurate information to law enforcement officials seeking to gather evidence about crimes committed against them, nor to make informed decisions about whether they want to risk cooperating with criminal investigations or not (for, by doing so, they expose themselves and their loved ones to a risk or reprisals from traffickers or their associates). There is also evidence that the practice of making assistance conditional on cooperation with law enforcement, even if it delivers short-term benefits for law enforcement, contributes in the long-term to making trafficked persons

69. See Cathy Zimmerman et al, Stolen smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe, The London School of Hygiene and Tropical Medicine, 2006.

suspicious of law enforcement agencies and unwilling to talk openly about their experiences, consequently hindering rather than helping with prosecutions. In order to meet the standard set by the Council of Europe Convention, it is sufficient for the authorities to set a reflection delay of no more than 30 days. However, to meet the intention of this protection measure, they should also be monitoring and evaluating the effects of a 30-day delay (or whatever other length has been agreed in your national legislation), to check whether trafficked persons have in fact recovered sufficiently in this period to make an informed decision (and one that is not made under pressure from the authorities or worry about their own status) about whether to cooperate with a criminal investigation.

What is reported in practice – for adults

In 25 out of the 27 Member States there is reported to be provision for a period for reflection and recovery for trafficked persons. In most countries (19) this was estimated to carry with it advantages over other ways of seeking temporary residence (Q93), while in five it was not considered to do so. The length of the period concerned was specified for 25 countries as follows:

Table 8: The maximum length of reflection period available in each country

Number of days	Number of countries	Countries concerned
30	8	Austria, Bulgaria, France, Germany, Greece,[70] Hungary, Latvia, Sweden[71]
45	2	Belgium, U.K.
60	5	Czech Republic, Estonia, Ireland, Malta, Portugal
90	6	Luxembourg, Netherlands, Poland, Romania, Slovakia, Slovenia
100	1	Denmark
180	1	Finland
No maximum specified	1	Spain
Minimum (not maximum) of 30	1	Cyprus (no maximum specified)
No reflection period required	1	Italy
No data provided	1	Lithuania

70. The situation in Greece changed radically in September 2010, when Greece ratified the UN Trafficking Protocol and amended its law to extend the reflection period to three months.
71. No-one is known to have applied for or been granted a reflection period in Sweden.

Italy is a particular case, as accredited NGOs and local authorities take part in the identification procedure. Further, the degree of protection provided 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 identify them as trafficked and before they agree to enter into a social assistance and integration programme.

In 15 out of the 24 countries which provided responses, the provision for a reflection period is not limited to "third country nationals" (i.e., citizens of a country outside the EU). However, in six it is, thereby excluding citizens of other EU Member States from benefiting from a reflection period (Austria, Cyprus, Greece, Latvia, Malta and Poland). Up until now, it has also been limited in Spain, though this is due to change in December 2010. Three of the countries with these limitations are among the more developed EU States that receive significant numbers of migrants (and trafficked persons) from other EU countries.

When a presumed trafficked person wishes to be recognised as 'trafficked' but the authorities refuse to do so, in 12 out of 23 countries s/he is entitled to challenge the decision through a formal appeal (or review) process. However, in 11 countries, there is no opportunity to do so.

Once identified, presumed trafficked persons who are granted a reflection period in most countries (20 out of 27) are entitled to all the forms of assistance available to individuals who have been definitively identified as 'trafficked' (Q100).

Our researchers obtained information that was incomplete in some countries about the numbers of people who were granted a reflection period. For 2008, information was available from 11 countries about a total of 207 people who benefited. For 2009, information was available from 18 countries about 1,150 people.

There was legal provision for trafficked persons to be granted a residence period in virtually all countries (not, it seemed, in Denmark). In 2008, 1,026 temporary residence permits were known to have been granted to trafficked persons in a total of nine countries. The average of more than 100 permits per country belayed the truth, however, for 664 of these were issued in Italy alone (and a further 810 in 2009), along with 235 in the Netherlands, meaning that the seven other countries only issued a total of 127 between them (i.e., averaging less than 20 each). This suggests the authorities in different countries take a radically different approach on issuing residence permits. However, the origins of trafficked persons evidently different from country to country, with

a significant proportion of those identified in some countries coming from other EU countries, in which case they did not need to apply for either a reflection period or a residence permit in order to remain in a EU country.

What is reported in practice – for children

A key requirement of international law (under the terms of article 3 of the UN Convention on the Rights of the Child) is that decisions on the status and residency of children should include a formal procedure for determining what is in their best interest. Just 12 out of the 27 Member States were reported to have a standard procedure for achieving this and in only nine was this considered to follow such a procedure in practice.

In most countries there is a legal provision for a temporary legal guardian to be appointed to accompany each unaccompanied child who is presumed to have been trafficked (Q131). The only countries reported not to have this provision were Ireland, Lithuania and the UK.

In the 15 countries for which information was available, temporary guardians were appointed for trafficked children in ten countries in both 2008 and 2009. In 20 countries temporary legal guardian were reportedly allowed (in theory) to attend meetings where decisions concerning a durable solution for the child were under consideration (Q139). However, in 2008 and 2009 it was only in half of these countries (Belgium, Bulgaria, Cyprus, Czech Republic, Finland, France, Netherlands, Romania, Slovenia, Spain) that temporary legal guardians were reported to be actually present in such discussions (Q140).

Trafficked children were reported to have been granted leave to remain in six countries in these two years: France, Italy, Poland and the UK, where they were granted temporary leave only until shortly before they reached the age of 18, and Austria and Denmark, where the leave to remain was considered permanent. This distinction too reflects marked policy differences and some observers have queried whether the practice of making decisions on trafficked children, which are only temporary (particularly for children trafficked at the age of 16 or 17) is really a durable solution that can be considered to be in their best interests, as required by international standards.[72]

72. E.g., see Anti-Trafficking Monitoring Group, Wrong Kind of Victim. One year on: an analysis of UK measures to protect trafficked persons, June 2010. All EU Member States have a legal obligation under the UN Convention on the Rights of the Child to make a child's best interests a primary consideration in any action affecting the child. For regional standards on this point, see UNICEF, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, UNICEF Regional Office for CEE/CIS, 2006.

5.6.2 Risk assessments

Standards that EU Member States are expected to observe

In order to prevent trafficked persons from being victimised once upon their arrival back in their country of origin or re-trafficked, and to protect their safety more generally, it is essential to establish systems and procedures for carrying out a risk assessment in respect of every presumed trafficked person before they return to their country of origin. The purpose of such risk assessments is to ensure that trafficked persons are not sent back to a situation that endangers their life, health or personal freedom or would expose them to the likelihood of being subjected to cruel, inhuman or degrading punishment or treatment.[73] It is also an opportunity to ensure they are not subjected to *refoulement*.[74] Carrying out a risk assessment involves consulting the person concerned, as well as considering evidence available about her or his specific circumstances. So, it is essential to ensure a proper risk assessment analysis procedure in the victims' country of origin before repatriation. Each case must be dealt with on a case by-case basis and comply with the principle of non *refoulement*, including through referral to the asylum procedure where relevant".

What is reported in practice

When the authorities plan to return a presumed trafficked person to his or her country of origin, our researchers concluded that in 14 out of the 17 EU Member States for which information was available risk assessments were not carried out automatically. The four where it was believed to be normal practice are Germany, Italy, Portugal and Romania.

5.6.3 Repatriation / Return

Standards that EU Member States are expected to observe

If a trafficked person is required to leave a country where they have been identified as trafficked, the Council of Europe Convention specifies that the

73. Under Articles 2 and 3 of the European Convention of Human Rights, States have a positive obligation to protect individuals. Protection offered to trafficked persons should be on the basis of individual risk assessment and need.

74. See UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, UNHCR document HCR/GIP/06/07, 7 April 2006, accessed at www.unhcr.org/doclist/publ/3d4a53ad4.html.

departure should "preferably be voluntary" and their return to their country of origin is to be "with due regard" for their "rights, safety and dignity" (article 16), meaning that the authorities have an obligation to assess the risks associated with their return and not to proceed with it if significant risks are identified. States are entitled to deport, expel or forcibly repatriate an individual who has no legal entitlement to be in their territory, when the authorities have confirmed that the individual is not entitled to protection (for example, as a trafficked person or refugee) and faces no (significant) risk in her/his country of origin. However, the Council of Europe Convention suggests (but does not insist) that returns should "preferably be voluntary", i.e. should take the form of 'voluntary assisted return' rather than 'non-voluntary return'. If trafficked persons have been obliged to leave your country as a matter of routine or policy (i.e., subjected to 'non-voluntary return'), it suggests that the State may have made no effort to meet the requirements of article 16 of the Convention.

One way for States to minimise the likelihood of returnees being abused is for them to agree a formal procedures or protocol bilaterally with other Member States or third countries, to govern the process of return of a trafficked person to their own country and specify the rights of the individuals involved – but evidently the individual trafficked adult should have the right to say that they do not wish to be identified to their own country's authorities (as having been trafficked) and wish to return outside the framework of such bilateral agreements.

What is reported in practice

Six countries were mentioned by our researchers as having formal agreements with other EU Member States or third countries to govern the process of return of a trafficked person to their own country: France, Greece (concerning children from Albania, but not adults), Latvia, Portugal, Spain and the UK. In practice, we suspect the total may have been higher (i.e., that some of these countries had concluded agreements with other EU Member States which were not identified as having entered into these agreements).

Information was available from 15 countries about returns of adults in 2008 who had been trafficked or were presumed trafficked persons: evidently other returns may have occurred about which no information was made available or, as in Sweden, there was contradictory information from different officials (the National Coordinator reported that about 40

persons had been returned between 2004 and 2008 and thought that most trafficked women, about 80 percent of them, left Sweden voluntarily). A total of 194 were reportedly returned to their country of origin in 2008 from 12 countries (Austria, Cyprus, Czech Republic, Denmark, France, Greece, Italy, Latvia, Netherlands, Poland and Slovenia). In at least one case, Austria, it was clear that all those returned were women, reflecting the fact that the country's procedures for protecting and assisting trafficked persons focus on women. In 2008 the largest number of returns was reported from the Netherlands (37), with Italy next (31), followed by Cyprus (24), Germany (23) and Denmark (21). Information about returns was available for 2009 from fewer countries, just ten. In this case 171 individuals were reportedly returned to their country of origin from ten countries (Austria, Bulgaria, Czech Republic, France, Greece, Ireland, Italy, Poland, Portugal and U.K), with one country, Greece, accounting for well over half all the returns.

The countries with the highest numbers of reported return in 2008 and 2009 are mentioned in Tables 8 and 9. However, these tables do not attempt to correlate the number of reported returns with the reported number of trafficked persons in the countries concerned.

Table 9: Returns reported in 2008 (the top three countries where most returns were reported)

Netherlands	37
Italy	31
Cyprus	24
9 other countries	107
Total	**194**

Table 10: Returns reported in 2009 (the top three countries where most returns were reported)

Greece	107
Poland	23
Austria	22
7 other countries	19
Total	**171**

In terms of the proportions of the total numbers of presumed trafficked persons who were identified in these countries, it is clear that these numbers represent quite different proportions of the totals, suggesting that the criteria used for deciding on returns at national level are quite different. However, the data needed to measure these proportions was not available for all the relevant countries (e.g., Italy). Further, data about returns is really only significant in the case of countries of destination. The fact that EU States that are principally countries of origin of trafficked persons, such as Slovakia and Romania, did not return any trafficked persons to other countries does not seem surprising.

Table 11: Returns from 10 EU countries as a proportion of the total number of presumed trafficked persons identified in 2008 or 2009

Country	Numbers of trafficked persons identified in a 12 month period in 2008/09	Numbers of trafficked persons reportedly returned in 2008	Numbers of trafficked persons reportedly returned in 2009	Percentage of total identified who were returned in 2008	Percentage of total identified who were returned in 2009
Austria	165	21	22		13.33%
Cyprus	119	24	n/a		20.17%
Denmark	118	21	n/a		17.80%
Greece	121	4	107	3.31%	88.43%
Latvia	23	3	0	13.04%	
Luxembourg	2	0	0	0.00%	
Netherlands	909	37	n/a	4.07%	
Poland	173	17	23	9.83%	13.29%
Portugal	79	0	2		2.53%
Slovenia	31	1	0	3.23%	

Based on the limited data available, it is apparent that returns represented between 4 and 5 percent of the total number of presumed trafficked persons who were identified in all the EU countries for which we obtained data about numbers identified and returned (4.84% in 2008 and 4.26% in 2009). In the two (out of three) countries that had the highest number of returns in 2008, the numbers represented very different percentages: 4% (Netherlands) and 20% (Cyprus). In the three countries with the highest reported numbers of returns in 2009, the numbers represented 88% in Greece), but 13% in Poland and Austria. These numbers suggest strongly that the policies concerning returns in Cyprus and Greece require revision and also imply that worrying violations of human rights may have occurred as a result of their current policies on returns.

Researchers were asked to try and find out how many returnees had been forcibly repatriated and how many returned voluntarily. However, they found it difficult to obtain relevant information about the circumstances in which returns have been carried out (information was obtained on only two countries).

5.7 Assistance available for trafficked persons

5.7.1 Standards that EU Member States are expected to observe

The Council of Europe Convention requires States to provide assistance to "victims in their physical, psychological and social recovery", (article 12.1) including at least:

a. "standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure[75] accommodation, psychological and material assistance;
b. access to emergency medical treatment;
c. translation and interpretation services, when appropriate;
d. counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
f. access to education for children".

In addition to "emergency medical treatment", "each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help" (article 12.3). Further, all States in Europe have a legal obligation to enforce article 29 of the UN Convention on the Rights of the Child: "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child. When a trafficked child is identified, EU Member States are required by *Council Framework Decision of 19 July 2002 on combating trafficking in human beings* to "take the measures possible to ensure appropriate assistance for his or her family" (article 7.3, emphasis added).

5.7.2 What is reported in practice

Information about the number of presumed trafficked persons who were the subject of referrals in 2009 was available from 16 countries, concerning a total of 4,010 people.

75. See explanation of what 'secure' means in the Glossary. It does not imply detaining someone in a closed centre or prison.

The authorities in most countries were reported to be trying to get a fuller understanding of the ways that either adults or children (or both) were being trafficked or exploited in their country, for example by commissioning research (Q90). However, six countries were not known to have made any efforts of this sort (Cyprus, Hungary, Latvia, Lithuania, Luxembourg and Malta).

In ten countries cases were reported in 2008 of assistance being made conditional for individuals who had been identified as trafficked persons (out of the 18 for which information was available). For example, in Belgium assistance was 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.

The first of these conditions, requiring a presumed trafficked person to provide information, clearly fails to respect Article 12.6 of the Council of Europe Convention, which requires States to take action "to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness".

Twenty out of 23 countries providing information reported that emergency medical treatment was available in 2009 for presumed trafficked persons. The exceptions were reported to be Denmark, Germany and Romania (Q172).

Fifteen countries are reported to have telephone line run by a government agency (or by another organisation at the request of a government agency) which is intended to provide assistance to trafficked persons (Q80).

In 2008 or 2009, in 18 Member States, citizens of other EU Member States who were identified in the country as presumed trafficked persons were supposed to be provided with appropriate protection and assistance on the same basis as nationals from so-called 'third countries' outside the EU (Q187). However, in eight Member States (Estonia, Germany, Hungary, Latvia, Lithuania, Malta, Romania and Spain), there was reported not to be provision for the same level of protection and assistance for trafficked persons from other EU countries as for trafficked persons from 'third countries'. This nevertheless implies that in most West European countries to which citizens of EU countries in Central Europe were trafficked, they could get assistance. In Germany and Spain, where there was no provision for the State to provide them with assistance, NGOs were nevertheless able to do so. In 14 out of 25 EU countries, EU citizens were identified and assisted in 2008 and 2009 on the same basis as others. In four out of 25 (France, Germany, Spain and the UK) they may have experienced some difficulties.

5.7.3 Accommodation

Safe accommodation (no access for guests or outsiders) was available for adults in 19 countries but said to be unavailable in four (Cyprus, Czech Republic, Ireland and Romania - Q191). Open secure accommodation (with windows and doors preventing outsiders from entering) was available in 14 countries and unavailable in seven.

Researchers were asked to report on whether safe accommodation was available for men and boys who were presumed to have been trafficked, as well as women and girls. In Austria, for example, no special accommodation was available for men or boys.

Table 12: Availability of accommodation for different categories of people who have been trafficked

Specialised accommodation for particular categories of adults or children	Number of countries providing information	Yes (available)	No (not available)
Accommodation especially for trafficked adult women is available	26	18	8
Accommodation especially for trafficked adult men is available	27	21	6
Accommodation especially for trafficked girls (i.e., under 18) is available	26	4	22
Accommodation especially for trafficked boys (i.e., under 18) is available	26	4	22
Accommodation especially for trafficked transsexuals is available	27	1 (Italy)	26

As attempt was made to measure the extent to which appropriate forms of accommodation and witness protection were available to presumed trafficked adults by allocating each country points according to whether each of eight forms of assistance was available in 2009 (Q191). The eight concerned were:

1. safe accommodation (no access for guests or outsiders - information from 26 countries);
2. open secure accommodation (windows and doors prevent outsiders entering -information from 25 countries);
3. accommodation including an alarm to call police (information from 24 countries);
4. accommodation where all incoming phone calls are monitored or recorded (information from 25 countries);

5. mobile telephone provided for making emergency calls for help (information from 25 countries);
6. bodyguard available when moving outside secure accommodation (information from 24 countries);
7. change of identity possible (information from 25 countries);
8. relocation to different town or district possible (information from 25 countries).

For example, in eight countries accommodation was available which enabled residents to make an alarm call to the police (while in 12 it was not). In 13 countries residents were sometimes provided with a mobile telephone to enable them to make an emergency call for help.

On each of the eight points, a country scored positively (+1) if the particular form of assistance was reported to be available and negatively (-1) if it was not. The resulting ranking gave some indication of the availability of these various forms of assistance, but was evidently found to mix forms of assistance which were in routine use (i.e., accommodation) with forms of protection during legal proceedings which were either never invoked (even if available in theory) or only rarely. A more meaningful scorecard focused uniquely on the first three points – the availability of various forms of safe accommodation. The scores are shown in Table 9. The potential maximum of +3 is represented as 7 and the minimum possible of -3 is represented as 0. While this is too crude to be considered precise in its ranking, it seems reasonable to conclude that those at the bottom of the list were not making accommodation available as they ought.

Table 13: Scorecard for EU Member States: Availability of suitable accommodation for trafficked persons in 2009

Country	Score (7 = maximum; 0 = minimum)	Number of States in each tier
Austria, Finland, Greece, Luxembourg, Netherlands, Poland and U.K.	7	7
Germany & Slovakia	5	2
Belgium, Estonia, France, Italy, Portugal, Slovenia & Spain	4	7
Latvia, Lithuania, Malta & Sweden	3	4
Bulgaria, Cyprus, Czech Republic, Denmark & Hungary	2	5
Ireland & Romania	0	2

It should also be stressed that numerous shelters benefiting from state funding have suffered cuts in funding as a result of general reductions in government spending. For example, most state-funded shelters in France are reported to have experienced reductions in funding since 2009, however many trafficked persons have been referred to them.[76] In cities such as Bordeaux or Marseilles, the funding for NGOs working with trafficked persons has been reduced. In the case of Bordeaux the state has withdrew the totality of its funding putting the NGO at risk of closing down. Similarly the NGO CCEM, one of the rare NGOs in France to work with exploited domestic workers, has seen its funding greatly reduced, putting it into a difficult situation.

Closed secure accommodation (where residents were not entitled to leave as and when they want, without being accompanied) was reportedly in use in eight out of 21 countries for which information was available, with 13 countries saying that this sort of closed accommodation was not in use. In some cases, researchers may have construed this to refer to formal detention, for many presumed trafficked persons continue to be detained on account of their irregular immigration status in EU countries in additional countries. The eight where the use of closed accommodation was reported were: Austria, Finland, Greece, Ireland, Luxembourg, Netherlands, Portugal and Slovakia.

5.8 Access to justice

5.8.1 Standards that EU Member States are expected to observe

Article 12.1 of the Council of Europe Convention requires assistance trafficked persons to include, at least,

12.1 d "counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;

12.1 e "assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders".

Article 15.1 of the Council of Europe Convention requests States to "ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand". Article 15.2 guarantees "the right to legal assistance and to free legal aid for victims" (under the conditions provided by the country's internal law).

76. More information on www.fnars.org (in French).

The same article 15 guarantees "the right of victims to compensation from the perpetrators" and requires States to adopt a measure "to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims", which could be funded by confiscating the assets of convicted traffickers. In all these cases, it does not have to be a government/state official who provides assistance or information, but the State has a responsibility to ensure it happens. The Convention does not spell out explicitly what steps need to be taken to ensure that victims can obtain compensation from perpetrators. However, the next article does point out that, "When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary" (article 16.2, emphasis added). The Convention's *Explanatory Report* goes further and points out that, "The return of a victim shall also take into account the status of any legal proceedings related to the fact that the person is a victim, in order not to affect the rights that the victim could exercise in the course of the proceedings as well as the proceedings themselves" (paragraph 202). For some trafficked persons to obtain compensation, therefore, States Parties need to ensure that they have a residence permit to remain in the country concerned for the duration of the relevant proceedings.

As far as "Protection of victims, witnesses and collaborators with the judicial authorities" is concerned, Article 28.2 of the Council of Europe Convention requires States to, "adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs" (emphasis added). Article 28.4 requires "appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations" which assist trafficked persons during criminal justice proceedings.

5.8.2 What is reported in practice

Information was obtained on the forms of in-court protection available for trafficked persons who opt to give evidence as victims or witnesses in prosecutions of suspected traffickers and on compensation payments that have been made to trafficked payments. As the number of prosecutions of traffickers is reported to remain relatively low, these two questions were considered pertinent to whether trafficked persons were likely to agree to give evidence and thereby support prosecutions or not.

Protection available to trafficked adults who were witnesses or victims of crime and who take part in legal proceedings

Relocation of threatened victim witnesses (to another place in the same country) was reported to be possible in 19 countries (Q191).

In-court protection

Researchers were asked whether four kinds of in-court protection were available to trafficked adults (Q192) and children (Q193) who were victim witnesses (i.e., were victims of crime who gave evidence against a trafficker). The responses suggested that during 2009 in-court protection was generally available, but that practices varied, as the flowing table indicates.

Table 14: The number of countries making four kinds of in-court protection available for adult victim-witnesses

Category of in-court protection for adults	Available	Not available	No information
Victim witnesses were able to give evidence at a preliminary hearing (e.g., before an investigating judge) and did not have to appear at the public court hearing	13	10	3
Victims witnesses gave evidence by video link and did not have to appear in open court	13	8	6
Victims witnesses giving evidence in court were shielded from the view of the accused (i.e., did not have to look at him/her and could not be seen by the accused, even if they could be seen by others)	10	8	9
Separate waiting areas in court (or in other places where witnesses testify) were available for prosecution and defence witnesses	15	6	6

Once again, it was possible to draw up a score card reporting how EU countries ranked on these four questions, using the same system as in Table 9, i.e., a country scored positively (+1) if the particular form of witness protection was reported to be available and negatively (-1) if it was not. The scores (with a potential maximum of +4 and minimum of -4) are shown in Table 10.

Again, it is necessary to note that the resulting ranking is relatively crude, but gives some indication of the availability of these various forms of protection, whose availability might be expected to encourage trafficked persons to be more inclined to testify or take part in legal proceedings against suspected traffickers.

Table 15: Scorecard for EU Member States: availability of suitable in-court protection measures for victim witnesses in 2009

Country	Score (8 = maximum; 0 = minimum	Number of States in each tier
Austria, Netherlands, Poland, U.K. Portugal & Spain	8	6
Bulgaria, Cyprus, Czech Republic, Denmark & Hungary	7	5
Germany & Belgium	5	2
Luxembourg, Slovakia, Estonia, Italy, Lithuania, Malta, Sweden & Romania	4	8
Finland & Greece	3	2
France & Slovenia	2	2
Ireland	1	1
Latvia	0	1

The information available on in-court protection for trafficked children was much more patchy, as there were significantly less court cases involving children as victim-witnesses. For example, in Denmark, according to an NGO in contact with most of the children who were suspected of having been trafficked, none of the cases identified as presumed victims in 2008 and 2009 were investigated fully by the police and no trafficker was convicted. Researchers in 11 countries were unable to provide any information on any of these forms of protection for children. In only five were researchers able to confirm that all four forms are available for children who have been trafficked (in Luxembourg, Netherlands, Poland, Spain and Romania).

Table 16: Countries making four kinds of in-court protection available for child victim-witnesses

Category of in-court protection	Available	Not available	No information
Child victim witnesses gave evidence at a preliminary hearing (e.g., before an investigating judge) and did not have to appear at the public court hearing	12	3	14
Child victim witnesses gave evidence by video link and did not have to appear in open court	9	6	12
Child victim witnesses giving evidence in court were shielded from the view of the accused (i.e. did not have to look at him/her and could not be seen by the accused, even if they could be seen by others	7	5	15
Separate waiting areas in court (or in other places where witnesses testify) were available for prosecution and defence witnesses	8	4	15

In five countries (Czech Republic, Denmark, France, Portugal and the UK) there were reported to have been cases in 2008 or 2009 in which a trafficked adult or child whose identity was supposed to remain confidential had their identity made public in the course of criminal justice proceedings (investigation or trial, Q194). In Demark such a case was also reported in 2010, when a lawyer representing a victim witness obtained agreement from a court that the woman's identity would not be made public. Despite the ban on revealing her name, the woman's first name was reported in a newspaper. A legal action was initiated by the lawyer against this newspaper (rather than the court, representing the State, taking action to punish the newspaper) and the woman concerned received a payment in compensation from the newspaper of €650, such a paltry amount that it does not act as a disincentive to this newspaper or the rest of the media to refrain from publicising the names of victim witnesses. Weak action on this point by the State evidently suggests that in such cases the State is not fulfilling its internationally recognised obligations to protect the privacy and security of victims of crime. Similar evidence was available from other countries.

In a different case which reveals apparent negligence by the authorities, an NGO reported that a Nigerian woman who was suspected of trafficking Nigerian women into Denmark was being held in custody in a closed mental institution. She escaped six days before her trial and was not recaptured. Indeed, law enforcement officials were reportedly not informed of her escape for several days and the court convened to start her trial without having being told of her escape. The victim witness did not receive an apology or any written explanation about what had happened from the authorities. However, she has reportedly received threats from the criminals responsible for trafficking her to Denmark. Further, the authorities took no steps to ensure her personal security and by mid-2010 her application for protection and the right to remain in Denmark had not been resolved.

The level of information provided to victim-witnesses during legal proceedings was reported to be good in more than half the countries. In 19 out of the 22 countries for which information was available, information on legal proceedings was reported to be routinely available in a language understood by victim witnesses (Q195). In three (Bulgaria, Italy and Latvia) it was not. In rather less countries (15 out of the 19 for which information was available), victims of crime were reported to be kept informed during the police investigation of the progress of that investigation (whether a suspected trafficker was in detention, was being charged, was being remained in custody, etc.); in four countries they were said not to be kept adequately informed (Czech Republic, France, Latvia and Sweden).

Access to redress, including compensation

Recent research from Anti Slavery International[77] and OSCE[78] concluded that although there is a right to compensation for trafficked persons and despite the existence of several compensation mechanisms, the actual receipt of a compensation payment by a trafficked person is, in practice, extremely rare. Nevertheless, in 12 countries (out of 22 for which information was available) a trafficked person was reported to have received a payment in damages or as compensation during 2008, and in 12 countries (out of 20) during 2009, either as a result of court proceedings or from a different source (Q197 and 198). The nine countries in which compensation payments were reported two years running were Austria, Denmark, France, Germany, Italy, Netherlands, Spain, Sweden and the UK.

Trafficked persons who are citizens of both other EU Member States and third countries (outside the EU) were reported in six (out of 16) countries to have experienced particular difficulties in securing payments as compensation or damages during 2008 or 2009 (i.e., greater difficulties than nationals of the country concerned). Even in countries where compensation payments were made in both 2008 and 2009, trafficked persons were reported to have experienced difficulties in securing compensation or damages. For example, in the Netherlands, criminals convicted of trafficking were sentenced to pay compensation to their victims in 13 cases. By mid-January 2009, full payment had been made in three cases, while ten were still waiting for the payments to be made. The amounts varied considerably: less than €500 in one case, between €500 and €5,000 in seven cases and between €5,000 and €15,000 in the remaining five cases.

5.9 Prevention of human trafficking (children and adults)

5.9.1 Standards that EU Member States are expected to observe

Prevention covers a wide range of possible measures, most of which were not the subject monitoring during this project. The Council of Europe Convention calls for "effective policies and programmes to prevent trafficking in human beings" to be established or strengthened, for example by "research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings" (article 5.2). Article 5.3

77. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
78. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

requires States to "promote a Human Rights-based approach and [each State] shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes" (referred to in article 5.2). A human rights approach intrinsically involves checking what the effects of anti-trafficking policies and programmes are on the people who are intended to benefit – trafficked persons and others who have been identified as being disproportionately more likely to be trafficked than average – and modifying such policies and programmes if they have a negative impact on such people. Finding out whether this is being done means checking for evaluations, impact assessments or other exercises by the authorities to find out what the impact of prevention activities have been and to modify them as necessary, a question which is examined in relating to the formal monitoring of each State's anti-trafficking initiatives (see 5.10 below).

No information was collected about the question of what efforts were made to prevent human trafficking by discouraging demand (articles 6 and 19 of the Council of Europe Convention).

5.9.2 What is reported in practice

Our research did not explore the numerous prevention methods in detail but focused on finding out what information was available to migrants before and after their arrival in a country where trafficked persons are reported to have been exploited. We asked both about information made available by the authorities in a migrant's country of origin in the EU and by those in their destination country.

Inadequate information was reported to be available for migrants on their arrival, on precautions to take to avoid being trafficked or subjected to forced labour, in 16 out of 23 countries (Q203). Similarly pre-arrival information on such precautions was reported to be inadequate in 16 out of 21 countries (Q204).

We asked whether relevant government agencies in each country investigated proactively whether human rights and labour rights were respected or abused, in either 2008 or 2009, and whether working conditions were acceptable in the unprotected sectors of the economy (notably sectors where it is predominantly women, rather than men, who work or provide services, such as domestic work, *au pair* or similar arrangements, and the commercial sex sector) and try to detect exploitative working practices, including cases of forced labour and trafficking (Q206 and 207). Evidently the questions covered a sweeping set of circumstances and the answers were correspondingly broad. In nine countries researchers concluded that there had been such

proactive investigations in 2008 (and in 2009 there were in eight), whereas in ten they felt (in both years) there had not been. The seven countries which were criticised for falling short in both years were Belgium, Cyprus, Czech Republic, Finland, Latvia, Luxembourg, and the U.K.

We learned in this context, for example, that in Germany the Federal Ministry of Labour and Social Affairs commissioned a study in 2009 with the title "Development of sustainable support structures for those affected by human trafficking for labour exploitation", in order to conduct an initial national survey and to develop recommendations for further action by the Federal Government on this issue. It is clear, therefore, that in 2009 the authorities were still developing their knowledge about appropriate methods to use in protecting and supporting people trafficked for purposes other than sexual exploitation.

Nine EU Member States that are mainly countries of origin and emigration reported that in most (six out of nine), adequate levels of advice seemed to be available in 2008 or 2009 from government agencies for potential emigrants: information that mentioned appropriate precautions to avoid being entrapped by traffickers or others who might subject them to forced labour (Q208). A slightly higher number reported that such information was available from other sources (such as NGOs or international organisations). The two countries where the level of information available was reported to be inadequate (from either of these potential sources) were Latvia and Lithuania. In none of these nine countries did our researchers consider that the information available was inaccurate or that it exaggerated the problems that potential migrants might encounter (Q210, e.g., that information exaggerated the risk of being trafficked or implied that the safest option was automatically to stay at home and not migrate).

5.10 Monitoring and evaluation of anti-trafficking measures

5.10.1 Standards that EU Member States are expected to observe

The Council of Europe Convention requires States to "promote a Human Rights-based approach" (article 5.3) in their policies and programmes to prevent trafficking in human beings and this implies that they are under some obligation to find out what the effects of their policies and programmes are (by monitoring, evaluating or assessing their impact) and to amend them accordingly. A non-binding international standard, the UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2002) outline the key elements of a human

rights approach in the context of anti-trafficking initiatives and goes further that the European Convention, requiring States to review the effects of protection and assistance measures, as well as preventive measures.[79]

Article 29.4 of the Council of Europe Convention requires States to "consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements". The wording ("Each Party shall consider…") is very weak. However, already by March 2010, the draft of the EU Directive prepared by the Council and referred to the European Parliament suggested that, "Member States shall take the necessary measures to establish National Rapporteurs or other equivalent mechanisms". By September 2010, the Parliament had supplemented this, asserting that National Rapporteurs should be independent and should report once a year to the relevant national authorities and also to various bodies within the European Commission.

5.10.2 What is reported in practice

Eight out of 27 countries reported that they had a National Rapporteur on trafficking in human beings, while 17 said they did not. Only a few of these (e.g., Netherlands and Portugal) are reported to have a National Rapporteur whose role is limited to monitoring the activities of other agencies (and policy implementation) and does not have an operational role in making policy, coordinating agencies or detecting cases of human trafficking.

In Belgium, there is no official National Rapporteur on trafficking, but unofficially a different statutory body, the *Centre pour l'Egalité des Chances et la Lutte contre le Racisme* (Centre for Equal Opportunities and Combating Racism), performs a monitoring role and publishes information on Belgium's anti-trafficking responses. In Cyprus there is no National Rapporteur, and the Ministry of the Interior is to perform some of a Rapporteur's functions. However, this amounts to the ministry observing and evaluating itself. In three of the nine countries with a Rapporteur (Latvia, Lithuania and Sweden) the role of the organisation concerned was not limited specifically to monitoring: it also had an operational role in anti-trafficking operations, substantially limiting its independence and potentially reducing its ability to monitor in a strictly independent way.

79. "States and, where applicable, intergovernmental and non-governmental organizations, should consider: (1) Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked" (UN High Commissioner's Guidelines 1, point 1), www.ohchr.org/english/-about/publications/pap-ers.htm.

6. CONCLUSIONS CONCERNING ACTION REQUIRED TO IMPROVE RESPONSES TO HUMAN TRAFFICKING IN EU MEMBER STATES

The E-notes monitoring exercise encountered plenty of difficulties in obtaining comparable information about all the questions it set out to answer in each of the 27 EU Member States. Despite these difficulties, substantial amounts of information were made available and a baseline was established which could be used for measuring further changes in the years ahead.

6.1 Discrepancies between standards and practice

The exercise suggested that there are still vast discrepancies at operational level in the way trafficking cases are investigated and prosecuted and in the authorities' response to adults and children who are suspected of having been trafficked. Both EU institutions and the Council of Europe should address these over the coming years. So too should the governments of individual EU Member States, not only by taking note of weaknesses reported in their country in Chapter 5 of this report, but also by paying attention to comments made below in the 'country profile' section about their particular country.
As there are too many discrepancies between States to summarise here, the table below lists comments made by the European Commission in a working document in October 2008 (see Chapter 2: European Commission, *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*) and compares these to our more recent findings. This indicates some clear limitations on the scope of our findings, but also highlights some issues which deserve attention as a matter of priority by most EU Member States.

Table 17: A Comparison of European Commission observations in October 2008 and E-notes findings in June 2010

European Commission observations in October 2008	E-notes findings in June 2010
The protection of trafficked persons in national legislation from prosecution or criminal sanctions for offences committed as a consequence of their situation as trafficked persons appeared to be insufficient.	E-notes did not monitor how many trafficked persons were detained or prosecuted.
Long-term preventive measures were still insufficient, especially measures aimed at promoting gender equality.	E-notes reviewed a small sample of preventive measures and did not monitor measures to promote gender equality. We noted that in nine countries govern-

	ment agencies did not investigate proactively whether human rights and labour rights were respected or abused in the unprotected sectors of the economy where trafficked persons have been found.
The total number of cases (of human trafficking) investigated in the EU was 195 in 2001, 453 in 2003, 1,060 in 2005, and 1,569 in 2006.	E-notes learned of 858 convictions in 22 countries for trafficking during 2008 and 692 convictions in 21 countries during 2009. A total of 2,871 people were reportedly investigated in relation to trafficking offences in 17 countries during 2008.
Very few countries were able to say how many trafficked persons received protection.	Protection consists of numerous different acts. In terms of formal identification, 11 out of 27 Member States a single government agency or structure was responsible for making a formal identification of anyone who is presumed to have been trafficked. E-notes did not learn how many presumed trafficked persons were identified in these 11 countries. See below for the estimate of the number of referrals, which was probably similar.
Replies regarding compensation showed that there was also a gap in this field between legislation and enforcement.	Difficulties in obtaining compensation were still reported in 2009. At least one trafficked person was reported to have received a payment in damages or as compensation during 2008 in 12 countries (out of 22 for which information was available) and in 11 countries (out of 19) during 2009.
The majority of countries had adopted legislative measures in the field of victim support.	E-notes focused on finding out what support (assistance) was available in practice, rather than legislative provision. In 20 out of 23 countries emergency medical treatment was reported to be available in 2009 for presumed trafficked persons. However, in some countries assistance was still conditional on trafficked persons being willing to provide information to law enforcement officials, contrary to the provisions of the Council of Europe Convention, which requires States to take action "to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness".
Most countries had introduced a reflection period for presumed trafficked persons, varying from 30 days to 6 months. However, only five countries made relevant figures available. The total number of all those granted a reflection period in these five countries in 2006-2007 was 56, of which 30 cases were in Norway and only 26 in EU Member States.	E-notes learned about 207 presumed trafficked persons who were granted reflection periods in 2008 in 11 countries, and 1,150 people who were granted reflection periods in 18 countries in 2009.
It was difficult to obtain information about the numbers of trafficked persons who received assistance and "The vast majority of countries do not	E-notes researchers learned that 3,800 presumed trafficked persons were the subject of referrals in 16 countries during 2009. Although no estimates were available from the other 11 countries, it is reasonable

even dispose of figures". However, in countries where there were relatively higher numbers of assisted trafficked persons (Austria, Belgium, Italy, Bulgaria and the United Kingdom), "figures on criminal proceedings are also higher", so it might be appropriate for the EU to develop further regulations on victim support in order to facilitate more prosecutions of traffickers.	to presume that the total was higher than 3,800. However, it was not clear whether the number of presumed trafficked persons who were the subject of referrals was increasing year-on-year or decreasing or remaining much the same.
Little information was available about assisted return. "In many countries risk assessment by law enforcement agencies before return is not regulated, or have very limited implementation".	Information was available from 15 countries indicating that 194 adults were returned to their country of origin from 12 countries in 2008. In 2009 information was available from 10 countries about 171 adults who were returned, with one country (Greece) accounting for over half the total. No details were obtained on where the countries of origin were or the conditions surrounding each return to indicate what proportion were voluntary or forced and whether returnees were assisted or not. E-notes researchers confirmed that risk assessments are not carried out as a matter of routine before adults who are presumed trafficked persons are returned, except in three EU States.
In most countries an inter-agency coordinating body had been appointed, but "national machinery still seems to be inadequate as far as monitoring mechanisms are concerned".	A national structure to coordinate anti-trafficking responses was reported to have been established in 20 out of the 27 Member States. In some countries there is a procedure recognised at national level that specifies the roles to be played by different organisations in providing protection or assistance to trafficked persons and for referring them to appropriate services – a 'National Referral Mechanism' or System. A total of 17 countries have such a system, while nine do not, meaning that referrals in these nine are organised at sub-national level (as in Italy) or that there is no system governing referrals.

6.2 Recommendations

The E-notes project has showed that there are substantial discrepancies between EU Member States on fundamental aspects of anti-trafficking policy and practice within the EU, such as national legislation to prohibit human trafficking and definitions (or interpretations by relevant government agencies) of what constitutes trafficking, the existence of coordinating bodies and the process to identify trafficked persons. It also showed that several provisions of international and national legislation that are intended to secure the protection of the rights of trafficked persons still exist on paper alone and their implementation has hardly begun in the majority of EU Member States.

The organisations taking part in E-notes believe that more effort should be made by the European Union, by EU Member States themselves and by civil society to strengthen the basis of the policy framework, at national and EU levels, that is intended to stop human trafficking.

While substantial improvements are needed with respect to the implementation of many aspects of anti-trafficking policies in the EU, the following recommendations prepared by the E-notes project focus on the protection of the rights of trafficked persons, as we are convinced that this should be the core of any State's efforts to counter trafficking in human beings. However, it is with respect to prevention of trafficking and protection of trafficked persons that relevant provisions are implemented the least.

6.2.1 Identification and referral of trafficked persons

The protection of the rights of trafficked persons can only be secured when all presumed victims (irrespective of their cooperation with the authorities) are identified as such. The E-notes findings show that identification is still a very weak link. In order to improve the identification process in the Member States we consider that it is essential that:

- Member States develop checklists and/or indicators, in cooperation between law enforcement, prosecutors' offices and service providers, to assist in the identification of presumed victims of trafficking for any form of exploitation. Additional indicators should be identified for every form of exploitation, such as labour exploitation, domestic servitude, sexual exploitation, forced begging, forced involvement in illicit activities etc. Specific indicators for the identification of child victims should be developed;
- Identification is not the responsibility of a single government agency but should be carried out by multidisciplinary teams that including organisations providing services to trafficked persons;
- The national structures that are in place for referral, either National Referral Mechanisms (NRM) or others involved in implementing Standard Operational Procedures (SOPS), should be based on close and regular cooperation between law enforcement officers, immigration officials, labour inspectors, relevant trade unions, child protection agencies, prosecutors' offices and NGOs or other service providers;
- Access to justice for trafficked persons, including for claiming compensation, is improved by guaranteeing free legal aid to all identified trafficked persons;
- All Member States ensure that an individual risk assessment is conducted for all trafficked persons when it is proposed that they return to their home country.

6.2.2 Monitoring

Further monitoring is essential, both at EU and national level, so that all relevant stakeholders have a better understanding, not only of what exists on paper in terms of what is supposed to be done in each country to stop trafficking, but what is actually occurring in reality. For a good understanding of the implementation, the effects and the impact of anti-trafficking policies in the European Union, it is urgent that:

- National Rapporteurs or other equivalent mechanisms should be independent bodies (as agreed in The Hague Declaration, 1997), so as to guarantee independent and comparable monitoring of results of anti-trafficking actions. It is also important that the impact and the unforeseen or even negative effects of anti-trafficking measures should be identified and reported;
- There should be more standardisation on relevant terminology, statistics and ways of measuring (e.g., numbers of individuals prosecuted for trafficking);
- There should be close cooperation between the EU and its Members States and the members of GRETA, the independent monitoring body of the Council of Europe Convention on Action against Trafficking in Human Beings, in order to avoid unnecessary overlap in monitoring activities.

6.2.3 Legislation

- Further monitoring is needed to ensure that all national legal frameworks incorporate the definition of trafficking agreed in the 2002 Framework Decision and the 2005 Council of Europe Convention.
- There appears to be a significant need for a better understanding in many EU Member States of the notion of "exploitation" and the various offences linked to illegal exploitation, both when people are trafficked into exploitation or for the purpose of exploitation and when people are subjected to illegal exploitation without having been trafficked.

6.2.4 Coordination of anti-trafficking policies at national level

All Member States that have not done so yet should create a coordination structure and a national action plan to give more coherence to their anti-trafficking policies. Appropriate allocation of human and economic resources is crucial for the efficient functioning of both of these. It would consequently be appropriate for any future monitoring exercise to check what resources are allocated in each EU Member State to finance a national coordination structure and to support coordination activities.

7. COUNTRY PROFILES[80]

7.1 AUSTRIA[81]

The phenomenon

Austria is both a destination and a transit country of trafficking in human beings. No official and comprehensive statistics are currently available on the scale and forms of trafficking occurring in the country. Nevertheless, it is a fact that foreign women, men, and children are being trafficked and exploited in different sectors. Trafficking for the purposes of sexual exploitation and trafficking for domestic servitude in diplomatic households are the most commonly identified forms, which generally involve women and girls. Only few cases of trafficking for purposes of forced au pair work, forced marriage, begging, or petty crimes have been identified; while trafficking of men for labour exploitation in agriculture and in the construction sectors is suspected to take place, even though no cases have been officially identified yet.

Trafficked women are mostly between 19 and 35 years old and generally come from Bulgaria, Romania, Hungary, and Nigeria, but also women from Slovakia, Ukraine, Philippines, Russia Serbia and other Latin American, Asian, African and European countries have been identified.

National anti-trafficking legislation and institutions

Cross-border trafficking for the purpose of sexual exploitation has been part of the Austrian criminal code (art. 217) since 1970s. In 2004, the anti-trafficking legislation has been amended (art. 104a) to comply with the definition of the Palermo Protocol. According to this article, offenders can be sentenced to a term of imprisonment of up to 10 years. Child trafficking is also punished through §104a. §116 of the Alien's Police Act – which punishes the exploitation of foreigners – is also used to punish trafficking in persons.

In Austria, two National Action Plans against trafficking in human beings have been developed by the Task Force Menschenhandel (Human Trafficking Task Force), the intergovernmental national coordination structure, for the following time periods: 2007-2008 and 2009-2011. NGOs such as Lefö-IBF, ECPAT and BIM (Ludwig Boltzman Institute for Human Rights) were structurally included in the development process of both plans. The implementation of the first National Action Plan has been assessed in the report "Human Trafficking" (2008).

No National Rapporteur on trafficking in human beings or any equivalent mechanism has been appointed in Austria yet.

Identification, protection of rights, and referral

In the case of Austria, the Federal Ministry of the Interior is formally responsible for the identification of trafficked women. The NGO Lefö-IBF acts on behalf of the Federal Ministry of the Interior and the Women's Directorate at the Federal Chancellery and can therefore contribute to the formal identification of trafficked women.

Still, no official published list of indicators to be used for the identification of trafficked persons exists. The Federal Ministry of Economy, Family and Youth though published indicators for child trafficking. In the case of trafficking in women, a list of indicators distributed and discussed during police trainings, which are carried out in co-operation with an expert of Lefö-IBF.

No formal standard procedures have been set up in positive law concerning the referral of trafficked persons. The Police of Vienna introduced an internal order that states that Lefö-IBF is to be contacted if a woman or a girl is suspected to be trafficked.

An internal directive to the police on the issue of granting a reflection period exists. Still, a reflection period has not been implemented in positive law, so that officials are not obliged to grant it.

A differentiation between short-term and long-term assistance is not made In Austria, all trafficked women are granted access receive the same access to support.

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80. NB The text of these country profiles in this section has not been edited and proofread professionally.
81. Written by Sandra Gombotz, Lefö-IBF, Vienna.

Lefö-IBF offers them a shelter, access to medical and psychosocial support, legal advice and support as well as psychosocial and legal support in criminal procedures. Medical assistance for trafficked women without a residence permit in Austria is only possible through the co-operation with other NGOs.

There are no specialized shelters for trafficked children or men.

Since 1998, trafficked persons have the option to apply for a residence permit on humanitarian grounds, if they commit to testify in a civil or criminal court procedure. In 2009, the law on residence permit was modified. The requirement for obtaining a residence permit now is the opening of a civil or criminal court procedure.

The new Austrian Law on Residence and Settlement of Foreigners NAG §69a not only grants the right to an application, but also allows for appeals. As long as a civil or criminal court procedure is in progress, the renewal of the residence permit is possible. Residence permits are granted for a period of at least 6 months; daily practice proves, however, that in most cases, they are automatically granted for a period of one year.

If any security authority or the aliens' police states that repatriation is not possible on a continuous basis (due to danger in the country of origin) or that the case is already fully investigated, according to NAG §43 or §44, residence can be granted.

Lefö-IBF organizes the return of the trafficked persons who express the will to go back home. Although within the EU well-established networks already exist, Lefö-IBF only currently works on the development of quality standards for risk assessment to be carried out before a trafficked woman leaves Austria. So far Lefö-IBF has mostly been able to organize a return on an ad hoc basis. The current National Action Plan sets that assisted voluntary return should be carried out within the European Return Fund and an adequate case monitoring should follow. In the case of men and children, assisted voluntary return to the origin country can mainly be realized through return programme offered by IOM Austria.

Access to justice

The Code of Criminal Proceedings clearly states that victims of violence are to be referred to the accredited organisations for the protection of victims.

Lefö-IBF is the NGO assigned by the Federal Ministry of Justice to offer support in criminal procedures to trafficked women and girls. The NGO, therefore, supports and provides psychosocial counseling, while specialized lawyers grant legal counseling and assistance during the legal proceedings.

According to the Victims of Crime Act, trafficked persons are to be granted free access to psychosocial support, legal advice and support in criminal procedures. Based in the Victims of Crime Act, trafficked persons, who legally resided in Austria when the act of violence was committed, receive compensation for the loss of income or alimony, medical rehabilitation, measures such as psychotherapy, orthopaedic care such as physiotherapy, and professional rehabilitation such as financing of vocational training and social rehabilitation, if their country of origin is not willing to pay for it.

There is no obligation for trafficked persons to personally testify in the main trial or to even be present. If facts are already proven, testimonies can be made anonymous. If trials were dismissed or suspended in court, the trafficked person has to be informed. In special cases, the trafficked person can take on a new identity. In criminal court proceedings, the state itself acts as prosecutor and carries all costs of the trial. In the case of a civil court procedure, the trafficked person may bear the costs, which can be significant. Financial support to file a suit for their employment rights can be sought with the Chamber of Labour (Arbeiterkammer).

Applying the Criminal Code as well as the Civil Code, compensation for the damages victims have suffered can be included into a court sentence on the defendant. There is evidence that this practice is being successfully applied in practice, albeit using the police to confiscate assets.

Prevention

In Austria, Lefö-IBF has carried out some awareness raising campaigns against human trafficking. On the occasion of its 10th anniversary, Lefö-IBF held a press conference as well the symposium "Work- migration-rights; strategies against trafficking in women". Every year, folders on women trafficking are being distributed to embassies and consulates receive

training. In 2006 the Movie "Kurz davor ist es passiert" (It happened right before) by Anja Salomonowitz addressing the issue of human trafficking was produced in cooperation with Lefö-IBF.

The Federal Ministry of Economy, Family and Youth published folders on child trafficking. The Task Force Human Trafficking issued folders on human trafficking.

On the occasion of the 2009 EU Day against Trafficking in Human Beings, the Federal Ministry of the Interior, the Women's Directorate at the Federal Chancellery and others organized a discussion platform "Together against Human Trafficking".

In 2008, Austria contributed to the organisation of the UN-Gift Vienna Forum to Fight against Human Trafficking and to the Third World Congress against Sexual Exploitation of Children.

Training programmes on the issue of trafficking in women are being carried out by Lefö-IBF in co-operation with specialized police units, including border authorities.

ECPAT and the Federal Criminal Agency carried out trainings for, inter alia, the police, youth welfare, shelters for women, refugee centres.

Lefö-IBF also regularly holds trainings for judges and prosecutors.

Monitoring and evaluation system

The evaluation of the anti-trafficking measures carried out in Austria is foreseen in the 2009-2011 National Action Plan against trafficking in human beings. The Task Force carried out a National Report on Human Trafficking in 2009. This report cannot be seen as equivalent to an independent scientific evaluation study, though. The National Report on Human Trafficking was published by the Federal Ministry of the Interior and the Federal Ministry for European and International Affairs.

Recommendations

- Even though the police are currently more informed and prepared about human trafficking, also due to the sensitization work carried out in the past years, improvement on the identification of trafficked persons is still needed.
- The current 30-day reflection period should be extended and, most of all, it should become a standard procedure. In addition, the residence permit should be unconditionally granted and not be dependant on the victim's willingness to testify in court.
- Facilities for the protection and support of trafficked children and men need to be developed urgently.
- Providing more room for legal migration and access to the labour market is crucial for the prevention of human trafficking.
- A National Rapporteur on Human Trafficking should be appointed to usefully contribute to the fight against trafficking in Austria.

7.2 BELGIUM[82]

The phenomenon

In Belgium, trafficking in human beings resurfaced on the public agenda in the early nineties after the publication of a book entitled "*Ze zijn zo lief, mijnheer*" ("They are so sweet, sir"), written by the journalist Chris De Stoop. The book received a lot of media attention and the subject of human trafficking became a political item. In the wake of strong public reaction, a Parliamentary Investigation Committee was formed in the House of Representatives, charged with examining proposals for a structural policy on combating the international women's trade. Since then, different specific laws and measures have been adopted.

Due to the lack of reliable statistics on trafficking it is difficult to give a good phenomenon description but it can be said that the two forms of trafficking mostly observed in Belgium are those for the purpose of sexual exploitation (such as street prostitution, window prostitution, exploitation in massage salons…) and for labour exploitation (in restaurants, bars or hostels, in construction or agricultural sector, in horse riding schools, in shops…). Domestic servitude, involving domestic workers employed by a family (sometimes of diplomats), is also considered a form of trafficking for labour exploitation. Most vic-

82. Written by Alice Jaspart & Heidi De Pauw, PAG-ASA, Bruxelles.

tims exploited in prostitution come from Bulgaria, Albania, Nigeria, Vietnam and Thailand (the latter in massage salons). There are also some Rom networks coming from Romania or Moldova, which exploit persons in forced prostitution or in forced begging. As far as trafficking for labour exploitation is concerned, the construction sector is mainly run by Brazilian networks, which are also active in the horse riding schools sector. Pakistan and Indian criminal networks are involved in night shops and car wash. Polish and Romanian men and women are exploited in the agricultural sector. Some North African victims coming from North Africa are exploited also in sweatshops, night shops or bakeries. Chinese men and women are exploited in Chinese restaurants (and sometimes in the renovation of these restaurants) but foreigners of different nationalities are also exploited in the "*horeca*" sector (hostels, restaurants, bars). The domestic workers generally come from all over the world. In 2008, the three specialized anti-trafficking Belgian centres (i.e. PAG-ASA, Payoke, Sürya) assisted persons trafficked from 50 different nationalities. The average age registered was 32 years old. The youngest victim was 19 years old and the oldest 59 years old.

The trafficking process to reach Belgium greatly varies. Some criminal networks are specialized in smuggling of migrants, among which trafficked persons, from different parts of the world. Currently, mainly Indian, Turkish, Iraqi and Afghan networks are leading this sector. Also some Chinese and African criminal networks organize the travel by flight and use false identity papers or papers owned by persons who resemble the victims. The Eastern European women who are designated to work in prostitution can travel to Belgium by flight, bus or private car.

National anti-trafficking legislation and institutions

In 2005, in the order to meet the international and the European Union obligations, Belgium modified its legislation with regard to human trafficking. Thus, the law of 10 August 2005, enacted since 12 September 2005, included several substantial changes:

- Trafficking in human beings is distinguished from smuggling of migrants and, thus, it becomes a autonomous offence of the penal code clearly defined (article 433, sections five to nine);
- The definition of trafficking in human beings was expanded to include both domestic and transnational trafficking and all forms of exploitation.
- The provision formerly prosecuting both trafficking of foreign nationals and smuggling of migrants has been modified (article 77b of the law of 15 December 1980) in order to exclusively target the latter offence.

Article 433, section 5 of the criminal code, clearly defines the offence of trafficking in human beings, which includes: "the recruiting, transportation, transfer, harboring or reception of a person, or the passing on or transfer of control over a person for the purposes of" exploitation of the person through prostitution and child pornography; begging; labour (in circumstances that are contrary to human dignity); trafficking in organs; and forced crime committal.

It is important to note that the Belgian legislator has not transposed the definition of trafficking in human beings such as it is defined in the EU Framework Decision (2002) and in the Palermo Protocol (2000). Indeed, in contrast to these key instruments, the Belgian provisions do not make a distinction, in terms of punishment, between trafficking of adults and child trafficking. Furthermore, the elements constituting the offence are: the existence of an act (recruiting, harboring, transporting) and the presence of a clearly determined exploitative objective. The operating methods (menace, constraint, violence, etc.), which are in the Palermo Protocol and in the EU Framework Decision, are not included as constitutive elements of the crime, but are instead among the aggravating circumstances. This choice has been made notably with a view to facilitating the proof of the crime.

With regard to the forms of sexual exploitation linked to human trafficking, the law restricts itself to prostitution and child pornography. According to the law, in order to be maintained as trafficking for labour exploitation, the latter has to take place in "conditions contrary to human dignity". This is a very vague description and impedes the identification process.

The Belgian legislation also criminalizes trafficking for the purposes of organ removal, forced begging, and forced illegal activities.

Since 2008, Belgium has an Action Plan to Combat Trafficking in Human Beings, which assesses the anti-trafficking policy so far implemented. It outlines the projects that have to be carried out until 2011. The plan also addresses the issues of co-ordination, collection of information, evaluation of the anti-trafficking policy and it suggests improvements.

In order to ensure the coordination of the various initiatives aimed at fighting human trafficking and smuggling of migrants, an Interdepartmental Coordination Cell was set up. The latter exists since 1995 but it has been strengthened by the Royal Decree of 16 May 2004 on the fight against human trafficking and smuggling. The Cell is composed of all actors (whether operational or political) active in the fight against human trafficking and smuggling and is chaired by the Minister of Justice and its Secretariat. Along with the coordination, it is also tasked to assess the results of the fight against human trafficking and smuggling and to provide recommendations on the concerned policies. Given that the Cell meets only once or twice a year, a Bureau comprising the services of the main departments engaged in the fight against human trafficking and smuggling was created. Such Bureau, which meets on a monthly basis, has to ensure the functioning of the Cell and to prepare or execute its decisions, recommendations and initiatives.

The Centre for Equal Opportunities and Opposition to Racism also plays a co-ordinating role, in particular as it is responsible for coordination and overseeing the good collaboration between the specialized victim reception and support services.

Identification, protection of rights, and referral

In Belgium a national referral system is included in several legal texts.[83] According to these provisions, when a frontline officers (e.g. police officer or labour inspector) is dealing with a presumed or potential trafficked person, s/he must inform the presumed victim of the victim protection status and refer that person to one of the three specialized centres so that the victim can be taken care of. Any social service, a private citizen or a victim herself/himself can also contact the specialized centres. Once in the centre, the victim receives further information about the "human trafficking procedure" and the support measures offered. The specialised centres can apply (to the Aliens' Office) for a (temporary) residence permit on behalf of the victims who choose the abovementioned procedure. The centres can also contact the police and the Prosecutor's offices.

Since the 1990s, Belgium has established a system of protection for the victims of human trafficking. The Belgian anti-trafficking policy occupies the middle ground of a compromise between, on the one hand, a desire to protect the victims and offer them genuine future prospects and, on the other hand, the need to carry out an effective fight against the criminal networks. It is within this framework that victims, who agree to co-operate with the competent authorities and be assisted by a specialized reception centre, may benefit from a special status. Under certain conditions, they may also be granted temporary – or even permanent – residence in Belgium. This system has recently been incorporated into the law of 15 December 1980 on entry, residence, settlement and removal of foreigners.

In this context, victims can benefit from a 45 day-reflection period to find the necessary peace of mind and decide whether they want to make a statement against their perpetrators or to return to their country of origin.

In 2007, the Ministry of Justice issued a directive (COL 01/07) concerning policies of investigation and judicial pursuit with regard to human trafficking, which replaces the previous directive (COL 10/04). Such directive primarily addresses magistrates and police officers. It includes a list of indicators designed to help to detect and identify cases of human trafficking. Furthermore, Appendix 1 tries to better define the notion of human dignity – the heart of the offence of human trafficking for the purpose of labour exploitation – by making

83. The directive from the Justice Ministry: COL 01/07 concerning policies of investigation and judicial pursuit with regard to human trafficking; the ministerial circular on the establishment of multidisciplinary cooperation concerning victims of human trafficking and certain aggravated forms of human smuggling, 26 September 2008.

a reference, in particular, to the parliamentary works of the law of 10 August 2005. It specifies, *inter alia*, that the work conditions contrary to human dignity must be assessed by using the Belgian criteria and not those of the victim's country of origin or the victim's perception as to her/his working conditions. Appendix 2 provides a detailed list of indicators aimed at helping to detect evidence of trafficking. While most indicators were already listed in the former 2004 directive, those concerning the working conditions of presumed victims were further detailed and expanded in this new directive. For instance, new specifications include the worker's obligations, the employer's behavior towards the worker, the place and the material conditions of the work, etc. However, COL 01/07 does not include any specific indications for minors. This directive certainly takes the victim's interests into consideration. In the case of victims who are irregular as to the residence or immigration status or the employment legislation, it is expressly foreseen that they must be considered first and foremost as victims of a crime. In other words, they should not be initially regarded as irregular migrants or workers, but as presumed victims, and should therefore be referred to specialized reception centres that can meet their needs.

Also the ministerial circular of 26 September 2008 aimed at all frontline officers (e.g. police, inspection services, immigration services...) provides for an important identification tool. It in fact details the measures to be taken once a person has been identified as a presumed victim and it explains the different steps entailing the reflection period and the procedures to set up once the victim is officially identified as such. This circular also focuses on unaccompanied foreign minors who are victims of human trafficking. It explicitly underlines that a frontline officer must take the specific vulnerability of the child into account when s/he is believed to be a victim and it lists the special measures that must be ensured as to the reporting (to the guardianship services) and housing (in a suitable centre). The frontline actors must inform the presumed victims about the "victim protection status", for example through a multilingual brochure that explains human trafficking and gives information about the three specialized centers: their address, their phone numbers, and what they can do for them. The brochure can be downloaded also from different websites.[84] It must be underlined that in Belgium no single anti-trafficking national hotline is available.

In order to be granted protection and assistance, victims of human trafficking must cooperate with the competent authorities. Only those who are granted the status of "victims of human trafficking" have access to a residence permit, accommodation, psycho-social help and legal aid. To achieve such status, they must meet three basic requirements: break all contacts with the presumed perpetrators, be assisted by a specialized reception centre and, within the 45-day reflection period, make a statement or file a complaint against their exploiters. Once the victims have made a statement, they can benefit from a three month-residence permit and have access to training and employment opportunities (provided they have a work permit). The duration of their stay is strictly linked to the development of the judicial procedure and to certain conditions. If necessary, the victims are granted a six month-residence permit, which can be renewed until the legal proceedings are finalized. In some cases, the victims can obtain a permanent residence permit.

At any time, the victims can decide to return to their home country. The assisted voluntary return is generally organized by the specialized centre in co-operation with IOM.

Access to justice

The victims receive legal assistance by the specialized reception centres. During the police interrogation, a legal worker of the centre can assist the victims and, during the investigation, s/he will be constantly in contact with the police officers and prosecutor's office for a follow up of the case. The centre can also provide a specialized lawyer when the victims want to obtain compensation for the damages suffered. Once the investigation is terminated, a meeting is organised between the victim, the lawyer and the centre to prepare the court defence. The victim is not obliged to be personally present during the hearings. The court can order the

84. www.diversite.be, www.dofi.fgov.be, www.polfed-fedpol.be, www.poldoc.be

defendants to compensate their victims, however, the victims often do not receive any compensation because the convicts officially prove to be propertyless and with no financial means.

Monitoring and evaluation system

According to its mandate, the Interdepartmental Coordination Cell has to carry out the evaluation of the anti-trafficking policies and measures and to provide recommendations to improve the anti-trafficking response. In the framework of different workgroups within the Cell different viewpoints are discussed. Examples of issues assessed are: the recognition and financing of the specialized centers, the victim status, international recommendations, etc. In 2010, the evaluation on the circular letter issued in 2008 on the multidisciplinary cooperation was discussed. Also, the experts' network of the "Collège" of general prosecutors is responsible for the annual evaluation of the directive pertaining to the research and proceedings on trafficking in human beings.

Since 2004 the Information and Analysis Center on Trafficking of Human Beings formally exists but it is not effectively operational.

The Centre for Equal Opportunities and Opposition to Racism is an independent body that yearly issues a report on the state-of-the-art as to the phenomenon and the policies to combat human trafficking and assist victims. The report, which also includes a list of recommendations, is sent to the Government and the Parliament.

Recommendations

- The functioning of the Inter-departmental Coordination Cell should be revised to better co-ordinate the anti-trafficking measures in Belgium. To grant a human rights-centred, specialized anti-trafficking NGOs should be part of the Cell.
- A National Rapporteur should be officially appointed and this could be, for instance, the Centre for Equal opportunities.
- The Information and Analysis Centre on Trafficking of Human Beings, formally established in 2004, should finally become operational to allow the monitoring and the evaluation of the anti-trafficking legislation and policies in Belgium.
- Multi-agency identification procedures, protection and assistance to all trafficked persons need to be improved also through the adoption of standard operating procedures.
- Better training of the first-line actors that may get in contact with potential and presumed trafficked persons need to be regularly implemented.

7.3 BULGARIA[85]

The phenomenon

Trafficking in human beings is a phenomenon that has significantly affected Bulgaria, although the exact number of victims is unknown it as there are no official statistics. Bulgaria is a country of origin, transit and destination for trafficked persons, mainly women and girls. Due to its geographical location, mainly women and children between the ages of 18-30 are trafficked through Bulgaria from Ukraine, Romania, Moldova and Russia. Bulgarians are trafficked primary to Germany, France, Italy, The Netherlands, Belgium, the Czech Republic, often through Kosovo and Macedonia. 15% of the victims in Bulgaria are women and children from the Roma community. Additionally, Bulgarian women, children and men become victims of trafficking for labour exploitation in countries such as Greece, Italy, Spain, and the United Kingdom. Similarly, Bulgarian children are forcefully involved into street begging and pick-pocketing within and outside Bulgaria and, *inter alia*, in the UK and Greece.

The reasons for Bulgaria being so affected by trafficking can be found in different aspects of the economic, political and social life of the country. One of the main negative consequences is the flourishing of criminal businesses, which make use of the desperate situation of the poor or generally of the dreams for a better life that dominates among average Bulgarians: over the last 20 years of transition towards liberal and democratic society, some social groups underwent a long period of impoverishment and lack of perspectives. These changes were always accompanied by unemployment. Wom-

85. Written by Svetlin Markov, Animus Association, Sofia.

en and young people turned out to be the most vulnerable groups. Patriarchy, poverty, unemployment, the idealization of "the West" and the idea that the future is not in one's own hands but depends on the people with power, etc., make a lot of persons to easy fall prey to trafficking. In addition, economic insecurity and the difficult life have a negative effect on many families. Victims of trafficking are more often children from dysfunctional families, who have been victims or witnesses of violence between their parents. Last, but not least, Bulgaria is among the countries with most children in institutions. They form a large vulnerable group that may be involved in human trafficking for different purposes of exploitation.

National anti-trafficking legislation and institutions

Along with the Universal Declaration of Human Rights and the Bulgarian Constitution, the fight against trafficking and the protection of the rights of the victims are mainly contained in the Combating Trafficking in Human Beings Act (CTHB) of 2003[86]. The National Commission for Combating Trafficking in Human Beings (NCCTHB) was established by virtue of this Act in 2005. The CTHB Act is the supplementation of the UN Palermo Protocol, through which the Bulgarian Government expressed its commitment to fight against human trafficking and implement a human rights approach into its legislation.

The Combating Trafficking in Human Beings Act is the national translation of the Palermo Protocol. After the ratification of the Council of Europe Convention on Against Trafficking in Human Beings in 2007, the Criminal Code was amended through the adoption of the more binding definition of human trafficking into the national legislation. In practise, the victims are generally not detained, fined, or otherwise penalized for unlawful acts committed as a direct result of their being trafficked. Also the EU Framework Decision on Combating Trafficking in Human Beings has been transposed into the national legislation just before Bulgaria became member of the EU.

NCCTHB determines and administers the implementation of the national policy and strategy in the area of combating trafficking in human beings. The National Commission under the Council of Ministers organizes and coordinates the interaction between separate institutions and organizations executing the Combating Trafficking in Human Beings Act. It aims to prevent trafficking in human beings and to protect, assist and reintegrate victims of trafficking. Since 2005, the National Commission annually develops a National Programme for Prevention and Counteraction of Trafficking in Human Beings and Protection of the Victims, which is approved by the Council of Ministers. NCCTHB also evaluates the National Action Plans in annual National Reports. All the documents are presented both in English and in Bulgarian on the NCCTHB website.[87]

Identification, protection of rights, and referral

On 25 November 2010, the National Mechanism for Referral and Support of Trafficked Persons (NRM) has been officially adopted by the NCCTHB. The NRM is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society. Such mechanism provides guidelines for the implementation of the measures for protection and support of trafficked persons included in the Combating Trafficking in Human Beings Act, among which, the unconditional support, the reflection period, the special protection status for the duration of the criminal proceedings, the granting of anonymity and data protection, etc.

Since 2005, a coordinating mechanism for unaccompanied and trafficked children is available in Bulgaria, within which five shelters for minors were set up. This mechanism is functioning properly and the international standards in this field are respected.

Within the NRM, identification is divided in two main stages: informal and formal. The informal identification is performed by officers

86. The Act was promulgated by the State Gazette (SG), No. 46/20.05.2003, amended in SG 86/28.10.2005, effective in 29.04.2006, supplemented by SG No. 33/28.03.2008.
87. http://antitraffic.government.bg

and employees of different institutions and organisations that have the first contact with the victim. It allows the trafficked person to immediately access the first assistance and services provided by the NRM. Formal identification is carried out by the competent authorities to determine the victim status and aims at starting the investigation.

The NRM provides a list of indicators to identify victims of human trafficking. Identification is performed on the basis of the initial informal conversation with the trafficked person; observations of the person's behaviour and appearance; information provided by the referring person; observation and analysis of the circumstances in which the person was found; self-identification of the trafficked person and others.

A person identified as a victim of human trafficking is granted short-term support by the service providers, mainly NGOs. A risk assessment is carried out and a safety and support plan is jointly developed with the victim to protect and assist him/her.

A reflection period should be granted to every presumed trafficked person regardless of her/him will to cooperate with the law enforcement authorities or whether or not criminal proceedings against the perpetrators are in place. According to Art. 26 of the Combating Trafficking in Human Beings Act, the reflection period lasts 30 days. Actually, due to its recent introduction, the reflection period is still not very well defined. No clear criteria are foreseen on how the given situation of a presumed victim of trafficking is assessed. Furthermore, most presumed trafficked persons do not benefit from this provision. There is no information about Bulgarian citizens, identified as victims of trafficking, who chose to go through a reflection period. Furthermore, the personnel of shelters and crisis centres, the social workers and the psychologists – all professionals directly working with trafficked persons – believe that one month is definitely an insufficient time period to recover for a person who experienced serious trauma. Furthermore, the reflection period is a measure that concerns only adults. Children victims of trafficking are provided with protection measures in accordance with the Child Protection Act.

Article 25 of CTHBA provides for the special protection status for the duration of the criminal proceedings for trafficked persons who decide to cooperate with the law enforcement authorities. The special protection status includes the granting of a long-term residence permit to foreign nationals and the accommodation in the shelters.

In fact, very few foreign victims of trafficking prefer to identify themselves as such. The status of asylum seeker or even that of refugee are far more interesting to them. So, when they are found by the competent authorities, they are not motivated to expose all the facts about their trafficking experience. As a result, they declare to be asylum seekers or they often do not share any information about their identity and, after several months, they are released.

According to the NRM, once the reflection period is over and the identified victim cooperates with the competent authorities, s/he has access to a long-term assistance comprising accommodation, psychological and social counselling, legal support, medical care, educational or training programmes aimed at her/his social inclusion. Victims of trafficking are also entitled to a monthly financial allowance if they meet the criteria established by the Act and the Regulations. They can also get a lump-sum payment as a measure of justice.

The accommodation of victims of human trafficking is free of charge. The Crisis Centres in Bulgaria may accommodate adult victims for up to one month. Then, the person is referred to another place or to her/his home town or another place where s/he could stay close to its family/relatives. Almost all NGOs that provide assistance and support programmes are funded by international donors and not by the Bulgarian authorities. This sort of funding is short-term and is not sustainable. Five shelters are currently available for minors up to six months that can be renewed. Improvement is needed at different levels as to the situation of adult victims. Under the Anti-Trafficking Act it is foreseen that the National Commission for Combating Trafficking in Human Beings has the obligation to create and manage shelters for persons identified as victims of trafficking. However, since the adoption of such Act, not a single shelter was opened or funded.

According to the NRM, the assisted voluntary return is supported by organisations such as IOM or Caritas. The return to the region/country of destination is organised only after all necessary measures have been

taken to guarantee the trafficked person's safety and the possibilities to continue the process of reintegration.

Access to justice

Generally speaking, within the current legislative framework, it is very complicated to press charges that shall be approved by the judges. In order to improve the work of the prosecutors, the interpretative decision no. 2/16 July 2009 on "Trafficking in People" Chapter of the Criminal Code was issued by the Supreme Court of Cassation.[88] Thanks to this court decision, many useful definitions were formulated that allow a faster and easier enforcement of the anti-trafficking provisions under the Criminal Code. However, a significant gap still exists between the foreseen legal provisions and their effective application. The Criminal Code provides for a mechanism called "anonymous witness", which grants safety witnessing but it is rarely applied by the judges. And even if it is applied, the lawyer or the defendant could easily identify the victim by knowing the evidence supplied. To solve this very uncomfortable situation, in 2003, a witness protection programme was introduced. Unfortunately, in 2008, only seven victims of trafficking were granted. Such programme is very expensive and the authorities are not keen to use it.

In Bulgaria, trafficked persons are entitled to a one-time financial compensation from the state under the Crime Victim Assistance and Financial Compensation Act (CVAFCA). Compensation is a form of justice, which can have rehabilitation and prevention effects since it allows the trafficked person to start a new life and decreases the danger of falling prey to trafficking again. Unfortunately, the Financial Compensation Act is difficultly applied for victims of trafficking.

Prevention

The prevention methods used in Bulgaria concern three main areas of intervention: direct work with victims, awareness rising in the community and training of specialists.

A hotline provides information about safe ways of legal migration abroad, the risks of trafficking and relevant services and organisations granting support to trafficked persons in the countries of origin and destination. Other prevention tools used are: booklets and leaflets for potential victims and a handbook for police officers and prosecutors on how to carry out proceedings with child victims of sexual exploitation.

The most efficient prevention method, especially for groups at high risk, is the delivery of empowerment trainings to young women in schools, universities and orphanages. Other important tools are seminars for teachers, pedagogical advisors, school psychologists, parents, social workers, police officers and so on to inform them about different forms of trafficking, including the risks deriving from the use of the Internet.

Monitoring and evaluation system

Even though the National Commission for Combating Trafficking in Human Beings (NCCTHB) issues annual assessment reports, an objective point of view is lacking. Since the second national action plan, the Government of Bulgaria regards the collection and the analysis of statistical data to monitor the phenomenon as a priority to counteract human trafficking. The national action plans are annually submitted and evaluated by NCCTHB, but they only cover the annual goals set. So far, a long-term and comprehensive monitoring and evaluation programme has not been developed. However, the recently established NRM is a great step forward as it collects data about the victims and share them with the relevant actors on a case-by-case basis. NCCTHB will monitor state policies and draft amendments to laws, taking into consideration the local experience. This can certainly play a powerful tool for the implementation of the human rights approach into the Bulgarian legislative system.

Recommendations

- Contradictions are found in the Anti-trafficking Act and in the NRM. Changes in law are thus needed. The law for social and health insurance has to be amended to allow trafficked persons to restore their social and healthcare rights and, thus, have access to the benefits joined by all citizens. Trafficked

88. http://antitraffic.government.bg/m/9/cat/9/type/3/lang/en

persons are not mentioned in the relevant legislation. The law for foreigners has to be changed to allow foreign trafficked persons to benefit from the reflection period and to receive proper help and support as described in the Anti-trafficking Act.

- For a good functioning of the newly established NRM the following conditions need to be met:
  - A clear monitoring and evaluation system for the implementation of the NRM and the enhancement of the stakeholders' quality of work;
  - Set up a system for proper case reporting and data collection, with respect to confidentiality and data protection. Such a system will help the state to obtain a clearer picture on the phenomenon in the country and to develop evidence-based strategies and policies;
  - Develop expertise on other forms of trafficking (e.g. for labour exploitation, forced begging…);
  - Financial sustainability;
  - Training and capacity building of the implementers of the NRM, both state and NGOs.
- No identification of trafficked persons among refugees and migrants is carried out. Training is thus needed for the organizations and institutions that work with these groups.
- Quality standards for service providers need to be developed and implemented.

7.4 CYPRUS[89]

The phenomenon

The majority of the victims in Cyprus are trafficked for the purpose of commercial sexual exploitation and for labour exploitation. Additionally, over the past few years, children being trafficked and instances of trafficking for organ transplants are coming to light. Most of the victims come from Russia, Philippines, Moldova, Hungary, Ukraine, Greece, Vietnam, Uzbekistan and the Dominican Republic. Moreover, Cyprus is the destination country for women from Colombia, Romania, Belarus, Bulgaria and the United Kingdom. Most of the victims are female within the age of 19 to 25 years old.

Women increasingly migrate independently of their families in search of employment opportunities and a better future. They are also increasingly vulnerable to deception by traffickers with promises of employment opportunities. Thus, the recruitment usually takes place under false job promises and false pretences. The recruiters are usually different agencies, and sometimes acquaintances or unknown persons. Most of the identified victims were fraudulently recruited and sent to Cyprus on three-month "artiste" work permits to work in the cabaret industry, on "barmaid work permits" to work in pubs, or on tourist visas to work in massage parlours disguised as private apartments. However, on the 1st of November 2008, the "artiste" work permits were abolished having as a result the traffickers to use other means mentioned above to recruit the victims as well as the newly granted "creative artist" and "performance artist" work permits.

Victims are trafficked either through the official entry points of Cyprus as well as through the occupied areas into the Republic of Cyprus-controlled areas.

Sexual and labour exploitation are the most common forms of exploitation identified in the Republic of Cyprus. Traffickers usually use force and abuse of the position of vulnerability of the victim or the "debt bondage" as a means of manipulation and control. The victims are forced into prostitution through the use of violence, or/and threats and deception, and consequently end up living under slave-like conditions as their fundamental rights and freedoms are violated.

Trafficked victims are usually isolated and under strict surveillance; traffickers and/or "employers" often withhold their personal documents and wages to repay "debts" and threaten to deport them. By these means the traffickers manage to keep them under conditions of dependency. Victims often suffer from sleep deprivation and malnutrition, and sometimes risk their lives attempting to escape.

89. Written by Andria Neocleous, Future World Center, Nicosia.

National anti-trafficking legislation and institutions

The Combating Trafficking in Human Beings and Sexual Exploitation of Young Persons Law (L. 31(I)/2000) provides for the protection, compensation and rehabilitation of victims of trafficking. A new law entitled "Combating Trafficking and Exploitation of Human Beings and Protection of Victims Law (L. 87(1/ 2007)" was drafted and published on the 13th of July 2007 that abolishes the previous law. This law is comprehensive and applicable in all its forms, considering the *aquis commonautaire*, international conventions and protocols, as well as the domestic legislation. Its main objectives are to penalize trafficking in human beings, exploitation and child pornography, to protect and support victims of these offences and to create administrative provisions for its implementation. It is supported by various relevant organizations that this legislation is more advanced than in most countries, but the problems lay on the lack of implementation of its provisions.

The legislation covers offences of trafficking in human beings, trafficking of children, trafficking of human organs, sexual exploitation of persons and sexual exploitation of children. It also defines the national referral system, the victims' rights such as access to medical treatment, public allowances, access to labor and educational programs, while the granting of a reflection period and its renewal are also included. Additionally, this legislation provides for the establishment of the "Multi-thematic Team", which is coordinated by the Minister of Interior, as the National coordinator. This team is responsible for monitoring and evaluating the activities and measures implemented concerning trafficking, taking measures for combating trafficking, reviewing or amending the National Action Plan, initiating public awareness activities etc.

On 19 September 2001, the Council of Ministers decided to appoint a group of experts to coordinate actions to combat human trafficking and the sexual exploitation of young persons. The Group of Experts (Multi-thematic team), consisting of governmental departments as well as NGOs, drafted the first National Action Plan (NAP) in February 2005. The context of this Action Plan was not in line with the provisions of the current trafficking legislation, which was published in 2007.

In April 2010, the initiation of a new two-year action plan (2010-2012) was announced by the Government, which aims in tackling the problem of human trafficking. The NAP focuses on primarily on measures related to prevention, persecution, and protection, and each governmental and non-governmental organization involved in the drafting of the NAP has been assigned responsibility for the implementation of a share of these according to their respective areas of expertise. The NAP was drafted by the multi-thematic team based on the suggestions and contribution of all the members of the team and the co-ordination of the Ministry of Interior. Specifically, the Action Plan sets actions in order to improve the co-ordination of all the stakeholders, increase the awareness and sensitization of the public, to inform the immigrant workers on the issue, to protect the victims, to support the victims, to suppress and prosecute trafficking offences, to enhance the available statistics on trafficking, to conduct relevant research, to train the government officials on the issue, to provide linguistic and vocational trainings to the victims, to strengthen the co-operation with international organizations, and to intensify the cooperation with the countries of origin and transit.

The above Plan does not include the issue of trafficking of children since it has decided that, due to the special characteristics and nature of the problem, another action plan should be prepared by the Welfare Services.

In Cyprus, a National Rapporteur does not exist but an equivalent mechanism is considered to be the Ministry of Interior. In the trafficking legislation, this mechanism is mentioned as the "National Co-ordinator" (Article 49, L. 87(I), 2007) and it is responsible, among others, for chairing the meetings of the "Multi-thematic team", coordinating and monitoring the implementation of the measures and actions decided by the team or/and those included in the National Action Plan, representing the Multi-thematic team to the Ministerial Committee and submitting the team's annual report to the latter.

Identification, protection of rights, and referral

The law on trafficking (L. 87 (1/2007) states that the responsible body for the formal identification of victims of trafficking is the Police and defines the following referral procedure:

any person, department or NGO who suspects that a person may be a victim of trafficking, must refer such a person to the Welfare Services of the Ministry of Labor, which will inform the victim on his/her rights and then refer him/her to the Police for identification.

In practice, the office officially responsible for the identification of the victims is the Office for Combating Trafficking in Human Beings, under the Police Headquarters, established in 2004. Following the identification of the victims by the police, the Social Welfare officer is notified and from then on is considered the 'guardian' of the victim. Thus, the officer is responsible to inform the trafficked victims about their rights and to provide shelter and further assistance during the reflection period. Then, if the victim decides to cooperate with the authorities, s/he continues to receive this assistance.

Even though the legislation defines the Police as the competent department for formally identifying the victims, it does not provide for any guidelines or mechanism for the victim identification, thus, leaving it to the discretion of the Police staff.

According to the Police's Office, the identification of a victim is performed by following the guidelines listed in a manual, which includes a set of indicators to be identified during the interview. This manual has been developed by the Office for Combating Trafficking in Human Beings based on the Interpol's manual "Trafficking in Human Beings. Best Practice Guidance Manual for Investigators" and it is always used by the staff of the Office. Due to the fact that this manual was not circulated within the Police as official guidelines, it is not used by any other department or office.

The reflection and recovery period is granted to the victim only after the Police has identified him/her as a victim. The aim of the reflection period is to give the chance to the victim to recover and escape the traffickers influence, so that s/he will be able to decide, after being thoroughly informed on her/his rights, whether to cooperate with the authorities or not. This period lasts at least one month with the possibility of being extended by the Immigration Officer. In practice, very few victims were granted a reflection period until present, since most victims, after their identification, decide to co-operate with the authorities for the criminal investigation of their case.

During the recovery period, the victims have the option to stay at the governmental shelter. They are entitled to financial and psychological support, medical treatment, public allowances, and to the labour market as every European citizen. They are also entitled to free legal aid, free interpretation services and they can participate in governmental vocational programmes.

The Immigration Officer can provide the victim with temporary residence permit so as to be granted reflection period and if the victim decides to co-operate with the prosecution authorities for the investigation of the offence this permit can be renewed until the court proceedings are concluded.

During the period of the temporary residence, the victim is entitled to the same support measures provided during the reflection period. NGOs play a significant role in the protection of the victims even though they are not officially included in the procedures. They usually provide support, social and psychological counselling. Until 2008, victims had also the choice to stay at the shelter of the NGO STIGMA, which is currently not operating. Thus, at present, victims' option is either to stay at the governmental shelter or find an apartment.

In practice, the majority of the victims received only the most necessary support measures. This is because they are generally not fully informed about their rights and, thus, not aware of what they are allowed to claim. Furthermore, there are great delays in the examination of the victims' claims by the Welfare officers due to the vast workload, which results in delays of the provision of the assistance needed.

According to the relevant legislation, the repatriation of the victim must preferably occur voluntarily, with procedures that secure the individual protection, safety and dignity. The repatriation process must be conducted in cooperation with the victims' country of origin so that the re-victimization is prevented.

However, the above provisions are not implemented in practice since, before the victim is repatriated, the Cyprus' authorities conduct no risk assessment and no formal procedures or protocols to govern the return process are in place.

Access to justice

The victim willing to cooperate with the competent authorities has the right to be informed on the progress of the case in court and on the court's decisions; furthermore, s/he can claim compensation from the Republic of Cyprus and from the perpetrators.

The victims/witnesses who decide to cooperate with the authorities for the criminal proceedings have the right to receive assistance and protection under the provisions of the "Protection of Witnesses Law of 2001 (L. 95(I)/01)". According to this legislation, among others, the trial may be conducted behind closed doors, the deposition of the witness can be taken in such a way that the accused and the victim are not in direct contact (placing of a special partition or use of closed television circuit or of any other electronic means), the publishing or disclosure of the name or the content of the victims' deposition is prohibited, and the victim can enter the "Witnesses and Justice Cooperators Protection Programme".

None of the above measures have been applied in practice during the criminal or the court proceedings in Cyprus. The measures usually employed are: escort of the victim witness to the court by a patrol car and a police officer and separate waiting areas in court for the victims and the defendants.

No trafficked victim has ever claimed and received compensation by the Republic of Cyprus, as provided by the trafficking legislation. There was only one claim for compensation from the Republic and from the trafficker in 2009 that is still pending.

Prevention

Various efforts have been made by NGOs or governmental departments to inform the public about the forms, the features, the extent, and the impact of human trafficking in Cyprus.

In December 2008, the government launched a public awareness campaign. Pamphlets and posters were distributed in government offices, colleges, airports and supermarkets; billboards were placed on main streets and highways. This campaign, however, did not specifically address the demand side in Cyprus, a measure urgently needed in the country.

In May 2010, the Frederick University in Nicosia organized an awareness campaign on modern-day slavery by presenting real life stories of trafficked persons and distributing informational leaflets.

In April 2010, an event was organized by a local radio station, NGO KISA (Action for Equality Support and Antiracism in Cyprus), the organisation Cyprus Stop Trafficking and the Office of the European Parliament in Cyprus at the Presidential Palace. The Minister of Interior attended such event and, among other issues, the issuance of the new National Action Plan (2010-2012) was announced.

During 2010, the Cyprus Police, with the support of the Council of Europe and the Ministry of Interior of the Republic, published informative booklets entitled "You are not for sale. Trafficking in human beings", which present the story of some trafficked women.

In the last two years, several conferences were held by different organizations and departments, such as the Mediterranean Institute of Gender Studies, where trafficking related-issues were discussed both by local and international experts.

Anti-trafficking information leaflets are to be found in Cypriot embassies in various countries, mainly of Eastern Europe, which were until recently the main origin countries of women trafficked and sexually exploited in Cyprus.

Even though some awareness raising efforts have been made, the Cypriot population lacks knowledge and understanding on the nature and extent of trafficking in Cyprus, shares many common misperceptions on such phenomenon and confuses prostitution with trafficking and vice versa.

No intensive specialized training programmes are organized for all the governmental officers who may come in contact with victims of trafficking. Training of officers is delivered sporadically and to officers with responsibilities concerning trafficking in specific posts. Only some police officers from different units attended weekly conferences abroad. Two years ago, the head of the Office for Combating Human Trafficking gave regular lectures to train new police recruits on trafficking related-issues, including identification procedures.

In November 2008, in order to prevent trafficking, the Government abolished the "artiste" work permit (or "entertainment visas"). The provision of entertainment visas proved to be a contributing factor to the increase of traffick-

ing cases. In 2007, the Government of Cyprus issued around 3.000 "artiste" visas before being abolished. Nevertheless, the renewal of such visas has continued to take place, at least until recently. Currently, the policy for granting visas to third-country nationals to work in artistic occupations is similar to that for other jobs. Also, the authorities are taking measures to assure the real artistic skills of the persons applying to work as artists.

No research was conducted by any governmental department to identify the push and pull factors of human trafficking or on its features in Cyprus. However, some studies were carried out by NGOs such as INDEX, Research and Dialogue, and the Mediterranean Institute of Gender Studies.

Finally, no support programmes within the EU or in the main origin countries were developed. However, a legal cooperation agreement was signed with Bulgaria on international crime and human trafficking issues.

Monitoring and evaluation system

No monitoring or/and evaluation system is currently available in Cyprus.

The Multi-thematic team, co-ordinated by the Ministry of Interior, is the structure responsible for organizing and monitoring the activities to be implemented. The main actors involved in meeting the goals set are the Ministry of Interior, the Welfare Services, the Ministry of Education, the Mediterranean Institute of Gender Studies, STIGMA, the Youth Board, the Ministry of Labour and Social Insurance, Police, the Immigration Office, the Municipalities, the Asylum Service, and the Ministry of Justice and Public Order.

Recommendations

- The official cooperation of NGOs with governmental services within the referral system and the protection of the victims is necessary.
- An effective identification procedure should be based on standard operating guidelines that should be used by all police departments and officers who may get in contact with presumed victims of trafficking. To this end, all police officers should be trained. Furthermore, during the identification and the protection, victims should have easier and prompt access to the welfare benefits.
- Assisted voluntary return of victims should be organised only if a comprehensive risk assessment has been conducted and no risk of victimization is found.
- The Multi-thematic group should play a more effective role as foreseen in the legislation.
- A raising awareness campaign should be launched to inform the public about the nature of human trafficking and to eliminate the existing misconceptions and confusion between trafficking and prostitution.

7.5 CZECH REPUBLIC[90]

The phenomenon

The Czech Republic is a source, destination and transit country (with internal trafficking as well) whereby men, women and children are trafficked for the purposes of sexual and labour exploitation.

Since 2000, there is a continuous increase in the number of girls and women arriving from Eastern European countries (predominantly Ukraine, Moldova, Bulgaria, Russia, Byelorussia, Lithuania and Romania) as well as from Asian countries (Vietnam and China) who are forced into prostitution within the Czech Republic, or are transported via the Czech Republic to Western Europe. NGOs also report have female clients from Brazil, Thailand and Nigeria. Furthermore, every year NGOs provide assistance to Czech women who have been exploited within the Czech Republic. Trafficked persons from the Czech Republic, according to police findings are primarily trafficked to the countries within the EU. In these cases, the Czech Police frequently reports that the victims experience direct physical violence in the destination countries. This group of women is generally willing to cooperate with the police authorities, and provide necessary information leading to detection of the offenders.

As regards slavery, servitude, forced labor and other forms of labor exploitation, the Czech Republic has become, since early 2000, a

90. Written by Jakub Svec, La Strada Czech Republic, Prague.

target country for persons coming from the former USSR (in particular, Russia, Ukraine, Kyrgyzstan, Moldova and Uzbekistan) and from Romania. There have also been indications of victims coming from Vietnam, Mongolia and Belarus. The work usually entails physically demanding activity for minimal or no pay. Such persons work fifteen or more hours a day, seven days a week, and are prevented from leaving through artificial increases to their debts, and by threats of physical violence against them or against their families in their countries of origin.

The transportation of Czech citizens to the United Kingdom and to other EU Member States for the purpose of forced labor has been documented.

Child trafficking is conducted for sexual exploitation, petty crime and illegal adoption. In terms of the commercial sexual exploitation of children, child trafficking is linked closely to child prostitution and pornography. Child trafficking has two distinct forms, interfamilial or extrafamilial. Interfamilial trafficking is perpetrated by the parents, guardians or persons close to the child, as a function of unfavorable social and economic situations, coupled with social exclusion. Children are forced to contribute to the family budget through petty crime, such as: pick pocketing, car burglary, drug distribution, and begging, or commercial sexual exploitation. Extrafamilial forms of trafficking involve situations when the child is, by his or her parents or guardians, handed over or sold to another person or persons with the aim of securing better living conditions for him or her through educational or work opportunities.

National anti-trafficking legislation and institutions

The Czech national legislation does not include any special "anti-trafficking" law. The relevant provisions are spread among various laws.

With the relevant article of the new Penal Code introduced in January 2010 (Act No. 40/2009 Coll., the Criminal Code – which criminalized trafficking in human beings solely for the purpose of sexual intercourse), the Czech definition fully applies to the requirements of Council of Europe Convention and the Framework Decision of 2002, and covers all forms of exploitation. Nevertheless, the problems with the definition of human trafficking, its unclear interpretation (especially the terms "other forms of exploitation" and "abuse of stress or dependence") and lack of common guidelines and identification criteria remain a limiting factor for the sufficient activity of the criminal justice system, as well as the identification process and support program for trafficked persons.

The number of convicted cases of human trafficking (especially labor trafficking) is very low and disproportionate to the estimated count of trafficked and exploited persons in Czech Republic.

The Penal Code provide number of other provisions related to trafficking, including procurement, depriving of personal freedom, restraint of personal freedom, intimidation, etc. These provisions are often used to prosecute trafficking crimes, since they are usually less difficult to prove; however, the victims of these crimes have harder or no access to social services.

A significant problem seems to be, that enslavement, forced labor or labor exploitation alone are not defined as special crimes in the Penal Code.

Identification, protection of rights, and referral

In 2004, the Ministry of Interior established financing and institutionalized "Programme of Support and Protection of the Victims of Trafficking in Human Beings" (referred as "Programme"). The Program is implemented through a "National Referral Mechanism for Trafficked Victims". The mechanism establishes the procedures by which trafficking persons are identified and receive assistance and protection. The objective of the Programme is to provide victims of trafficking in human beings with support services, to protect their dignity and human rights, and to motivate them to provide testimony and assist law enforcement authorities in exposing, prosecuting, proving the crime and convicting traffickers. The national referral mechanism is both the procedure of identification and victim care, and a working group (involving the Ministry of Interior, law enforcement bodies and NGOs) that coordinates the procedure.

Many NGOs report that a large number of migrants (especially migrant workers) who were exploited or even trafficked have left Czech Republic without being identified or offered any help or assistance. The identifica-

tion process is very strictly set and the capacity of the whole system is insufficient – in relation to estimated number of migrant workers that are exploited or abused in the country.

Conditions for inclusion in the Programme are voluntary and obviously expressed interest, signature of initial statement containing consent with the processing of personal data, cutting off of contact with the criminal environment and consent to be accommodated in an asylum flat of a NGO for a minimum of two-month crisis intervention. Information provided by to victim to law enforcement bodies must also be at least reasonably relevant. Exceptions are made for victims of trafficking who are mentally retarded or who suffer from psychological problems.

The Programme is composed of three phases:

1. Reflection period/crisis intervention: during the first 60 days after the trafficked person's identification, which can be extended in exceptional circumstances, he or she must decide whether to cooperate with law enforcement authorities. At the same time, the victims are provided basic crisis intervention, entailing psychological and social assistance.
2. Social reintegration: after the end of the first phase, the cooperating foreign victim will apply for visa and will continue to receive social services. This procedure may be repeated during the term of penal proceedings, and after its termination the person will be offered a voluntary and safe return to his/her home country.
3. Permanent residence granted on humanitarian grounds: for victims who are third-country nationals, in cases in which they face a significant risk in the country of origin, they can be granted permanent residence on humanitarian grounds. Regarding Czech citizens, the assistance services should finish at this point.

The regulation of temporary residency for foreign victims in the Czech Republic is quite complicated, and is governed by several provisions of Law on the Residence of Aliens in the Czech Republic.

The process of voluntary return constitutes a weak link in the Programme, as risk assessments concerning the victim's security in his or her country of origin are conducted only in some cases by IOM.

Prevention

Prevention activities are primarily conducted by NGOs, and to a lesser extent by Ministry of Interior and Ministry of Education. Other governmental agencies conduct programs on an ad hoc basis (i.e. Ministry of Health, Ministry of Justice and Ministry of Foreign Affairs).

The most active non-governmental organizations in the field of prevention of human trafficking are La Strada and Czech Catholic Charity. Their preventive activities focus both on the general public and its sensitivity to the problem through the use of media and the internet, and on specific groups at risk for human trafficking, namely young women and girls (including Roma) and foreigners working in the Czech Republic. A whole range of communication strategies are being used, including leaflets and information materials, a telephone hotline and lectures as methods of prevention.

The Ministry of Education, Youth and Physical Training addresses the issue of human trafficking within its work on the prevention of social pathologies in the educational process. The issue of sexual exploitation has been included in the curricula in the General Programme of Education at Basic Schools and is also included in the prepared General Programme of Education at Grammar Schools and Secondary Vocational Schools. A number of other manuals and information materials for teachers are published on the websites of the Ministry of Education, Youth and Physical Training.

During 2007-2009, IOM and several NGOs conducted an information campaign targeted to clients of prostitution and indirectly to victims of trafficking in human beings for the purpose of sexual exploitation. The slogan of the campaign was "Don't Be Afraid to Say It on Her Behalf". Websites in the Czech, English and German languages were created. Partner organizations (La Strada, Czech Catholic Charity) operated telephone hotlines lines. Promotional materials were disseminated on public means of transport and at the airport in Prague, at border crossing points with Germany and Austria, and in clubs and restaurants in large cities throughout the Czech Republic. The campaign was positively received by the target group and suspicions of trafficking were reported through the hotline and e-mail.

Monitoring and evaluation system

The "National Strategy on Combating Trafficking in Human Beings (2008-2011)" is the national action plan currently enforced. Since 2008, the Ministry of Interior publishes annual reports on human trafficking. It is also the main responsible body for combating trafficking in human beings in the Czech Republic. A number of other state bodies maintain competence in the field of human trafficking, including: the Ministry of Justice, the Ministry of Labor and Social Affairs, the Ministry of Health, the Ministry of Education, the Ministry of Foreign Affairs, and the Office of Government. NGOs are also important players.

The Multidisciplinary coordination platform has been established to implement the National Strategy.

The reports contain information on the situation in the area of trafficking (including statistics), and on actual activities and measures implemented by governmental and non-governmental organizations.

Even though these reports should evaluate the anti-trafficking policy, they rather give an overview of activities of different actors, with no clear assessment and no benchmarks. As a matter of fact, no evaluation criteria are presently employed.

The National Strategy represents a good and comprehensive policy, even though it does not include some of the proposals from NGOs (e.g. unconditional support for trafficked persons, legislative definition of trafficking for forced labour, identification guidelines, no contact between law enforcement agencies and trafficked persons during reflection period etc.). Nevertheless, the progress in some of the key anti-trafficking areas (e.g. trafficking definition, identification, capacity of the program for trafficked persons, readiness of the criminal justice system, prevention and information campaigns abroad) is rather slow.

The regular reports provide information on the phenomenon and an overview of the activities implemented by all key actors, including NGOs. However, the reports – under the responsibility of governmental bodies – are too little critical, not naming the real gaps and problems. This can be partially caused by the fact that the National Rapporteur is not an independent body (that would only monitor the situation and asses the policy), but an executive body (Ministry of Interior) responsible for the policy implementation.

Recommendations

In order to strengthen the anti-trafficking policy of Czech Republic, it is necessary:

- To ratify the Palermo Protocol and to sign and ratify the Council of Europe Convention.
- To establish an independent National Rapporteur on trafficking in human beings.
- To develop transparent, clear and obligatory guidelines/list of criteria for identification of presumed trafficked persons.
- Unconditional assistance for all identified trafficked persons, regardless of their cooperation with law enforcement agencies. Furthermore, the existing programme for trafficked persons should be available also to victim of crimes related to human trafficking.
- To conduct a risk assessment for all trafficked persons wishing to return to their origin country.

7.6 DENMARK[91]

The phenomenon

Denmark is mainly a country of transit and destination of trafficking. The women identified as victims by the Danish Centre against Human Trafficking (CMM) in 2009 came from: Brazil, Latvia, Niger, Nigeria, Romania, Slovakia, Thailand, Uganda, Hungary, unidentified African country and unidentified Eastern European countries. Where age is concerned – as determined by CMM based on 50 persons whose age was available – the age of adult victims at the time of identification varies from 19 to 45, the average age being 30.8 and with an over-representation of women in their late 20's and early 30's. The women from Asia are slightly older at the time of identification than the women from Africa and Eastern Europe, respectively. The women from South American countries are in the middle. There is no certain comprehensive knowledge and general view of

91. Written by Vibeke Nielsen, Pro-Vest, Fredericia.

how trafficked persons identified so far were recruited and how they usually enter Denmark.

The anti-trafficking work is very political favoured and has during the intervening years undergone changes. The initial experiences founded adjustments of some initiatives and effectuations of others, such as establishing the above-mentioned co-ordinating centre (CMM). The police contributions to the work is highly favoured and simultaneously so much weight is attached to the social dimension, that the outreach work among foreign women in prostitution has been extended to the entire country. The focus so far has predominantly been on sexually exploited women and only to a lesser degree on children for the purpose of exploitation. As a result, the knowledge on trafficking mainly concerns this form of exploitation.

It is a well-known fact that the task of determining the number of trafficked women to be found in a country and internationally is very difficult. Many figures are in circulation and the various estimates rely on different foundations. In Denmark, the police estimate that 2.500 foreign women in prostitution are staying here in the country the course of one year. From the experience gained by working with foreign women in prostitution, it is well known that practically all are heavily exploited, but only a small percentage can be identified as victims of trafficking.

National anti-trafficking legislation and institutions

The Danish Penal Code section 262a makes trafficking in human beings an offence. Such section was incorporated into the Danish Penal Code in 2002 and went into force on June 8, 2002. It is formulated based on and in order to implement simultaneously the UN Palermo Protocol (2000) and the EU Framework Decision of July 19, 2002 in Combating Trafficking in Human Beings. The section includes the various forms of exploitation; sub-section 2 is about children, and here the coercive means do not have to be involved.

Denmark's first Action Plan to Combat Trafficking in Women and a subsequent addition about children started in 2003 and ended in 2006. The present Action Plan to Combat Trafficking in Human Beings (NAP) extends the target group to include not only women and children, but also men. In addition, the plan now includes not only sexual exploitation but labour exploitation too. And in Danish anti-trafficking legislation, the removal of organs is also included as a criminal offence.

Already during the first Action plan, the reflection period was extended from 15 to 30 days. Under the present Action plan, the reflection period has been further extended so that victims who cooperate with the competent authorities about their return are granted a reflection period of up to 100 days.

An inter-ministerial work group is in charge of coordinating the Government's initiatives. The group was established in 2002 under the Ministry of Welfare, Department of Gender Equality. In 2007, it was decided that the same body would remain in charge of coordinating the Government´s initiatives and that its mandate would be revised to cover all forms of trafficking, including trafficking in children. In 2010, the Department of Gender Equality was transferred to the Ministry of Climate and Energy.

The Danish Minister of Gender Equality and the Department of Gender Equality are the authorities responsible for the implementation and overall monitoring of the NAP.

Denmark does not have an independent National Rapporteur, but a coordinating centre, The Danish Centre against Human Trafficking, which was established in 2007 as a part of the National Board of Social Service under the unit dealing with issues of prostitution and abuse. The National Board of Social Service is a part of The Ministry of Social affairs and reports to the Department of Gender Equality.

CMM is responsible for the implementation of numerous key elements of the NAP, among them being to ensure the continuous gathering and sharing of knowledge, so that developments can be monitored, experience accumulated and the attained knowledge documented and systematized. To ensure that activities are implemented, CMM works with different service providers on a contractual basis (memoranda of understanding), such as the Nest International, Pro Vest, the Danish Prostitution Centre and the Danish Red Cross.

Identification, protection of rights, and referral

Authorities, NGOs as well as citizens may spot a presumed victim of trafficking and start the identification process by contacting the Hotline, the Danish Centre against Human Trafficking, service providers, law enforcement agencies or any other qualified agents.

CMM has a contract with the GO Danish Prostitution Centre and the NGOs The Nest International and Pro Vest, who form part of the official identification process. This happens in part through their outreach work and other contact with foreign women in prostitution, where they meet women who are victims of trafficking. And partly they are agencies that, where adults are concerned, have to submit a completed identification form to DIS or CMM. In addition, CMM has a contract with Save the Children and the Red Cross. The Red Cross handles the direct contact where children are concerned. The role of the individual organisations appears from their contracts with CMM.

The DIS is the authority granting the status of victim of trafficking to persons with an irregular residence status in Denmark. In cases where the presumed trafficked person has regular residence status (EU-citizens), CMM can legally indentify the person as a victim of trafficking.

The decision of DIS is based on preparatory reports submitted by the police and the CMM or service providers. Both police and CMM/NGO fill in an identification questionnaire based on a first contact interview with the presumed victim. Mostly, this first interview is conducted at a police station, a prison or an asylum centre. The police and the social service providers use different sets of questionnaires. The DIS takes into consideration the information provided from both the police and the social services to determine whether the person should be granted the first 30-day reflection period.

Under the Danish Action plan, a victim of trafficking is first granted a 30-day reflection period, which can be extended first by 40 days and then a further 40 days up to a maximum of 100 days if the person is willing to cooperate with the police about her repatriation. The cooperation is only about repatriation. The extended period of reflection is mentioned in section 33, subsection 14 of the Aliens Act.

In Denmark, female victims of trafficking either get to stay at the shelter of The Nest International or at one of the Danish crisis shelters for victims of violence. CMM has a special contract with one of the crisis centres, which receives most of the trafficked persons that are allowed to stay at a crisis centre.

During their stay the women have access to counselling about their situation; legal advice and aid, including information about legal rights and possibilities; health care, including medical, psychological and dental care; and vocational training courses. Where necessary, an interpreter is used. The women do not pay for the stay or the services received during their stay.

According to EU rules of free mobility for persons and services, citizens from all EU countries/EAA nationals may stay freely in Denmark for up to three months. If EU citizens/EAA nationals are seeking employment during their stay, they may remain in Denmark for up to six months. The last restrictions were removed in May 2009.

However, Denmark does not offer immediate access to persons from third countries to enter our country and work except those who are granted asylum. Other than that, only persons under the family reunion programme or those with high skills have that possibility.

Only three cases where a trafficked person has achieved asylum or family reunion, respectively are known. But there is no information about whether they were given support for integration and, if so, what kind of support.

DIS has signed an agreement with the International Organization for Migration (IOM) on "Information, Assisted Voluntary Return and Reintegration Assistance for Vulnerable Migrants from Denmark". The programme supports the creation of a framework for assisted voluntary return of vulnerable third country migrants from Denmark. The offer of assisted return includes psychological, legal, social and medical assistance in Denmark as well as reception assistance by an organization in the country of origin. The programme is not targeted specifically for trafficked persons. IOM is in charge of making contact with service providers in the country of origin. If the woman in question is from a EU country, CMM is in charge of the return.

In 2008, five female trafficked persons returned to their home countries, 3 of them were assisted returns through the IOM. In 2009, the number was 21 women, 7 of whom were assisted in their return by IOM.

If the women do not want to cooperate voluntarily towards repatriation, their stay in Denmark cannot be extended beyond the 30 days with a chance of recovery. Instead they will be sent home by the police immediately after. It is therefore debatable how voluntary the situation is for the women who accept an assisted return.

Access to justice

Denmark has a nation-wide outreach effort in relation to foreign women in prostitution. By virtue of this effort the women are informed of their possibilities and rights, including the offer provided by the NAP. At the moment, when a woman is encountered by the police and taken to a police station for staying irregularly in the country or having irregularly worked and as a presumed victim, she is again informed of her rights, partly by the police and partly by the social organisation that appears at the station to support her and, possibly, assist in identifying her as a victim. If the woman is identified as a victim of trafficking and is allowed to stay at a crisis centre, the counselling regarding rights will continue and she can obtain free legal aid from a lawyer.

The Danish Civil Code has provisions for witness protection in general. Some examples: The accused leaves the courtroom while the witness testifies. Name and address of the witness may not be disclosed to the accused. Court proceedings may be conducted in camera so that neither the public nor the press have access to the court session.

In 2008 there were 7 convictions under section 262a of the Penal Code, 12 convictions under section 228 (inducement to sexual immorality) and 1 under section 229 (promoting sexual immorality for profit, renting out hotel room for sexual immorality/procuring). These convictions may include cases where the original charge was "trafficking". No data is yet available for 2009.

Section 26 of the Liability Act authorizes a claim for tort compensation for victims of crimes, including trafficked persons. There are few cases where the courts have granted tort compensation to victims of trafficking. In assessing the amount of compensation one factor to be considered is the length of the victim's stay with the accused, i.e. what you might term the "period of the criminal deed".

Prevention

In 2006, the Ministry for Gender Equality initiated an information and debate campaign on trafficking in women targeting the clients of women in prostitution. The slogan said: "You have a choice – she does not!"

Since then a couple of NGOs have launched different campaigns on trafficking.

Currently, the Ministry for Gender Equality and CMM are working on the organisation of a campaign that will presumably have a wider target group and not mainly be focusing on trafficking for sexual exploitation but also include trafficking for other purposes. This may include trafficking for domestic servitude and labour exploitation.

The conference named "Human Trafficking - a complex reality" contributed to the illumination of the complexity of human trafficking, its background and consequences – for the victims as well as at national and international levels. The conference was targeted at professionals, politicians, decision-makers, researchers and any others who are dealing with – or have an interest in – human trafficking in Denmark and internationally. The conference hosted 150 participants from different countries and disciplines and consisted of presentations and interactive workshops.

Over the last few years CMM has participated in various information and debate events and hearings for politicians in the Danish Parliament. Moreover, the Centre has also contributed to the media debate to raise awareness of trafficking.

As a party to the current NAP, CMM has organised several training programs for a wide range of professionals such as social workers doing outreach work in the prostitution area, professionals at Danish Red Cross asylum centres, law enforcement officers, police cadets at the Danish Police Academy and for judges and lawyers.

CMM has developed a variety of training materials targeting front line professionals. They have published, among others, a paper on "Definitions and indicators of trafficking" and an information leaflet on how to identify and deal with minors of trafficking. Currently the Centre is in the process of developing training films for law enforcement officers and healthcare providers. Eventually, the plan is also to produce a training film for the stakeholders in the labour market.

Under the Danish Ministry of Foreign Affairs Neighbourhood Programme, financial support is provided for a programme to combat trafficking in human beings in Eastern Europe. The programme is primarily targeted at Belarus, Moldova and Ukraine; but Bulgaria and Romania are also included.

The fact that the phenomenon of human trafficking also exists in Denmark has become

very obvious in recent years in connection with women trafficked for prostitution. It is less clear that there may also be persons who are trafficked for forced labour.

However, examples from both Norway and Sweden, which in recent years have seen convictions for trafficking for forced labour, together with reports on the occurrence of forced labour in a number of EU countries, suggest that the risk may well be present in Denmark as well. Therefore, CMM intends to examine areas in which trafficking for forced labour might occur in Denmark.

The first step in this effort has been the publication of a report on the prevalence and risks of human trafficking among a group of au pairs in Denmark. The report is based on a qualitative study featuring interviews with 27 au pairs from different countries living in Denmark. This study to establish whether trafficking is occurring in connection with the Danish au pair system is the first in a planned series of studies by CMM on the prevalence of trafficking for forced labour in various industries in Denmark. The next two studies deal with the prevalence and risk of human trafficking among Eastern European farm workers and migrants working in the cleaning industry in Denmark.

Monitoring and evaluation systems

By monitoring activities, developments and experience gained under the National Action Plan, CMM as well as the Danish Ministry for Gender Equality wish to gather knowledge on the phenomenon and trends as well as the activities implemented. In this way they intend to create a platform for adjusting and developing the ongoing activities to reflect the reality.

As for a general evaluation of the NAP (and thus CMM), the Danish Ministry for Gender Equality intends to evaluate if the 7 goals of the NAP are reached and whether the activities implemented have had an effect on victims of trafficking.

The Department for Gender Equality is in charge of the overall monitoring of the NAP. CMM is responsible overall for the continuous data gathering and monitoring at the local level of the social dimensions of the NAP.

Reporting on the implementation of the NAP is scheduled annually. The inter-ministerial work group puts together this report based on findings from CMM. The latter gathers information from the different service providers in the form of statements of affairs (on a six-monthly basis) and registration forms filled in occasionally by service providers. An independent evaluation of the implementation of the NAP (and thus CMM) is anticipated in 2010. CMM has developed a registration system composed of different registration forms for different situations. Service providers will fill in these registration forms occasionally (when they conduct outreach work, when they meet potential victims/victims of trafficking etc.) and submit them directly to CMM.

The final conclusion is that in Denmark the Action plan to combat Trafficking in Human Beings has created good sittings for the anti-trafficking work, but there is still many challenges and possibilities for improvements.

Recommendations

It is recommended that Denmark in connection with a future Action plan/strategy:

- Nominates a National Rapporteur;
- Guarantees establishing of a structure so no presumed victim for trafficking risks to be imprisoned and presumed victims immediately are assigned stay in a crisis centre where the identification takes place;
- Extends the present 100-days period of reflection and simultaneously offer updating of occupational qualifications to the women during the period of reflection;
- Continues focusing on women in prostitution and include other adequate groups in prevention of trafficking;
- Offers residence permission to victims of trafficking.

7.7 ESTONIA[92]

The phenomenon

Estonia is primarily an origin and transit country of victims trafficking in human beings. According to the Report of UNODC, within Central and South Eastern Europe, Estonia is

92. Written by Sirle Blumberg, Living for Tomorrow, Tallinn.

ranked as 'high' in the citation index as country of origin[93]. There are also indications of internal trafficking, mostly from the North-Eastern region to the capital city.[94]

Victims who transit through Estonia mainly arrive from neighbouring countries, such as the Russian Federation and Latvia, as well as from Ukraine, Moldova, Afghanistan and Poland. Main destinations of these victims are Scandinavian and other European Union countries, as well as Japan, China and the USA.[95]

The main socio-economic risk factors for trafficking include: unemployment, low wages, lack of possibilities for professional growth and a wish to obtain a prestigious education. In particular, in some counties of the North-Eastern part of Estonia, the unemployment rate is relatively higher. Thus, there is a trend of internal trafficking within Estonia from the North-Eastern region to the capital city. Also the majority of Estonian victims of trans-national trafficking are thought to come from this part of the country.[96]

Even though trafficking in human beings concerns both women and men, most of the victims are female, due to existing gender-based discrimination. There is an unequal treatment of women in the labour market of Estonia, which can be seen by comparing the average hourly wage of men with that of women. According to the data of the Department of Gender Equality of the Estonian Ministry of Social Affairs women are mostly employed in less prestigious working places and there are a lot less women than men in higher positions[97].

Victims from Estonia are trafficked for both sexual (children and women) and labour (both men and women) exploitation. In case of sex-related trafficking victims are usually not above 35 years old, whereas in cases of labour-related trafficking victims belong to different age groups.

National anti-trafficking legislation and institutions

While the Estonian Penal Code does not directly name trafficking in human beings as a criminal offence, there are approximately 16 articles prohibiting activities that are linked to human trafficking (e.g. enslavement, abduction, provision of opportunity to engage in unlawful activities, pimping, illegal donation of organs, manufacturing and distributing child pornography). The articles above can be used in combination with provisions of other laws (Advertising Act, Transplantation of Organs and Tissues Act and Republic of Estonia Child Protection Act) that relate to the topic of trafficking in persons. Although the phenomenon of trafficking in persons may contain elements of offences mentioned in the Penal Code, cases in practice unfortunately are often more complex and do not entirely fit within the current legal framework. In year 2010 the specific offence of "trafficking in persons" is expected to be included into Estonian legislation. The Ministry of Justice is formally responsible for the drafting and implementation of laws on human trafficking.

Estonian legislation defining and punishing the offence related to trafficking in human beings covers almost only cases of sexual exploitation and trafficking for organ removal. In addition, there are specific law provisions that explicitly prohibit and punish the use of forced labour, compulsory labour or forced services.

The legislation does not state any clear difference between trafficking of children and of adults; although in case of "sexual exploitation" there are different paragraphs stating actions to be taken in case of involvement of minors or adults into prostitution, punishment for those offences are nevertheless equal (§ 175, § 176, § 177, § 178, § 268, § 2681 of Penal Code).

On 26 January 2006 the Estonian Government adopted the first Development Plan for Combating Trafficking in Human Beings (2006-2009). The Governmental institution responsible for the coordination of the implementation of the Plan is the Ministry of Justice. Within the framework of the Development Plan for Combating Trafficking in Human Beings (2006–2009), in

93. UNODC, *Trafficking in Persons: Global Patterns*, Vienna, 2006, p. 91.
94. Development Plan for Combating Trafficking in Human Beings (2006-2009), p. 5.
95. Trafficking in Human Beings for Sexual Exploitation: An Analysis of the Situation in Estonia. International Organisation for Migration, 2005 pp. 38-41.
96. NGO Living for Tomorrow, *Not one victim more. Human trafficking in Baltic States*, Tallinn, 2008, p. 183.
97. Idem, pp. 183-185

2006 the 'National Human Trafficking Network' was organised, where all ministers and governmental institutions are represented together with NGOs. Appointed in 2006as Adviser at the Ministry of Justice, Criminal Policy Department, Criminal Statistics and Analysis Division the National Coordinator (NC) is responsible for setting the agenda for the meetings of the Coordination Network, gathering information on the status of implementation of the measures foreseen by the national action plan, collecting input and suggestions from different stakeholders for the yearly report on NAP implementation, and liaising with the Minister of Justice on a regular basis.

The main stated aim of the Plan (2006-2009) is to increase effectiveness of the fight against human trafficking by fulfilling six objectives:

- Continuous mapping of issues related to human trafficking in order to get a comprehensive and trustworthy overview of the actual extent and forms of human trafficking;
- Prevention of human trafficking by informing the public on the nature of the phenomenon and related dangers (both in Estonian and Russian languages);
- Development of the skills of professionals dealing with human trafficking, and promoting cooperation among them;
- Reduction of human trafficking by means of more effective border controls and control over employment mediation;
- Effective prosecution of criminal offences related to trafficking in persons;
- Providing assistance and recovery to victims of trafficking.

It has to be mentioned that, at governmental level, a great contribution to the anti-trafficking work has been made by the Gender Equality Department of the Ministry of Social Affairs, which in close cooperation with relevant NGOs has been addressing the issue of trafficking in human beings already for four years. The Ministry of Social Affairs is designated as the responsible institution for carrying out following activities: organizing of lectures, training and information campaigns on trafficking, within the scope of the Development Plan.

The Unit for Serious Crimes and Crimes against Persons of the Northern Police Prefecture and the Central Criminal Police are responsible for cases related to human trafficking. Investigative responsibility for labour cases is not clearly assigned at the moment. Many policemen however have taken specific trafficking training and have participated to different international and national events (conferences, seminars, roundtables, working meetings, study visits etc.) on the topic. They have also established cooperation with national NGOs working on anti-trafficking.

Following the "Development Plan for Combating Trafficking in Human Beings 2006-2009", a new plan on "Development plan Against Violence 2010-2014" was adopted. This time NGOs and civil society representatives were officially invited to take part to the development of the new plan. The Plan against Violence consists of three main parts:

- Violence against children, juvenile violence and offences,
- Domestic violence,
- Prevention of human trafficking.

For each of the three themes, working groups have been set up and are coordinated by Ministry of Justice. NGOs working in the field of trafficking prevention were against adoption of the whole Development Plan against Violence, because they were concerned that human trafficking might not get enough attention in comparison with other themes covered by the Plan.

Identification, protection of rights, and referral

There is no specific standard procedure for identification of victims of trafficking, but the Ministry of Social Affairs in cooperation with other relevant authorities issued a tool named "Human trafficking victim identification and assistance guidance", which includes:

- Indicators of different forms of exploitation;
- Instructions about referral practices specifying different options;
- Rules for ethical interviewing and a model-interview;
- Contacts of assistance service providers and anti-trafficking actors in Estonia.

A small abstract of the guidelines was published and distributed among border guards.

Several agencies and organisations share the responsibility of identifying trafficking victims: NGOs working in field of human trafficking and governmental institutions (Ministry of Foreign Affairs, police and border guard, social workers). The NGO "Living for Tomorrow" often facilitates referral to different service providers. Referral between the police and ser-

vice providers happens on an *ad hoc* basis. No designated contact exists for potential cases of trafficking for labour exploitation among law enforcement agencies.

A separate section on children was included in the procedures for the identification of victims of trafficking (with the participation of the Ministry of Internal Affairs, the Central Criminal Police, the Citizenship and Migration Board and theBorder Guard Administration); in case of suspicion, an additional interview will be carried out with the child at the border.

Indicators of human trafficking, which are mentioned in the guidance, are not effectively working in practice and are rarely used by state officials and law enforcement. A check-list for formal identification is in the pipeline at the moment at the Ministry of Social Affairs and will be hopefully finalized by the end of 2010.

Besides the insufficient provisions against human trafficking in the legislation, the conviction of traffickers is largely hindered by the reluctance and fear of the victims to turn to the police or to testify in court. On 15 June 2005, the Estonian parliament finally passed the Witness Protection Act that sets out ways and conditions for witness protection in criminal cases.[98] Before that the only available protection was a possibility to declare a witness anonymous in accordance with the Code of Criminal Procedure. On 17 March 2000, Estonia signed a cooperation agreement on witness protection with Latvia and Lithuania.

Until February 2007 another factor that made it difficult to investigate and prosecute trafficking cases was the fact that a person, who had arrived to Estonia illegally or whose right to stay in the country had expired, had no legal basis for staying even if s/he was an important witness in a criminal case. The problem was acknowledged by the National Development Plan (2006-2009). In order to solve this matter the Plan recommended to implement the EC 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 subjects of an action to facilitate illegal immigration. The Directive was transposed into the domestic law by amending the Aliens Act. As a result of the amendments that came into force on the 1st February 2007, a whole new chapter was added - Chapter IV[3] "Special Cases of Issuing Temporary Residence Permit", which inter alia foresees issuance of a residence permit on the basis of public interest to victims or witnesses in criminal cases of trafficking. It also foresees the possibility of granting a reflection period of 30–60 days unconditionally and of issuing temporary residence permits to victims of trafficking cooperating in criminal proceedings. The duration of the temporary residence permit is of one year[99]. No applications have been received since the norm was introduced.

When it comes to protecting trafficked children, there is a big gap both in theory and in practise. Until now in all cases of domestic child trafficking, children involved in prostitution were not considered as victims of trafficking. Moreover, it is not known what kind of assistance and protection they received during the investigation and after.

Serivices for victims of trafficking are provided by NGO, who depend on support from state budget provided on annual basis. There is a range of services available to victims of trafficking in Estonia. The main actors providing those services are listed below.

The NGO Eluliin, the rehabilitation centre Atoll for women involved in prostitution and the shelter Vega for victims of trafficking for sexual exploration offer a wide range of services, tailored on victims' needs. The NGO Estonian Women's Shelters Union provides sheltering, psychological, legal, social assistance in the Ida-Virumaa region. The NGO AIDS Support Centre provides medical assistance to women involved in prostitution. The NGO Living for Tomorrow provides hotline service for trafficking victims and carries out prevention work through hotline, trainings and lectures. Since year 2006 the hotline service provided by NGO Living for Tomorrow receives governmental support in frame of the National Action Plan. The Consular Assistance Office also runs a hotline number active 24 hours/7 days. Victims can also contact the National Victim Support system that creates and employs a network

98. Witness Protection Act, passed on 15 June 2005, in force since 21 July 2005.
99. Aliens Act, Passed 8 July 1993.

of organisations in the region that offer assistance and services to victims of a crime.

Risk assessment is conducted only in case of victims' cooperation in criminal proceedings and upon request of the trafficked person or of the service providers. A program for safe return and reintegration of victims of trafficking is not in place at the moment. Budget resources available for the return of victims of trafficking are very limited.

Access to justice

According to the report on the implementation of the National Development Plan Against Human Trafficking, 89 persons in 2008 were sent by the Prosecutor's Office to court on the grounds of criminal offences related to human trafficking; 31 (35%) of these were related to the offence of fostering prostitution.

In 2008, 97 persons were investigated as suspected of perpetrating criminal offences related to trafficking. In general, in case of nearly half of these cases, no more than one person was suspected, while in cases of fostering prostitution there was more than one person suspected in 11 cases out of 15 (73%). Taking into consideration the total number of the cases above (trafficking and fostering prostitution), in 18% of criminal offences related to human trafficking there was more than one suspect. At least 31 persons (32%) were associated with cases of fostering prostitution and 35 persons (36%) with cases of unlawful deprivation of liberty.[100]

Estonian authorities did not criminalize victims for illegal acts committed as a direct consequence of their being trafficked. Trafficking victims are encouraged to participate in trafficking investigations and prosecutions.

Protection available for victims and/or witnesses during criminal proceeding is provided under general "Witness protection act", but no additional measures are used by law enforcement and court officials to protect the victims.

A number of special measures may be used under the Code of Criminal Procedure. These include: the protection of identity of victims/witnesses; closed hearings; the use of equipment (e.g. video) to prevent contact with the defendants; phone hearings (only allowed with consent of the defendants).

Since 2008 the possibility of anonymous witnessing has been introduced in bigger courthouses. However such procedures are rarely used for trafficking cases. According to practitioners, this is due to lack of awareness of the sensitivity of such cases among criminal justice authorities.

Until now, all victim-witnesses received counselling and information in a language that they can understand. Victims of trafficking have right to apply for compensation available in general for victims of crime in Estonia; no dedicated fund was established for victims of trafficking.

Prevention

The New Development Plan Against Violence (human trafficking section) points out several actions for the period 2010-2014:

1. Information on trafficking for the overall population and targeting risk-groups (especially youth and girls);
2. Labor exploitation prevention and detection;
3. Effective investigation of trafficking cases[101].

At the moment, prevention measures implemented include services provided by the National Anti-trafficking Hotline (run by NGO Living for Tomorrow), lectures and training for professionals and risk-groups (supported both by the government and other sources of funding) and awareness materials about risks associated to trafficking.

Monitoring and evaluation system

Since the adoption of the Development Plan (2006-2009), the Ministry of Justice issues a report at the end of the implementation period. These reports contained information about measures undertaken, as well as analysis about further measures that needed to be taken in future for successful development of anti-trafficking responses. It is worth highlighting that the first Development plan was very well made and all the participants of the National Network were satisfied with its provisions and subse-

100. Implementation report of Development Plan for Combating Human Trafficking (2008).
101. Development Plan Against Violence (2010-2014).

quent implementation. The Ministry of Social Affairs, other institutions and NGOs are constantly monitoring and evaluating anti-trafficking issues and responses in Estonia. Monitoring and evaluation were insofar mainly focusing on trafficking for the purpose of sexual exploitation, while trafficking of children and for labour exploitation are under currently review. In 2010 a research on trafficking for labour exploitation was conducted by University of Tartu. Several other researches are equally carried out by NGOs and other institutions, most of the time on their own initiative and without government support, aimed to monitor the situation of trafficking in Estonia and to analyse measures implemented by governmental bodies. However, the findings of these studies are constantly referred to by the Government.

In 2010, a new "Development Plan Against Violence 2010-2014" was adopted. Most likely, hereinafter monitoring and evaluation of anti-trafficking measures will be entirely performed in the framework of implementation of this plan.

No official declarations on the impact of anti-trafficking measures in Estonia has ever been made by the Office of the Chancellor of Justice, which is responsible for investigating and reporting on allegations of human rights abuses.

Since year 2010, the Ministry of Justice appointed a National Rapporteur on Trafficking in Human Beings.

Recommendations

- To adopt long-term national policies that extend the impact of the measures envisaged in the National Development Plan for Combating Trafficking in Human Being;
- To provide a definition for the term 'trafficking in persons' in the national legislation, in compliance with international standards, and to form a separate chapter in the criminal law prohibiting actions that constitute trafficking;
- To run ongoing regular prevention activities, programmes and campaigns about trafficking and related issues, in order to break the human trafficking chain;
- To raise Government's attention on the demand side of trafficking, in order to shift perspective from curbing businesses to putting human beings at the hearth of anti-trafficking work;
- To ensure a sustainable anti-trafficking hotline service and to provide shelters and all necessary services for trafficked persons (psychological, medical, social, judicial etc.).

7.8 FINLAND[102]

The phenomenon

Finland is both a country of transit and of destination for trafficking in human beings. Trafficking and the related exploitation occurs in prostitution as well as in different sectors of the labour market, such us construction, cleaning, food industry, transport, domestic work and agriculture.

Persons trafficked for sexual exploitation mainly come from the neighboring Baltic countries and the Russian Federation, Thailand or different African countries. Victims of trafficking for labour exploitation allegedly come from the areas mentioned above, as well as Asia and Eastern Europe. Also Finns may fall into trafficking victims, either in Finland or abroad. Finland is also a transit country mainly for young Asian men and women on their way to other Western European countries. Trafficking for the purpose of organ removal has not emerged.

Trafficking victims are both men and women. In 2008-2009, about 60% of victims who received assistance from the System of Victim Assistance, 40% were men and nearly 1% were children. In about 30% of the cases they were identified as victims of sexual exploitation and in about 70% of labour exploitation".

National anti-trafficking legislation and institutions

Provisions criminalizing trafficking in Finland came into force in August 2004. Regarding the acts, means and purposes constituting trafficking in persons, the Finnish Penal Code (FPC 25:3) is reproducing almost literally the Council Framework Decision 2002 and UN

102. Written by Tiina Oikarinen, Pro-tukipiste ry, Helsinki.

Trafficking Protocol. Also attempted trafficking is punishable (FPC 25:3) as it is the failure to report trafficking in persons in time to prevent the offence (FPC 15:10).

Aggravated pandering??? (FPC 20:9a), work discrimination amounting to usury (FPC 47:3a) and aggravated facilitation of illegal entry (FPC 17:8a) are referred to as "trafficking related offences". The penal provisions on trafficking and pandering partly overlap. Thus a part of the cases that would be regarded trafficking according to international standards are considered as pandering in Finland. Obviously this circumstance hinders the rights of trafficking victims.

The other relevant laws affecting prostitution-related trafficking include the penal provisions on the exploitation of a person subjected to sex trade (FPC 20:8), which criminalizes the purchase of sexual services from sex workers as well as victims of human trafficking and the purchase of sexual services from a child (FPC 20:8a). In addition, the Public Order Act (2:7) prohibits buying or selling sexual services in public places and the Aliens Act (148:1) states that if there are reasonable grounds to suspect that a person may sell sexual services, s/he can be removed from the country and/or banned from re-entering it. There are also some customary legal regulations that may be applied. For example due to the fact that prostitution is regarded as unethical, contracts made in the context of commercial sexual services are not considered valid and have no juridical cover.

Other provisions relevant to trafficking cases include the reflection period & residence permit to trafficking victims envisaged by the Aliens Act and the Act on the Integration of Immigrants and Reception of Asylum Seekers (System of Victim Assistance) – see below.

Two National Plans of Action against Trafficking in Human Beings (NAPs) have been produced: the first one in 2005 and a revised one in 2008. The NAPs' approach is based on three main principles: victim-centered approach, gender-sensitiveness and multidimensional approach. Despite the good starting points, Finland's anti-trafficking actions are lacking exactly in these dimensions. The official System of Victim Assistance does not adequately function from a victim-centered perspective, the multidimensional approach often shrunks to mean the expertise of pre-trial officials and the narrow interpretation of the trafficking criminal provision – especially in prostitution-related cases – has restrained the enjoyment of rights of victims.

Implementation of the Revised Plan of Action (2008) is managed by an inter-agency National Steering Group that is chaired by the Ministry of the Interior (MoI), who is also responsible for coordinating the implementation of the Plan. The Steering Group includes several Ministries, the Finnish Immigration Service (Migri), the Police and Border Guard, as well as NGOs, universities, research institutes and church-based organizations. The National Rapporteur participates as an observer. The Steering Group meets minimum six times a year and is expected to publish its recommendations on how to further develop anti-trafficking measures by the end of 2010.

The Steering Group also has a sub-working group focusing on information and awareness raising and has – among other activities - set up a web-portal about human trafficking (www.trafficking.fi / www.ihmiskauppa.fi). The sub-group will also publish a handbook about the rights of victims of trafficking and the System of Victim Assistance in 2010. The handbook will be disseminated to victims during the identification process.

Stakeholders generally regard the Steering Group as a good platform for information sharing. They however question the Steering Group's capacity to support the coordination of Finland's actions against trafficking, Actually, the Ministry of the Interior does not receive enough resources for its coordinating function: there are only 2 persons dedicated to the coordination of anti-trafficking activities, and they both have other duties to perform. The National Rapporteur and the representative of the Ministry of Interior have declared that the anti-trafficking work lacks a real coordinator. The lack of coordination and the broad variety of actors involved in the Steering Group lead to a certain degree of inefficiency.

Identification, protection of rights, and referral

In Finland the officials responsible for formal identification of victims of trafficking (which triggers the right to assistance and protection) are the Police and the Border Guard (as it concerns reflection period), Finnish Immigration Service (issuing residence permits) and

the directors of the reception centres (allowing access to the System of Victim Assistance).

Identified victims of trafficking may be granted a reflection period (30 days to 6 months) before receiving a residence permit. The reflection period may be terminated if the victim has re-established relations with persons suspected of trafficking. It can also be terminated if the person is considered to be a danger to public order, security, public health or Finland's international relations.

Reflection periods are very scarcely applied in practice. From 2006 to May 2010 reflection period has been granted only in 4 cases. This explains why stakeholders seem not to be familiar with the exact application of this measure. Similarly, NGOs generally are not able to advice victims on the kind and quality of information that they have to give to the authorities in order to be granted a reflection period.

One reason to explain these difficulties is that even though it is meant to allow some time for the victim to recover, the reflection period is by many stakeholders regarded as a way to legalize the person's residence status in Finland.

A victim of trafficking may receive a temporary residence permit (the so-called "B permit"). The requirements are that the victim's residence in Finland is based on pretrial investigation or court proceedings, that s/he cooperates with the authorities, and that the victim does not have any relations with the suspected perpetrators.

Victims who are considered to be in particularly vulnerable situation are not required to cooperate with the authorities in order to receive a permit of stay ("A permit"). Neither is it a requirement under the A permit that the victim's residence in Finland would be necessary because of investigation or court proceedings.

Relatively few residence permits have been issued so far. This is probably partly due to the fact that most of the identified victims were already legally residing in Finland. At the same time, the B permit is not very attractive to a presumed trafficking victim, because it "requires a lot, but gives very little". Even though the victim intended to cooperate with justice, the reward he/she would get is just a right to reside in Finland until the authorities no longer need him/her for the criminal proceedings.

Assistance to trafficking victims is provided within the official System of Victim Assistance whose services are defined in the Act on the Integration of Immigrants and Reception of Asylum Seekers. According to the above-Act, individuals who have been granted a reflection period or a residence permit under the respective sections of the Aliens Act (52a&b, on the grounds of trafficking) or who may otherwise, judged on their circumstances, be considered to be trafficking victims or persons in need of special assistance, while investigations are ongoing, may be referred to the System of Victim Assistance. This means that also witnesses of trafficking cases may receive assistance. The person can be excluded from the Assistance System when the above grounds no longer exist – e.g. the criminal proceedings do not start – or the need for assistance is no longer envisaged.

Victims of trafficking may be provided with a large variety of support measures, including legal and other advice, crisis intervention, social and health care services, interpretation, accommodation, social assistance and other necessary services, as well as support to safely return to their country. According to the law, assistance has to be provided taking into consideration the victim's special needs arising from age, vulnerability, physical and mental state. There are however no provisions on minimum standards on the quality and quantity of services to be provided. The assistance and support system is meant for persons not residing in a municipality in Finland. Municipalities are responsible for ensuring the service and support measures to victims who were assigned a municipality of residence, but they have the possibility to claim compensation from the System of Victim Assistance.

The System of Victim Assistance is administrated in the refugee reception centres of Joutseno (adults and groups) and Oulu (unaccompanied and separated children). The decision to refer a person to the System of Victim Assistance or to remove him/her from the system is taken by the director of the respective reception centre. To support the director of the reception centre in taking this decision, reception centres have established a multi-professional evaluation group, including representatives of the Police, the Border Guard, the Finnish Immigration Service, as well as social welfare and health care specialists.

Victims can be referred to the System of Victim Assistance by the Police, the Border Guard or the Immigration Service. In addition other private or public service providers, NGOs, victims themselves or any private person may submit a request for the acceptance in the system of the presumed victim of trafficking, although filing such a claim requires specific expertise. That is why some NGOs, in order not to endanger the victim, would not make a proposal without the help of a lawyer.

If filing a request for assistance entails judicial expertise, clearly the threshold has become too high. The National Rapporteur (2010) has stated, too much value is given to the opinion of the pre-trial investigation officials when deciding whether a person is granted assistance or not and she also confirms that some victims have not been taken to the system, because the police have not investigated the case as trafficking, but as something other offence. There have also been cases where getting into the system has been made conditional on reporting the case to the police.

As one NGO described it, the process resembles a small-scale trial, where the director of the reception centre is the judge and the one applying for assistance is the defense lawyer of the victim. As many respondents pointed out, the threshold to get into the system has risen in the recent years: while in 2008 all the 17 persons proposed to the System of Victim Assistance were accepted to it, in2009, out of the 42 persons who were proposed for assistance, only 17 were accepted into the system.

The System of Victim Assistance is also obliged to report cases to the Police, which means that assistance given to victims is connected to the criminal proceedings even at an early stage. Until June 2010, all victims who entered the System of Victim Assistance have cooperated with law enforcement.

Most of the cases accepted to the System of Victim Assistance have been cases of the so-called labour-related trafficking and there have been difficulties in identifying sexually exploited victims. According to the National Rapporteur, several authorities believe that once a person consents to prostitution he/she cannot be considered as a victim, no matter the abuses s/he suffered. This flawed point of view hinders the identification of possible victims, as they are regarded merely as prostitutes.

This distinction between labour and sexual exploitation is not very helpful and may on the contrary complicate the identification of trafficking victims. Many governmental and non-governmental stakeholders also believe that the stigma attached to prostitution may prevent possible trafficking victims from seeking help.

The process of formal identification experienced by different NGOs also varies tremendously: some victims have been accepted to the System, very quickly, while at times the process has taken up to several months. Representatives of the System of Victim Assistance confirmed that it may take even 2 months from the filing of the application until the decision is made. The delay is often due to the lengthy discussions among the multi-professional group before deciding on a case. Even after a decision has been taken, NGOs stated that they might have to wait for several days before they or the person concerned are informed about the results. In addition to other problems, apparently the multi-professional evaluation group lacks expertise on how to assess the situation of a person in a vulnerable situation.

The way a referral process progresses seems to depend on personal contacts with authorities who make decisions, as well as and on NGOs' expertise to fill in an application that mirrors the penal provisions regarding trafficking. Once a person is accepted in the system, support and assistance is made widely available, but much of the coordination responsibility rests on the shoulders of the service providers who need to be very proactive.

Apart from translation services, before 2010 there have also been no updated formal agreements among service providers and the System of Victim Assistance. Instead, service providers had to ask for permission for every expense from the director of the reception centre. spending a lot of time and energy this way. According to the National Rapporteur, the System of Victim Assistance does not have clear guidelines on what and for how long services shall be provided to clients and the process of removing a person from the Assistance System is not clear. Persons are not "hastily" removed from the system, but neither are adequate risk assessments made or safe return procedures followed.

Access to justice

Until June 2010, there have been four court cases for trafficking (three for sexual

and one for labour exploitation), three of which resulted in convictions for trafficking. Even though it can't be said that a legal praxis has yet formed, there has been a discussion on the narrow interpretation of existing trafficking provisions. In prostitution-related cases the issue of consent has been interpreted differently depending on whether the victim is deceived as to the nature of the work or the working conditions. If a person is deceived about the nature of the work, the case has been classified as trafficking. But if a person is deceived about the working conditions, the cases have been classified as pandering. However, a recent decision of the Court of Appeal in late 2009 showed a positive development in the interpretation of anti-trafficking norms.

The problem is partly due to the fact that the penal provisions of trafficking and pandering overlap, which enables law enforcement officials to view the limitations of the prostitutes' autonomy, risk of violence or debt bondage as "rules" to which the prostitutes have given their consent to, when consenting to work in prostitution. This is not in line with the international standards and thus the National Rapporteur (2010) has recommended that the situation be clarified by removing all elements that refer to coercing or intimidation from the pandering provisions.

If the case is taken to the court, legal advice and counseling provided seem to be adequate in general, although according to the National Rapporteur, in those cases that do not reach the court, there is the risk that adequate legal advice has not been provided.

Prevention

Actions that Finland intends to undertake in order to prevent trafficking can be divided into 6 types, as presented in the National Plan of Action (2005): Implementation of international agreements; Development cooperation and cooperation with neighboring countries; Prevention of labour exploitation; Visa policy as part of immigration control; Civilian crisis management and peacekeeping missions; Dissemination of information and awareness raising.

In addition, the Plan of Action addresses the issues of identification, assistance and prosecution of traffickers. The Revised Plan of Action (2008) did not add any new "categories" for prevention trafficking, but pointed to some specific problems, such as inadequate identification of victims, that had occurred in implementing the activities listed above.

Dissemination of information and awareness rising has been actively carried out, even though there is always a need for further education, reaching also key stakeholders. It is positive that attention to human trafficking is paid in development cooperation and neighbouring cooperation agreements, as well as in civilian crisis management. Unfortunately, the amount of development cooperation funds (0,55% GDP) does not stand up to international recommendations. While stricter immigration control is no solution in itself, more efforts to empower at-risk groups could be made, for instance providing information in the context of the visa application process. It is also positive that trafficking in legal labour market sectors has been recognized from the beginning of anti-trafficking activities, although resources to address it were not adequately allocated.

It is also bothersome that the Plan of Action (2005) does not actually include any measures to tackle trafficking in the sector of prostitution. When the plan was drafted, the "prostitution issue" was knowingly dropped out, because working group members could not reach a common position on the issue. Thus, in order to achieve some results, exploitation that happens in prostitution was not discussed at all, while the "prostitution issue" was addressed in a different working group within the Ministry of Justice, which later on produced a governmental bill criminalizing the purchase of sexual services. The parliament however changed the bill so that only the purchase of sexual services from procured prostitutes or victims of human trafficking is punishable. Very little research has been conducted on anti-trafficking activities.[103]

103. See however LL.D. Venla Roth, *Defining Human Trafficking, Identifying its victims. A study on the impact and future challenges of the international, European and Finnish legal responses to prostitution-related trafficking in human beings*", University of Turku, 2010.

Monitoring and evaluation system

Since the beginning of 2009, the Ombudsman for Minorities has acted as National Rapporteur on trafficking in human beings. The Rapporteur is an independent authority and its duties include: monitoring phenomena relating to human trafficking, overseeing action against human trafficking and issuing proposals, recommendations, statements and advice relevant to develop anti-trafficking work and to promote victims' rights. The Ombudsman also provides legal advice and can assist victims of trafficking and related crimes in claiming their rights.

The Ombudsman submits a report on human trafficking and related phenomena to the Government on an annual basis, and every four years to the Parliament. The first report of the Rapporteur was published in June 2010 and can be downloaded from www.vahemmistovaltuutettu.fi. (available only in Finnish.)

Recommendations

- The threshold of the System of Victim Assistance has to be lowered. Access has to be granted automatically when specified stakeholders, authorities and NGOs, identify trafficking indicators as the ones recognized by ILO. If a person that does not have any other residence permit is accepted to the System of Victim Assistance, he/she should automatically be issued a reflection period (3 months) and during this time s/he does not have to be compelled to cooperate with law enforcement authorities.
- Roles and responsibilities need to be clearly divided between the service providers and the System of Victim Assistance and formally stated in Memoranda of Understanding. The System of Victim Assistance has to coordinate the assistance services and to cover all the related material and personnel expenses. In order to facilitate regular cooperation, it is suggested to organize regional meetings between the System of Victim Assistance and service providers.
- To assure adequate assistance in the early identification phase, enough resources have to be granted to NGOs, in particular to enhance interpretation services. Early assistance shall be made available to victims who are reluctant to cooperate with authorities, also as a means to motivate them to apply to the System of Victim Assistance.
- Adequate resources need to be allocated to the industrial safety authorities to carry out inspections to identify trafficking cases. NGOs doing outreach work in this sector need to also receive adequate funding.
- The overlap of the penal provisions on human trafficking and pandering has to be eliminated. All elements that refer to coercion or intimidation have to be erased from the pandering provision. The impact of provisions contained in the Aliens Act and of those concerning exploitation of prostitution on identification of victims of trafficking needs to be carefully assessed. More effective provisions to address trafficking for sexual exploitation need to be developed, stemming from a victim-centered and rights-based approach.

7.9 FRANCE[104]

The phenomenon

There are no official figures available for trafficked persons in France. However, there is evidence from various NGOs working with trafficked persons, migrant workers, or on human rights issues that various forms of trafficking are occurring in France. Trafficking for the purpose of exploitation of prostitution is one of the most well known forms of trafficking. However, there have been several cases of trafficking for the purpose of domestic or labour exploitation that have been identified, either formally by a court or by NGOs. There have also been cases of trafficking for the purpose of exploitation and cases of trafficked persons exploited for stealing or drug dealing.

National anti-trafficking legislation and institutions

The offence of trafficking in human beings was first introduced in the French Penal Code (article 225-4-1 of the Penal Code) in March 2003[105]. Trafficking is conceived by French law

104. Written by Prune de Montvalon, ALC, Nice.
105. *Loi no. 2003-239 du 18 mars 2003 de sécurité intérieure.*

as the preparation stage before exploitation, whether it is exploitation of the prostitution of other (pimping), labour or begging exploitation. The French definition includes the statement that trafficking can aim "to force (this) person to commit any felony or misdemeanour". According to this definition, the consent of the trafficked person is systematically considered as irrelevant, whether the person was deceived, abused, forced or threatened. However, if threats, force, coercion or abuse is used, this will be considered as aggravated forms of trafficking (Articles 225-4-2 of the Penal Code).

Likewise in many other countries, also in France, traffickers are most likely to be convicted not for trafficking but under relative offences, such as aggravated forms of pimping (Articles 225-7 et 225-7-1 of the Penal Code), unpaid work (article 225-13 of the Penal Code) or conditions of work incompatible with human dignity (Article 225-14 of the Penal Code). In 2005, the European Court of Human Rights judged that France was in breach with Article 4 of the European Convention of Human Rights.[106] Although the definition of trafficking has been slightly changed since, there is still no offence according to French law that includes slavery or servitude.

There is no national coordinated anti-trafficking policy in France. However, the Home Ministry and the Ministry of Justice have taken a lead in setting up an interministerial working group on trafficking in human beings. Several NGOs, among them ALC, CCEM, Amnesty International, Caritas and others, have been invited to join this working group that officially started its activities in December 2008. The objective of this group is to set up a national plan of action, a coordinating body and a national Rapporteur.

Identification, protection of rights, and referral

Since 2003, trafficked persons who file a complaint or a testimony against their trafficker or pimp may file a claim for a short-term residence permit (article L316-1 of the Code on Entry and Residence of Foreigners and Asylum Law). When a case of trafficking for domestic or labour exploitation is not pursued under the offence of trafficking (as is most often the case), trafficked persons have a right to residence. All other social and economical rights that are dependent on that residence status are greatly restricted.

Identification of trafficked persons remains a major issue in France. The rule is that only trafficked persons who cooperate with police services will be officially identified and granted a residence permit.[107] In 2009, The Ministry of Immigration provided the first figures of the number of residence permits issued. According to these figures, 56 short-term residence permits were delivered (6month to 1-year), 43 were renewed and 5 were duplicated.

Practices vary greatly from one city to another. In general, the information that a victim provides must be judged "useful" by authorities; in many cases it will also be required that trafficked persons bring the proof of a will to integrate into French society.

There is no referral mechanism, though there are legal documents highlighting the role of police services in identifying trafficked persons and referring them to adequate NGOs and other administrative or social services. The only specific referral mechanism that exists is coordinated by the NGO ALC and is intended to provide trafficked persons who face a danger at the local level with a secure housing through geographic relocation ("Dispositif Ac.Sé")[108].

The possibility for a foreign trafficked person to benefit from a reflection period of 30 days was introduced in the French law in 2007. In theory there is no other criterion than having a positive evaluation from the police services, yet in practice, authorities ask for evidence equal to a full testimony or filing a complaint. To our knowledge, there have been two cases in 2009.

Within the Ac.Sé network, there is evidence that there are more and more trafficked persons who seek asylum on the grounds of having been trafficked for sexual exploitation.

106. Judgement Siliadin vs. France of the 26th July 2005, available on http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Siliadin%20|%20France&sessionid=55518247&skin=hudoc-en

107. Article L316-1 of the Code on residence of foreigners and asylum demand (CESEDA).

108. More information on www.acse-alc.org

There have been several cases reported to the Ac.Sé network in which trafficked persons, identified as such by NGOs, were not subject to any identification procedure nor to any risk assessment before being returned to their country. However, there have been a few cases in which the trafficked persons were freed from a retention centre on the basis of their having been trafficked.

The Law of 2003 introduced the possibility for trafficked persons to be accommodated in state-funded shelters, most of which are run by NGOs or by local communities (Article L. 345-1 in the Social Action and Family Code). In France, there is no shelter specifically provided for trafficked persons.

Accessing residence for trafficked persons can become difficult if they are undocumented immigrants. Shelters are increasingly under pressure not to accept undocumented immigrants. Since access to residence permits for trafficked people are conditional, their access to accommodation and other rights such as financial aid, as a result, is often conditional.

Trafficked persons can access health insurance like any other national if they are French or like any other foreigner if they are a citizen of another country. Any person in France, whether legal resident or not, can have access to free medical care, including counselling and mental health care under certain conditions (resources, documents…).

The law provides free access to a lawyer on conditions of resources and on conditions of legal residence, with some exceptions.[109]

There are official numbers for voluntary return at a national level, but as there is no identification procedure for trafficked persons, it is impossible to know how many of them were trafficked. The only reliable source of information we have regarding return of trafficked persons, is the Ac.Sé network. In 2008, amongst the 54 persons referred to the national network Ac.Sé for secure housing, 2 have decided to return voluntarily to their home country. In 2009, amongst the 66 trafficked persons referred to the national network Ac.Sé for secure housing, 1 has returned voluntarily to her home country. There is evidence that NGOs in different part of the country have assisted trafficked persons (identified by the NGO) to return to their home country if they wished to do so, but there are no official figures that can confirm that information.

Access to justice

The Decree of 13th of September 2007 states that police should inform all potential trafficked persons of their rights. In practice, very few police officers are aware of this decree; nor are they informed about the rights trafficked persons are granted. ALC has therefore, in collaboration with the Home Ministry created a DVD in which these rights are explained in 10 different languages.

There is no specific protection for trafficked persons during legal proceedings, whether they are witnesses or not. It appears there are still recurrent cases of trafficked persons who have been denied the right to file a complaint if the Police officers judge the information irrelevant. In some cases, partner NGOs have pointed out that no copy of the complaint was given, although the French law makes it an obligation for the police officers to provide such a copy.[110] There has been evidence that during judiciary investigation trafficked persons were not necessarily interviewed in a confidential setting, for ex. the interviews sometimes took place in open offices. There is an evident lack of means for police officers and judges to allow for required confidentiality to be respected. Before a criminal audience involving trafficking or exploitation, there has been little or no evidence of measures taken to guarantee the anonymity of the trafficked persons, such as video testimony, etc. In very few cases, were trafficked persons who took part in a criminal proceeding informed when their trafficker was set free.

Trafficked persons can access compensation from their trafficker during a criminal or a civil proceeding (article 706-3 of the Code of Criminal Procedure). The law decrees that any person who is recognised as victim of trafficking or a victim of pimping can be granted full compensation, which excludes most cases of trafficking for labour exploitation for those who are not pursued under these offences. Trafficked

109. Article 1, Law no. 91-647 relative to free judicial counselling, 10th July 1991.
110. Article 15-3 of the Code of Penal Procedure.

persons can also access compensation through the Commission for Compensation of the victims of criminal offences (article L214-1 of the Code of Judiciary Organisation) although there are conditions of legal residency.

Prevention

There has been no national prevention scheme of trafficking so far in France, although there has been some local campaigning led by NGOs such as Amnesty (most recent). The National Consultative Commission of Human Rights (CNCDH) has produced a very detailed opinion and report on all aspects of anti-trafficking measures and exploitation.[111]

Monitoring and evaluation system

Currently, no monitoring and evaluation mechanism, whether independent or not, is in place in France. The only evaluation so far carried out is that of the National Commission on Human Rights, which is an independent body attached to the Prime Minister's office. Such Commission published a detailed opinion (available also in English) and a thorough study on human trafficking from a human rights perspective.[112]

Recommendations

In order to effectively fight trafficking and protect trafficked persons, we recommend that France:

- Harmonises its definition of exploitation in order to ensure that all forms of exploitation that result from trafficking are punished on similar grounds.
- Adopts a national coordination mechanism as well as an independent national Rapporteur that would not only evaluate the scale of trafficking but also monitor the national policies adopted and provide guidelines to all actors involved in anti-trafficking actions.
- Adopts an identification procedure that is not dependent on a judicial investigation.
- Ensures that access to rights is not dependent on the will of the trafficked persons to cooperate and that trafficked persons who take part in a judicial proceeding can benefit from adequate protection.
- Ensures that a risk assessment procedure is set up in the case of a voluntary return of potential trafficked persons.

7.10 GERMANY[113]

The phenomenon

Germany is mainly a transit and destination country of trafficking in human beings and, to a lesser extent, also an origin country. Commercial sex is the main field of exploitation of victims, who are predominantly, but not exclusively, women. They are often induced under false pretences to come to Germany or forced into prostitution by threat or use of violence. Most of victims are women from Central and Eastern European countries, especially from Romania and Bulgaria. The majority of them are migrants exploited often due to their vulnerability as residents in a their weak status related to their residence in a foreign country, but German women can also be affected by human trafficking. According to the Situation Report on Human Trafficking, published by the German Federal Criminal Police Office, in 2009, about 20% of the 710 identified victims of human trafficking for the purpose of sexual exploitation were minors; and 6% of the victims were under the age of 14 at the time of the offence. Furthermore, 45% of the victims had agreed to work in prostitution, whereas 23% had been recruited by deception and 15% had been recruited by agencies or by ads in newspapers. A further 10% had been forced into prostitution by means of violence. The routes and procedures of entry vary, depending on the location of the countries of origin and the individual background.

Human trafficking for the purpose of labour exploitation predominantly takes place in the private sector and in economic sectors that are difficult to regulate (sex industry, au pair work, agriculture, catering, domestic services, etc.). It is important to note that also here the weak status of the victims, related to their residence in a foreign country, is often exploited by the perpetrators. Victims are both female

111. www.cncdh.fr/article.php3?id_article=723
112. www.cncdh.fr/article.php3?id_article=687
113. Written by Nicole Garbrecht, KOK, Berlin.

and male; information on their age and country of origin is limited due to the extremely low rate of identified cases (24 in 2009). However, victims of trafficking for forced labour came from a wider range of countries. The persons trafficked for the purpose of labour exploitation come to Germany in different ways. Many come without a visa or with contracts for seasonal employment. When entering the country illegally, traffickers are frequently involved.

National anti-trafficking legislation and institutions

In 2005, through the 37th amendment of the German Criminal Code, the crime of human trafficking was classified in the section entitled "Offences Against Personal Freedom" of the German Criminal Code. Thus, human trafficking was subdivided into Human Trafficking for the Purpose of Sexual Exploitation (Criminal Code Section 232), Human Trafficking for the Purpose of Labour Exploitation (Criminal Code Section 233) and Assisting in Human Trafficking (Criminal Code Section 233a). In addition, Section 236 of the Criminal Code focuses on Trafficking in Children. Other forms of human trafficking such as organ removal, begging, etc., are not included in the Criminal Code.

The 37th amendment of the Criminal Code on 19 February 2005 expanded the elements of the crime of trafficking in human beings according to the Framework Decision on combating trafficking in human beings of the Council of the European Union of 19 July 2002 (2002/629/JHA). In Germany the elements of the crime are the following:

Section 232 - Human trafficking for the purpose of sexual exploitation

(1) Whosoever exploits another persons predicament or helplessness arising from being in a foreign country in order to induce them to engage in or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person or to suffer sexual acts on his own person by the offender or a third person shall be liable to imprisonment from six months to ten years. Whosoever induces a person under twenty-one years of age to engage in or continue to engage in prostitution or any of the sexual activity mentioned in the 1st sentence above shall incur the same penalty.

(2) The attempt shall be punishable.

(3) The penalty shall be imprisonment from one to ten years if
- The victim is a child (section 176 (1));
- The offender through the act seriously physically abuses the victim or places the victim in danger of death; or
- The offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(4) The penalty under subsection (3) above shall be imposed on any person who
- Induces another person by force, threat of serious harm or by deception to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above or
- Gains physical control of another person by force, threat of serious harm or deception to induce them to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above.

(5) In less serious cases under subsection (1) above the penalty shall be imprisonment from three months to five years, in less serious cases under subsections (3) and (4) above imprisonment from six months to five years.

Section 233 - Human trafficking for the purpose of work exploitation

(1) Whosoever exploits another persons predicament or helplessness arising from being in a foreign country to subject them to slavery, servitude or bonded labour, or makes him work for him or a third person under working conditions that are in clear discrepancy to those of other workers performing the same or a similar activity, shall be liable to imprisonment from six months to ten years. Whosoever subjects a person under twenty-one years of age to slavery, servitude or bonded labour or makes him work as mentioned in the 1st sentence above shall incur the same penalty.

(2) The attempt shall be punishable.

(3) Section 232 (3) to (5) shall apply mutatis mutandis.

Section 233a - Assisting in human trafficking

(1) Whosoever assists in human trafficking under section 232 or section 233 by recruiting, trans-

porting, referring, harbouring or sheltering another person shall be liable to imprisonment from three months to five years.

(2) The penalty shall be imprisonment from six months to ten years if:
- the victim is a child (section 176 (1));
- the offender through the act seriously physically abuses the victim or places the victim in danger of death; or
- the offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(3) The attempt shall be punishable.

In 2007, the "Action Plan II of the Federal Government to combat violence against women" was launched. The measures stipulated in the National Action Plan I to combat violence against women were intended to be further enhanced in the new action plan. In Germany, there is no special Action Plan to combat human trafficking. The Action Plan II merely touches on the topic of women affected by trafficking for the purpose of sexual exploitation. Men and children, as well as other forms of human trafficking, are only mentioned.

Currently, no independent National Rapporteur is in place.

Identification, protection of rights, and referral

In Germany, measures for combating human trafficking are carried out at two levels: at the federal level and at the state level. Due to the nature of the federal structure (16 Federal States), instructions and recommendations are differently managed, assessed and implemented throughout the Federal States. Existing structures for combating human trafficking for the purpose of sexual exploitation are significantly stronger than structures for combating human trafficking for labour exploitation.

At the federal level, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) is concerned with issues related to trafficking in women. In order to coordinate the fight against trafficking in women, the BMFSFJ founded the Federal Working Group on Trafficking in Women.

In 1999, the first Federal Cooperation Concept for the cooperation between the specialised counselling centres and the police was developed for the protection of the victims of human trafficking who testify in court. In 2007, it was updated. The Cooperation Concept can be regarded as a "best-practice" model, which should serve as an example in order to develop Cooperation Concepts at a regional level. Currently, in twelve Federal States, specific Cooperation Agreements have been developed based on the Federal Cooperation Concept. Furthermore, the BMFSFJ sponsors the German Nationwide Activist Coordination Group Combating Trafficking in Women and Violence Against Women in the Process of Migration e.V. (KOK e.V.). The KOK e.V. is an intradisciplinary alliance of 39 non-governmental-organisations with altogether 47 specialised counselling centres, combating trafficking in women and violence against women in the process of migration. Cooperation Agreements, at the regional level, regulate the structures and measures against human trafficking. The Federal Ministry for Labour and Social Affairs (BMAS) is responsible for the area of human trafficking for the purpose of labour exploitation. Up until now, there is neither a corresponding federal working group, nor an institutionalised cooperation between the concerned actors. Some of the existing Cooperation Agreements on human trafficking for the purpose of sexual exploitation explicitly include human trafficking for forced labour. A differentiated system of instruments for the development of suitable measures against human trafficking for the purpose of labour exploitation does not yet exist at the federal or regional level, but is currently discussed.

In Germany, a high discrepancy is assumed between the low number of reported cases and the high estimated number of unreported cases that point to the actual extent of human trafficking. Some of the victims are identified in the context of criminal prosecution, e.g. on the occasion of controls or because of findings through investigations and hearings of evidence. In Germany, although different authorities are engaged in combating criminality and in criminal prosecution, the principle authority responsible is the police. In the German federal system, the Federal States and their local police departments are responsible for the criminal prosecution of human trafficking for forced labour. NGOs also play an important role in the identification of trafficked persons. Identification can also be initiated by the trafficked persons themselves or by third

parties (acquaintances, family, clients of sex workers, other institutions, etc.).

The number of persons identified that have been trafficked for the purpose of labour exploitation is very low. These persons are identified e.g. during workplace inspections that are conducted by the Office for Financial Control of Illegal Employment (FKS), which is affiliated with the German Customs Administration. Since the focus of the FKS lies on the detection of illegal employment and residence, trafficked persons are seldom identified. The activities of the specialised counselling centres as well as other NGOs and social services in Germany are of great importance for the identification of that target group. Identification can also be initiated by the trafficked persons themselves or by third parties (acquaintances, family, clients of sex workers, other institutions, etc.).

Once identified by the police, trafficked persons are entitled to a reflection and recovery period of at least one month. During this period, the victims should be allowed to reflect on their current situation and be informed of their rights; they can make use of counselling services and decide whether they are willing to testify or not. If necessary and wanted, departure from Germany can be arranged.

A network of 47 NGOs (specialised counselling centres) provides professional counselling to women victims of trafficking for sexual exploitation throughout Germany. Counselling services include concrete measures, which enable the trafficked persons to claim their rights, regain their self-determination and their physical and psychological integrity.

An equivalent specialised support system for victims of labour exploitation does not exist yet. Its establishment is currently under discussion.

If a trafficked person fulfils the following conditions, under Section 25 (4) of the Residence Act, s/he can be granted a temporary residence permit: 1) If the victim of a criminal offence under Sections 232 and 233 of the Criminal Code decides to testify during the criminal proceedings; 2) if the prosecution authorities consider this testimony crucial for the proceedings; and 3) if the witness has broken off relations with the perpetrators.

The dependence of the right of temporary residence on the willingness to give testimony is often criticized by NGOs. Furthermore, the Residence Act provides for the automatic expiration of the residence permit once the criminal proceedings are over. The victim witness can be granted another residence permit after the end of the proceedings if her/his or his/her family members' return to the home country can endanger their life and/or freedom. However, this extended residence permit does not ensure a secure right of residence, as it is conditional to the continuous situation of danger, which is regularly checked.

The counselling centres, often in cooperation with NGOs of the origin countries, support the assisted trafficked persons to organise and manage her/his mandatory or voluntary the return.

Access to justice

Due to the complexity of the legal German system, trafficked persons need the counselling of lawyers to fully understand issues related to the residence rights, the role and duties/rights of the victim witness, and the claim of various rights. Legal counselling and representation is not for free. Some NGOs provide funds in order to support legal aid.

Trafficked persons and victim witnesses can become active as joint plaintiff during the criminal proceedings, having the right (including funding for their legal representation) to employ a lawyer as legal representation in the prosecutions. Protection measures for witnesses are stipulated in the Victim's Rights Reform Act and were expanded in the second Victim's Rights Reform Act in 2009. The changes include an extended duty on the part of the prosecution authorities to provide the victims with information. In some cases, the witnesses have the right to conceal their place of residence. Furthermore, interrogation can be carried out through video, separate hearings, removal of the accused person, etc.

Protection measures for witnesses are also extended to trafficked persons, which are recorded in the "cooperation agreements" between the police and the specialised counselling centres to institutionalize and to improve the cooperation in the case a trafficked person is found. In addition, the specialised counselling centres as well as the police can provide other protection measures, e.g. change of residence, cancellation of insurances, etc.

In addition to the criminal proceedings, trafficked persons can claim compensation for

damages against the perpetrators in different ways: The claim can be filed before the criminal court during the trial on human trafficking, or it can be filed independently from the proceedings before a civil court. Moreover, wage payments can be claimed before the labour courts; however, this option is rarely considered.

Compensation in the context of human trafficking is granted on rare occasions and is rather low in terms of monetary value. Some victims of human trafficking for sexual exploitation received compensation payments by the government in accordance to the Victim Compensation Act. Up until now, claims for damages before the civil court haven not been filed very often in Germany. Also, the granting of the victim's rights after returning to their country of origin has been insufficient. In 2009, the German Institute for Human Rights (DIMR) started the three-year long project "Contemporary Forced Labour". It explicitly targets victims of human trafficking for the purpose of labour exploitation and, under certain conditions, grants support for the enforcement of compensation claims during legal proceedings through legal assistance and a fund to cover the costs.

Prevention

Numerous analyses, expert statements, research papers and studies on the topic of human trafficking for the purpose of sexual exploitation have been published. NGOs have carried out several campaigns in this field, but there is a lack of scientific studies, which focus on the actual extent of this phenomenon. The only substantiated statistics for the Federal Republic is published annually by the Federal Criminal Police Office in the abovementioned "Situation Report on Human Trafficking".

Over the past years, there have been different studies about the extent and the forms of human trafficking for the purpose of labour exploitation, but no comprehensive research focussing at the Federal Republic exists. Currently, NGO KOK e.V. is conducting a study on behalf of the BMAS about the scale and the extent of human trafficking for labour exploitation in Germany. The study will be published in 2011 and will include recommendations for sustainable support structures.

The Federal Working Group on Trafficking in Women published a working paper to improve and standardise the training modules on issues related to trafficking for sexual exploitation. Specific trainings on trafficking for labour exploitation are not available, although they are much needed.

At present, several studies and projects are being carried out to investigate both major forms of human trafficking identified in Germany.

Monitoring and evaluation system

Monitoring and evaluation in Germany is conducted at the federal and the regional level and involves governmental and non-governmental actors. As already mentioned, there is no National Rapporteur or an equivalent mechanism.

In Germany, there are independent, but coordinated structures such as the KOK e.V., the Federal Working Group on Trafficking in Women, the Federal Criminal Police Office, various government ministries and specialised counselling centres that cooperate with each other. These structures serve to monitor and evaluate each other, as there is no central overarching authority.

Recommendations

- Discuss and develop sustainable support structures for victims of trafficking for labour exploitation;
- Treat the protection and rights of victims as equally important as prosecution;
- Promote and strengthen measures to grant compensation and unpaid wages;
- Promote unconditional access to support and protection structures to victims of trafficking (unconditional to being a witness);
- Secure funding for support structures.

7.11 GREECE[114]

The phenomenon

Greece is situated at the southern tip of the Balkan Peninsula. Traditionally, Greece has been a country of origin of migrants. This role was reversed in the early 90s when it became a

114. Written by Maria Vogiatzi, Human Rights Defence Centre, Athens.

country of destination for migrants (regular and irregular) and, at the same time, a country of destination for victims of human trafficking from countries of South-Eastern and Eastern Europe, as well as from Africa and, to a lesser extent, from Asia. Human trafficking has flourished in Greece primarily because of its geographic position, its economic development and its status as a member of the European Union. Other factors contributing to the development of trafficking were the social, economic and political upheavals in neighbouring countries following the fall of the Berlin Wall. According to official data provided by the Hellenic Police, the majority of the victims come from Bulgaria, Romania, followed by Russia, Albania, Nigeria and other Eastern European countries. Even though collected data do not differentiate between different types of trafficking (for sexual exploitation, labour exploitation, etc.), NGOs providing assistance and support to victims claim that the majority of identified victims are women and children trafficked for the purpose of sexual exploitation. During the last years, however, it has been noted by all actors in the field that labour trafficking is on the rise, involving mainly young men and children working in the agricultural sector as seasonal workers.

National anti-trafficking legislation and institutions

Trafficking in human beings became a distinct criminal offense in Greece in 2002 with the adoption of Law 3064/2002. This was deemed necessary in order to respond to new criminal phenomena and prevent new forms of sexual and labour exploitation that the already existing legal framework was unable to combat effectively. Since then, legislation covering all forms of human trafficking has been gradually introduced in the legal system.

Articles 323A and 351 of the Greek Criminal Code (introduced by Law 3064/2002) address all forms of trafficking in human beings, including trafficking for sexual exploitation (Article 351), labour exploitation, trafficking for the removal of organs and trafficking with purpose of recruiting minors in armed conflict (Article 323 A). Offenders are punished with incarceration of up to ten years, in addition to a fine ranging from 10.000 to 50.000 Euros. In cases of further aggravating circumstances (minor victims, abuse of authority, heavy bodily harm or death of the victim, trafficking exercised as a profession), the crime is punished with at least ten years of incarceration and a fine from 50.000 to 100.000 Euros. Existing legislation also punishes (with imprisonment for at least six months) those who intentionally use the services provided by victims of human trafficking (punishment of the clients). Article 323B of the Criminal Code makes sexual tourism targeting children a felony, punished with incarceration up to ten years and a fine for those organising, financing, overseeing, directing, and advertising trips with the purpose of sexual intercourse or other indecent acts with children. Participation in trips with the purpose of sexual tourism with children is also punishable with up to one year-imprisonment, regardless of the commission of the actual act of intercourse or other indecent act.

The domestic anti-trafficking legislation meets the minimum standards set by the Council of Europe Convention and the EU Framework Decision of 2002. All forms of human trafficking, whether for purposes of labour exploitation, organ removal or sexual exploitation are made felonies and are punished with heavy sentences (minimum incarceration of 10 years) and monetary fines. Relevant provisions regarding the protection and assistance of victims have also been adopted. In the first years after the introduction of anti-trafficking legislation, the few cases that were prosecuted concerned mainly trafficking for the purposes of sexual exploitation. In more recent years, there have been few instances that cases involving labour exploitation were brought light and prosecuted in court. In any event, the rate of identifications and prosecutions remains very low. This situation is further complicated by the fact that there is no unified online system either for pending cases or, more importantly, for judicial decisions covering the whole country. This situation seriously hampers monitoring and access to objective and measurable indicators regarding the application and effectiveness of the law. As far as children victims of trafficking are concerned, the law provides that minority (below 18) constitutes an aggravating circumstance for all forms of trafficking. Although the punishments for child trafficking are very severe, there is no concrete provision in the Greek Criminal Code stipulating that recruiting a child for pros-

titution will be *de facto* prosecuted as human trafficking. Regarding the elements of the crime for the trafficking of children, there is no concrete mention that these should differ from the elements of crime for adult victims, (i.e. no need for the element of violence). However, Articles 323A (2) and 351 (2) of the Criminal Code, clearly state that if the consent of the victim (adult or minor) has been obtained by fraudulent means, deceit or by taking advantage of the vulnerable position of the victim, then the crime of trafficking has been committed.

The National Action Plan (NAP) against human trafficking was adopted in 2004 and updated in 2006 and 2009. The NAP outlines the responsibilities and actions of relevant state and non-state actors and it aims to involve different stakeholders in the fight against human trafficking. The Greek NAP was drafted by an Inter-Ministerial Committee comprising the Secretary-Generals from the Ministries of Justice, Finance, Foreign Affairs, Education, Interior, Employment and Health. Despite numerous detailed provisions for the role and responsibilities of difference actors, it contains no precise provisions for its monitoring and evaluation. Furthermore, it should be noted that Greece has not established yet a National *Rapporteur* or an equivalent mechanism.

Identification, protection of rights, and referral

Formal identification of victims of human trafficking is done by an act of the Public Prosecutor of the First Instance Court according to the procedure described in Law 3386/2005 and Presidential Decree 233/2003.[115] When police forces suspect that a person involved in a police investigation may be a victim of trafficking, they notify the Anti-trafficking Police Units, which are responsible for the investigation of such crimes. Currently, there are 14 Anti-trafficking Police Units around the country. Likewise, whenever presumed victims contact or are referred to EKKA (National Centre for Social Solidarity, responsible to coordinate social protection services), NGOs, hotlines, diplomatic missions or other service providers, these actors should also notify the Anti-Trafficking Police Units (and where not available, local Police Forces or the Coast Guard) or the Public Prosecutor. Police forces and social support bodies are responsible for informing the presumed victims about the rights and protection offered by national legislation to identified victims and their right to contact the diplomatic authorities of their country of origin. They also notify the Public Prosecutor.

The law provides for the protection of victims and presumed victims of human trafficking. Of particular importance is the willingness of the victim to cooperate in the criminal proceedings against her/his traffickers. Cooperation is a factor that significantly affects the protection and assistance available. Presumed victims of trafficking are entitled to one month reflection period (Article 48 of Law 3386/2005). During such period, they cannot be deported and enjoy all rights provided to identify victims but the issuance of a residence permit. This provision has been proven useful to avoid deportation before victims are identified as such. Identified victims who cooperate with the authorities are entitled, under Greek legislation, to a one-year residence permit, without obligation

115. This report outlines the situation of human trafficking in Greece in June 2010. It should be noted, however, that after this report was finalized, Greece ratified on 20 September 2010 the UN Convention against organized crime and its protocols, including Palermo. Consequently, certain legislative amendments were introduced by law 3875/2010. Definitions and punishments remained the same as they comply fully with all international standards. The main changes refer to: a) increase of reflection period from 30 days to 3 months for adults and to 5 months (max.) for minors; b) a slightly wider definition of who is a "victim of human trafficking" as this now includes persons where there is a strong possibility to be considered victims, even before criminal proceedings are instituted; c) clear mention that illegal entry into the country is irrelevant for the characterization of someone as victim; d) clarification of certain points in the process of identification by the Prosecutor; e) possibility that identification can also take place even if the victim refuses to cooperate with the authorities, on the discretion of the Prosecutor and on the condition that the victim or her family is under serious threat; f) clear mention that during the reflection period the victim cannot be deported; existing deportation decisions cannot be executed; g) clear obligation of police authorities and prosecutors to inform victims of their rights and the possibilities that the law offers (protection, assistance, residence permit etc.); h) clear provision that victims are entitled to translation services and free legal aid.

to pay the required fee (Article 46 Law 3386/2005); this permit is also valid as a work permit providing victims with access to the labour market. The permit is renewable until the end of the penal procedure. Thereafter, they can apply for a residence permit under a different status (marriage, work, etc). According to the presidential decree 233/2003, assistance, including police protection, accommodation, education for persons up to 23 years old, health care, legal advise and interpretation are provided if a prosecution has been brought against the suspected traffickers, or if the trafficked individual has sought the service listed in an Annex to the Decree (with state institutions and shelters). If minors are involved, they are provided all the above services and are placed in educational and vocational programmes, as appropriate. Law 3386/2005 specifies that: (i) the provisions of presidential decree 233/2003 apply to potential victims during the reflection period, (ii) persons who do not have sufficient resources shall be granted adequate standards of living and (iii) that these persons, where appropriate, shall be provided with translation and interpretation services and all required legal aid (Article 49 of Law 3386/2005).

Although there are no official identification guidelines or other instruments formally used by investigating and prosecuting authorities, including indicators for victim identification, relevant procedures regarding approaching and handling cases of human trafficking by the Hellenic Police are incorporated into a confidential document entitled "Memorandum of Actions and Best Practices in handling cases of human trafficking", only for internal use by police authorities. Some indicators can also be found in an "Information Sheet" provided by the police officer in charge to suspected victims during the phase of preliminary inquiry. This sheet, published in 13 languages and signed by both the officer and the victim, informs the presumed victim about the rights and protection available under national legislation to identified victim. It includes a list of indicators that can help presumed victims to self-identify as a victim of human trafficking in order to cooperate with investigating and prosecution authorities. Compared to indicators listed by the ILO, These indicators are not fully analytical and do not constitute a formal checklist to reach safe conclusions.

Greece has not adopted yet a proper and official NRM. Nevertheless, a quasi-referral and flexible mechanism for victims of trafficking has been set in place. NGOs participate in such mechanism by offering specialised assistance, mainly accommodation and psychosocial care. NGOs also participate in an unofficial and consultative capacity in the Inter-Ministerial Committee against Trafficking in Human Beings, which is a political body responsible to design and coordinate anti-trafficking policies. To this date, 12 NGOs and IOM Greece have signed a MOU with the Committee. This cooperation however, has become in the last 3-4 years almost redundant, as the Committee has ceased to hold meetings with the NGOs and their opinion is rarely solicited regarding the adoption of new policies/measures.

In practice, referrals of victims to service providers tend to work fairly satisfactory in large cities. However, due to the lack of a concrete institutional framework and common referral protocol, referrals are done on an *ad hoc* basis, mainly from the Police to NGOs and other service providers. The adoption of formal NRM would help solve these problems and would ensure that all victims have access to proper and specialised services. It would also help create a more stable and more predictable system.

Identified and presumed victims of trafficking, who wish to go back to their countries, are subject to the return procedure developed and implemented by IOM, in cooperation with the embassies.

Access to justice

The right of the victim to counselling and information, regarding her/his legal rights and the services available in a language that they can understand are generally respected. During the investigation phase, the Police provide to all presumed victims an information sheet explaining what is human trafficking, its various forms, and the available protection and assistance measures. This information is available in fourteen languages. Legal aid remains a problem area, as victims are not entitled *de facto* to free legal representation. They have the right to free legal aid under the same conditions and prerequisites set by domestic law and applicable to all. Free legal aid was introduced by Law 3226/2004, but the conditions set are restrictive. Furthermore, application of this law remains problematic

resulting in few instances where free representation is finally provided. At the moment, some NGOs provide free legal aid and representation in court, but this is done on an *ad hoc* manner as resources are scarce and funding for such programmes is intermittent. An area of serious concern is the quality and, in many instances, the lack of proper interpretation during the trial resulting in victim not being able to fully participate in the proceedings.

Victims of human trafficking are also entitled to protection during the phase of judicial proceedings as witnesses. The witness/victim protection system was introduced with Law 2928/2001 and its provisions include, *inter alia*, physical protection, possibility to testify via video link, omission of name and other personal data in court proceedings, change of identity. However, this law is applied in a restrictive manner as it is activated only in instances that human trafficking is committed by organised criminal ring/criminal gang/association to commit offences as defined in the Criminal Code. Consequently, this leaves unprotected many victims resulting in their unwillingness to testify as witness and low number of convictions. To summarise, while the standards set do comply with the Council of Europe Convention, their practical application and the restrictions imposed result in sub-standard protection of the victims during pre-trial and trial phase.

Human trafficking is a criminal offense and victims have the right to participate in the criminal trial as civil parties and request compensation. This compensation however is limited. In order to secure full compensation the victim will have to file civil law damages against the perpetrator in civil courts. Criminal prosecution is initiated *proprio motu* and the victim is under the obligation to testify as witness if summoned. Though anti-trafficking legislation was introduce in 2002, practical implementation and more importantly results and impact have been less than what originally expected. This was particularly true in the first years of the introduction of the law; in recent years this tendency is slowly changing, with slight increase in convictions. Past experience shows that, in many instances, prosecutors and judges are not familiar with trafficking phenomena and related crimes. As a result, in many cases, they fail to prosecute properly the offences as human trafficking and leads to conviction for lesser offences such as pimping, pandering, illegal prostitution etc. In addition, there have been instances where courts seem to be unable to understand that human trafficking is a distinct criminal offence, no less a felony, and insist to ask for evidence that the victim made special efforts to escape, or was physically abused in order to confirm the charges. Efforts are made to reverse this situation with constant training of judges and prosecutors.

Compensation in criminal proceedings is usually nominal and damages can be obtained through civil law proceedings. This means that the victims will have to initiate a second trial against the perpetrator resulting to an additional financial burden for them, as they will need to employ a lawyer and they will need to remain in the country. Additionally, civil law trials are very lengthy. A positive step was made with the recent Law 3811/2009 regarding the compensation of victims of crimes but, again, it fails to provide a proper solution covering all victims of trafficking. Compensation under this new law is only available for certain crimes and under certain, strict circumstances. In addition, no special compensation fund for victims of human trafficking is in place.

Prevention

The existing preventive measures are not part of an integrated policy or programme. State funded initiatives include awareness raising in countries of origin, targeted media and information campaigns in Greece, trainings for service providers, policy makers and other professionals. However, these initiatives are not centrally coordinated, monitored and evaluated and this can result in duplication and reduced efficacy. Moreover, impact assessment is not centrally coordinated.

In the last years, numerous training programmes have been organised targeting prosecutors, judges, lawyers and police officers to instruct them on the phenomenon, its various forms and criminal dimensions. Furthermore, special courses and seminars have been included in the curriculum of the National School for Judges and in that of the Police Academy.

Regarding dissemination of information, advice and proactive investigations to prevent exploitation of vulnerable groups, the situation remains problematic. Compared to trafficking for sexual exploitation, Preventive

activities against other forms rather the trafficking for sexual exploitation are underfunded and limited in scope.

Monitoring and evaluation system

At present, no comprehensive system of monitoring and assessment of anti-trafficking legislation and policies exists. The NAP does not provide for its monitoring and assessment; however, the body responsible to oversee the progress of the NAP is the Inter-Ministerial Committee. This is a high level body, established in 2004 with the mandate to draft the first NAP and coordinate state policies against human trafficking. In order to ensure effective cooperation, participating ministries in the Inter-Ministerial Committee have appointed contact points to secure monitoring of new developments and follow pending matters. In 2008, the Ministry of Foreign Affairs created a flexible, working level task force to complement the Inter-Ministerial Committee and facilitate cooperation and response to urgent matters.

In addition, a number of ministries and state bodies perform self-monitoring on their own policies and actions. At the moment, statistics on victims, perpetrators, prosecutions etc. are kept only by the Greek Police and are released on a yearly basis since 2003. On the other hand, reports prepared by ministries can vary from yearly to periodic to *ad hoc* basis, as there is no concrete obligation to release yearly reports and statistics. Independent authorities, such as the Greek Ombudsman, perform only incidental and limited monitoring to the extent that it falls under their mandate, e.g. when examining individual complaints against state authorities. Additionally, some NGOs monitor state anti-trafficking policies and initiatives on a yearly basis. Finally, in December 2008, IOM Greece and the Ministry of Foreign Affairs took the initiative to draft a questionnaire to collect data with the intention to create a National Referral Mechanism.

Recommendations

- A formal national referral system, replacing the existing weak informal mechanisms, should be established.
- State should secure long-term funding for the creation of permanent structures for the protection and assistance of victims, staffed with experienced and trained personnel. The role of municipal authorities in protecting victims should be enhanced.
- Special training courses for all police personnel and the judiciary, taking a human rights/victim centred approach, should be regularly delivered.
- Better coordination and cooperation among anti-trafficking state and non-state actors are crucial to establish as well as an independent monitoring and evaluation body.
- More bilateral agreements with countries of origin to strengthen regional cooperation for better protection of victims should be enforced.

7.12 HUNGARY[116]

The phenomenon

The vast majority of victims of human trafficking in Hungary are nationals from the North-eastern region. No official data on trafficked persons are available. In addition, the percentage of national victims would be difficult to clearly established as traffickers "rotate" victims from time to time. As a result, the same person may be a victim of internal trafficking as well as of international trafficking.

The most vulnerable groups are poorly educated young adults, often coming from orphanages – mostly women, and often Roma, from low socio-economic backgrounds. They are the most targeted group for trafficking for sexual exploitation but also for forced labour, especially in the case of men.

Trafficking in children is mainly for sexual exploitation. Hungary is also used as a transit country for men from Central and South-eastern Asia who are trafficked to Western Europe to be exploited for labour purposes. Hungary also reports cases of trafficking for begging and organ removal.

Hungarians are mainly trafficked through Austria to the United Kingdom, Denmark, Germany, the Netherlands, Austria, Italy, Spain,

116. Written by Agnes Rahel De Coll, Hungarian Baptist Aid, Budapest.

Switzerland, Ireland, USA, Foreign trafficked persons are generally from Romania, Moldova, Bulgaria, Russia, Ukraine and they either stay in Hungary or transit to reach Western Europe or the USA.

National anti-trafficking legislation and institutions

In Hungary, human trafficking as a crime was defined in 1998, in Act IV of 1978 on the Criminal Code Title III, Crimes Against Freedom and Human Dignity. Section 175/B, in force since 1 March 1999, defines trafficking in human beings as: "Any person who sells, purchases, transfers or receives another person or exchanges a person for another person, also the person who recruits, transports, houses, hides or appropriates people for such purposes for another party, is guilty of an offence punishable by imprisonment up to three years."

The Hungarian legislation punishes trafficking in human beings for different purposes: for forced labour, forced sexual services, "perversion" or the illegal use of human organs. The punishment can increase to eight years if the victim of trafficking is under 18 years old or is deprived of his/her freedom, or if trafficking is done in an organized manner and for profit.

In practice, trafficked persons often become the subject of criminal proceedings, and risk to be charged for violating labour or migration laws.

There is no law that solely addresses human trafficking; the latter is referred to by Article 175/B of the Hungarian Criminal Code (1978) which only mentions the treatment of perpetrators. The rights or treatment of trafficked persons are not covered by this article. The absence of sufficient legal support for the identification and protection of trafficked persons leads to significant gaps in how they are perceived and treated by the State. The scope of Article 175/B considers only direct and recently committed violence as evidence of trafficking. Accordingly, victims who fail to meet these criteria are not considered exploited or trafficked persons. This is particularly problematic for sex workers, who – according to the Hungarian law – are engaged in "illegal" commercial acts. If there are no signs of violence, they receive little, if any support. Hungary also ratified the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children child prostitution and child pornography by Act 161 of 2009.

In April 2008, under the responsibility of the Minister of Justice and Law Enforcement (MoJLE), the government adopted a National Strategy against trafficking in human beings. Such strategy provided for the appointment of a National Coordinator with the mandate to coordinate all anti-trafficking efforts and to develop a national action plan in cooperation with the relevant national authorities, governmental organisations, and NGOs. However, the National Coordinator held its first meeting in February 2009 and since then very little has been done to implement the drafted strategy. Furthermore, neither a National Action Plan against trafficking in human beings nor an evaluation or monitoring system have been established so far.

The Hungarian government established an Inter-ministerial Anti-trafficking Working Group and an International Trafficking Unit under the National Police in 2004. The working group is coordinated by the National Coordinator, the Secretary of State and the MoJLE. It consists of representatives of governmental and non-governmental agencies such as the Ministry of Foreign Affairs (MoFA), the Ministry of Social Affairs and Labour (MoSAL), the Ministry of Education and Culture (MoEC), the Police Department, the Metropolitan Court, the National Crisis Management and Information Telephone Services (OKIT) under the responsibility of the Ministry of Social Affair and Labour. Furthermore, the International Organization for Migration (IOM), the NGO Hungarian Baptist Aid (HBAid) and Hungarian Interchurch Aid (HIA) are also members of the Working Group and give advice on the practical needs of victims as to the legislation, protection and assistance. The national coordination structure respects the views and the independence of NGOs.

The tasks of the Working Group are governed by a Memorandum of Understanding (MoU), which states the roles, responsibilities and tasks of all members, emphasizing the assistance of trafficked persons by HBAid.

Identification, protection of rights, and referral

The National Strategy states the need for a national identification plan, though identification is not supported or proactively conducted

by a single, comprehensive procedure. The National Crisis Management and Information Telephone Services (OKIT) acts as a hotline that receives phone calls from presumed victims and refer them to the shelters. HBAid and IOM evaluate each case in cooperation with the Police. The MoU allows organisations including NGOs to refer presumed trafficked persons to a specific government agency for formal identification such as Police, IOM, HBAid or HIA. Non-Hungarian nationals who are identified as trafficked persons can seek assistance from Hungarian service providers as well as from their own embassies.

In 2009, the Ministry of Social Affairs and Labour signed an agreement with HIA to finance a shelter for nationals internally trafficked. However, no government-funded shelter is currently available. Also the Hungarian Baptist Aid provides accommodation to trafficked persons of all nationalities. The reflection and recovery period is 30 day long, which can be extended for up to 6 months if the trafficked person is involved in court proceedings and cooperates with the competent authorities during the investigation and prosecution. Residence permits can also be issued on humanitarian grounds.

Act No. LXXXV of the Programme of Protection of Participants of Criminal Procedures, Persons Supporting Jurisdiction 2001, provides for the protection of victims and witnesses of a crime. In the framework of the Witness Protection Programme, the endangered individuals can be moved to a protected residence and their identity can be altered or they can be moved within Hungary or, upon mutual agreement, to another country. The Hungarian state socially and financially supports the protected persons if they are unable to make a living on their own.

Act CXXXV of Supporting the Victims of Crimes and on State Mitigation of Damage 2005 (herein after: *Ást*) is aimed at implementing the EU Council Directive 2004/80/EC 2004 relating to compensation to crime victims. Article 1(1) of *Ást* 1§ stipulates that trafficked persons are entitled to receive victim support. Article 9/A and Article 43(3) (2007) aim to implement sections 5 and 6 of the EU Council Directive 2004/81/EC regarding residence permits 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. Article 43(3) provides that all victims of a crime that cooperate with the authorities are entitled to full information; assistance in meeting needs; legal support; immediate financial aid and redress for damage.

Victim assistance is provided by the county offices of the Office of the Justice Victim Support Service and covers monetary and legal aid and state compensation to victims of a crime when individuals suffered severe physical or mental damage as a direct consequence of a crime. In reality, compensation is rarely granted.

The Victim Support Service can secure psychological assistance for crime victims within the frame of facilitating the victims' interests. At the Budapest Victim Support Service, psychological help is available once a week on the basis of an agreement between the Office of Justice and a psychologist.

Access to justice

If an investigation is initiated, the trafficked person is obliged to testify in court. Frequently, in cases involving non-Hungarian nationals, individuals are returned to their home country before any criminal proceedings take place. It is apparent that the law enforcement officials have difficulty in proving the offences, which refer explicitly to human trafficking and tend to secure convictions for other offences, such as making profit for organizing illegal immigration or smuggling.

Under Article 9/A, the competent authorities have to inform presumed foreign trafficked persons that they have one month to consider whether they are willing to co-operate with the law enforcement authorities, are entitled to a temporary residence for a reflection period, and to receive a residence permit for the period of co-operation with the competent authorities. Article 29(1)e of Act II 2007 provides that any third-country national, or other affiliated third-country nationals, who cooperated with the authorities throughout the investigation and contribute to gather information and evidence is entitled to receive a residence permit for humanitarian purposes.

Prevention

The first Hungarian campaign to address the demand for prostitution involving trafficked persons took place from March to June 2009. The campaign did not target potential or actual

victims but the users of their services, namely men between 25 and 45 years old. The campaign conveyed the following message: while the user is free to decide whether to use the services of a trafficked person, the latter does not have this freedom of choice.

The Crime Prevention Department of the National Police Board in cooperation with the National Bureau of Investigation NBI and IOM drafted a training material for police personnel. The county police forces employed such material to deliver regular trainings for professionals and youngsters at schools, child protection facilities and churches to raise the public awareness on human trafficking related issues, focussing especially on the vulnerable groups.

In 2009, the NGO MONA Foundation for the Women of Hungary, in cooperation with NANE Women's Rights Association and the Association of Street Social Helpers, implemented trainings for police officers and law enforcement officials aimed at providing tools to better combat trafficking and assist victims; raising awareness about the connection between trafficking in persons, sexual exploitation and prostitution; and increasing the participants' sensitivity towards victims of trafficking and persons in prostitution.

In the second half of 2009, MoJLE joint the UNODC awareness raising campaign called "Blue Heart". The aim is to provide information about the phenomenon of human trafficking to the public at large. The campaign is still ongoing.

Monitoring and evaluation system

No monitoring and evalution of the anti-trafficking legistation, policies and practices have been carried out in Hungary so far. They are under proccess.

Recommendations

- Legal rules should consider trafficking as a special and independent problem, there should be a specific law against trafficking.
- Comprehensive standard operating procedures for the identificationa and referral of victims of trafficking should be developed and implemented both by anti-trafficking governmental and non-governmental organizations. Presumed victims need to be treated as victims as soon as there is the slightest indication that a person may be a victim of trafficking, even if there is no sign of psysical abuse, she or he should be treated as such and be promptly granted. Furthermore, assistance and protection rules should be envisaged by laws.
- NGOs or other organization have to be able to provide services for presumed victims through professional staff. Regular and timely financial resources should be allocated to NGOs and services that provide assistance and protection to trafficked persons.
- Regular training and refresher courses on human trafficking related issues should be delivered to all professionals who may get in contract with potential trafficked persons and actual victims.
- Thorough risk assessment procedures are crucial to fully protect the assisted trafficked persons.

7.13 IRELAND[117]

The phenomenon

Ireland is a destination and, to a lesser extent, transit country for, men, women and children trafficked for the purposes of commercial sexual exploitation and forced labour. Women from Eastern Europe, Nigeria, other parts of Africa and, to a lesser extent, South America and Asia have reportedly been trafficked to Ireland for prostitution[118]. The experiences of women[119] in the study, 'Globalisation, Sex Trafficking and Prostitution', illustrate that trafficking into the sex industry is built on repressive methods and can involve kidnapping, deception, forced travel and long journeys, physical and psychological coercion, systematic rape and even gang rape. Other methods include the drugging of women whilst in transit, locking women in rooms and holding them in captivity, removing passports and other documents, withholding earnings and setting

117. Written by Denise Charlton, Immigrant Council of Ireland, Dublin.
118. P. Kelleher, M. O'Connor, Carmel Kelleher, J. Pillenger, *Globalisation, Sex Trafficking and Prostitution. The Experiences of Migrant Women in Ireland*, Immigrant Council of Ireland, Dublin, 2009.
119. Immigrant Council of Ireland, *Sex Trafficking – Summary findings from a report*, Dublin, 2010.

impossibly high repayment sums in return for passports and other documents. Research from this study indicated that some women 'owed' between 55,000 and 65,000 Euros to their traffickers upon arrival in Ireland. Over a 21-month period, between January 2007 and September 2008, service providers identified 102 women who were trafficked and in contact with their services. None of the 102 women knew they were being specifically recruited for the sex industry. According to the researchers of this study, these figures are an underestimation, as trafficking is covert and illegal. Furthermore many women who are trafficked remain invisible. It is mainly women who escape, are rescued or who have paid off their indentured 'labour' that come to the attention of services. Of the 102 women identified as having been trafficked between January 2007 and September 2008, 11 per cent were children at the time they were trafficked into Ireland. The researchers found that poverty, family dislocation, war, violence and childhood abuse were key factors in heightening vulnerability and thus predisposing women to being trafficked.

Victims of labour trafficking reportedly include men and women from Bangladesh, Pakistan, Egypt and the Philippines, although there may also be victims from South America, Eastern Europe and other parts of Asia and Africa. One Irish NGO, the Migrants Right Centre Ireland, (MRCI) has assisted victims of forced labour who have been employed as domestic, agricultural, restaurant and circus workers, along with seafarers and workers in the care and construction sector[120]. According to MRCI, in the cases of forced labour they assisted, repressive methods were also used. In some cases people had received as little as 50 Euros per week for a seventy to eighty hour working week. Perpetrators also used deception, coercion, psychosocial and emotional abuse to exercise control over exploited workers. Many were duped through a variety of means, including debt bondage, the removal of passports and the use of threats, intimidation and violence. Families were often threatened subtly or overtly as an effective means of preventing a person from leaving or seeking assistance[121].

National anti-trafficking legislation and institutions

There remains a lot to be done to ensure that Ireland has comprehensive legislative and administrative structures that address the very serious crime of human trafficking and fully guarantee the protection of the human rights of victims of trafficking. According to researchers Kelleher, O'Connor and Pillenger, statutory systems and services are insufficient to support and protect women and victims of trafficking can find themselves criminalised and treated as illegal immigrants. The consequences for women being detected but not recognised as victims of trafficking are serious and range from being arrested and put into custody to immediate deportation[122].

Act 2008 came into effect on 7 June 2008. Enactment of this legislation brings Ireland in line with the criminal law and law enforcement elements of the EU Framework Decision on Combating Trafficking in Human Beings and the Council of Europe Convention on Action against Trafficking in Human Beings. The Act[123] creates offences of trafficking in children and adults for the purpose of sexual or labour exploitation or organ removal. It also makes it an offence to sell, offer for sale, purchase or offer to purchase any person for any purpose. Penalties range from no prescribed minimum to life imprisonment, which are sufficiently stringent and commensurate with punishments prescribed for rape. In 2008, the Government initiated 96 investigations into alleged human trafficking offences. The Government reported no prosecutions or convictions under its human trafficking statute that year. In 2009, six persons were prosecuted for human trafficking-related offences[124]. To date, there has only

120. Migrants Rights Centre Ireland, Forced Labour: The Case for Criminalisation, MRCI, Dublin, 2010.
121. Idem.
122. P. Kelleher et al., *op. cit.*
123. The offence of trafficking in children existed prior to 2008 through the Child Trafficking and Pornography Act 1998.
124. *Irish Times*, Tuesday, November 02, 2010 (one person for 3 offences related to a minor, one person for offence of attempting to traffic a child for sexual exploitation, three people convicted in Romania as result of cross-border co-operation and one person prosecuted for activities that took place in 2004).

been one conviction based on child trafficking, which occurred in March of this year. However, despite the prosecution being based on trafficking, and while NGOs acknowledge steps have been taken to improve care for separated children in Ireland, there is concern that not one child has been identified as a victim of trafficking (under the relevant Administrative Arrangements which were put in place in 2008) and respectively granted the higher level of protection and care with recovery.

Identification, protection of rights, and referral

In accordance with the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, first introduced in June 2008, a recovery and reflection permit shall be granted to a person who has been identified by a member of an Garda Síochána (Irish police force) not below the rank of superintendent in the Garda National Immigration Bureau (GNIB – the immigration police) as a suspected victim of human trafficking. This provision seeks to implement Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings,[125] which requires that State domestic law provide for a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. In accordance with the Convention, such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.

There is much discussion and debate regarding the development of the identification process under these administrative arrangements. NGOs have repeatedly expressed concerns regarding the length of time it takes to grant a recovery and reflection permit, subsequent provision of services and the limited numbers of victims that are identified. According to NGOs, in practice, permits are granted after many lengthy 'informal interviews' with members of An Garda Síochána and, on occasion, victims of trafficking have already progressed to giving full and detailed witness statements by the time they are granted a recovery and reflection permit[126] While it is appreciated that there may be a pressing need to gather evidence in certain cases, serious concern has been expressed that, in practice, victims of trafficking often do not seem to get any 'breathing space' allowing them time to recover, escape the influence of the alleged perpetrators of trafficking and make an informed decision as to whether to assist the Gardaí/other relevant authorities or not.

The National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland (2009-2012), published by the Irish Government in 2009, excludes victims of trafficking who "allege trafficking as part of an asylum claim" from access to the labour market while other victims are granted such access.[127] This appears to be contrary to the State's obligations under Article 14(5) of the Council of Europe Convention on Action Against Trafficking in Human Beings, which provides that "(…) each Party shall ensure that granting of a permit according to this provision [in other words a renewable residence permit] shall be without prejudice to the right to seek and enjoy asylum". It has been argued that Article 12(4) of the Convention, which provides that "(e)ach Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education", allows for the exclusion of victims of trafficking with pending asylum claims from the labour market. However; where a pending asylum application is the ground for the exclusion from the labour market, victims might find themselves in a situation where their ability to pursue an application for the protection of the State is impaired by the disadvantage suffered as a result.

Furthermore, the current system fails to provide an avenue to obtain residence on humanitarian grounds This includes grounds relating to the victim's safety, state of health, family situation and other factors relating to

125. Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16th May 2005.
126. Submission by ICI on the Interpretation of reasonable grounds in context of Identification of victims of human trafficking – May 18th 2010 – Hilkka Becker.
127. National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland (2009-2012), p. 115.

her/his humanitarian or medical needs. Currently, this only occurs once a victim has been issued with a notification of the Minister's intention to deport her/his pursuant to Section 3(3) of the Immigration Act, 1999 and has successfully made representations setting out the reasons why she/he should not be deported to her/his country of origin or former habitual residence. The process under which a victim of trafficking can currently apply for permission to remain in the State on 'humanitarian grounds' is set out in Section 3 of the Immigration Act 1999 as amended. However, this provision is set to be abolished with the coming into force of the Immigration, Residence and Protection Bill 2010. If the new legislation is enacted as now drafted, the only avenue through which a victim of trafficking will be able to pursue a 'humanitarian claim' would be through an application for international protection.

Applications for refugee status under the Refugee Act 1996 (as amended) or for subsidiary protection pursuant to the European Communities (Eligibility for Protection) Regulations 2006 are a viable option to obtain long-term safety for victims of trafficking. However, the criteria that are to be met in order to qualify for 'international protection' in Ireland are very strict. Furthermore, the Immigration, Residence and Protection Bill 2008 specifies that "the Minister shall not be obliged to take into account factors in the case that do not relate to reasons for the applicant's departure from his or her country of origin or that have arisen since that departure", when considering whether or not compelling reasons exist to grant permission to remain in the State. The 'protection route' will thus not provide adequate protection for many victims of trafficking.

Access to justice

There are some ongoing concerns regarding the long-term situation of victims of trafficking within the State. These risks include inadequate protection from being prosecuted for offences committed by them in the context of their own trafficking, and concerns that the provisions in relation to the compensation of victims of trafficking may not be sufficient and in line with the requirements of the relevant provisions in international law.

Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings obliges Member States to "provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so". However; there is concern that victims of trafficking in Ireland may not be adequately protected against prosecution for offences which they committed as a direct consequence of their situation as trafficked persons, or where they were compelled to commit such unlawful acts.

The majority of immigration-related offences are contained in the Immigration Act 2003 and the Immigration Act 2004 and the failure to comply with a duty prescribed by either act generally entails the commission of a criminal offence under the relevant act. A person guilty of an offence is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or both.[128] However, victims of trafficking for the purpose of sexual exploitation could also find themselves being charged with breaches of the Employment Permit Acts 2003 and 2006 as well as with prostitution-related offences.

To date, the Government has failed to include a non-prosecution clause in the Criminal Law (Human Trafficking) Act 2008. Whilst there is a commitment in the National Action Plan to Prevent and Combat Trafficking of Human Beings 2009 – 2012 to ensure that "a person who is a suspected victim of an offence under the Criminal Law (Human Trafficking) Act 2008 shall not be prosecuted for entry into, or presence in the State for carrying out labour or sexual acts where those acts were a consequence of the trafficking of that person", real security around this issue has not been provided to victims of trafficking in Ireland. The relevant guidelines of the Director of Public Prosecutions (DPP) have been amended to assess if public interest is served by a prosecution but there are not immediate plans to publish the revised version and to make these changes publicly available.

128. Section 13(1), Immigration Act 2004.

The only way in which non-prosecution can be guaranteed at present is through a letter from the Director of Public Prosecutions (DPP) allowing for immunity in relation to specific offences. In order to obtain such a letter however; it is first necessary to list every single offence for which the person concerned is afraid of being prosecuted, including all immigration, employment and public order-related offences. This seems far too uncertain to guarantee adequate protection of the victims of this most heinous crime.

Furthermore, the only avenues for victims of trafficking being granted compensation in Ireland seems to be through the awarding of compensation by a civil court or a court of criminal law, pursuant to the provisions of the Criminal Justice Act 1993, or through the Criminal Injuries Compensation Tribunal. As the Tribunal only covers 'out of pocket expenses' and does not compensate for pain and suffering, the provisions clearly fall short of the level of compensation required by the Council of Europe Convention, at least in situations where the perpetrator cannot be found or has been declared bankrupt.

Prevention

No appropriate measures to prevent demand for sexual exploitation have been developed to date, resulting in an increased amount of indoor prostitution establishments where migrant women from the poorest states constitute up to 90% of the women for sale. The Government plans to review its prostitution regulation amidst a national campaign to tackle demand for commercial sex in Ireland.

Recommendations

- Making Provision for regularising immigration status/immunity from prosecution - All trafficked women who come forward should not be criminalised for their undocumented status in the country and should be facilitated in regularising their status if required. Victims of trafficking should not be charged with administrative or criminal offences such as illegal residence, irregular earnings or other criminal activities.
- Institutional Cooperation between key actors in the identification process is needed in order to achieve a reliable identification process. Cooperation should be an ongoing process (as recommended by the CoE Convention and the OCSE guidebook). While the AHTU consultations are some form of cooperation (in setting up systems of identification), international documents recommend a continuous process of cooperation in identification and support. The identification process should ensure a low threshold and a process that in practice 'reverses the burden of proof' should also be adopted.
- Provision of designated residence permits for VOT, as outlined in the CoE Convention - Currently the IRP Bill says an R&R permit may be granted when there are reasonable grounds to suspect that the person is VoT. This is contrary to the CoE Convention stipulating that the R&R permit shall always be granted in these cases. The CoE does not provide for any discretion in relation to identified victims of human trafficking in this regard. To ensure that asylum seekers and other permit holders are not precluded from accessing a temporary residence permit designed for witnesses in criminal investigations. The CoE provides two conditions for the granting of a TRP: 1-Humanitarian needs AND/OR 2-Cooperation with an investigation, of which Ireland has only opted for the latter. The decision taken in Ireland to exclude certain victims of trafficking from these provisions appears to be yet an additional condition. There is a lack of possibilities to apply for a permit to remain in the State in cases where humanitarian reasons dictate so but cooperation with the authorities is impossible and/or there is not an investigation ongoing. The IRP Bill 2010 does not provide for humanitarian permits for adult victims other than through the mainstream asylum process, which is not always appropriate for trafficked persons.
- Provision of Legal Aid to Victims of Trafficking - Should be provided from the outset and due to the specifics of the immigration system and the established process of identification, should include legal representation. Furthermore, the need for a legal representative is dictated by the existing compensation possibilities and the access to non-prosecution for victims, both requiring the intervention of a solicitor.

7.14 ITALY[129]

The phenomenon

Italy is mainly a destination country for trafficked persons but it is also a transit country for many victims eventually exploited in other EU Member States. The exploitation exerted on women is mainly of sexual kind, while men are generally exploited for labour purposes and minors – of both sexes – may be exploited in prostitution, forced begging and forced illegal activities. In recent years, also some transgender persons have been trafficked and sexually exploited in Italy.

Several are the countries of origin of the victims: Romania, Nigeria, Albania, Moldova, Russia, Ukraine, Bulgaria, China and, to a lesser extent, Belarus, Brazil, Colombia, Kazakhstan, Kyrgyzstan, Pakistan, Bangladesh, Ecuador and other countries. The average age group of trafficked persons for sexual exploitation is between 20 and 25, even though the percentage of minors seems to increase constantly. Older trafficked people are instead victims of labour exploitation.

Trafficking in persons is mostly carried out through the same channels and with the same mechanisms used to smuggle irregular migrants into Italy. In many cases, the line between smuggling and trafficking – though clearly drawn by the law – fades when put into practice. This is especially true for labour exploitation. Trafficked persons are recruited, transferred and exploited in different ways according to many variables such as the places of origin, the degree of awareness of the trafficked person, the style of recruitment, the type of criminal network involved, the relationships between the exploited person and the trafficker(s)/exploiter(s), and so on. The routes to reach Italy constantly change in order not to be detected by law enforcement agencies.

Victims of sexual exploitation are generally recruited by an acquaintance, a friend, or even a relative. Sometimes they directly approach the recruiter, which can also be a travel or an employment agency. They are generally offered jobs in Italy as waitresses, factory workers, bar tenders, nurses, baby-sitters or dancers and, sometimes, openly as prostitutes, strip teasers, call girls etc. In most cases, however, they are deceived about the severe working and living conditions they will have to face. Sexual exploitation can take place either outdoor or indoor in night clubs, apartments, hotels, massage parlours, etc.

Generally, women trafficked for the purpose of sexual exploitation are deprived of their passports, and they experience deceptive and abusive behaviours and are required to make at least a minimum amount of money per day. Deprivation of documents seems a common practice also in labour exploitation. Both on the streets and in indoor premises, trafficked persons are controlled directly. Currently, the quality and means of control have changed: less frequently than in the past exploiters exert constant and coercive control. "Negotiated exploitation" have emerged, which entails the sharing of earnings on the part of the trafficked persons and the enjoyment of a more significant degree of freedom. These new *modi operandi* allow traffickers and exploiters to obtain the victims' confidence and loyalty. Due to the working environment, control appears high in labour exploitation.

Finally, it must be highlighted that the studies performed on trafficking in persons mainly concern women and sexual exploitation. Less knowledge is available about men or transgender persons trafficked in the sex market; also studies on child trafficking are scarce and even research on trafficking for forced labour is still at the very beginning.

National anti-trafficking legislation and institutions

Trafficking in human beings is a distinct penal offence carrying penalties for all forms of the crime (Art. 601 of the criminal code related to Art. 600 criminal code) and crossing of national borders is not a prerequisite for the offence of trafficking. Italian criminal law punishes attempt to commit any crimes, trafficking in human beings included. Moreover, it is worth noting that Article 602 foresees a penalty for the cases other than the ones referred to in the Article 601, which involves the purchases or sales of a person in condition of slavery.

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Trafficking in minors is punished harsher (see Art. 601 penal code) and the crime is that of trafficking, not a special crime. Law does not specify that none of the abusive means of recruitment need to occur if a child is involved. Finally, Article 5 of Law no. 228/2003 ("Measures against trafficking in persons") also punishes associations, companies and all legal entities involved in trafficking.

Despite this comprehensive legal framework, there is no National Action Plan on trafficking in human beings. In addition, no national co-ordination structure exists as foreseen by the Council of Europe Convention. However, in 1999 the Presidency of the Council of Ministries – Department for Equal Opportunities created the Inter-ministerial Committee for the implementation of article 18[130] (*Commissione inter-ministeriale articolo 18*). In 2007, the Committee was renamed as "Inter-ministerial Committee for the support of victims of trafficking, violence and exploitation" (*Commissione interministeriale per il sostegno alle vittime di tratta, violenza e grave sfruttamento*). This body is responsible for the co-ordination of the protection programmes aimed at the trafficked persons.

The Department for Equal opportunities at the Presidency of the Council of Ministers chairs the Inter-ministerial Committee. It is composed by representatives of the Ministry of Justice, Ministry of Interior, Ministry of Labour, Health and Social Policies, Department for Family Policies, Unified Conference (Regions, Provinces, Municipalities). The main Committee's tasks are to direct, plan and supervise the funds for the assistance and protection projects, so called Article 13 projects and Article 18 projects. Each year the Department for Equal opportunities launches a call for proposal to fund the Article 13 and 18 projects. Regional, Local authorities and NGOs can submit a project proposal.

Identification, protection of rights, and referral

In Italy there is no formal identification procedure or a defined set of indicators to identify cases of trafficking in human beings. The organisations running Article 13 or 18 programmes and law enforcement agencies are in charge of the identification process and they rely on their own experience. In general, if law enforcement officers identify a trafficked person, they will address her/him to organisations running the above-mentioned programmes. If the trafficked person gets at first in touch with NGOs, the latter will contact the law enforcement agencies when the assisted person decides to join the protection programme and a formal complaint (judicial procedure) or a statement (social procedure) has to be submitted to the law enforcement agencies. Trafficked persons might have access to the programme through other channels and/or the support of different actors such as: social services providers, voluntary organisations, acquaintances, friends, clients, partners, national hotline (*Numero Verde Anti-Tratta).*

At the local level, there are agreements signed by police forces, public prosecutor office, health services, NGOs and other relevant actors, which set guidelines to identify and refer trafficked people. Some of the agreements are general and not really operational. Some are more effective in practice and they include standard operating procedures to identify and refer trafficked persons.

There is no formally established reflection period in the Italian legislation. Because the anti-trafficking protection system was already set up when European legal standards introduced the reflection period, Italy did not change its system. As a matter of fact, a reflection period is informally granted, with the great advantage not being limited within a certain number of days.

These programmes are an example of the welfare mix culture, which is pervasive in Italy. They are based on the collaboration between public and private agencies. The programmes allow trafficked persons to receive protection and services. At first, the person is put in a safe place and, then, s/he benefits from an informal reflection period. S/he will be heard by social workers and/or law enforcements officers but there is no rule about the period within which she/he has to make a statement or a formal complaint or at least provide information that

130. The special legal provision that allows undocumented migrants to obtain a residence permit and to have granted help to the access to social services, educational institutions and employment.

enables her/him to access a protection programme if not able or willing to formally report the traffickers/exploiters ("social path" of Art. 18 providing for unconditional assistance). NGOs and law enforcement agencies will jointly evaluate the situation and cooperate to protect the person. If the cooperation is well established the system works smoothly. If NGOs lack in experience in dealing with authorities or law enforcements officers are not well trained to interview a trafficked person and gain his/her trust, the effectiveness of protection can be under risk.

Another special feature of the Italian legislation is the residence permit for humanitarian reasons (so called Article 18 residence permit). It applies to foreigners in situations of abuse or severe exploitation where their safety has been endangered as a consequence of attempts to escape from a criminal organisation or as a result of prosecution actions against the traffickers. Two separate ways of obtaining the residence permit actually exist. A judicial procedure (so called "judicial path"), and a social procedure (so called "social path").

The judicial path implies the cooperation with the police and the prosecutor. Within this procedure, the trafficked person files a complaint; then, the public prosecutor has to propose to grant to his/her a residence permit or has to agree with the request made by the police forces.

The social path requires the submission of a "statement" (containing provable key-information) by an accredited Article 18 agency or by the public social services on the behalf of the trafficked person. There are many reasons behind this social path (e.g. trafficked persons might not have relevant information or the criminals have already been prosecuted) but the most relevant is that at the beginning, people who went through the hard experience of trafficking, are too scared for their own or their relatives' safety to press charges. In the Italian experience, many trafficked persons, after having been reassured and gained new trust in institutions, came to the decision to file a complaint against their traffickers and/or exploiters. This happens because trafficked persons have granted protection regardless of their immediate cooperation with the law enforcement authorities. This distinctive feature of the Italian system, together with the existence of an informal reflection period, gives important results in the fight against human trafficking.

The Article 18 residence permit is renewable and can be converted in work or study permit. Consequently, the person does not need to go back home once the programme is over. In presence of a regular job, s/he can remain in Italy accordingly to their work contract's conditions and, eventually, apply for permanent residency in conformity with the immigration rules in force. This means that trafficked persons are greatly affected by changes in immigration rules.

According to the rules, the Article 18 residence permit may apply both to children and adults. In addition, any foreign child cannot be expelled, whatever is her/his situation in Italy.

As previously reported, the Article 13 and 18 programmes provide accommodation and other services to trafficked persons.

The Article 13 programme lasts three months that, when applicable, may be extended for three more months. The accredited organisations offer a set of protection and first assistance measures (accommodation, social and legal assistance, and health care services) to victims of slavery, servitude and trafficking. Once the programme is over, foreign victims can receive further assistance through the Article 18 programme.

The Article 18 programme ("Social assistance and integration programme") is longer and more comprehensive, providing for access to social services, educational institutions, and enrolment with the State's employment bureau, access to employment. The final aim is, in fact, the social and labour inclusion of the assisted persons.

The funded projects do not necessarily provide all types of services directly. In several cases, in fact, the wide range of activities and services is assured by the projects' network. The projects work as reception centres and assistance providers that offer a so-called "individualised programme of social protection" tailored to the needs of the persons sheltered and in compliance with the law.

Within each individual programme various activities and services are provided to the victims: board and lodging; social counselling; psychological counselling; social and health care services accompaniment; free legal consul-

tancy and assistance; social activities; educational and training activities; Italian language classes; education; vocational guidance; training activities; job placement.

Even though also men and boys trafficked for purposes of labour exploitation, forced begging and illegal activities are assisted by the protection programmes, women and girls still remain the largest group mainly due to the consolidated experience in detecting trafficked persons for sexual exploitation.

Due to the absence of a comprehensive monitoring system, it is almost impossible to state the number of persons assisted, although not identified as trafficked ones. According to the last available data, 14.689 trafficked persons were assisted through the Article 18 programme between 2000 and 2008. The Article 13 Programme provides basic measures of protection. No database keeps track of such distinction, between those identified trafficked victims and those who are not. The system works equally for men, women, female and male minors. But there is a relevant gender imbalance in the availability of services. The experience developed with trafficked women in sexual exploitation needs to be used to raise the availability of services offered to men.

Italy has a tax-based National Health Care System granting a uniform level of coverage throughout the country. Nationals and authorised residents have to register with the NHS at the local health administration (*ASL – Azienda sanitaria locale*) that provides them with the health card (*tessera sanitaria*). Since 1998, undocumented migrants have access to the services offered by NHS as long as they are granted a "STP code" (a code for "temporarily present foreigners"). Such code allows them to have free of charge access to a wide range of health services: a) urgent and essential medical care b) preventive care c) care provided for public health reasons, including prenatal and maternity care, care for children, vaccinations and diagnosis and treatment of infectious diseases. So, the health coverage is connected with the status of migrants and not with the one of trafficked person.

European trafficked persons have full access to NHS when they are assisted by an Article 18 or 13 programme. Once completed the programme, they enjoy all the rights of European citizens if they have a job and, consequently, the legal residence. If they have lost the legal residence, they have the same rights of third country nationals who have a "STP code" and the State provides them a so-called "ENI code" (*Europeo Non Iscritto*: Unregistered European).

Return to the origin country does not represent a hot issue, at least for adults. Numbers are low and the procedure seems to be highly standardised, and always including risk assessment. It is difficult to evaluate the situation concerning minors. The written rules do not always work in practice. Generally, the protection is guaranteed, but in some border areas of the South, the situation is highly unclear.

Access to justice

There is no special information provided to witnesses from governmental agencies; in general, information regarding criminal proceedings is given by the lawyers of the trafficked person. In the early stage of the criminal proceeding, law enforcement officers roughly informed him/her about the consequences of their statements. But the accuracy of the information provided cannot be evaluated because it depends on law enforcement officers and it changes in time and place.

The Italian protection system outside the court is well developed because it is part of the Article 13 and 18 programmes. Moreover, in some particular circumstances, the trafficked person can receive protection under law no. 82/1991 for the protection of witnesses of offences committed by organized crime members. In this case a concrete help to the investigation is required. The protection might include bodyguarding, safe and secret place to live, identity chance; however, these measures are not common for trafficked persons. Moreover, the Ministry of Interior can establish special administrative procedures of protection but, again, this is not ordinarily provided to trafficked persons.

Regarding the in-court protection, several protection measures are available. It is worth underlining that they are not special provisions for trafficked persons but they are routinely used when situations are sensitive. More protective rules are foreseen for minors in case of sexual violence but not specifically for victims of child trafficking. However, the trafficked person who

These measures do not include the possibility to hide the identity of the trafficked person from the person(s) against which s/he presses charges. By law, in fact, the defendant has the right to know who is accusing her/him. The biggest unsolved problem is the protection of family members (or any other significant person) in the origin country. In this regard, the cooperation between the competent Italian authorities and their counterparts of other countries is growing randomly.

Italian legislation allows trafficked person to receive compensation for the damages suffered. However, this possibility is frequently hampered because the convicted trafficker is insolvent. If the latter has no money, the victim cannot receive any compensation. In general the possibility for the victim to receive compensation increases if traffickers may obtain a reduction of penalty in the criminal proceedings. According to the criminal procedure, judge may grant a reduction of the penalty when the defendant compensates the victim.

Prevention

The Italian government does not appear particularly involved in actions to prevent human trafficking. Firstly, money invested in development cooperation is decreasing; secondly, no comprehensive programmes to prevent trafficking in human beings are implemented. In last few years, the Ministry of Foreign Affairs has been funding prevention projects mainly in Central America, South-East Asia and Western Africa (namely, in Nigeria).

Monitoring and evaluation system

In Italy, no national thorough monitoring and evaluation system run by governmental offices or private organizations is in place to assess the anti-trafficking legislation, policies and interventions. Some NGOs and local authorities have an internal evaluation system of their anti-trafficking services but their reports are not available.

The Department of Equal Opportunities is improving the monitoring and evaluation system; however, it has never issued a comprehensive report on the anti-trafficking interventions it yearly funds throughout Italy. Generally in the country – not specifically for the issue of trafficking – data collection, monitoring and evaluation systems are lacking.

Recommendations

- Standard operational procedures to identify and refer presumed trafficked persons need to be improved and shared by all anti-trafficking actors throughout the country;
- Ad hoc services and measures for victims exploited in the labour market, forced begging or illegal activities need to be promptly provided to fully protect the rights of all trafficked persons;
- A National Action Plan against Trafficking and Exploitation of Human Beings and a comprehensive formalised National Referral Mechanism must be developed and enforced with no further delay;
- Prevention activities targeting vulnerable groups, trafficked persons and the public at large need to be promptly implemented;
- An independent National Rapporteur should be appointed to establish a sound and effective monitoring and evaluation system on the anti-trafficking legislation, policies and interventions carried out in Italy.

7.15 LATVIA[131]

The phenomenon

Latvia is mainly considered to be the country of origin for the victims of human trafficking. In the years 2005-2008, when the national economy developed very rapidly, Latvia became also a transit and destination country for trafficked persons. At present, under the circumstances of economic crisis, Latvia is again mainly regarded as a country of origin.

In the case of Latvia, the major groups targeted by traffickers are girls and women, who are trafficked for sexual exploitation mainly to Great Britain, France, Germany, the Netherlands, Italy, Denmark, Spain, Greece, Ireland, Finland, as well as to non-EU countries, namely Japan and United Arab Emirates. There had been cases, when Latvia had become the country of destination for persons trafficked from

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Belgium, Portugal and Thailand. According to the Ministry of Interior of the Republic of Latvia, the potential victims of human trafficking are 18-35 years old Latvian females with no education, employment and motivation to make efforts and work to improve their life quality.[132] At present, however, the structural factors should be emphasized as the main determinants for the increase of human trafficking, i.e. the unemployment level (22.3% in March 2010), low wages, irregular employment, etc. Thus, the number of potential victims of human trafficking can significantly increase, involving both men and women of different ages, especially in case of trafficking for forced labor.

The scale of human trafficking increases whenever the economic situation of the country worsens. The NGOs emphasize the increase of the number of fictitious marriages in the European Union Member States (particularly in Ireland), where Latvian women seriously run the risk to become victims of trafficking. Street and apartment prostitutes are a vulnerable groups targeted by traffickers who recruit them by offering a false opportunity for legal and well-paid prostitution work in the brothels of Germany, the Netherlands and other countries.[133]

According to the official statistics, trafficking of adults and children is almost non-existing in Latvia. However, according to the US TIP Report, Latvian men and women are trafficked into the United Kingdom to be exploited into the labour market. Clear interpretation of the definition of trafficking for forced labour is required as well as efforts to prosecute cases of trafficking in general and those for forced labour in particular.

National anti-trafficking legislation and institutions

No specific anti-trafficking law is enacted in Latvia. On a general scale, human trafficking is forbidden by the State Constitution of the Republic of Latvia, Chapter 8 "Fundamental Human Rights". The definition of human trafficking and the explanation of related concepts are provided by the Criminal Law, while other pertinent offences are covered by different laws and regulations (e.g. prohibition to involve children in begging, prostitution, ban to sell organs, etc.). In general terms, the Latvian legislation complies with the international requirements, and it is progressively improving. For example, more severe punishments to prosecute human trafficking have been included in the legislation. Nevertheless, in the 2010 U.S. State Department TIP Report, Latvia was placed in the Tier Two Watch List, which means that the country does not fully comply with the minimum anti-trafficking standards, but it is making significant efforts to reach them. This assessment is mainly based on the state-of-the-art as to the investigation and punishment of offenders.[134]

At present, the State Programme for the Prevention of Human Trafficking (2009-2013) is topical in Latvia. It implements the activities started by the former programme (2004-2008), but is also focuses more on assistance of victims, prevention measures and research activity. Unfortunately, the full efficiency of the programme is hindered by the difficult national economic situation and the lack of economic resources allocated.

In March 2010, the Working Group for the Co-ordination of the Implementation of the State Programme for the Prevention of Human Trafficking (2009-2013) was set up. It is composed of 18 members, namely officials from the Ministry of Interior, Ministry of Welfare, Ministry of Education and Science, Ministry of Justice, Ministry of Economy, and Ministry of Foreign Affairs, State Border Guard, State Police, Office of Citizenship and Migration Affairs, the Prosecutor General Office, the parliamentarian of Riga Municipality, State Agency of Medicines of Latvia; and members of two NGOs (RCW Marta, The Shelter "Safe House") and one representative of IOM Latvia. The working group has to ensure the operational information exchange and the co-ordination of the prevention activities.

Before 2010, an informal inter-institutional working group was in place in Latvia that carried out activities by means of *ad hoc* meetings; however, the Ministry of the Interior is respon-

132. www.iem.gov.lv/lat/nozare/in/
133. Idem.
134. U.S. State Department, TIP Report 2010 http://riga.usembassy.gov/tip.html

sible for anti-trafficking policies in Latvia. In general terms, the abovementioned working group is considered the National Rapporteur, whose core mandate is to implement the programme. However, such working group runs the risk to only represent the government's viewpoint, thus expressing a biased opinion on the trafficking situation in Latvia.

Identification, protection of rights, and referral

In Latvia, a formal procedure to identify, grant the victim status and refer a presumed trafficked persons to assistance services is currently in place. Victims of trafficking can be officially identified by law enforcement agencies, the Prosecutor's Office, and the service providers (NGOs). However, NGOs are not entitled to identify trafficked persons independently. In case the service provider is the first point of contact of a presumed trafficked person, an identification commission must be convened at the initiative of the NGO. The identification commission comprises a social worker, a psychologist, a lawyer representing the presumed victim, a general practitioner, police officials, and other specialists, depending on the case. The commission assesses whether or not the person is a victim of trafficking according to a set of official regulations. The identification process is based on the examination of documents and information presented by the lawyer of the presumed victim. The commission of a public institution or of a NGO evaluates the case, reports to the Ministry of Welfare, which takes the decision concerning the fund allocation for the assistance of the victim. The identification procedure has to be completed within three days at the latest and the information communicated to the Ministry of Welfare. The Ministry can take up to three additional days to decide what services are to be provided. During this interim period, the presumed victim has no status and therefore legally no rights to access protection and assistance measures. For urgent cases, however, access to shelter services has been granted based on an informal procedure initiated by the NGO in direct contact with the Ministry of Welfare in charge for authorizing the provision of services until the identification commission is summoned and complete the process. This is a good practice that should be formalized.[135]

In 2007, Latvia adopted the law "On Residence of a Victim of Trafficking in Human Beings in the Republic of Latvia" in compliance with the European Council Directive 2004/81/EC of April 29, 2004, providing the conditions for third-country nationals to stay in Latvia. The reflection period is 30 day-long, while the temporary residence permit is issued for at least 6 months and it may be prolonged if the person agrees to collaborate with the competent authorities. According to this law, victims of human trafficking (and their children, if any) can be granted safe accommodation, first aid, psychological counseling, legal assistance, health care, emergency medical treatment, training and educational programmes.

In Latvia, very few cases of trafficking have been detected: 3 in 2008 and none in 2009. As a result, there is a serious lack of operational skills and practices concerning the protection, assistance and social inclusion of trafficked persons. So far, then, law still remain scarcely used at the practical level. The studies on the social inclusion of migrants (not specifically on victims of human trafficking) prove that the immigration policy in Latvia is inflexible and non-supporting. Moreover, scarce information is available on the services offered to migrants and whether the return to the countries of origin takes place in conformity with the existing legislation. According to the NGOs, the assisted return procedures for trafficked persons are unclear both to service providers and victims. However, cases of good collaboration between public institutions and NGOs exist even though they are not based on formal agreements.

Access to justice

The Latvian law provides for the legal protection of victims of human trafficking. In practice, according to NGOs, such law is not fully observed. For instance, the State should grant a safe accommodation, but, on the contrary, the latter is provided by NGOs or, in some cases, by the social services of local governments. NGOs, though, lack financial resources to meet the needs of all assisted persons.

135. UNODC, *Human Trafficking in the Baltic Sea Region: State and Civil Society Cooperation on Victim's Assistance and Protection*, Vienna, 2010.

The jurisprudence proves that the testifying by means of videoconference or in another way is not introduced in Latvia yet. No special procedures for hearing involving trafficked persons have been implemented. Information on the criminal case is provided by the law enforcement agencies and the NGOs. Notably, several persons refuse to get the victim's status and to collaborate with the police; this underlines the lack of trust towards these institutions. According to the annual report of the Ministry of Interior, trafficked persons are informed on the opportunity to receive compensation and some persons are reported to have applied for compensation. Unfortunately, no information is available on the outcomes of these requests. The lawyers of NGO RCW Marta find that there is a significant discrepancy between theory and practice also in this regard.

Prevention

The law enforcement agencies are aware of the need to combat human trafficking, but misperceptions and stereotypes are still common. For example, women involved in prostitution are thought to have deliberately chosen such "profession" and, thus, they have to personally face any possible consequence. Officials of several public institutions share such viewpoint, which is also included in several publications. In the latter, individual factors are emphasized as the main causes of trafficking, thus, relieving the society and its institutions from taking any responsibility to prevent and tackle human trafficking. Sometimes, it seems that anti-trafficking efforts are determined by the EU directives and programmes rather than by the trafficking consequences suffered by nationals or migrants in Latvia.

Public institutions, NGOs and the Riga Office of the International Organization for Migration (IOM) carry out measures to prevent human trafficking. Most of the work is, however, performed by NGOs and IOM, especially as to the return of victims, the educational activities, fund raising for the hotline, etc. Public institutions are more involved in the training of their employees and the personnel of institutions of local governments (e.g., the specialists of orphan's courts), which are part of prevention activities awareness raising campaigns in schools. In addition, the Ministry of Education included human trafficking as a topic in the human rights curriculum of all high schools. Information sheets and travel guides for tourists also to discourage sex tourism in Latvia were funded by the government and distributed by the Latvian State Tourism Agency.[136]

At present, knowledge on the phenomenon of human trafficking has increased, however, it is still insufficient. Both public and NGOs take part in different studies, but mostly within the framework of international projects. However, the research findings have an insignificant impact at the national level. Also according to the State Programme for the Prevention of Human Trafficking (2009-2013), there is a lack of research on human trafficking and, consequently, investigations on this phenomenon are planned to be carried out. In the past, some studies were issued on anti-trafficking policies. In 2005, a model for the inter-institutional collaboration at the national level for the prevention of human trafficking was developed through the EU funded EQUAL project "Open Labour Market for Women" in collaboration with the State of Latvia. Unfortunately, the model resulted from the work carried out within such project has not been introduced yet, although it would be an efficient mechanism to tackle human trafficking related-issues. For example, the model foresees the establishment of a coordination agency that would become the first point of contact for all presumed victims of trafficking and be responsible to ensure systematic referral.

Monitoring and evaluation system

The official monitoring of the anti-trafficking activities run in Latvia is carried out by the Ministry of the Interior through the abovementioned Working Group for the Co-ordination of the Implementation of State Program for the Prevention of Human Trafficking. The Ministry of Interior is responsible for gathering information on the progress made on the implementation of the action plan (self-monitoring and evaluation process) and for drafting the annual report which is submitted to the Cabinet of Ministers. Also NGOs provide information on the annual achievements both to the Ministry of Interior and the U.S. Embassy in Latvia. It is

136. US State Department, *Op. Cit.*

interesting to underline that the reports on human trafficking issued by the Ministry of Interior often contradicts with the annual TIP report prepared by the U.S. State Department.

Theoretically, both public institutions and NGOs are involved in the monitoring of human trafficking in Latvia; however, in reality, there is no common understanding of this phenomenon since each organization has a different point of view and available information. It shows also that the responsible/involved organizations do not want to collaborate for the sake of a common goal. It is possible that all the agents, potentially involved in the prevention of human trafficking, are not involved in the monitoring. For example, the assistance to victims of human trafficking may be provided also by the social services of local governments, but the report prepared by the Ministry of the Interior does include information available for the local governments.

Sometimes, reports and statements on human trafficking in Latvia are also issued by NGOs; however, in most cases, such reports are not well organized and information fully systematized and summarized.

In conclusion, it is important to highlight that up to now no common comprehensive methodology has been developed in Latvia for the evaluation of the legislation, policies and practices to prevent and fight human trafficking and assist trafficked persons.

Recommendations

- It is highly recommended to adopt the model for the inter-institutional collaboration at the national level for the prevention of human trafficking (developed within the framework of the EU funded EQUAL project "Open Labour Market for Women"). Such model could include all anti-trafficking agencies and provides for both theoretical (legislation, research) and practical (assistance, rehabilitation) impact.
- Promote institutional efficiency to fight irregular employment in order to prevent and fight trafficking for forced labour.
- Increase knowledge on human trafficking within the regional institutions responsible for the prevention and fight of such crime

7.16 LITHUANIA[137]

The phenomenon

Lithuania is a source, transit and destination country for human trafficking, involving mostly children and women trafficked for sexual exploitation.

Lithuania is principally a country of origin of victims trafficked to the United Kingdom, Germany, the Netherlands, Italy, France, Greece. After joining the EU, Lithuania became a transit country for victims from neighbouring and Asian countries. Domestic trafficking also occurs, targeting mainly girls and women from villages and smaller towns trafficked to bigger cities, where they are forced to work as prostitutes.

A significant percentage of victims are underage girls (37%) and mostly between 14 and 18 years old. The educational background seem to be rather low since, for instance, in 2008, about 40% of all victims did not have basic education.

Data on trafficked persons are rather diverse in Lithuania since no unified data collection system is currently in place. In 2009, according to the law enforcement agencies, 57 victims were identified and referred to NGOs; the latter assisted 170 trafficked persons; and the Ministry o Foreign Affairs referred to local NGOs 9 nationals identified abroad.[138]

No data on trafficking in human beings for purposes other than sexual exploitation are available for Lithuania.

National anti-trafficking legislation and institutions

The Lithuanian anti-trafficking legal framework complies with the international and European standards, including the EU Framework Decision on Combating Trafficking (2002) and the Council of Europe Convention Action against Trafficking in Human Beings (2005).

In Lithuania, human trafficking of both children and adults is an offence provided for by Articles 147 and 157 of the criminal code, which prosecute most forms of trafficking. The legal persons' liability is also foreseen in such norms. Penalties range from a fine up to 15 years' imprisonment.

137. Written by Giedrė Blažytė, Missing Persons' Families Support Center (MPFSC), Vilnius.
138. US State Department, *TIP Report*, 2010.

The anti-trafficking legislation does not make any distinction between internal and transnational trafficking. Moreover, it does not cover human trafficking for all purposes, such as, forced begging, forced illegal activities, domestic servitude or benefit fraud. Servitude is also not provided for as an offence, while slavery is prohibited and included in the part of the anti-trafficking article focusing on forced labour (Art. 147).

Activities related to prostitution are criminalised, such as, working in prostitution, exploitation of prostitution of others, paying for commercial sex with an adult. These offences are generally charged also in cases of trafficking for sexual exploitation.

The first national Programme for the Prevention and Control of Trafficking in Human Beings was carried out in 2005-2008 as a continuation of the Programme for Human Trafficking and Prostitution Control and Prevention (2002-2004). The second national programme started in 2009 and will finish in 2012. The Lithuanian government has already confirmed that the third national programme for prevention and control of trafficking in human beings will follow.

Identification, protection of rights, and referral

The Ministry of Interior is responsible for developing the governmental anti-trafficking policies, thus, acting as the national coordination institution to counter-act trafficking in the country.

The National Coordination system in Lithuania consists of three levels. A National Coordinator (Vice-minister of Interior), appointed by the Minister of Interior in 2007, belongs to the first level. Part of the second level is the Inter-agency working group, which is composed of representatives from the Ministry of Interior, law enforcement institutions and other agencies implementing the activities foreseen by the national plan. Although several NGOs and IOM Vilnius Office implement anti-trafficking measures and provide assistance to trafficked persons, they are not part of the Inter-agency working group. The third level is made of 10 police officers (one per each district police office). The latter collaborate with representatives of municipalities, NGOs, social workers, social pedagogues, etc. NGOs are thus included in the third level since they play a major role in implementing counter-trafficking activities and providing all kind of assistance measures to victims during their social inclusion process.

In 2006, the Trafficking in Human Beings Investigation Unit of the Lithuanian Criminal Police Bureau was established to specifically investigate and prosecute human trafficking and related crimes. However, no single agency is tasked to officially identify a victim of trafficking. Governmental institutions, intergovernmental organizations, and NGOs share such responsibility.[139]

According to the IOM depersonalized database, victims are identified as such as envisaged by the UN Palermo Protocol, ratified by Lithuania in 2003 (Art. 3 identifies victims independently of their will to participate in pre-trial investigation). The IT and Communication Department under the Ministry of Interior register data on persons identified as victims in pre-trial investigations and suspected persons according to Articles 147, 147(1), 157 of the Criminal Code. According to THB Investigation Unit, a list of indicators is used to identify victims of trafficking. The list consists of two parts: one deals with legal features and the other enumerates risk factors – both with boxes to be ticked as relevant. The procedure involves law enforcement, NGOs and other specialists.

Currently, the Ministry of Interior is drafting a special legal act on victims' identification procedure. This would be a very important step forward to improve the victims' identification process and, consequently, to further develop their social inclusion. It would also contribute to have a clearer picture of the scope of human trafficking in Lithuania.

In Lithuania, neither a formal identification system nor a reflection period is provided for by the legislation. However, according to Art. 30 of the Law on the Aliens' Legal Status of the Republic of Lithuania (29 April, 2004. No X-1442), "the alien shall not be expelled from the Republic of Lithuania or returned to a foreign state if he has been granted the cooling-off

139. Recommendations for victims of human trafficking identification process are available: www.anti-trafficking.lt/index.php?s_id=63&lang=lt

period according to the procedure established by the Government of the Republic of Lithuania, during which he, as the present or former victim of human trafficking, has to pass a decision on cooperation with the pre-trial investigation body or the court." Moreover, mostly NGOs engaged in the anti-trafficking field provide a sort of informal reflection period, whose duration depends on individual case basis.

Lithuanian citizens, whether they are presumed 'trafficked' persons or formally identified as 'trafficked', receive the following assistance measures by NGOs: board and lodging; health assistance; social and moral support; psychological and psychiatric counselling; legal counselling and pre-trial and trial assistance; support to integrate into the labour market; leisure time activities; follow up assistance; etc.

The first shelter for victims of human trafficking was established in 2001 by the NGO Missing persons' families support centre (MPFSC). Temporary housing is also provided by the Lithuanian Caritas. This service is mainly for girls and women; no shelter for trafficked boys or men is available in Lithuania. Temporary housing as well as other support services are implemented in the framework of the projects "Social support for victims of human trafficking, their security and integration into society", supported by the Ministry of Social Security and Labour. However, in the last 18 months, the Government has not supported any integration service due to the negative economic situation in Lithuania.

According to the Law on the Legal Status of Aliens' only "an adult alien who is or has been a victim of human trafficking and cooperates with pre-trial investigation body or court" (art. $49^{(1)}$) is able to receive assistance foreseen for aliens who granted temporary protection. Among the services that are available for aliens are: an access to free accommodation; provision of information regarding their legal status in Lithuania in their native language or in a language which they understand; employment in Lithuania during the period of temporary protection; ability to receive a monetary allowance if they have no other income; ability to receive emergency care and necessary assistance in terms of social care; other right guaranteed under by the international treaties, laws and legal acts of Lithuania.[140] The temporary residence permit shall be issued for six months. There is no information if negative decisions about residence permit have been challenged through a formal appeal.

According to the Migration Department under the Ministry of Interior (further Migration Department), there is no particular procedure provided especially for the victims of trafficking. According to the general procedure, every alien has the right to obtain a permanent residence permit, if s/he has been residing in the Lithuania uninterruptedly for the last five years holding a temporary residence permit.

However, no data on trafficked persons granted a temporary residence permit in 2008 and 2009 was found. The Migration Department also could not state if it is relatively routine for trafficked persons to apply for the refugee status in order to seek permanent residence. Such cases are not common in Lithuania and they rarely occur in practice.

Access to justice

In Lithuania, criminal procedures are long and rather complex, especially when related to human trafficking. There are the reasons why just a few women agree to testify in the court.

According to the criminal code, anonymity is granted to witnesses during the questioning phase (Art. 282) to avoid any negative impact on the criminal proceedings and, most of all, to ensure the protection of the victims and of other witnesses.

The article to cover the damage for the victims is also involved into the latter legislation (LR Law on Compensation for the Violent Crimes. Vbės Žn., 2005-07-14, Nr. 85-3140. Nr. X-296).

In Lithuania, no special measures are used by the law enforcement or court officials to protect adults and children who take part in criminal proceedings as witness or victims of crime. However, confidential identity and isolation are used more often than in other cases. Information about the protection granted both in-court and outside is not available. Nevertheless, a representative of the Trafficking in Human Beings Investigation Unit declared that in-court protection and support are available through the responsible investigator, NGOs, social workers or psychologists.

140. www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319034

In 2008 and 2009 there was no case of trafficked child or adult identity made public in the course of criminal justice proceedings.

According to representative of the Trafficking in Human Beings Investigation Unit, in compliance with the criminal code, victims were fully informed about the procedures in courts, the risks entailed, the trial results and, in case of a foreign victim, information was available in a language understood by the victim witness.

Based on the Lithuanian legislation (Law on Compensation for the Violent Crimes. V-bės Žn., 2005-07-14, Nr. 85-3140. Nr. X-296), victims can claim compensation for the damage suffered. No information is available though on how many victims (if any) benefitted from this provision.

Prevention

Because of the negative economic situation, migration has become a great concern for Lithuania. However, not much information is available on the possible dangers people planning to leave country may face. However, persons are generally capable of checking whether a work employment agency is legal through the websites of the Labour Exchange Office and of the Ministry of Social Security and Labour.

In spite of a serious financial lack and no support by the government, NGOs are active in the prevention field. *Ad hoc* lectures are held in schools and foster homes, public events; awareness rising campaigns are arranged, and flyers and brochures are published. MPFSC also distributes flashlights and stickers with the note "Don't sell yourself" and the number of hotline.

No national helpline to provide information and assistance to trafficked persons is currently active in Lithuania. However, NGO MPFSC runs a hotline aimed at relatives of missing persons and individuals who are going abroad and need some advice. Victims of human trafficking can also contact this NGO. Few years ago, IOM Vilnius Office had a hotline, which stopped working once the related project finished. Finally, the THB Investigation Unit administers a special anti-human trafficking e-mail box for the general public (prekybazmonemis@policija.lt). Each piece of information received in the Unit is checked and relevant measures are undertaken.

Even though in the past some relevant studies were carried out on trafficking-related issues, in the last two years no research has not been done in the field.

Monitoring and evaluation system

The Office of National Coordinator monitors policies on all forms of trafficking in human beings and annually issues reports on both practical and theoretical issues. Information and data on anti-trafficking activities and victims assisted are received by the competent governmental agencies and NGOs. Moreover, an assessment of the results achieved by the National Programme for the Prevention and Control of Trafficking in Human Beings is carried out and discussed before the issuance of a new programme.[141]

Recommendations

- To improve the identification procedure of victims of human trafficking. A single government agency or structure responsible for the formal identification of presumed trafficked persons should be established.
- The role of the National Rapporteur on trafficking in human beings should be clearer and more active. Moreover, such mechanism should be independent to be able to fully achieve its monitoring tasks.
- The National Programme for the Prevention and Control of Trafficking in Human Beings should be continued and financial support should be ensured. Furthermore, it should include comprehensive preventive activities.
- Higher attention should be paid to child trafficking and to comprehensive measures to ensure security, social rehabilitation and integration of trafficked children.

7.17 LUXEMBOURG[142]

The phenomenon

Luxembourg is situated in the middle of Western Europe. It is a very small country, lying between Germany, Belgium and France. The geographic position and the proximity to three

141. Annual reports (in Lithuanian language) are available at: www.vrm.lt/index.php?id=566
142. Written by Joelle Legille, *Femmes en Détresse*, Luxembourg.

border areas make it easy to use Luxembourg as a country of transit for human trafficking. Luxembourg has also been a country of destination for migrants for decades. Its favourable economic and social situations and its status as a member of the European Union make Luxembourg an attractive country of destination for regular, irregular and trafficked migrants.

Victims of human trafficking mainly come from African countries, Kazakhstan, Bulgaria and Brazil to work in Luxembourg, but they are generally deceived about the nature of the job offered. So far, only women trafficked for the purpose of sexual exploitation have been identified; however, the police assume that there are also cases of labour-related trafficking that have not been uncovered yet.

In some instances, trafficked persons have been exploited in some neighbouring countries and, in order to flee from their exploiters, escaped to Luxembourg.

National anti-trafficking legislation and institutions

In Luxembourg, the first anti-trafficking law was adopted in August 2008. Because Luxembourg's anti-trafficking policy is so recent, lots of requirements have not yet been put into practice.

The anti-trafficking legislation is segmented into three parts. Articles 92-98 of the Immigration Law adopted in 2008 by the Ministry of Foreign Affairs provide for the residence permit and the reflection period for victims of human trafficking.[143]

The second law adopted in 2009 by the Ministry of Justice provides for the criminal offence of trafficking in human beings and establishes the related punishment.[144] It covers all forms of human trafficking, such as sexual exploitation (perpetrating the offence of procuring or of sexual aggression or offences against the victim), forced labour or services (the exploitation of the labour or the services of the victim in the form of forced or compulsory labour or services, of servitude, of slavery or similar practices and in general in conditions contrary to human dignity), organ removal or tissue against a person's will. Such law meets the minimum standards set by the Council of Europe Convention.

The third part of anti-trafficking legislation, adopted by the Ministry of Equal Opportunities in 2009, provides for the assistance, protection and security of trafficked persons.[145]

The Ministry of Equal Opportunities launched its National Action Plan for the period 2009-2014 that includes also anti-trafficking activities. Therefore, no action plan only focussing on human trafficking exists.

No National Rapporteur or any equivalent mechanism is currently in place in Luxembourg. However, the 2009 law about assistance, protection and security for victims of human trafficking provides for the establishment of the *Comité de suivi de la lutte contre la traite des êtres humains*. The latter is designed as a coordination structure for the prevention and the assessment of the phenomenon of human trafficking; it should also serve as a mechanism to monitor and evaluate the implementation of the legislation.

Identification, protection of rights, and referral

The 2009 law on the assistance, protection and security of victims of human trafficking defines the "assistance services", which comprise NGOs, civil society organisations and public or private services, whose main goal is to assist and counsel the presumed and identified trafficked persons. In order to take part to this assistance system, such agencies need to be officially accredited in compliance with a grand ducal regulation associated to the legislation. In practise, none of the relevant NGOs, public or private organisations has got the official accreditation because the regulation is still pending and will be probably finalised in the upcoming months. The grand ducal regulation should specify the referral procedures to follow whenever the concerned agencies will get in contact with presumed trafficked persons.

In Luxembourg, the only authority allowed to carry out the formal identification of presumed trafficked person is the police, which have always to inform the Criminal Investigation Department that is in charge of the cases of human trafficking.

143. www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=33
144. www.legilux.public.lu/leg/a/archives/2009/0051/a051.pdf#page=2
145. www.legilux.public.lu/leg/a/archives/2009/0129/a129.pdf#page=2

Presently, a formal identification procedure is not employed. However, it has just been developed but not published yet. Up to the present, no formal indicators have been used to identify trafficked persons. The slightest indication that a person has been subject to the crime of trafficking is sufficient to consider and treat him/her as a presumed victim. The main indicator is the declaration of the person him/herself. Indicators, *inter alia*, like deception, coercion, abuse, retention of identity documents, debt bondage are considered as additional indicators.

Once a victim is identified as such, the police have to immediately inform one of the assisting NGOs, which will provide accommodation, social, psychological, financial, medical, linguistic and legal assistance. Special accommodation for victims of trafficking does not exist. Female victims are accommodated in women's shelters and minors are placed in children's houses. Minors can stay as long as necessary. They can be assisted until they are 18 or until the competent authority of their origin country, which shall act in their best interest, will take over. Officially, no accommodation for trafficked men is available. However, men may be accommodated in an asylum for refugees.

A presumed trafficked person is granted a reflection and recovery period of 90 days. According to Article 93 of the Immigration Law, during the reflection period a presumed victim of trafficking cannot be expelled, regardless his/her willingness to cooperate with the competent authorities. During the reflection period, the authorities are required not to interview the presumed victims about possible crimes that they or others may have committed.

According to Article 95 of the Immigration Law, an identified victim who decides to testify against the perpetrator(s) shall be granted a six-month residence permit. The latter can be extended for other 6 months whenever:

- The victim filed a complaint or submitted a statement to the Luxembourg authorities against his/her perpetrators;
- The victim must cooperate with the authorities responsible for the investigation;
- The presence of the victim in Luxembourg is necessary for the investigation;
- The victim cut all connections with the perpetrators;
- The victim is not a menace to the public order.

Article 98 of the same law established that, after the expiration of the residence permit, the concerned person may receive a residence permit for private reasons.

Regarding to long-term assistance and social inclusion, children have access to education. Adult victims have access to vocational training and education. The resident permit also grants the access to the labour market.

The International Organisation for Migration (IOM) may assist the victims who wish to go back to their own countries. In January 2010, IOM and the Luxembourgish Government signed a memorandum of understanding to co-operate in this field. Nevertheless, no return programmes for trafficked persons have been officially implemented. Furthermore, no bilateral agreements with EU Member States or third countries have been signed to govern the process of return. NGOs informally carry out the risk assessment for victims who wish to go back to their origin country. If necessary, they can be accompanied by the police for their return journey.

Access to justice

By law the assistance service has to promptly inform the victim about his/her rights, the relevant judicial and administrative proceedings and the available services. Victims of human trafficking are assisted by a translator so that they can be fully counselled and informed on their legal rights. They also have the right to legal assistance through a free lawyer.

Victims, witnesses, family members and friends are granted safety measures as well as protection from potential retaliation or intimidation. In case of the latter, the president of the district court may issue against the perpetrators the interdiction:

- To betake to certain places;
- To contact the person under protection;
- To be in possession or to wear a gun and the mandamus to hand it out to the police.

Relocation is not mentioned in the law but, in practise, it is already implemented. Because Luxembourg is a very small country, victims can be relocated abroad within a witness-protection programme. A formal agreement about the relocation abroad does not actually exist. However, a formal agreement with Germany is in progress. An identity change is not possible in Luxembourg. Within the witness protection programme, a victim may be

brought to Germany, where an identity change can be executed.

Since the adoption of the anti-trafficking law in 2009, no court case against suspected traffickers has taken place. Finally, a law called "*Victimes d'Infractions Pénales*" (Victims of criminal offence), enacted in October 2009, provides for victim compensation from the perpetrators. A fund for victim compensation has also been established.

Prevention

Currently, no prevention activities are in place and no official information for potential and presumed victims of trafficking is available.

In general, the Luxembourgish population is not aware of the phenomenon of human trafficking existing in Luxembourg. Only recently, the policy makers have started to acknowledge the phenomenon of human trafficking and its complexity.

As far as training is concerned, few have been delivered for professionals working for anti-trafficking NGOs in the last years. The police, though, regularly participate in training programmes delivered by the State Office of Criminal Investigations in Germany (LKA).

Monitoring and evaluation system

The 2009 law about the assistance, protection and security of the victims of human trafficking provides for the establishment of a national coordination structure called "*Comité de suivi de la lutte contre la traite des êtres humains*". One of the tasks of such committee should be the monitoring and evaluation of human trafficking related issues. The committee should be composed of representatives of public authorities (from the Ministry of Equal Opportunities) and anti-trafficking accredited NGOs. To date, though, the *Comitée de suivi* has not been set up since the related grand ducal regulation is not completed yet.

Recommendations

- The granducal regulation must be enacted as soon as possible in order to establish the standard operating procedures for the identification and referral of trafficked persons that will be adopted by the relevant public and private accredited agencies;
- The grand ducal regulation must be enacted as soon as possible also to set up the "*Comité de suivi de la lutte contre la traite des êtres humains*" so that it can finally carry out the monitoring and evaluation as to the phenomenon, the legislation and the policies to fight human trafficking and protect the rights of trafficked persons;
- Prevention measures aimed at the potential victims and the population at large must be developed;
- Accommodation facilities for men need to be implemented in order to meet the needs of male victims trafficked to Luxembourg.

7.18 MALTA[146]

The phenomenon

Trafficking in human beings is a relatively new issue on the Maltese policy agenda and has received little by way of public attention. Very often, it is confused with migrant smuggling or is restricted to the trafficking of young Eastern European women for the purpose of exploitation within the sex industry. Trafficking for other purposes is therefore sidelined or ignored.

The very number of trafficked persons identified in Malta makes the establishment of reliable trends impossible. However, so far, cases identified have all related to adult females exploited within the sex industry. Indications are that all cases investigated by law enforcement in Malta have dealt with Eastern European women. No cases of trafficking involving children or for labour exploitation or through the removal of organs have been reported. Moreover, despite the widespread belief that some persons within the asylum seeker community have been or are being trafficked, law enforcement agencies have not received any reports in this regard. If one had to consider only identified cases, then one would limit the phenomenon to trafficking of young (but not minor) Eastern European women for sexual exploitation. Malta is, in this context a country of destination. It is however often argued that Malta is also a country of transit and destination most notably with regards to African migrants.

146. Written by Jean-Pierre Gauci, The People for Change Foundation (PfC), San Gwann.

National anti-trafficking legislation and institutions

Malta's anti-trafficking legal framework is strong and fulfils the requirements of the Palermo Protocol (2000), the Council of Europe Convention (2005) and the EU Directive (2002), which have all been signed and ratified. The framework can be divided into two broad categories, namely the criminal law provisions and the immigration law provisions. The former are enshrined mainly within the Criminal Code[147] and provide for the criminalization of trafficking and related offences, whilst the latter have been promulgated by means of subsidiary legislation issued under the Immigration Act[148] and refer to the protection of trafficked persons.

The wording of the criminal code provisions indicates that there are three elements to the crime of trafficking, namely the action, the means and the purpose. The actions include: the recruitment, transportation or transfer of a person, including harbouring and subsequent reception and exchange of control over that person, and includes any behaviour that facilitates the entry into, transit through, residence in or exit from the territory of any country for any of the relevant purposes. In terms of means, these include: violence or threats, including abduction, deceit or fraud, misuse of authority, influence or pressure or the giving or receiving of payments or benefits to achieve the consent of the person having control over another person. The purpose must be exploitation. No general definition of exploitation is provided, however, in the context of labour exploitation, this is defined as including requiring a person to produce good and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety. The threshold is therefore low expanding the potential scope of the provision.

Trafficking offences are punishable by imprisonment, the duration of which is linked to the type of exploitation: 2-9 years in the case of labour and sexual exploitation and 4-12 years for organ trafficking. "These prescribed penalties are sufficiently stringent and commensurate with punishments prescribed for other serious crimes, such as rape".[149] Trafficking of minors is criminalised irrespective of the means used.

In the case that the means are employed, then, the crime is considered as aggravated carrying an increase in punishment of 1 degree. The same increase in punishment applies to other aggravating circumstances, namely: if accompanied by grievous bodily harm, if it generates proceeds exceeding 11, 646.87 Euros or when it involves a criminal organization.

The law also provides for corporate responsibility both in the case where the individuals concerned are in a position of control and when the individual is not in such position but the crime is made possible by inadequate supervision by those in control. If found guilty, corporate entities are liable to the payment of a fine. The value of the fine depends on the position of the individual and can range from 4,658.75 to 1,863,498.72 Euros.

Moreover, jurisdiction is extended to instances where only part of the action giving execution to the offence took place in Malta and where the offender is a Maltese national or a permanent resident in Malta. It is important to note that acts committed under compulsion are exempted from punishment (see 248(6)).

Malta has not yet adopted a National Action Plan against trafficking although at time of writing, the author is informed that such a plan is being drafted. Neither has a national referral mechanism been put in place. A taskforce bringing together its various ministries on the issue of trafficking has been set up. The exact scope and objectives of the taskforce are however not known and NGOs have thus far been excluded thereof. On an operational level, the institutional framework is still at an early stage of development. Within the Police Force[150] counter-trafficking is carried out by the vice squad, which also covers other issues including, *inter alia,* prostitution, sexual offences, child abuse and domestic violence.[151]

147. Chapter 9 of the Laws of Malta.
148. Chapter 217 of the Laws of Malta.
149. TiP Report 2010, p. 229
150. For more information about the force visit: www.police.gov.mt/
151. See the organigram of the Malta Police Force available at: www.cepol.europa.eu/fileadmin/website/-About_CEPOL/Police_Colleges/Malta/Malta_org.pdf

Indeed, human trafficking is not specifically mentioned as one of issues covered by the squad. The National Social Welfare Agency APPOGG[152] has added trafficking as one of its service areas. The service was however only set up a few years ago and consists of only one staff member (the Service Manager), who is also responsible for a number of other services. It is therefore not a fully-fledged service. NGO involvement in the issue of trafficking is also very limited. NGO engagement with the issue is usually limited to the forwarding of presumed cases identified through work on other issues, most notably with asylum seekers. The People for Change Foundation (PFC) made trafficking one of its priority areas in 2009 but does not offer any direct services to victims. IOM has also looked into the issue of trafficking through, *inter alia,* the setting up of the national training team and the organization of training to various front-line officials. The training team is composed of representatives of APPOGG, the Police Force and PFC.

Malta does not have a national Rapporteur or an equivalent mechanism. The only regular assessment of the situation is that done by the US government through the annual TIP Report. An assessment of the situation regarding child trafficking was undertaken for the EU Agency for Fundamental Rights (FRA). This however focused solely on the legal situation.

Identification, protection of rights and referral

Malta does not have a set of indicators that are used to identify trafficked persons, instead, the relevant entities use various indicators proposed by bodies abroad. Identification remains a matter of concern, as the number remains remarkably low. Various sources consulted confirmed their awareness of instances where cases assessed as being presumed trafficking were referred to the police but the latter did not consider them as such and therefore did not investigate further. Furthermore, the failure to adopt a national referral mechanism is a matter of concern in this regard. No proactive measures have been undertaken to identify potential trafficked persons.

The 'Permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese Authorities Regulations'[153] provides for a reflection period for those considered to be cooperating with the authorities. Regulation 3(3) provides that the principal immigration officer (the Commissioner of Police) is to (shall) grant a reflection period for the third-country national to detach him/herself from the influence of the perpetrators enabling him/her to take an informed decision on co-operating. The reflection period is to be of no longer than 2 months and entitles the individual the right to stay[154] but not create a right to a residence permit. For the duration of the reflection period, the individual is to be provided with (due regard being had to his/her safety and protection needs and to whether he/she has sufficient resources):

- The standards of living capable of ensuring his/her subsistence;
- Access to emergency medical care;

And where applicable:

- Attention to the needs of the most vulnerable;
- Psychological assistance;
- Translation and interpretation services;
- Free legal aid;
- Access to free public education.

The law allows for the termination of the reflection period in the case that the beneficiary thereof voluntarily and actively re-establishes contact with the alleged trafficker or for reasons of public policy or national security.[155]

The short-term assistance of trafficked persons is the responsibility of APPOGG under the provisions of a Memorandum of Understanding (MoU) signed between the Malta Police Force and the Ministry for Social Policy. Whilst the MoU has not been published, it appears to refer to the referral of trafficked persons for social work and psychological assistance by APPOGG. From its existing services, APPOGG can offer accommodation, social work intervention, as well as psychological services. The social workers involved would also collaborate with other entities for other ser-

152. For more information about the agency visit: www.appogg.gov.mt
153. Subsidiary Legislation 217.07 available at: http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/217/07.pdf
154. Regulation 3(4).
155. Regulation 3(6).

vices as required, including medical and psychiatric services.

No specific shelters exist for trafficked persons, however, the understanding is that domestic violence shelters would be utilized should the need arise. APPOGG's shelter has a maximum capacity of 16 places, both for children and adults. No formal establishment of how many places would be allocated to trafficked persons has yet been made; however, this would probably be one or two places.

Regulation 5 allows[156] the Principle Immigration Officer to recommend to the Director for Citizenship and Expatriate Affairs[157] the issuance of a residence permit to the trafficked person when it is clear that:

- Such permission may present an opportunity for the investigations and judicial proceedings;
- There exists the intention on the part of the trafficked person to collaborate;
- All relations with the suspected perpetrators have been severed.

This residence permit is valid for 6 months renewable for as long as the above criteria continue to subsist and provided that the prosecutions are still ongoing.[158] This raises concerns in terms of the long-term protection needs of trafficked persons. During the duration of the residence permit, the same set of rights and entitlements as set out for persons under a reflection period apply.

In terms of medical care, however, the law provides that, in this context, the entitlement is to all necessary medical care or other assistance when s/he does not have sufficient resources and has special needs, such as in the case of pregnant women, disabled persons, victims of violence and minors.[159] The law allows the discretion to the relevant authorities[160] to allow access to the labour market for the duration of the residence permit and, especially, when the individual is a minor, access to vocational training and education.[161] Moreover, the law provides for access to programmes and schemes[162] aimed at the recovery of a normal social life, including, where appropriate, courses designed to improve professional skills or preparation of his/her assisted return to the country of origin.[163]

The law provides also for the withdrawal of the residence permit in the case that:

- The holder actively, voluntarily and of his/her own accord, renewed contact with the suspected traffickers;
- If the principal immigration officer believes that the complaint or cooperation are fraudulent;
- For reasons of public policy and national security;
- The individual ceases to collaborate;
- The principal immigration officer decides to discontinue the proceedings.[164]

No specific provision is made regarding the long-term assistance and social integration of trafficked persons, as the understanding is that their residence ends upon the termination of the proceedings.

No specific assisted voluntary return programmes have been put in place to address the needs of trafficked persons; however, it is understood that *ad hoc* arrangements would be made, in collaboration with IOM should the need arise.

Access to justice

The above quoted regulations oblige the principal immigration officer, when it appears to him/her that the third-country national is co-operating with him/her in the fight against trafficking, to inform him/her about the possibilities offered under the regulations (namely the right to a reflection period and to the residence permit in the case of collaboration).[165] It allows the principal immigration officer to

156. This is without prejudice to any restrictions arising from public policy or national security.
157. Within the Ministry for Foreign Affairs. For more information visit: foreign.gov.mt/default.aspx?mdis=522
158. Regulation 6 Provides that 'upon the recommendation
159. Regulation 5(3).
160. The PIO and the Employment and Training Corporation.
161. Regulation 5(4).
162. Provided by government, NGOs or associations having a specific agreement with government.
163. Regulation 5(5).
164. Regulation 6.
165. Regulation 3(1).

invite NGOs or another relevant association to give such information to the third country nationals.[166] It is unclear whether these provisions have ever been applied in practice; however, no specific information leaflets or other materials have been prepared in this context, neither have any NGOs been approached to carry out this task.

The latest Trafficking In Persons Report commends Malta for allowing trafficked persons to provide testimony against the trafficker through video conferencing. Such measures, which are often used within the context of sexual offences are used also within the context of trafficking, allowing the victims to feel more at ease when providing their testimony. Moreover, if the need arises, the Police Act[167] provides for the possibility of a witness protection programme whereby an individual may be resettled to another country and even given a new identity if required.[168] The regulations discussed earlier also provide that due regard is to be had to the safety and protection needs of those collaborating with the authorities.[169]

Criminal and civil proceedings in Malta often take long to complete and this is not an issue linked specifically to human trafficking.

There are no specific provisions relating to compensation to trafficked persons; however, the general rules applicable to all victims of crime apply. The Criminal Injuries Regulations[170] provide for the application for compensation by victims of crime. This is though restricted to EU nationals and the injuries must have been sustained after January 2006. The maximum possible compensation is of just under 23.294 Euros. A victim is also entitled to sue, through a civil suit, his/her perpetrator for damages. In Malta, the notion of moral damages is relatively new and damages within the context of tort would appear to be restricted to press offences, promise of marriage and consumer affairs.

Prevention

There is very little prevention activities carried out on Malta on the issue of trafficking. Agenzija APPOGG[171] produced a leaflet on the issue as part of a campaign run in collaboration with Body Shop. Moreover, another leaflet, prepared by the same Agency in collaboration with the Ministry for Social Policy and the Ministry for Justice and Home Affairs, was distributed at various key locations including local councils, local entertainment hubs, hospitals and health centres. No further awareness raising campaigns were undertaken in Malta. Neither was specific information provided to potential and presumed victims of trafficking, such as members of the asylum seeker community. Awareness raising by NGOs has been largely missing as have been campaigns addressing the demand side of trafficking. Indeed, a project intended to include such an information campaign did not receive the required EU funding.

A number of training initiatives have been organized over the past years targeting mainly front line officials who may be involved in the country's counter-trafficking initiatives. Through IOM[172] AGIS IV project, a national training team was formally set up, composed of a representative of the Malta Police Force, a representative of APPOGG and a representative of The People for Change Foundation. The team was trained by a foreign expert and then provided two one-day intensive training sessions for various officials. Over 80 persons were trained over the two days. The team also provided training to volunteers of the helpline 179.

Whilst the legislation provides for access to programmes aimed at the recovery of the individual[173], no such programmes have yet been put in place.

Beyond this E-Notes report, there has been very little research carried out on the issue of human trafficking in Malta. One report was

166. Regulation 3(2).
167. Chapter 164 of the Laws of Malta.
168. Article 75 et seq.
169. Regulation 3(5).
170. S.L. 9.12 available at: http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/09/12.pdf
171. A government entity offering social welfare services.
172. IOM.
173. See above.

published in 2009 regarding child trafficking, prepared by the Organization for the Promotion of Human Rights for FRA. Other research has been confined to the realm of investigation carried out by students, most of which addressed the international scenario rather than the local situation.

Moreover, no research has been done to identify trends in human trafficking beyond the number of identified cases. This implies that the situation of trafficking in Malta remains largely unexplored and particular trends and situations are not being identified and addressed.

Monitoring and evaluation system

No systems have been put in place to monitor and evaluate the counter-trafficking operations in Malta. The only evaluation is therefore that carried out by the U.S. Government through the annual Trafficking in Persons Report. In its last report, Malta was placed in Tier Two Watch List. Considering that Malta has yet to adopt an action plan and a national referral mechanism (or equivalent) it is not surprising that no monitoring and evaluation mechanisms have been put in place.

Recommendations

- A National Referral Mechanism should be developed in close collaboration with all concerned actors and based on best practices from other European countries and the guidelines provided by the OSCE. The mechanism ought to include detailed standard operating procedures as well as a monitoring and reporting mechanism to oversee the NRM implementation.
- Malta should adopt without delay a national action plan, covering prevention, prosecution, protection and redress for trafficked persons.
- A common and shared set of indicators for identification of victims should be developed and shared between all relevant entities, including those not traditionally considered to be part of the counter-trafficking teams.
- Further training and capacity building should be provided to all relevant entities at various levels, including police, social welfare providers and NGOs.

7.19 NETHERLANDS[174]

The phenomenon

The Netherlands is a source, transit and destination country for men, women and children trafficked for the purposes of exploitation in the sex industry and forced labour and services. The dominant nationalities of trafficked persons who were registered in 2009 were Dutch, Nigerian, Romanian, Chinese and Bulgarian. The percentage of Dutch victims has increased over the years up to 39% in 2008. The statistics indicate that the majority of victims of human trafficking within the Netherlands are women, between the ages of 18 and 30, trafficked into the sex industry. With the broadening of national legislation in 2005 to encompass a wider definition of human trafficking, it is likely that statistics for trafficking men will further increase. The enhanced attention to labour exploitation in other industries, such as agriculture and domestic labour will probably lead to increasing statistics. The national police, government and NGOs are trying to raise awareness on trafficking outside the sex industry, but misconceptions remain as society has struggled to associate human trafficking with occupations other than forced prostitution.

National anti-trafficking legislation and institutions

In Dutch law, forcibly recruiting, transporting, moving, accommodating or sheltering another person with the intention of exploiting her/him is punishable as trafficking of human beings. All forms of trafficking were criminalized in the Netherlands in 1911 under article 250a of the Dutch Criminal Code; in 2005 this extended under Article 273f to align national law with the United Nations Trafficking Protocol and other international tools. With effect from January 2008, the punitive measures for human trafficking were increased. The maximum fine that can be imposed for a case of human trafficking is now 74,000 Euros. From July 2009, the maximum term of imprisonment for all aggravated forms of human trafficking is 12 years and for unqualified forms of human trafficking is eight years. When the offence is committed

174. Written by Marieke van Doorninck, La Strada International, Amsterdam.

under the most aggravating circumstances, the maximum sentence imposed is eighteen years. The government prosecuted 221 persons for human trafficking offences in 2007, compared to 216 for the year 2006. According to the Dutch National Rapporteur's Office, the average prison sentence imposed for 2007 ranged from 20 to 23 months-a reduction from 27 months. Dutch national anti-trafficking legislation complies with the provision on jurisdiction in the Council of Europe Convention on Action against Trafficking in Human Beings, which is in effect since 1 August 2010.

An important development is the development of a Bill to regulate prostitution and tackle abuses in the sex industry, which was drafted in 2009 as the Regulation of Prostitution Act. This bill provides that all commercial sex businesses are to be licensed to improve the regulation and monitoring of the sex industry in the Netherlands. It proposes a more comprehensive set of regulation, and punitive measures for sex workers and sex businesses that operate without a license. The Bill provides that all sex workers' names, addresses and passport details are to be recorded. There is much resistance against the proposals in this bill (which is not yet adopted by the Dutch parliament) especially on the forced registration of sex workers and the criminalization of those that are not registered.

The national position on human trafficking is stipulated in the National Human Trafficking Action Plan 2004 (NAM). In 2006, additional measures were made to include minors and child prostitution to the topics of prevention, reporting and registration, investigation and prosecution.

The Human Trafficking Task Force is assigned to identify and remedy shortcomings in current anti-trafficking efforts and ensure that policy is implemented as effectively as possible through interventions by relevant figures. In July 2009, the Task Force presented an Action Plan in which it formulated ten specific measures to address problems with current anti-trafficking efforts.

Identification, protection of rights and referral

Efforts to identify and address human trafficking cases in industries other than the sex industry are still preliminary. Misunderstandings regarding the relationship between human trafficking and prostitution remain and can impact how police and authorities identify and investigate trafficking cases. The result is that human trafficking cases may not be treated as such, or that police efforts are directed away from the needs of trafficked persons. Dutch police forces have formed specialist teams for human trafficking, however, improvements to training and information provision within the police are needed for more effective identification and treatment of trafficked persons. In 2008, the police's National Expert Group on Trafficking (LEM) published a guidebook — *The Reference Framework on Human Trafficking.* This handbook provides guidelines for police to follow when investigating human trafficking cases. National police forces share information about their experiences and findings in the Expert Centre on Human Trafficking and Human Smuggling (EMM). In the EMM the national investigation department of the police (DNR), the Immigration & Naturalisation Service, the Military Police and the Social Intelligence and Investigation Service (SIOD) work together.

The police and public prosecution services have given priority to investigating and prosecuting human trafficking in recent years, but they lack sufficient capacity to effectively identify and follow up on all trafficking cases.

The responsibility for keeping a national register of (presumed) trafficked persons falls upon the Coordination Centre for Human Trafficking (CoMensha), the former Foundation against trafficking in women. Only registered trafficked persons are entitled to support and advice from national service providers.

The state and its bodies have a duty of care towards trafficked persons. The police are required to clearly inform (presumed) trafficked persons of their options and rights and the possibilities of pressing charges. The identification of victims is generally the first step; an official complaint or statement made by the victim can form the basis of further investigation and prosecution. The B9 Regulations (refers to Chapter B9 of the Aliens Act Implementation Guidelines 2000) allows aliens who are victims or witnesses of human trafficking to remain legally in the Netherlands. The regulations allow for a three-month reflection period in which victims and witnesses can decide whether or not to cooperate in criminal proceedings. Further, it allows foreign nationals who are trafficked to be granted a

residence permit for a period of one year during an investigation and prosecution period if they choose to cooperate in criminal proceedings. In the event of a foreign national with a B9 permit required to stay for more than three years, they may apply for continued stay, even if the criminal case is still pending or the charges are eventually dropped. During the reflection period, and for the period in which a temporary residence permit is granted, the government provides trafficked persons and presumed trafficked persons with the necessary protection and legal, financial, medical, social and psychological assistance. In 2008, 235 B9 residence permits were awarded and 134 reflection period permits granted. CoMensha takes responsibility for sourcing shelter for registered victims. A key issue is the lack of shelter for trafficked persons, or the capacity of shelters to meet the demands and specific needs of trafficked persons. Consequently, one person may be moved a number of times between shelters, or may have to wait on a waiting list before finding stable housing.

Registered trafficked persons are assigned a care coordinator, who assists with meeting other needs, such as education, financial aid, child support, psychological, legal and medical needs.

Access to justice

In principle, trafficked persons have the legal right to claim redress for material and immaterial damages. By law, national police must inform trafficked persons of the opportunities for legal advice, compensation and any other government funded payment eligible to them. There are various ways in which trafficked persons can obtain monetary compensation for tangible losses such as loss of income, medical costs; and for intangible losses such as damages for pain and suffering. It can be done through the criminal courts, a civil procedure, the national Violent Offences Compensation Fund or through labour laws.

Despite the provisions available, there are multiple hurdles involved in the compensation process, and many victims of trafficking never receive the justice that they are entitled to.

Prevention

As for prevention activities and materials directly targeting (presumed) trafficked persons in the Netherlands, NGOs have produced information leaflets, especially on the rights of trafficked persons and undocumented workers. Also the Ministry of Social Affairs published a leaflet in several languages on the rights of migrant workers, especially focussed on workers from new EU countries.

For trafficking into the sex industry, there are many prevention campaigns to warn vulnerable (young) girls for loverboys practises (at schools and child care homes). The foundation *Meld Misdaad Anoniem* (Report Crime Anonymously) has started a campaign *Schijn Bedriegt* (Appearances are Deceptive) targeting clients of sex workers to report if they suspect forced prostitution.

In the name of preventing trafficking, the Netherlands keeps a tight control over the issuing of work permits. In regards to the informal work sector, work permits for au pair positions is, in practice, the only possibility. For the sex industry, there are no options as it is legally prohibited to issue work permits for labour in the sex industry. Work permits to third country national are only given for highly specialized/skilled occupations; however, progress has been made to simplify the issuing of work permits for seasonal work.

Major human trafficking cases in the Netherland's recent history have increased public awareness surrounding the issue; much of this can be attributed to press coverage of the so-called *Sneep and Koolvis* cases.

Monitoring and evaluation

The Netherlands meets the requirements of the Council of Europe in regards to monitoring and evaluation. It has a well-established National Rapporteur that, among its other core activities, undertakes the monitoring and evaluation of national anti-human trafficking policies and practices. The Rapporteur submits annual reports to the Minister of Justice. The Dutch government responds to the reports and informs parliament of its conclusions. Through these reports, the Rapporteur plays an important role in monitoring policies to combat human trafficking and the associated legislation. The government generally publishes a reaction to the reports, which is then the subject of a plenary debate in the Lower House of parliament.

The Police Monitor (2008) describes the efforts made by the different police forces to combat human trafficking, and the methods

and degree of cooperation between the various forces and the other partners in the chain of reporting. The monitor is written by police and contains a degree of self-reflection which illuminates where improvements are needed, and best practices. This information is passed onto the Minister of Justice to improve efforts in combating human trafficking. The Police Monitor 2010 will be published in April 2011.

Recommendations

- In order to prevent victims of trafficking from ending up in aliens' detention and being deported, the role of NGOs in the (early) identification of victims of trafficking should be formally recognized. To assess whether or not a person is a victim, apart from the police's judgment, information from NGOs and other assistance providers should be taken into account.
- A temporary residence permit and the attached support services should be granted to all indentified trafficked persons and not only to those that are willing/able to cooperate with the authorities.
- More expertise needs to be developed on trafficking for other purposes besides/than the sex industry. This is needed in the identification process, the jurisdiction, and the support and assistance schemes.
- In order to solve the problem of the capacity shortage in shelters, solutions must be sought in follow up accommodation for people who have been granted a temporary residence permit and accommodation for specific groups, such as men, minors, people with psychological or addiction problems or drug abuse, should be available.
- If anti-trafficking measures conflate with prostitution policies, both policies will be ineffective. This was one of the main conclusions of the Sneep case. Mandatory registration of sex workers and the criminalisation of unregistered sex workers and their clients, as is proposed in the latest prostitution bill, carry the risk that sex workers, who cannot or do not want to register, end up in an illegal circuit in which the chances of abuse, exploitation and violence are much higher and the chances of identification much smaller.

7.20 POLAND[175]

The phenomenon

Poland is a country of origin, transit and destination for trafficked persons. Polish nationals are being trafficked mostly to Germany, the Netherlands, Belgium, Italy, Spain, Greece, and Scandinavian countries and, to a lesser extent, to Austria, Australia, and the United States.

According to the analyses of the National Prosecutor Offices, women from Lithuania, Latvia and Moldova trafficked to Germany are smuggled across Poland. As a country of destination, the majority of trafficked persons to Poland are from Ukraine, Bulgaria, Moldova, Romania, Belarus and other countries of the former Soviet Union. During the last four years, NGOs have noticed a growing number of trafficked persons from some African (Cameroon, Djibouti, Nigeria, Senegal, Somalia) and Asian countries (Bangladesh, China, Mongolia, Philippines, Tajikistan, Thailand, Uzbekistan, Vietnam). Although there is a growing awareness of other forms of trafficking, available statistics still show that the majority of the trafficking cases from and to Poland are those with a purpose of exploitation into the sex sector. During the last two-three years a growing number of trafficking cases have been noted, whereby people have been forced into labour, slavery like practices, begging, petty crimes, both abroad and in Poland.

In the 2004-2006 period, NGO La Strada Poland mainly assisted women between 21 and 25 years old. The youngest female client was 13, the oldest 52. Only 15% of the people assisted were male. The majority of trafficked men were above 30 years old and had been trafficked for the purpose of forced labour, labour exploitation, begging and petty crimes.

National anti-trafficking legislation and institutions

The National Action Plan against Trafficking in Human Beings for 2009-2010[i] is a continuance of National Programmes for Combating and Preventing Trafficking in Human Beings, which have been implemented since

175. Written by Stana Buchowska, La Strada Foundation against Trafficking in Persons and Slavery, Warsaw.

2003. The primary objective of the Plan is to create conditions necessary to effectively prevent and combat trafficking in human beings in Poland and to support and protect victims of this crime. Actions taken under the Plan should result in improved detection of trafficking in human beings, and as a consequence, increased number of criminal proceedings related to human trafficking as well as increased number of victims of this crime who have been provided support and protection.

The inter-ministerial Committee for Combating and Preventing Trafficking in Human Beings, presided by the Undersecretary of State in the Ministry of Interior, is responsible for implementation and monitoring of tasks provided in the Plan. It functions as a consultative and advisory body to the Prime Minister. This Committee is comprised of representatives of government entities (i.e. the Minister competent for education, the Minister competent for social security, the Minister of Justice, the National Public Prosecutor, the Minister competent for foreign affairs, the Minister competent for health, the Minister competent for the Interior, the Committee for European Integration, the Head of the Office for Repatriation and Aliens, the Police Commander-in-Chief, the Border Guard Commander-in-Chief) as well as of invited institutions (the National Labour Inspectorate) and non-governmental organisations dealing with the issues of trafficking in human beings (La Strada Foundation Against Trafficking in Persons and Slavery, Caritas Poland, Nobody's Children Foundation and ITAKA Foundation – Centre For Missing Persons, Halina Nieć Legal Aid Centre).

In certain aspects, the structures and referral system in Poland are functioning well. Representatives of the competent authorities (police, border guards, prosecutor office) are trained to identify victims, including children. In general, NGOs are consulted in the process of identification. Once identified, trafficked persons can obtain a temporary residence permit according to the Act of Aliens for 6 months, which can be prolonged. Obtaining a residence permit is conditional to the cooperation with the competent authorities. All trafficked persons referred to NGOs have access to various forms of (free of charge) care, including psychological support, crises intervention, medical help, legal assistance, and safe accommodation. For Polish citizens and for migrants with regular resident status, a programme of social and labour inclusion is offered. Although, in theory, the laws to protect trafficked persons are in place, there are several serious obstacles that hinder their implementation, such as, for example, the services offered within the KCIK (the National Intervention and Consultation Centre) programme are conditional; trafficked persons need to express their will to receive such an assistance; trafficked persons have to refuse contacts with their traffickers; the trafficked persons should be identified – either informally by the NGO or formally in case of migrants, by the Police, the Border Guards or the prosecutor office. Although not obliged by formal agreements, individual risk assessments for trafficked persons who (have to) return are carried out by NGOs, in cooperation of partners from country of origin.

Access to justice

Trafficked persons reported to NGOs, KCIK and to La Strada Foundation have access to legal information, which is reliable, accessible in a language the assisted persons can understand. Legal counseling is available on several matters, including legal problems with their civil and family situation, residence status, criminal and court proceedings, compensation claims. Although there are several official ways for trafficked persons to claim compensation in Poland, not many successful claims have been made. This is partly due to a lack of awareness about these possibilities for compensation for trafficked persons.

Prevention

Within the National Action Plan an effective coordination between the various bodies responsible for preventing human trafficking exists. The following preventive actions are generally conducted: programmes, research and awareness raising campaigns for persons vulnerable to trafficking. They are implemented both by governmental institutions and NGOs. The latter especially promote a human rights-based approach and implement gender mainstreaming principle in their projects and activities. NGOs are conducting lobbying activities to promote safe migration and informed decision about migration among the "at risk" groups. The prevention materials and activities of NGOs are

spreading out the accurate, reliable and an appropriate information about the risk of trafficking, safe steps in migration and on working and living conditions in countries of destination.

Monitoring and evaluation system

Unfortunately, no evaluation mechanism is in place in Poland. Most evaluation attempts carried out concerned legal and prosecution aspects of the phenomenon. In order to develop a harmonized system of evaluation, it is necessary to create a questionnaire that will be filled in by European countries – Parties of the Council of Europe Convention. It is important to make a comparative study of questionnaires form different EU countries to better understand current situation in a country and also challenges of the anti-trafficking work. A report and conclusions concerning the measures taken by the states concerned to implement the provisions of the present Convention should be produced. It is also important to increase the role and the involvement of NGOs in the evaluation and monitoring process. Until now, only few NGOs conducted a monitoring or evaluation activities in Poland.

Recommendations

- It is crucial to improve the practical implementation of the reflection period for presumed trafficked persons.
- In order to protect the rights of all trafficked persons, it is fundamental to improve the identification procedures to target also cases of trafficking for all purposes of exploitation, such as, forced labor, slavery like practices, forced begging and so on.
- To fully and regularly assess the state-of-the-art, it is essential to introduce and implement a monitoring mechanism covering all aspects of anti-trafficking legislation, policies and activities in Poland.
- In order to assess the effectiveness if the newly enacted anti-trafficking legislation, a monitoring system should be put in place.
- In order to provide sound assistance and fully grant the rights of trafficked persons, it is crucial to improve the quality of the existing multi-sectorial and interdisciplinary cooperation at the national and international level.

7.21 PORTUGAL[176]

The phenomenon

Portugal is mainly a transit and destination country of human trafficking. Trafficked persons are generally women from Brazil, particularly from Gûias, Rio de Janeiro, Pernanbuco and Rio Grande do Sul; followed by women from Central and Eastern Europe as well as Africa (mostly Mozambique, Nigeria and Morocco). In Portugal, women are sexually exploited, especially in bars and apartments in large urban centres of the north and the centre/north. Cases of women forced to work in bars and prostitute themselves at the border with Spain have also been reported.

In the last two years, victims identified were mainly women between 26 and 31 (19%). Men are also trafficked to Portugal both for sexual and labour exploitation. About half of identified trafficked persons were regularly residing in the country. Victims are generally recruited by means of false job offers.

National anti-trafficking legislation and institutions

Portugal ratified the Council of Europe Convention on Action against Trafficking in Human Beings. Portuguese legislation covers all forms of exploitation, and foresees substantial differences between the offence of trafficking of adults and trafficking of children. Legal provisions on human trafficking were updated recently, through Law 59/2007 of September 4, Article 160 of the Penal Code.

The new legislation meets the requirements of the Council of Europe Convention and the EU Framework Decision 2002/629/JHA. The crime of trafficking in persons is included in the chapter on crimes against personal liberty, following the crime of slavery. The law prescribes the criminalisation of the exploitation of any situation of vulnerability. Explicit reference to adoption for trafficking purposes and criminalization of the adopter are included. Aggravated offences are foreseen if a child was subjected to coercive means. The revision of the Penal Code also resulted in the introduction of a provision on the criminal liability of legal persons.

176. Written by Rita Moreira, Associação para o Planeamento da Família Delegação Norte (APF), Porto.

In the Plan for the Integration of Immigrants (Council of Ministers Resolution No. 63-A/2007 of May 3), a chapter relating to Trafficking in Human Beings has been introduced, which includes the definition of the status of victim of trafficking. The Plan also established the creation of a shelter for victims of trafficking, and the Trafficking in Human Beings Observatory. Furthermore, the National Action Plan for Inclusion (NAP) foresees the adoption of a model care of victims of human trafficking, the set up of a temporary shelter for victims and of a multidisciplinary team of professionals to work with victims

Portugal adopted the first National Action Plan against Human Trafficking on 6 June 2007 (2007/2010). It includes policy measures to address prosecution, as well as prevention and protection of victims of the crime.

The Council of Ministers has also resolved to:

- Designate the Commission for Citizenship and Gender Equality (CIG) as the responsible entity for assisting in the Plan's coordination and follow-up on the implementation of its measures, requesting the government to designate a competent coordinator;
- Determine that the functions of the National Rapporteur on Trafficking in Human Beings are part of the responsibilities of the Plan's Coordinator. The National Rapporteur will liaise with counterparts at the international level; promote and participate in the development of structures and networks nationally and internationally; and ensure the final evaluation of the implementation of the Plan by an external entity.
- Create a Technical Support Commission to complement the role of the Coordinator. The Commission will include a representative per each of the following institutions: Council's Presidency, Ministry of Internal Affairs, Ministry of Justice, Ministry of Labour and Social Solidarity, Ministry of Foreign Affairs.

Identification, protection of rights, and referral

In Portugal, the inter-ministerial governmental body that guarantees coordination of the policies, strategies and initiatives on trafficking in human beings established the partnership for a pilot project on Trafficking in Human Beings, financed by EQUAL, Project CAIM. The project resulted in the development of a number of studies by national and international NGOs and the definition of an intervention model that is now reflected in the national referral mechanism. This defines roles for the different agencies, i.e. how to respond when a trafficked person is identified and to which agency s/he should be referred.

The identification procedure is adequate to "ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim happens".

The adoption of instruments such as the standardised registration guide, the creation of an observatory in relation to trafficking issues and the development of an annual forum extended to all personnel involved in this domain are expected to contribute significantly to increase the knowledge base and improve the response to the phenomenon of human trafficking in Portugal. The structure of the referral mechanism consists in a formal signed agreement between government agencies and APF and a protocol between all NGOs that agreed to use the standard instruments and be part of the national referral mechanism.

Since June 2008, any organisation, NGO, social services or individual, including the victims themselves, may report cases of human trafficking to the multidisciplinary team (NGO Family Planning Association and Gender and Equality Citizen Commission). The law enforcement agencies (i.e. Foreign and Border Police, Judiciary Police, Public Security Police, Republican National Guard) are required to report the cases to the OPCs Focal Point (specialized police unit). When reporting cases of trafficking, the law enforcement agencies must fill in the Unified Register Form, while the NGOs must fill in the Signalling Guide; both will then send the records to the Observatory on Trafficking in Human Beings.

The identification process is carried out by the judicial authority or the Focal Point within the police or by the Coordinator of the National Plan Against Trafficking in Human Beings (PNCTSH).

OPC indicators are used as a checklist in the context of a formal identification procedure, so that a presumed trafficked person will only be identified as such if some of the characteristics suggested on the list of indicators are present.

The OPC indicators are similar to the Operational indicators of trafficking in human beings of ILO and the European Commission.

A multidisciplinary team including specialised support service providers and OPC focal points work together during investigations, the rescuing and identification processes. The mechanism does not work 100% but its efficiency is gradually increasing.

Law no. 23/2007 of July 4 regulates the legal system for the entry, stay, exit and removal of foreigners from national territory and includes provisions on reflection and recovery period for victims of human trafficking.

Trafficked persons may be granted a reflection period of 30 to 60 days during which they have access to different types of supports, such as safety, social services, psychological support, legal advice, medical assistance, translation and interpretation. Support is offered by a core technical team and the Shelter and Protection Centre (CAP), in coordination with other entities, such as: the National Health Service, Judicial-Legal System; Institute for Employment and Vocational Training. The shelter is currently open only to women and their children. Authorisation for residence is granted to foreign citizens who are or have been victims of trafficking in persons at the following conditions:

a) It is necessary to prolong the victim's stay in the country during legal investigations and procedures;
b) The victim is willing to collaborate with the authorities;
c) The victim has broken all relations with the traffickers.

Authorisation of residence is valid for a period of one year and renewable for equal periods, if the previously mentioned conditions continue to be fulfilled or if the need for protection of the person persists. The trafficked person has access to official programs whose objective is to help recovery and re-integration into social life, including courses for improving professional skills.

Foreign minors have access to the educational system under the same conditions as national citizens. All procedures will be undertaken to establish the identity and nationality of the unaccompanied minor, as well as to locate his/her family as quickly as possible, also guaranteeing his/her legal representation including, if necessary, in the area of criminal procedure.

The Decree-Law no. 368/2007 of November 5 states that a residence permit may be granted to a victim of trafficking without the necessity for the previously mentioned requirements when the personal circumstances of the victim justify it, in particular with respect to a situation of vulnerability of the trafficked person, his/her family members or people with whom he/she has close relationship.

The assistance available for trafficked persons in Portugal is still targeted mainly to women and children. The June of 2008 Cooperation Protocol between Ministries and NGO APF defines the adequate function of the national multidisciplinary team and regulates the different assistance services trough the provisory accommodation centre (CAP). Although the CAP team works with trafficked men as well as women, a proper structure and specific response for male victims still does not exist. Therefore support for men in practise is not ideal.

In 2008 and 2009 all identified victims and presumed victims were offered secure accommodation, psychological and material assistance, access to emergency medical treatment, translation and interpretation services, when appropriate, counselling and information about their legal rights and the services available to them in a language that they can understand, assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; access to education for children.

The Portuguese model foresees also the option of voluntary assisted return, in cooperation with countries of origin. The victims' stay at the CAP should not last for more than one year, although there might be exceptional situations that justify the extension of such period, like for example for safety reasons, or when there are no social conditions to ensure the victims autonomy, training and professional occupation.

Access to justice

The Portuguese legislation includes provisions on compensation for victims of the crime of human trafficking.

In terms of protection measures for victims/witnesses, the Law No. 93/1999 of 14 July and the Decree-Law No. 190/2003 of 22 August regulate the implementation of measures for wit-

ness protection in criminal proceedings where "their life, physical or mental integrity, freedom or property of considerable high value are put in danger because of their contribution to the proof of the facts". The measures include the families of the victims and others close to them and in case of particularly vulnerable people (like minors) they are applied also when the effective situation of danger has not been assessed.. This law, also approved the statute that regulates the implementation of measures for witness protection in criminal proceedings in line with the international movement to recognize the rights of witness, enshrined in the Recommendation R (97) 13 Council of Europe.

Prevention

In the Portuguese I Plan Against Trafficking of Human Beings the second intervention area is subdivided into three main sections: *To Prevent, Raise Awareness and Train.*

Training activities were carried out within the above-mentioned Project CAIM and under the I national Plan against trafficking in human beings targeting different categories of personnel.

Information material on legislation relative to immigration have been prepared, which should be distributed to Portuguese embassies and consulates, including links that guide internet users to facts on trafficking in human beings and preventive information as well as contact points in the web pages of government entities, NGOs, security forces and services as well as immigrant associations working in this area. An awareness campaign was developed and posted mostly through the public transport system.

Information leaflets have been produced about immigrant associations, NGOs and CLAI's. (*Centros Local de Apoio ao Imigrante*). Projects to support the development of programmes promoting zero tolerance towards gender-based violence and discrimination were carried out in schools Training on the assistance methodologies necessary for trafficking victims were carried out for judges and law enforcement agencies as well as the Labour Conditions Authority Associations of Entrepreneurs, Labour Unions and Immigrant Associations. The training sessions were carried out with the support of NGO specialised personnel as trainers.

Monitoring and evaluation system

The procedures for monitoring and evaluation of the effectiveness and impact of anti-trafficking measures in Portugal a national should be carried out by a national body that compiles data from different sources. The Centre on Human Trafficking (OTHS) of the Ministry of Interior has been established by the NAP. Its mandate is to produce, collect, process and disseminate information and knowledge about human trafficking and other forms of gender violence, including inputs of all the (non) governmental agencies involved in the fight against human trafficking.

An independent (?) commission also reports publicly on the implementation of policies and measures, evaluating their effectiveness. The National Rapporteur, relates, in fact, to entities with foreign counterparts and international level of human trafficking; has promoted and participated in the development of structures and networks nationally and internationally and is ensuring the final evaluation of the implementation of the I Plan by an external entity. (Messy paragraph, unclear connections among sentences. My revision is kind of a guessing exercise. I am not sure if I got this right and how to connect the last sentence to the previous ones correctly).

During 2008 and 2009, some valuations of anti-trafficking measures were published by the Commission coordinating the I Plan against Trafficking in Human Being, the Portuguese Observatory and the report of national security, including the data analysis from SEF (?) relating to the new legislation and policy towards immigration.

Recommendations

- Further sensitization and training of personnel involved in access to justice in cases of human trafficking.
- Improve knowledge of the law and enforcement of protective measures for victims.
- Better coordination between police and the courts in general and particularly in cases of minors.
- Joint training for different practitioners.
- Meetings for the network of partners at national level, including NGOs and civil society institutions to help harmonise action in terms of the national referral mechanism and victim assistance measures.

7.22 ROMANIA[177]

The phenomenon

In the past few years Romania has become a country of origin and transit for trafficking in human beings. Since 2007, when Romania was accepted in the EU community, migration policies have allowed Romanian citizens to travel freely around the EU. New migration patterns induced the establishment of a legislative framework with the purpose of combating, preventing and protecting the rights of victims of trafficking in human beings.

In 2009, 780 individuals were identified as trafficked persons, of which 145 were internally trafficked and 29 percent were recorded as minors. The gender of trafficked persons is nearly equal, with 54 percent as female and 46 percent as male. Male victims are associated with forced labour exploitation, whilst persons with disabilities or small children are often victims of forced begging. Young women and girls are generally trafficked for sexual exploitation, producing of pornographic materials and any other sexual related activities. Seldom there are situations in which the victims are exploited in more than one of the forms mentioned above (mixed type exploitation).

From Romania, the most common destinations for trafficked persons are recorded to be Spain, Italy and the Czech Republic. Commonly recruitment is through the false pretence of acquiring employment in legitimate occupations abroad.

For adult victims, the presence of the recruiter during transportation is rare. Individuals usually travel alone or are accompanied by other victims from the same recruiter. The means of transportation are international buses and low-cost company planes. In regards to minors, trafficked persons are most likely to be accompanied by the recruiter or trafficker in a personal vehicle whereby border crossing involved bribing border police, or the use of false documents.

National anti-trafficking legislation and institutions

Romania has ratified the United Nation's Convention against Transnational Organized Crime with its two Protocols in 2002 and is one of the first member states of the Council of Europe to have signed and ratified the Council of Europe Convention on Action against Trafficking in Human Beings. The provisions of the Conventions entered into force in Romania on February 1st, 2008 completing the existing implementation of the anti-trafficking legislation.

Regarding the definition of trafficking in human beings, legislative tools provide a detailed and operational approach: "It is an offence for anyone who recruits, transports, transfers, harbours or receives a person, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will, or by giving, offering or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation and is punishable by imprisonment for 3 to 12 years and interdiction of certain rights".

The main forms of exploitation stipulated in the Romanian law refer to: forced labour, sexual exploitation and organ removal. The Romanian legislative framework is harmonized to the Council of Europe Convention. In this respect, the anti-trafficking legislative tools are:

- The National Strategy against Trafficking in Persons for the period 2006-2010;
- The National Action plan for the Implementation of the National Strategy against Trafficking in Persons for the Period 2008-2010;
- Law 678/2001 on Preventing and Combating Trafficking in Persons, together with all the modifications and completions;
- The Government Decision no.299/2003 for the Approval of Implementation Regulation of Law 678/2001 dispositions on Preventing and Combating Trafficking in Persons.
- Law 39/2003 on Preventing and Combating Organized Crime;
- Law 211/2004 on Ensuring Protection Measures for Victims of Crime, which provides for the implementation of EU legislation.

At the level of governmental structures, the National Agency against Trafficking in Persons has the tasks of coordinating anti-trafficking

177. Written by Alexandra Mitroi, Adpare, Bucharest.

activities, of monitoring the implementation of policies in the field of trafficking in persons by the public institutions, as well as those in the field of protection and assistance provided to its victims. The Agency cooperates with governmental and non-governmental organizations within the country and abroad, as well as with inter-governmental organizations with the view of raising the public awareness on the phenomenon and its consequences. Presently, the National Agency against Trafficking in Persons works under the Romanian General Police Inspectorate, subordinated to the Ministry of Administration and Interior.

Identification, protection of rights, and referral

Romania reports ongoing difficulties with the identification and reintegration of trafficked persons, and the consequential prosecution of perpetrators due to gaps in the capacity of police forces and other authorities.

The National Agency, in its position as National Coordinator of anti-trafficking policies and actions, applies the provisions of the National Identification and Referral Mechanism (compatible with the Transnational Identification and Referral Mechanism's structure) regarding the standardised procedures of victim identification and referral, taking into account the constant protection of trafficked person's rights. The National Identification and Referral Mechanism stipulates:

- The identification procedures for victims of trafficking – acknowledging both formal (law enforcement agencies) and informal identification (Diplomatic Missions, consulates, NGOs, by hotlines) by the use of a set of specific indicators and principles.
- The referral procedures – depend on the identification process and require cooperation between all the actors involved.
- Non-Romanian trafficked persons shall be entitled without discrimination to the same support and protection measures as Romanian victims. Therefore, foreign individuals should be informed in a language they can understand about their right to a maximum of 90 days to recover and access specialized support services, including accommodation in specially arranged centres, psychological, medical and social assistance. A temporary residence permit can be granted to foreign nationals in the case in which they accept to cooperate with the Romanian authorities in investigating the trafficking related offences, or by being part in the trafficking trial.
- Repatriation procedures for facilitating a safe return are conducted both for Romanian and foreign citizens exploited on Romanian territory.
- The provision of assistance and protection for Romanian trafficked persons is ensured irrespective of whether they cooperate with the law enforcement or not, by NGOs and GOs and comprises of services such as: residential assistance in closed or semi-closed shelters, material assistance, psychological assistance, social assistance, medical assistance, educational assistance, legal assistance, all free of charge. Depending to the individual's needs, they can be included either in assistance in crisis programme (provided for a 90 days' period – the reflection and recovery period) or in a long term assistance programme with the aim of intensive recovery and complete socio-professional reintegration.
- The manner in which the assistance services are implemented is standardised by a set of good practices, synthesised under the name of The National Assistance Standards for Victims of Trafficking in Persons.

Access to justice

Each identified trafficked person has the right to be informed about their legal status and the rights deriving from it. Should he/she agree to collaborate with law enforcement authorities, the individual will receive consultancy and information on the legal proceedings and will be provided with a public defendant.

In addition, the law establishes several categories of terms/conditions for granting financial compensation to direct or indirect victims of the given crimes, including also information to the prosecution authorities about the crime committed, within a specified period of time.

In practice, sometimes the specific standards for assistance and protection cannot be fully complied due to the organization's reduced financial capacity to provide integrated long-term assistance services.

Despite the protocols that are signed, the rights of trafficked persons to access free of charge the sanitary, legal and psychological

protection on the state's behalf; these rights are not available *de facto*. In practice, routine procedures required by state actors are bureaucratic, prolonged and less accessible to beneficiaries in the initial phase of recovery. Usually they can be appealed to outside the context of emergency situations, with the resolutions to the beneficiaries' requests lasting up to one month.

Prevention

The National Agency against Trafficking in Persons has coordinated the implementation of campaigns such as: *Your money makes the traffickers rich...Your money kills souls!*" - focused on demand reduction; "*18 October - EU Anti-trafficking Day*" – information campaign; "*The trafficking in persons is there! Take an action TODAY, not TOMORROW*" - sensitization campaign of the trafficking in persons associated risks; *"Labour in the Czech Republic"*- information and prevention campaign.

The most recent training programmes have been conducted with the participation of anti-trafficking foreign experts and focused on involving more stakeholders in the early identification of victims of trafficking and on strengthening inter-institutional cooperation. As example stands the Training seminar for the representatives of the Romanian Territorial Labour Inspectorate on identification and referral of victims of trafficking in persons – in collaboration with the Romanian Territorial Labour Inspectorate, the Romanian Immigration Office and the International Labour Organization.

Moreover, one initiative of the National Agency against Trafficking in Persons in inter-institutional approach consists in signing several Memorandums of Understanding with governmental actors such as: The Ministry of Labour, Family and Social Solidarity, the Ministry of Health, the Ministry of Education, Research, Youth and Sport. These facilitate access and create a framework for victims of trafficking to access the state social assistance network, labour market, state medical facilities, state education, etc. At civil society level, there have been organized fundraising activities and social involvement initiatives (exhibitions, fairs, independent film projection, and informal anti-trafficking presentations at the University).

Monitoring and evaluation system

The Romanian Action Plan for the period 2008-2010 for the implementation of the National Strategy against Trafficking in Persons stipulates specific goals with associated evaluation indicators.

The monitoring process related to the implementation of measures, actions and policies in the field of trafficking in persons in carried out mainly by the National Coordinator – The National Agency against Trafficking in Persons, through the Monitoring, Evaluation and Research Service. The inputs necessary for conducting the monitoring are provided by the local NGOs active in the field of prevention and direct assistance provision to trafficked person. State transit centers for trafficked persons provide data that is transmitted to the Regional Center in Bucharest in order to be included in the National Victim Database. The inclusion of the collected data in the database as an operational tool helps the NAATIP representatives to gain a complete perspective over the victim's status, provision of assistance services and stage of recovery and reintegration.

Presently the monitoring and evaluation of the implementation of anti-trafficking policies and measures are being implemented, not only to assess the adequacy of the actions taken in the past two year period but also to establish new strategic objectives and actions that reflect the changing reality of human trafficking. The reviews will be published in the Romanian Action Plan for the implementation of the National Strategy against Trafficking in Persons for future years.

Recommendations

- Ensuring constant cooperation, support, sharing of information and good practices, through official protocols not only between the governmental and non-governmental side but also among local and national NGOs.
- Empowering and supporting the organizational development by redirecting governmental funds to assistance services providers.
- Facilitating the access conditions and fastening the bureaucratic procedures, since presently routine procedures required by state actors are bureaucratic, prolonged and less accessible to beneficiaries in the initial phase of recovery.

7.23 SLOVAKIA[178]

The phenomenon

Slovakia is considered primarily as an origin and a transit country and hardly as a destination country for trafficked persons, although the latter possibility is not to be excluded.

Based on the analysis of the investigation files carried out by UNODC in 2008, approximately twice as many cases of domestic trafficking identified during the monitored period (1 August 2004-1 April 2008) compared to cases of nationals trafficked abroad. This may be the result of the fact that Slovak persons trafficked abroad are often identified by the foreign competent authorities and NGOs and, when back to Slovakia, many of them refuse to cooperate with the Slovak Police. Accordingly, the lower number of investigations on trafficking cases of foreigners may be related to difficulties with identification process as such, with collecting criminal evidence and problems with the international cooperation among authorities involved in criminal proceedings.

The gender of trafficked persons in Slovakia is mainly female between 18 and 51 years of age; most of them are between 18 and 30 years old while, in cases of Roma, victims (but not exclusively) are often 15 year-old children.

The main places of destination for internally trafficked persons are Košice, Bratislava, Humenné, Lučenec, Komárno and Kežmarok. The means of transport vary depending on whether the person is being transported by the trafficker or travels alone. In the first case, s/he is generally transported by car; in the latter, s/he travels by buses and trains. People who are recruited through false promises of good jobs as hostesses, waitresses, bartenders, cleaners usually reach the destination place on their own And, once there, their documents are withheld.

Between 1998 and 2007, the Slovak authorities detected 86.507 irregular migrants[179], while 15-20.000 irregular migrants[180] were estimated to work in the underground economy in 2009. No foreign trafficked person, though, has been identified so far. Annual numbers of irregular migrants' detections were 8,236 in 1998, peaked to 15,548 in 2005 and fell back to 6,761 in 2007. Ukraine is the main origin country of irregular migrants, often heading to Austria, followed by Hungary and Czech Republic. This trend is also confirmed by the nationalities of smugglers found at the borders. Other countries of origin of identified irregular migrants were India, Pakistan, and Moldova. Smuggling businesses are mainly run by Slovaks and, to a less extent, by Ukrainians. Migrants are smuggled through foot crossings, a vehicle or trains where they hide themselves, or by means of fake passports. In 2007, 2.643 people applied for asylum seeking: only 14 were successfully granted the asylum seeker status.[181]

Although no foreign trafficked person in transit has been detected by the Slovak authorities, there is clear evidence that Slovakia is not only a transit country but, increasingly, also one of destination for trafficked persons.

National anti-trafficking legislation and institutions

The Slovak Republic signed the Palermo Protocol on 15 November 2001 and ratified it on 25 August 2004. The Protocol entered into force for the Slovak Republic under its Article 17 (2) on 21 October 2004 and was published in the Slovak Collection of Laws under No. 34/2005. The UNTOC Convention entered into force on 2 January 2004 and was published in the Slovak Collection of Laws under No. 621/2003.[182] The re-codification of the criminal codes took place in Slovakia in 2007. Act No. 140/1961 Coll. effective from 1 January 2006, was replaced by the Act No. 300/2005 Coll.

178. Written by Alexandra Malangone, The Human Rights League, Bratislava.

179. Office of Border and Alien Police, *Yearbooks*.

180. B. Divinsky, *Migracne trendy v Slovenskej republike po vstupe krajiny do EU (2004-2008)*, IOM, Geneva, 2009.

181. Office of Border and Alien Police, *Yearbooks*.

182. Pursuant to the new Notification of the Ministry of Foreign Affairs No. 502/2006 Coll., the body authorized to receive the applications in the sense of Article 18 (13) of the Convention is the Slovak Ministry of Justice. In urgent cases, the applications can be sent via Interpol.

Accordingly, Act No. 141/1961 Coll. effective from 1 January 2006, have been replaced by the Act No. 301/2005 Coll. The paragraph 179 of the Criminal Code no. 300/2005 Coll. of Laws reads as follows: "Any person who by use of fraud, limitation of personal liberty, violence, threat of violence, threat of other serious harm or other forms of coercion, through giving or receiving of payments or benefits to achieve the consent of a person having control over that person, or who abuses such person's position or his/her defenceless or position of vulnerability and entices, enlists, transfers or receives such a person regardless of his/her consent with the intent to engage such a person in prostitution or in other forms of sexual exploitation including pornography, forced labour or involuntary servitude, slavery or other practices similar to the slavery, servitude, removal of organs or tissues or cells or other forms of exploitation shall be punished by a term of imprisonment of four to ten years. (2) The same sentence as referred to in paragraph 1 (4 to 10 years) shall apply to anyone, who entices, transports, harbours, transfers or receives a person under the age of 18, even with his/her consent, for the purpose of engaging such a person in prostitution or other form of sexual exploitation, including pornography, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs, tissues or cells and other forms of exploitation."

Other offences that criminalize the conducts related to human trafficking in the Slovak criminal code include articles concerning rape, extortion, sexual violence and pimping (Articles 199, 189, 200, and 367).

Identification, protection of rights, and referral

In Slovakia, there is a formal agreement that allows various organisations (including NGOs) to identify trafficked persons. This is the Internal Directive of the Ministry of Interior named "Programme for the Protection and Assistance of the Victims of THB" (30.06.2008). The Slovak Act on the Residence of Foreigners no. 48/2002 Coll. of Laws transposing the Council Directive 2004/81/EC of 29 April 2004 provides for the granting of a tolerated residence, including the period of a reflection delay of 90 days to trafficked persons who are third country nationals and decide to cooperate with the authorities.

In the entire identification and referral process, a great importance is placed on the "self-identification" or "self-reporting", including not only foreigners (to be granted a residence permit for the purpose of a reflection delay, the authorities interpret the provisions in a way that such persons need to declare that they have been subjected to human trafficking), but also Slovak nationals, e.g. trafficked internally. Information leaflets, publications and trainings have been provided across agencies, but have not yet made a major impact on the identification of trafficked persons, mainly among foreigners. When it comes to trafficked Slovak nationals returning home, in most cases, they have already been identified as victims by the foreign NGO or police, or their family members have contacted IOM, called the National Toll Free Number, a Slovak NGO or the police. Upon their arrival to Slovakia, they are offered assistance directly by IOM, Caritas, or NGO Naruc and NGO Dotyk. According to the available evidence, assistance provided by IOM, Caritas and NGO Naruc is generally tailored made to the individual needs of trafficked persons.

Access to justice

Very few cases of trafficking in human beings have been prosecuted in Slovakia.

The Programme for Protection and Assistance provides for legal counselling to trafficked persons. At the same time, very few investigations have been initiated specifically prosecuting trafficking offences; a great number of trafficking cases are dismissed during the course of investigation.

Prevention

Based on the National Programme of Fight against Trafficking in Human Beings (2008-2010), the following prevention activities were or are organised:

- Development of a national awareness raising campaign targeting the general public through TV spots, billboards, newspapers, radio interviews (2009, in cooperation with IOM);
- Publication of written materials on trafficked persons (ongoing in cooperation with IOM);
- Establishment of the National Toll Free Number (since 1.7.2008, operated by IOM);
- Provision of information campaign for potential offenders (ongoing);

- Delivery of trainings for officials of public services, including pedagogues of police schools, employees of health, education, social, culture and international affairs services, religion institutions, local police (ongoing, in cooperation with IOM);
- Development of a list of business areas, which can be involved in human trafficking (ongoing).

The evaluation of prevention techniques shall focus on the fact whether all responsible bodies provided efficient anti-trafficking training for law enforcement, immigration, prosecution, judiciary and other relevant officials. In September 2008, UNODC trained 11 trainers from criminal police, investigative police, prosecutors and special organized crime anti-mafia prosecutors on human trafficking related-issues. Subsequently, in cooperation with the Ministry of Interior, selected trainers trained more than 100 police officers in three training courses under the supervision of UNODC. In spite of the obligations deriving from the National Programme to Fight Trafficking in Human Beings, the Ministry of Justice did not deliver any training for prosecutors and judges.

In 2008, in the realm of the UNODC technical assistance project "Criminal Justice Response to Trafficking in Human Beings in the Slovak Republic", an evaluation report prepared by the Institute for Good Governance was commissioned and published by UNODC Bratislava.

Monitoring and evaluation system

The Department of Parliamentary and Governmental Agenda of the Ministry of Interior is responsible for drafting and coordinating anti-trafficking plans and policies at the national level. It also monitors such policies and actions. The Department reports on the implementation of the National Action Plan (NAP) tasks to the Expert Group on Action against Trafficking in Human Beings. The meetings of the Expert Group take place at least once a year. Prior to the session of the Expert Group, input on the implementation of the NAP is sought from all the participating institutions, NGOs and international organisations. The Department of Parliamentary and Governmental Agenda then draws the evaluation report, which is submitted to the Government for approval. The Head of the Department is the Vice-President of the Expert Group on Action against Trafficking in Human Beings.

Recommendations[183]

- To enhance the efficiency of identification process of trafficked persons, including foreigners, and ensure that the granting of the status of trafficked person is not based on "self-identification";
- To take into account the positive obligation of the State to care for all trafficked persons with respect to their age, personal situation and specific circumstances of their case, in order to create the real possibility of mitigating the harm caused to them by having been subjected to human trafficking, including in the judicial proceedings;
- To develop well-directed and targeted prevention programmes with a measurable effect on specific target groups;
- To develop systematic awareness raising initiatives in the area of human trafficking, including trainings for police, prosecutors and judges and NGOs;
- To enhance efficiency of the Programme for the protection and support of trafficked persons, including social support and reintegration, and reinforce the cooperation with the Ministry of Social Affairs and Family in caring for trafficked children.

7.24 SLOVENIA[184]

The phenomenon

Slovenia is above all a transit country, even though it is turning into a country of destination, as well as a country of origin. Most of the victims are women exploited in forced prostitution.

In 2009, the Police detected several forms of trafficking in human beings. Most of the

183. Written by NGO Human Rights League, Bratislava.
184. Written by Mojca Lucovnik, Society Ključ - Center for Fight against Trafficking in Human Beings, Ljubljana.

cases were related to sexual and labour exploitation. There were no cases of forced begging or servitude in 2009, even though these were found in the previous year. In 2008, several cases of child victims to be exploited in forced labour were identified while transiting through Slovenia. In 2009, there were more cases of labour exploitation which reflects the current economic crisis and the consequent individuals' willingness to accept various job offers as long as one gets work. According to the Police, there is no information on cases of abuse of domestic workers or similar cases related to trafficking. As may be inferred from the 2009 annual report by the Inter-Departmental Working Group, presumed victims of trafficking in human beings accommodated in the safe place managed by Society Ključ or in the Caritas Slovenia crisis accommodation were all adults, mainly above 30 years old.

Potential victims in transit through Slovenia typically come from Bulgaria, Slovakia, Romania, Moldova, Ukraine, Russian Federation, Caribbean countries, the Dominican Republic, Thailand and Asia. In 2008, cases of trafficking for sexual exploitation were mainly identified in night clubs, flats and tourist facilities. Both in 2008 and in 2009, most victims were Slovenian citizens.

National anti-trafficking legislation and institutions

The Slovene Trafficking in Human Beings Act focuses on all forms of exploitation.

The Slovene Penal Code, in its Article 113 (1), prohibits the exploitation of prostitution of others or other forms of sexual exploitation, forced labour, slavery, servitude, as well as trafficking in organs, human tissues and/or blood. In line with this provision, anyone who buys, receives, harbours, transports, transfers, sells, gives or otherwise disposes of persons or functions as an intermediary, shall be sentenced from one to fifteen years of imprisonment.

Prostitution is mentioned in the Penal Code, Article 175, which criminalises all those who are involved in the exploitation of prostitution.

Article 112 criminalises slavery and practises similar to slavery.

The Slovene Penal Code focuses on exploitation, which means that the offence of human trafficking occurs even if the person concerned has consented to exploitation. Such consent is therefore disregarded if the person concerned is under or of age. Article 3c of the Palermo Protocol only applies to children, while in the Slovene Penal Code this article is extended to both children and adults. When the offence of trafficking in human beings, exploitation of the prostitution of others and/or slavery involves a person who is under the age of 18, the legal act envisages higher penalties than it does in cases involving adults.

"In 2001, the Republic of Slovenia actively joined anti-trafficking efforts by establishing the Inter-Departmental Working Group (IDWG) to tackle this issue, and by appointing a National Coordinator. With the course of events and [This expression sounds strange. Consider alternatives, for instance: "Gradually, also due to a growing scope of obligations, the status of the IDWG was confirmed in 2003 by the Slovene Government's Decision (No. 240-05/2003-1, 18 December 2003). At the same time, the Group's mandate and the list of its tasks were defined. This was the basis for drawing up Action Plans which have been completed and upgraded through the years, and which have included financially evaluated projects whose contractors were non-governmental organisations (NGOs) selected through public tenders. These NGOs now play an important role in prevention as well as assistance programmes for victims of trafficking in human beings, and in planning and formulating common measures and activities in this field."[185]

Identification, protection of rights, and referral

Initially, the activities carried out by individual institutions, prosecution authorities and civil society related to combating trafficking in human beings in Slovenia were linked to individual cases and were rather poorly coordinated. When trafficking in human beings became more of a perceived problem, the need for more adequate solutions emerged, and in particular the need fro a comprehensive and better coordinated approach to this phenomenon, entailing the participation of all relevant actors.

185. www.vlada.si/fileadmin/dokumenti/si/projekti/trgovina/AN_2010_-_2011_angl.pdf, 2 June 2010.

This was also one of Slovenia's international commitments. In February 2002, with a decision adopted by the Government of the Republic of Slovenia, a national coordinator tasked with the coordination and heading of the Inter-Departmental Working Group was appointed. The appointed members of the group are representatives of competent ministries, non-governmental organisations and intergovernmental international organisations.

In Slovenia, there is no national coordination structure, i.e. a 'National Referral Mechanism', although the roles and responsibilities of different organisations for referring presumed trafficked persons are clearly defined as a referral system is organised within the Inter-Departmental Working Group. The memoranda of understanding stipulated between the Ministry of the Interior of the Republic of Slovenia and Society Ključ, the Police and Society Ključ and between The Office of the State Prosecutor General of the Republic of Slovenia and Society Ključ include provisions on protection and assistance to victims of trafficking, while Caritas Slovenia concluded a contract with the Police.

In Slovenia, formal identification of victims of human trafficking can only be carried out by the police. In practice, the identification process occurs at various levels. It is partly carried out as regular police work (intelligence gathering, suspicions, evidence gathering). The police may conclude its investigation with a report sent to the prosecution service. When this occurs, the case is officially closed. (This happens when the police has not gathered enough suspicions to start an investigation procedure) or handed over to the prosecution service. In the latter case, the prosecution service directs the activities of the police, further investigating the evidence. Such a cooperation results in bringing the case before an investigating judge. In most of the cases, the investigating judge decides for a testimony of the victim who then is given the opportunity to tell their side of the story. Another possibility is that of victim identification through consultancy services offered to persons accommodated in a safe place. The third possibility is that of self-identification which also happens though rarely. Self-identification never occurs upon reception to accommodation facilities. It usually occurs after a certain period of time when the victim becomes strong enough to recognise, without being burdened by guilt or shame that they have experienced trafficking in human beings.

There is no standard formal identification procedure for presumed victims of human trafficking. The police have made no specific list of indicators for identifying victims of trafficking. They use an internal manual also covering the identification process. Within this manual and through periodic training and refresher courses, indicators assisting the identification of forms of coercion and force against the victims of trafficking are listed.

Governmental (the Police / the Centre for Aliens, The Office of the State Prosecutor General of the Republic of Slovenia, the Ministry of the Interior / the Asylum Centre) and non-governmental organisations (Society Ključ, Caritas Slovenia) share the responsibilities linked to the THB victim identification process as stipulated in the bilateral agreements and contracts.

Presumed trafficked persons are entitled to all the forms of assistance available to individuals who are formally identified as trafficked. The maximum time for a reflection period is 90 days. During this period, the police may not interview the presumed trafficked victim. The provision on the right to a reflection period is not limited to third country nationals; the reflection period is supposed to be granted if there is even a slight suspicion that a person has been trafficked. Each person [Consider: presumed victim] is accommodated in the Ključ safe house for a three-month recovery period. This means that even for the victims who during the period of crisis accommodation do not express a wish to cooperate with law enforcement agencies, the residence status within the three-month recovery period is governed by the Aliens Act.

The following forms of assistance are provided to victims of human trafficking for the purpose of their physical, psychological and social recovery, as well as for settling their status and participation in criminal proceedings:

- Adequate accommodation, food and care;
- Psychological assistance;
- Assistance in providing primary health care according to the Act governing health care and health insurance;
- Providing protection of victims and employees participating in individual cases, if necessary;

- 24/7 availability [add specification if possible] for victims accommodated in crisis accommodation;
- Translation and interpretation services, if necessary;
- Assistance in providing adequate support to child victims;
- Counselling and provision of information, especially in relation to their rights, in the language understood by victims;
- Assistance in settling a victim's return to their country of origin;
- Other measures in relation to socialisation and revitalisation ["revitalisation" is a strange term, but I can't find another suggestion];
- Assistance in regulating their status in the Republic of Slovenia;
- Assistance in informing child victims of their rights, role and the contents as well as the schedule and course of procedures to solve their problems;
- Assistance ensuring that the rights and interests of victims of trafficking in human beings are represented and dealt with at the relevant stages of prosecution of offenders;
- Assistance in providing adequate support to child victims during the entire legal proceeding;
- Professional training for contractors providing care and for other participants (police, employees from social work centres, etc.) during victim support and the prosecution of offenders;
- Raising awareness among young people and staff who work with young people regarding the dangers and traps of trafficking in human beings.

In line with the provisions of the Aliens Act, victims of human trafficking are treated equally as other foreign nationals. As, however, they represent a special category, they are regarded as a vulnerable group the members of which should, in accordance with the Aliens Act, Article 38/A/4, because of their victim status, be given the following special treatment: "Regardless of other conditions to be met for the issuance of the residence permit defined in the present act, the victim of human trafficking can be issued a temporary residence permit if they are willing to act as a witness in the criminal proceeding and their testimony, as confirmed by a law enforcement body, is of relevance." The above-mentioned provision does not apply to other foreign nationals who are victims of other criminal acts. It goes without saying that victims of human trafficking may be granted a temporary residence permit on some other legal basis (the same applies to other foreign nationals) if conditions are met. As follows, according to the Aliens Act, Article 38/A/7, "victims of trafficking in human beings are issued a temporary residence permit for the envisaged duration of the criminal proceeding. This permit is never granted for less then six months or for more than one year. Upon the request of the victim of trafficking in human beings, this temporary residence permit can be extended until the conclusion of the criminal proceedings should the criteria stipulated in this article be met for a maximum of one year". *The Aliens Act (official consolidated text) (ZTuj-1-UPB6), Official Gazette of the Republic of Slovenia, No. 64/2009.*

Negative decisions on residence permits can be challenged through a formal appeal procedure. Individuals who are seen by the authorities as irregular migrants have the opportunity to remain in Slovenia on the basis of a temporary residence permit granted for education or work purposes.

In case of return of victims of human trafficking to the country of origin, a threat assessment should be made in order for the person concerned to return to the environment that does not pose a risk for re-victimisation. To this end, checks and verifications should be carried out through the law enforcement authorities in the countries of origin and NGOs. Cooperation between competent authorities and organisations is extremely important in order to provide for a safe return and the final accommodation of victims of human trafficking.

Access to justice

Since 2003, Slovenia adopted a number of measures for the protection of victims of human trafficking against possible retaliation or intimidation, especially during an investigation and the prosecution of perpetrators. These measures have been defined in a Memorandum of Understanding and relate to persons accommodated in the safe house managed by Society Ključ. Society Ključ believes that the police are, when necessary, obliged to protect a victim during any movements necessary for the pur-

poses of a pre-trial criminal procedure. Society Ključ also hires a 24/7 physical protection guard for the safe house and the persons residing. An objective threat assessment may be issued by the police either on their own initiative or upon Ključ's initiative, while a subjective feeling of threat may emerge through the consultation process with the victim. Slovenia has also adopted the Witness Protection Act (Official Gazette of the Republic of Slovenia, No. 113/2005, 16 December 2005), but none of the trafficked victims have been included in the witness protection programme so far. The Slovene criminal law also provides for a series of less threatening possibilities for victims participating in criminal proceedings (video-conferencing, etc.), but these are rarely used.

Anti-trafficking legislation is difficult to implement in practice as Slovenia lacks the relevant case law. Criminal offences are difficult to prove, while the decisions of conviction depend on witness statements, as other material evidence is most difficult to gather. Prosecuting authorities and courts therefore often opt for a re-qualification of criminal offences, turning them into less serious criminal offences.

In 2009, outside the context of the courtroom, the following forms of protection of trafficked adults who were witnesses or victims of crime were made available (or supported) by a governmental agency: safe accommodation (no access for guests or outsiders); open secure accommodation (windows and doors preventing outsiders from entering); a mobile telephone for emergency telephone calls; a bodyguard when moving outside secure accommodation; physical security in the safe house.

In 2009, the following forms of in-court protection were available to trafficked adults who were witnesses or victims of crime: victim witnesses giving evidence in court were not visible to the accused; police physical protection and the presence of consultants.

The information provided by a governmental agency (or a service supported by a governmental agency) to victim witnesses in 2008 and 2009 about criminal proceedings and the likely impact on them was routinely available in a language understood by victim witnesses, while information about the possible risks entailed in appearing at a trial as a victim or as a witness was provided by the police or prosecutors. Victims of crime were kept informed during the police investigation about the on-going investigation; victim witnesses were informed of the results at the end of the relevant trial.

Citizens of other EU Member States or third country nationals who have been trafficked in Slovenia cannot claim compensation.

Prevention

According to the information available, the Slovene media published more than 40 contributions on trafficking in human beings. Most of the more in-depth contributions, radio and television programmes saw the participation of the national coordinator and members of the Inter-Departmental Working Group. On 18 October, the European Day against Human Trafficking, the Government Communication Office financed and organised a round table entitled *Trgovci z ljudmi ne izbirajo svojih žrtev* (*Traffickers Do Not Choose Their Victims*). Furthermore, many other forms of awareness raising activities have been carried out.

In 2009, the Ministry of Justice together with its Judicial Training Centre conducted a training for judges and prosecutors on the fight against human trafficking and on human-trafficking-related criminal offences. In line with the Police annual education and training plan, an advanced training for multiplicators entitled *Tihotapstvo in trgovina z ljudmi (Smuggling and Trafficking in Human Beings)* was carried out in May 2009 at the Gotenica training centre. Society Ključ was the organisation managing this training event, which also saw the participation of the representatives of Society Ključ and Caritas Slovenia.

In September 2009, the non-governmental organisation Society Ključ carried out a course on human trafficking within the international law enforcement training programme of the Gotenica training centre. In 2009, a manual for teachers entitled *O vama (About the Two of You)* was reprinted and completed with topics dealing with sexual violence and trafficking in human beings. In April 2009, a seminar aiming at teachers at primary and secondary schools entitled *Sex Education* was carried out. 90 teachers participated in the seminar. Special emphasis was put on trafficking in human beings. A similar seminar, aiming at head teachers within the *Šola za ravnatelje (School for Head Teachers)* courses, was carried out by Society Ključ on 24 November.

The *Vijolica – kako se izogniti trgovini z ljudmi (Violet – How to Avoid Trafficking in Human Beings)* programme is carried out by Society Ključ in the shape and form of workshops for the young population. In 2009, approximately 775 young people aged between 14 and 18 and attending primary or secondary schools participated in the programme. The programme also offers presentations for parents. Within its *Odvisnost – Neodvisnost (Dependence – Independence)* programme, Caritas Slovenia carried out prevention activities in November and December involving 360 students in the final grades of primary schools and 90 parents. Furthermore, the national coordinator for the fight against trafficking in human beings regularly lectures at the Faculty for Security Studies. Finally, Society Ključ also carried out two lectures on trafficking in human beings for the students of the Faculty of Law and the Faculty of Security Studies. Within the *Zveza za nenasilje – Zaprisega o izbiri nenasilja (the Non-Violence Federation – the Non-Violence Oath)* programme, Society Ključ, in cooperation with four non-governmental organisations carried out workshops on all the forms of violence posing a threat to young people. The PATS programme was implemented through informative and preventive interviews with asylum seekers at the Asylum Centre with the Ministry of the Interior. In 2009, 35 informative preventive interviews were carried out following the PATS methodology. The Standard Operating Procedures for the Prevention and Action in Cases of Sexual and Gender-Based Violence Programme is carried out free of charge in the Asylum Centre with the active participation of the PATS provider. This programme has seen the treatment of several cases of sexual and gender-based violence. The PATS provider carried out, free of charge, 15 extra interviews, as well as assisted the coordination and treatment of other relevant cases.[186]

Monitoring and evaluation system

The Inter-Departmental Working Group has been reporting on the impact of anti-trafficking measures to the Government of Slovenia in its yearly reports since 2002. In 2004, the Inter-Departmental Working Group prepared its first Anti-Trafficking Action Plan 2004-2006. The Action Plan was later adopted by the Slovene Government. The Action Plan is based on prevention and protection activities of all the bodies and organisations represented in the Inter-Departmental Anti-Trafficking Working Group, as well as on the education and training and international cooperation of experts, officials and volunteers working in the field of anti-trafficking.

The last Action Plan was mainly well prepared and implemented. The only measure which has not been implemented pertains to a public tender for a (re)integration programme.

In 2007, the Peace Institute carried out a research study on human trafficking entitled The Establishment and Monitoring of Internationally Comparable Indicators of Trafficking in Human Beings. In 2005, the International Organisation for Migration in cooperation with the Ljubljana Peace Institute conducted a research study entitled "Where in the Puzzle: Trafficking in Human Beings in, from and through Slovenia".

Recommendations

- There is a need to introduce continuous education and training in trafficking in human beings of prosecutors and judges in Slovenia. Similarly, the existing education and training of law enforcement officers in human trafficking needs to be further maintained and developed. Education and training activities ought to be carried out in cooperation with non-governmental organisations.
- Trafficking in human beings ought to be inserted in the Slovene school curriculum. Such an approach would permit to reach all children and young people. Currently, these are only targeted by one non-governmental organisation that is limited by its financial resources. Furthermore, the state should provide for prevention measures in various industrial sectors (tourism, construction, etc.).
- Slovenia lacks a formal mechanism for the identification of victims of trafficking in human beings.

186. www.vlada.si/si/teme_in_projekti/boj_proti_trgovini_z_ljudmi/, 3 June 2010.

- The NGOs providing accommodation and care for victims of trafficking in human beings ought to be allocated more financial resources. A formal document allowing for additional material expenses arising in individual cases for the accommodation and care of victims of human trafficking needs to be adopted. Society Ključ, the only specialised NGO providing care for victims of trafficking needs more financial resources to guarantee the capacity of the safe house in terms of staffing and operations.
- A threat assessment needs to be carried out whenever a victim of trafficking in human beings goes back to her/his independent life. There is a need for a social threat assessment, as well as for a physical safety threat assessment.

7.25 SPAIN[187]

The phenomenon

Spain is a destination and transit country for men, women, and children subjected to trafficking in persons, specifically forced labour and forced prostitution.[188] Victims originate from Eastern Europe, Latin America, East Asia and sub-Saharan Africa. The more frequent countries of origin of victims identified are: Romania, Brazil, Paraguay, and Russia. The countries of origin of presumed victims of trafficking for sexual exploitation are Romania, Brazil, Colombia and Spain.[189] The majority of victims identified in 2009, were women of 23-32 years old trafficked for the purpose of sexual exploitation. There have been also child victims identified.[190] There are reports of men and women being subjected to forced labour in the domestic service, agriculture, construction, and tourism sectors. Spanish nationals are reported to have been subjected to forced labour and forced prostitution within the country.[191] Unaccompanied minors crossing into Spain may be vulnerable to forced prostitution and forced begging.[192]

Recruiting and capture involve different practices such as false promises for employment (usually for catering, restaurants or domestic sectors) or through travel agencies, matchmaking services or modelling promises are used or by women who have already been victims for the network and receive commissions from the organisation. The captured women is normally provided with travel tickets and the documentation needed to enter Spain for which victims contract a debt which subsequently is used as the pretext for exploitation. Upon arrival, this debt is then arbitrarily increased and becomes enormously difficult to pay back.[193]

Once in Spain, victims suffer different degrees of control which, in the most serious cases, can include being kept locked, surveillance by closed-circuit television, not being allowed any contact alone with people outside of this environment, threats and even aggression and beatings.[194]

Networks targeting Sub-Saharan African women (especially Nigerians) usually take advantage of their superstitions using voodoo or black magic, linking the debt with tragic events that may happen to the victim or her family members if she were not to satisfy the debt.[195]

Regarding routes to reach Spain, women from Central and South America frequently travel through third countries (within the Schengen zone); hence avoiding direct flights to Spanish airports. Eastern European women are taken to Spain from Russia, Lithuania,

187. Written by Gentiana Susaj, Accem, Madrid.
188. Trafficking in Persons Report 2010, U.S. Department of State (hereinafter TIP Report 2010), p. 299.
189. Interview with Center of Intelligence for Organised Crime, Ministry of Interior, June 4, 2010; Nota de Archivo.
190. Ibid.
191. TIP Report 2010, p. 299.
192. TIP Report 2010, p. 299.
193. See Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, December 2009.
194. Ibid.
195. Ibid.

Ukraine and especially Romania by bus or van crossing all of Europe.[196]

National anti-trafficking legislation and institutions

The main anti-trafficking legal instruments in Spain are: Organic Law 10/1995, November 23, Criminal Code, modified by Organic Law 5/2010, June 22; Organic Law 4/2000, January 11, on rights and freedoms of foreigners in Spain and their social integration, modified by Organic Law 8/2000, 11/2003, 14/2003 and 2/2009; Regulation of the Organic Law 4/2000, adopted by Royal Decree 2393/2004, of 30th of December; Transitory Application for victims of trafficking in human beings of Art. 59 bis of the Organic Law 4/2000, Instruction 1/2010 of the Secretary of State of Security; Organic Law 19/1994 of 23 December on the protection of witnesses and Experts in criminal cases; The Comprehensive Plan to combat trafficking in human beings for the purpose of sexual exploitation was approved by the Government in December 2009. An Inter-ministerial commission was created to evaluate and monitor the implementation of the Plan.[197] The leading Ministry, tasked with the coordination of the implementation of the Plan, is the Ministry of Equality. A Plan to combat trafficking in persons for labour exploitation is planned to be drafted. The Ministry of Interior coordinates a working group in which participate different ministries. Its work is expected to be public during 2010, but there has been no news yet.[198]

Identification, protection of rights, and referral

There have been legal modifications related to the establishment of a reflection period for presumed trafficking victims. The process for formal identification of victims of trafficking is provided in the abovementioned Instruction issued by the Ministry of Interior. This Instruction is a transitory administrative instrument until the Regulation on the Aliens Law develops the above-mentioned Art. 59 bis, and establishes procedures for the identification and referral of victims of trafficking.[199] However, the government has yet to adopt formalized, stand-alone guidelines or indicators for all front-line responders to use in identifying potential forced labour or sex trafficking victims among all vulnerable groups, such as women in the commercial sex trade or migrant workers.[200]

According to a government report of early 2010, 1,301 trafficking victims were identified throughout 2009, of which 95 percent were reportedly female victims of sex trafficking. While the government publicly stated that all of these identified victims were assisted, it did not officially collect or track the actual number of victims who were referred to NGOs for care in 2009.[201] The government did not demonstrate adequate or thorough steps to screen the potential victims found to be sexually or labour exploited or refer them to NGOs.[202]

Identification of foreign persons, presumed victims of trafficking, in an irregular (migratory) situation is done by the Brigade for Aliens of the National Police, which can receive referrals from other police forces, governmental or non-governmental agencies and institutions (NGOs included). When the Brigade for Aliens has reasons to believe that the foreign person is a victim of trafficking, the Brigade will submit all the documentation on the case to the Vice-Delegate of the Government requesting a reflection period.

The Law on Aliens establishes a minimum of 30 days as a reflection period for foreign presumed victims of trafficking.[203] The current

196. Ibid.
197. Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, p. 12.
198. Comparecencia de la Secretaria General de Políticas de Igualdad ante la Comisión de Igualdad, Congreso de los Diputados Núm. 552 de 19/05/2010, Dª Isabel Martinez, (http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=puw9&FMT=PUWTXDTS.fmt&DOCS=1-1&QUERY=%28CDC201005190552.CODI.%29#
199. Interview with Center of Intelligence for Organised Crime, Ministry of Interior, June 4, 2010; Nota de Archivo: III Reunión del Foro Social contra la trata de seres humanos con fines de explotación sexual, May 2010.
200. Tip Report 2010, p. 300.
201. Ibid.
202. Ibid.
203. Law on Aliens, Art. 59.

transitory procedures are still in the first steps of implementation. In other occasions, there have been requests by NGOs, UNHCR and the Ombudsman Office, in order to stop the forced return of victims identified as presumed victims of trafficking, but there was no positive answer and the case was forcibly returned.[204] Once a case has been identified and reflection period has been requested, the victim shall also be referred to specialized NGOs for assistance, if she/he desires so.

There were some reported instances in 2009 whereby police arrested victims alongside their traffickers and transported victims to the same detention facilities, where traffickers subsequently threatened them not to cooperate with authorities.[205]

Assistance services to victims of trafficking are normally provided by NGOs. Assistance includes shelters, legal advice, health care (in the public health system), education, vocational training (language training, domestic service, hair dresser, etc.), food and clothing, (in some cases) psychological follow-up, etc. The length of time for such assistance depends on the needs and the process of integration or return of the victim. Funding is mostly provided by central and local authorities, notably the Ministry of Equality and Labour and Social Affairs, and also by local authorities such as municipality and autonomous communities. However, NGOs indicate that the resources allocated are limited, as not all NGOs that work with victims of trafficking have sufficient funding.[206] In March 2009, the government allotted about EUR 2.11 million for NGOs to improve the quality of care, services and security provided to trafficking victims. Regional governments continued to fund a network of NGOs throughout Spain offering protection and assistance to victims. One regional government provided about EUR 393,000 in 2009 for protection programmes.[207]

NGOs normally provide services for victims of trafficking for sexual exploitation. There is only one NGO, Proyecto Esperanza, which provides specialized assistance for women victims of trafficking for all forms of exploitation. There are no specialized services for men victims of trafficking, nor there are for children victims of trafficking. Specialized services for trafficked victims for purposes of labour exploitation have been recommended by NGOs and trade unions constantly.

A work and residence permit shall be granted to trafficked victims who collaborate with law enforcement. Normally such permits are granted for a period of one year, are renewable and duration will vary on the cooperation of the victim during the judicial cooperation, the criminal actions, the personal situation of the victim and the capacity to integrate.[208] In practice, it will depend on how useful the cooperation of the victim with the authorities is.

The Ministry of Labour and Immigration funds programmes for voluntary return of foreign nationals, including also victims of trafficking, for whom there are special considerations as vulnerable cases. The International Organization for Migration and other NGOs implement such programmes. No formal identification is required for the victims to be assisted. The government reported 15 victims received some assistance before they were voluntarily repatriated.[209]

Access to justice

There have been cases of good practices whereby victims have been informed on their rights and legal obligations, but these cases have taken place mostly when victims are assisted by NGO lawyers, specialized or sensi-

204. A presumed Nigerian victim of trafficking identified by NGOs, UNHCR and the Ombudsman Office was deported although there were strong indicators and a reflection period was formally requested. According to state officials, the woman did not "state that she was obliged to prostitute (…) not she said somebody was forcing her to prostitute".Comparecencia de la Secretaria General de Políticas de Igualdad ante la Comisión de Igualdad, Congreso de los Diputados Núm. 552 de 19/05/2010, Dª Isabel Martinez.
205. TIP Report 2010, p. 300.
206. Interview with Proyecto Esperanza. June 7, 2010.
207. Tip Report 2010, p. 300.
208. Law on Aliens, Organic Law 4/2000, Art. 59 bis.
209. TIP Report 2010, p. 301.

tized on trafficking issues. In most of the cases, victims do not receive adequate information even if they decide to collaborate with law enforcement agencies.[210]

The need for improvement of the procedural aspects has been also recognized by the Plan of Action, that specifically mentions the need to improve legal counselling and information, through specialized services.

Of particular concern is the lack of procedures and guarantees during the judicial process, in in-court proceedings for adult and minors victims of trafficking. Although victims do have access to free legal aid, such aid is not specialized or trained for cases of trafficking. As a result, protection measures do not always take place or are available, including the request for compensation. Some of the shortcomings may also be due to lack of resources.[211] The recently created fund for victims of trafficking guarantees "the subsistence of victims during the reflection period or their possible return to their country of origin if they request so."[212]

Prevention

In the last years, the Government of Spain as well as NGOs has implemented important awareness raising campaigns at the national and local level. The focus of actions and initiatives remains that of trafficking for sexual exploitation, as that is the focus of the Plan of Action in Spain.

Among the campaigns, let's mention: photographic exhibitions, distribution of beverage coasters to bars, cafes, restaurants and nightclubs to inform potential male clients that organized criminals sexually exploit the majority of women in prostitution in Spain; campaign to pressure newspapers not to publish classified ads that publicize sexually explicit services by women in prostitution, many of whom are assumed to be trafficking victims, exhibition on human trafficking for sexual exploitation; co-sponsoring of a series of documentary films on trafficking; campaign to warn Spanish travellers against committing child sex tourism offences abroad; etc. At the local level, in cities such as Madrid, Barcelona and Seville efforts were undertaken to reduce demand through plans of action against forced prostitution and public awareness campaigns.

Other training programmes have been developed, such as that of awareness training for Spanish military before they are deployed abroad for international peacekeeping missions.[213] Another initiative is that of the Ministry of Education and Ministry of Equality, which proposed to the Autonomous Communities information and awareness raising programme on trafficking for centres of education.[214] Trafficking has also been included in the training courses for consular officials in order to prevent trafficking from countries of origin.

The Ministry of Labour and Immigration has conducted a diagnosis and study on the situation of Temporary Centres of Stay for Immigrants in Ceuta and Melilla and is working on a training programme for the identification of victims in these centres as well as protocols for identification and referral of victims.

Other training was delivered in the courses of Centres of Law Studies, by the Ministry of Justice, and others to Forensic Doctors and Lawyers of State, International Workshop between Spain and Portugal, etc.

On the other hand, three important studies have been conducted (pending to be published) in the Framework of the Plan of Action against trafficking in human beings for sexual exploitation: study on trafficking in women in Spain, coordinated by Universidad de la Lagu-

210. Interviews with NGOs, June 4-8, 2010.

211. Memorias 2009, Vol. I. Cap. III. Actividad del Ministerio Fiscal. G) Fiscales de Sala Coordinadores y Delegados para Materias Específicas y Secciones o Delegaciones Territoriales Especializadas. 4. Fiscal de Sala Coordinador de Extranjería, p. 828. (http://www.fiscal.es/cs/Satellite?buscador=0&c=Page&cid=-1240560251626&codigo=FGE_&language=es&newPagina=8&pagename=PFiscal%2FPage%2FFGE_buscadorArchivoDocument)

212. Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, p. 26.

213. Ibid.

214. See Report on the state of play of the Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, p. 6.

na (not published),[215] study on the consequences of trafficking and map or resources (not published),[216] and study on the judicial treatment of victims of trafficking, Ministry of Justice (not published).[217] The only and first study on Trafficking in persons for labour exploitation was conducted by NGO ACCEM, funded by the Ministry of Labour and Immigration in 2008, published in 2009.[218]

Monitoring and evaluation system

Evaluation of anti-trafficking policies, legislation and practices has been mainly conducted by different parliamentary groups. As from December 2009, the approved National Plan of Action established the creation of an interministerial body, tasked with monitoring and evaluation of the actions forming part of the Plan, drafting of proposals, communication for combating trafficking in human beings for the purpose of sexual exploitation, tabling of proposals and conclusions to the Monitoring Committee of the governmental Human Rights Plan and approval of an Annual Report for submission to the Executive Committee for Equality and to the Ministerial Cabinet.

The authorities tasked with the implementation and coordination, are also tasked to do the evaluation. Thus, the evaluation of the implementation of the Plan is not independent. It should also be noted that such monitoring of the effectiveness and impact of anti-trafficking measures in Spain has been initiated only regarding sex trafficking.

There have been no published criteria to evaluate the impact of the policies and programmes implemented until now. According to the Spanish Network of NGOs against Trafficking in Persons, there are a serious number of concerns that the first annual report did not address or that were not properly addressed, in particular issues related to the identification and protection of victims of trafficking.[219]

Recommendations

- Public policies should include all forms of trafficking and a national action plan to combat all forms of trafficking should be drafted;
- Strengthen procedures and mechanisms for the identification and referral of trafficked persons and set up national structures for this purpose independently from the victim's cooperation with the authorities;
- Creation of a coordination structure, as well as an independent monitoring body with sufficient political weight and sufficient resources;
- Strengthen access to protection mechanisms, including asylum when appropriate; set-up procedures for safe return of victims and presumed victims, including individual risk assessment and coordination with countries of origin.
- Improve legal framework, notably procedural aspects for identification, protection and redress to victims, and monitor jurisprudence on trafficking cases and enforcement of sentences.

7.26 SWEDEN[220]

The phenomenon

Sweden is mainly a country of destination and transit of human trafficking. In 2009, 60 persons were reported to the police as presumed trafficked persons, 34 for sexual purposes and 26 for other purposes.[221] In 2008, 22 persons were reported to the police. There has been no conviction on trafficking for forced

215. See Report on the state of play of the Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, p. 4.
216. Ibid.
217. Ibid.
218. G. Susaj, K. Nikopoulou, A. Giménez-Salinas Framis, *La Trata de Personas con Fines de Explotación Laboral*, Accem, Madrid, 2009, (http://www.accem.es/publicaciones/trata.pdf)
219. Solicitud de información ampliada al: Seguimiento y Evaluación del Plan Integral contra la Trata, Red Española contra la Trata de Personas, 26 de mayo de 2010.
220. Written by Ninna Mörner, Stiftelsen Tryggare Sverige, Foundation Safer Sweden, Stockholm.
221. Lägesrapport 11 Människohandel för sexuella och andra ändamål 2009 RPS rapport 2010:5.

labour.[222] In 2009 the first conviction of trafficking for other purposes than sexual appeared. It was a man from Ukraine without arms that had been forced to beg.[223]

Most cases are identified by special police units, which often work both to fight trafficking and report buyers of sexual services. In Sweden, then, the focus is on trafficking for sexual exploitation.

The victims identified are women and girls between 13 and 36 years old. Many belong to a minority group in their home country.[224] Often they came from poor backgrounds of post-communist countries of Eastern Europe. Lately, however, victims from Thailand and Nigeria have also been identified. Most victims come to Sweden through informal channels. Internet is the main market place. Often, trafficked women are advertised in bars, restaurant and hotels or mediated through taxi drivers.[225]

There are also efforts made by the Government and the National Police Board to hinder sexual exploitation of children in other countries. There are set-ups of special police units to combat Swedish men that travel abroad to buy sex from children, for example, in Thailand. The period 2004-2007 there were 4 documented cases of Swedish men buying sex from children in other countries.[226]

There is no available statistic on presumed trafficked persons in Sweden, other than those reported to the police. However, there were 176 children missing in 2009 that had disappeared from the accommodation and care of the Migration Authority. There is a risk that they may have been trafficked or exploited or exposed to crime.[227] Further on, the NGO Roks reported that 515 foreign women married to a Swedish citizen sought help and protection for being abused and exploited for sexual and domestic services.[228] In 2009, media reported about hundreds of people from mainly Asian countries who had been deceived to come to the Northern part of Sweden, where they were exploited as berry pickers.[229] In addition, media reported that over 50 persons mainly from Romania and Bulgaria were denied entrance to Sweden, and sent back by border police[230] as they suspected that the Romanians and Bulgarians were brought to Sweden to beg.[231]

National anti-trafficking legislation and institutions

On 1 July 2001, human trafficking for sexual purposes was made a criminal offence in Sweden. In July 2004, the law was widened to encompass domestic trafficking and other forms of trafficking such as those for the purposes of forced labor, begging and organ removal. Swedish anti-trafficking legislation is based on the Palermo Protocol.

Often courts do not find all the elements of the trafficking section of the criminal code to be proven beyond reasonable doubt. Instead, perpetrators are convicted of procuring or aggravated procuring. Legislative amendments to raise the efficiency of the trafficking provision in the Penal Code (2008) entered in force 1 July 2010.[232]

Since 1999, when the prohibition against the purchase of sexual services entered into force, buying sex in Sweden has been a criminal

222. Lägesrapport 10, Människohandel för sexuella och andra ändamål 2007-2008. Report 2009:1.
223. Länsstyrelsen Stockholm, 2010 Människohandel och prostitution ur ett svenskt perspektiv.
224. Lägesrapport 10, Människohandel för sexuella och andra ändamål 2007-2008. Report 2009:1.
225. Länsstyrelsen Stockholm 2010 Människohandel och prostitution ur ett svenskt perspektiv.
226. Lägesrapport 10, Människohandel för sexuella och andra ändamål 2007-2008. Report 2009:1.
227. Ensamkommande barn och ungdomar – ett gemensamt ansvar Kartläggning och åtgärdsplan, Rapport 2010, Sveriges kommuner och landsting och Migrationsverket.
228. Täckmantel: äktenskap - Kvinnojourernas erfarenhet av fru-import, Roks report 2009:2.
229. Downloaded article from Sweden main daily newspaper; http://www.dn.se/nyheter/sverige/57-barplockare-utvisade-manniskohandel-misstanks-1.915178
230. Links to Swedish media reports: http://www.gp.se/nyheter/sverige/1.418015-tiggande-romer-utvisas, http://www.dn.se/nyheter/sverige/tiggeri-inte-en-rimlig-forsorjning-1.1146195,, http://www.dn.se/nyheter/-sverige/romer-utvisas-fran-sverige-trots-eu-lag-1.1145789
231. Lägesrapport 11 Människohandel för sexuella och andra ändamål 2009 RPS rapport 2010:5.
232. Prop: 2009/10:152.

offence. This means that obtaining casual sexual relations in exchange for payment is forbidden and is punished with a fine or up to six months' imprisonment. Selling sexual services, on the other hand, is not an offence. According to a recent evaluation (June 2010) of such law, on the whole prostitution has been reduced, and on the streets by half.[233]

The Government of Sweden adopted its first National Action Plan (NAP) for Combating Prostitution and Trafficking in Human Beings for Sexual Purposes in July 2008, for the period 2008-2010.[234]

Although legislation covering different forms of human trafficking has been adopted in 2004, policy measures addressing trafficking for other purposes of exploitation (e.g. for forced labour, forced begging, irregular activities, removal of organs, etc.) have not been developed yet. A draft for a NAP for trafficking for other purposes was presented 2007, but it has not yet resulted in further initiatives.[235]

The Government assigned to the National Police Board the task of a National Rapporteur on trafficking in human beings in December 1997. The task was subsequently delegated to a detective inspector who works at the National Police Board. To make it possible for the National Rapporteur to get information from the whole country, contact persons have been appointed at every police authority. The Swedish National Rapporteur is not an independent institution. The Rapporteur has also an operational role, being responsible for skills and methods enhancement at the National Police Board.[236]

There is no inter-agency coordination body at the policy level. Ministries in Sweden coordinate routinely on multi-disciplinary issues. The responsible institution acting as a focal point for anti-trafficking efforts within the Government Offices is the Ministry of Integration and Gender Equality (MIJ). Many State actors report to the MIJ, although it is not responsible for trafficking for forms other than sexual exploitation. Forced labor is under the responsibility of the Ministry of Labor. Also other Ministries have their responsibilities; the Ministry of Justice for legislation and the Ministry of Health and Social Affairs for assistance to victims. This set-up makes it difficult to establish a clear division of tasks and responsibilities, and risk to lead to either duplication of efforts or that certain tasks "falls between the chairs".

In January 2009, as envisaged in the NAP, the National Coordinator (NC) was appointed to develop methods to increase operational cooperation and coordination among key stakeholders to counteract trafficking in Sweden. The NC is based at the County Administrative Board of Stockholm and is responsible for combating human trafficking for sexual exploitation and prostitution. He reports to the MIJ.

Currently, the NC is working on the establishment of a Permanent Secretariat on Trafficking in Human Beings to ensure the set-up of a sustainable cooperation framework beyond the expiry of his mandate foreseen by 2010. To enhance the operational cooperation, a unit called "National Support Operations against Prostitution and Trafficking in Human Beings" (*Nationellt Metodstödsteam mot prostitution och människohandel*/NMT) has recently been set up. This body is composed of representatives from the Swedish National Police Board, the National Criminal Police, the Specialized Police Units on human trafficking, the Border Police, the Migration Board, the Prosecutors Chambers, and the Social Welfare Authorities from the three big city areas in Sweden. The unit focuses on operational work, activities coordination, tasks, case management and tries to ensure efficient information gathering and sharing among agencies. This effort builds upon experiences gathered through the project "Cooperation against Trafficking" (*Samverkan Mot Trafficking*) carried out between 2005 and 2007 as part of the EU funded Equal Programme.

233. SOU 2010:49, Förbud mot köp av sexuell tjänst En utvärdering 1999-2008.
234. Action plan for combating prostitution and trafficking of human beings for sexual purposes (Skr. 2007/08:167): http://www.sweden.gov.se/sb/d/108/a/110628.
235. Ds 2008:7, Människohandel för arbetskraftsexploatering m.m. - kartläggning, analys och förslag till handlingsplan.
236. Information folder in English from the Government Offices of Sweden: Against prostitution and human trafficking for sexual purposes, http://www.sweden.gov.se/sb/d/108/a/133677

Since 2005, Regional Operative Teams have been active in the three capital areas in Sweden: Stockholm, Göteborg and Malmö. The regional teams are supposed to be complemented by local teams of civil society actors that are contacted when needed. The regional and local networks are often based on interpersonal contacts rather than on formal agreements.

According to the Social Service Act, the municipalities are responsible for the assistance to victims of crime. This task is often performed by local NGOs, but sometimes the municipalities have established own competence for different target groups, such as, for example, women abused by men, women in prostitution or children sexually offended. NGOs are partially funded by the State (Ministry of Health and Social Affairs or Ministry of Justice or some other Ministry depending on the legislation applicable) and partially by the municipalities. The latter are independent and the assistance measures offered may differ from one place to another. However, a Memorandum of Understanding (MoU) has not been established due to the fact the different stakeholders have distinct mandate and their structure differs.

Nationwide indicators and guidelines for identification of trafficked persons are to be developed further. Guidelines for the identification of trafficked children have been published[237]; however, they are not yet been incorporated in the daily operational work. In 2007, the predecessor of the NC – "Cooperation against Trafficking" (*Samverkan Mot Trafficking*) – published a report on referral among authorities.[238] Such report also included some indicators that now are to be improved. Several authorities, acting at different levels, need to be coordinated for the management of each trafficking case.

Identification can be carried out by any stakeholder without high degrees of formality. Procedurally, however, the legal identification of a victim of trafficking is carried out by the prosecutor leading the preliminary investigation. The police present the case to one of the Prosecutors of the International Chamber who decides whether the case can be brought to court. The victim is then legally identified as such and can benefit from the special resident permit for people involved in court proceedings. Identification focus is still limited to trafficking cases for sexual exploitation both at the policy and at the operational level.

Victims of trafficking are entitled to a reflection period of 30 days. However, the reflection period has never been applied. Amendments to the Aliens Act (2004) have introduced the possibility to issue a temporary residence permit to foreign victims of crime in Sweden. The permit is six month-long and may be extended upon application by the prosecutor based on investigation needs. Application for reflection period and for temporary residence permit is conditionally. It is only the prosecutor in charge that may apply for this and only if the victim is needed in the judicial procedure. In 2009, 23 trafficked persons were granted temporary residence permits, and in 2008, 15 persons.

According to State officials, most victims opt for the return to their origin country: 80% of the victims identified are said to return home immediately, although no official statistics are available in this regard. Those who do have a temporary residence permit are often placed close to the prosecutor workplace to facilitate the investigation. There are no accommodation facilities designed for victim of trafficking, and even less for persons trafficked for purposes other than prostitution. The accommodation provided is often run by NGOs or the Social Service's Prostitution Units that exist in the three major cities.

No assistance standards for victims of trafficking are in place. Rehabilitation measures are carried out on an *ad hoc* basis. There is a lack of jobs offered to victims during their stay. Once the trial is over, the victims return home immediately. The return is currently not coordinated at the national level as it is managed case by case by the municipalities, local police and NGOs (and to some extent the Migration Board). Contacts with the countries of origin are limited. The Office of the National Coordi-

237. Kan det vara människohandel, Unicef & Socialstyrelsen, 2008.
238. Nationell Myndighetssamverkansplan för stöd till personer utsatta för människohandel, report 2007 Samverkan Mot Trafficking.

nator has been mandated with assessing the current system and developing a joint nationwide cooperation model for safe return of victims of trafficking. The assessment report (February 2010) underlined the need for improved routines and coordination for safe return.[239] Proper and standard risk assessment and better international cooperation in each case are necessary. In this regard, the National Police Board is developing a Methodological Handbook in accordance to NAP.

Access to justice

Victims and witnesses in court proceedings benefit from the same measures applicable to other victims of crime. It is usually the Police or the Social Welfare officer who inform them about their rights in a language they can understand. The legal procedure and the information given may be hard to apprehend anyway. Victims may have a legal counsel assigned to support them during the court proceedings if appropriate. If the charge is trafficking, the victim will became injured part and a legal counsel will be appointed. If the charge is procuring, which is often the case hitherto in Sweden, the situation is different. But during recent years, more and more victims of procuring and aggravated procuring have had an injured party's legal counsel appointed to them. Also volunteers may offer assistance to victims and witnesses in court.

The victims are often already back in their home country when the preliminary investigation starts. Nevertheless, they can participate in the judicial procedure. The Swedish Police travel to the victims' home country for interrogation. The police and prosecutor try to collect evidence, information and testimonies as soon as possible in the investigation. It is therefore not always necessary for the victims to stay in Sweden during the judicial procedure.

The Crime Victim Compensation and Support Authority's main task is to administrate and pay criminal injuries compensation. The Authority has decided over 30 applications concerning trafficking or other crimes related to trafficking. All but four of those with a court decision on damages from the perpetrator had applied for state compensation. In most cases the applicants were represented in the application process. The Crime Victim Compensation and Support Authority published a report 2010 where they noted that compensation awarded to victims of trafficking in human beings has come to hand of the victims, with only one exception.[240]

Prevention

Official Swedish reports underline that prohibition against buying sex is a tool against trafficking for sexual purposes. The Swedish perspective emphasizes the demand in the combat against trafficking for sexual purposes and prostitution.

The Crime Victim Compensation and Support Authority train different professionals that may get in contact with victims of trafficking (mainly for sexual exploitation). The training programme is part of the MiJ work against trafficking for sexual purpose and prostitution.

The NC, often in cooperation with the Task Force Against Trafficking in Human Being (TF-THB) at the Council of the Baltic Sea States (CBSS), delivered trainings to raise awareness among other professionals, such as, taxi drivers, employees of hotels, campings, youth hostels, ferry terminals, gas stations etc. In fall 2010, Sweden started the pilot project "Safe Trip" to distribute information on human trafficking for sexual exploitation in places such as toilets located in transfer places (e.g. ferry terminals). The project is connected to a hotline run by the National Centre for Knowledge on Men's Violence Against Women (*Nationellt Kunskapscentrum för kvinnor*, NCK). The calls can be done only by women and are referred by their national support line Kvinnofridslinjen.

No efforts have been made yet to inform persons migrating to Sweden for work purposes on the risks of human trafficking for forced labour.

Monitoring and evaluation systems

Several stakeholders are involved in the evaluation of and reporting on anti-trafficking measures in Sweden. The issues to be assessed

239. Rapport 2010:03, Ett tryggare återvändande för personer utsatta för prostitution och människohandel i Sverige, Länsstyrelsen Stockholm, 2010.
240. Brottsoffermyndigheten, 2010; Utbetalning av brottsskadeersättning till offer för människohandel.

are selected by the rapporteur appointed by the Government. The reports often build on information collected through interviews with the key stakeholders and, sometimes, also with NGOs representatives. Due to the fact that several key stakeholders often interview one other, the gathered information may be alike since the interviewers may influence each other.

Proposals to ameliorate the anti-trafficking framework and measures are submitted by several stakeholders and hearings are held to gather the views of operational actors. A monitoring and evaluation system is thus in place; however, the measures taken according to the assessment findings are not always coordinated between the Ministries and the departments. Moreover, the evaluations carried out focused only on human trafficking for sexual purposes.

Recommendations

- It is necessary to establish a National Centre to coordinate the anti-trafficking measures taken by different stakeholders. The Centre should provide training to professionals and publish handbooks. The Centre should also provide accommodations to all trafficked persons and offer long-term assistance in compliance with ratified international standards.
- The best interest of the victim should be at the centre of the reflection period purposes. Today, the victim only can stay in Sweden if s/he is needed in the investigation by the prosecutor. It should also be evaluated if the victim needs a recovery period once the trial is over, thus, before returning home.
- It is necessary to establish national and transnational standard operating procedures, including proper risk assessment, for the safe return home, also to lower the risk of re-trafficking.
- The NAP should include identification tools and assistance measures for victims of all forms of human trafficking.
- An independent National Rapporteur with no operational role should be appointed, who should regularly collect information also from the civil society organisations.

7.27 UNITED KINGDOM[241]

The phenomenon

There are different forms of trafficking found in the UK. People are trafficked both internationally and internally within the UK for purposes of forced prostitution, forced labour, forced criminal activities (for example, into cannabis factories) and forced begging. There were also cases reported of British nationals trafficked to other countries for forced labour.

People trafficked to the UK come from all over the world. The NGO Poppy project assisted, since its inception in 2003, women from 93 different countries. Between April and December 2009, people from 61 different countries were referred to the national referral mechanism, with the top three countries being Nigeria, China and Vietnam. Out of the people referred, 74% were women and 27% children (both boys and girls).

45% of the women and girls were trafficked for sexual exploitation. There were also two men and two boys trafficked for this purpose. 16% were reported to have been trafficked for domestic servitude – out of which 7 were boys and 7 men.

The cases of presumed trafficking for forced labour showed a different gender background, with a higher proportion of men and boys.

National anti-trafficking legislation and institutions

In the UK trafficking is not legislated against in a single act. Trafficking and related offences are scattered in several different laws. The laws were adopted pursuant the introduction of the UN Palermo Protocol of 2000 and the EU Council Framework Decision of 2002.

Trafficking for sexual exploitation is covered by sections 57-60 of the Sexual Offences Act 2003, which came into force on 1 May 2004. They cover trafficking into, within or out of the UK for the purpose of committing sexual offences and attract a maximum sentence of 14 years' imprisonment.

241. Written by Klara Skrivankova, Anti-slavery International, London. This text is largely based on the report of the Anti-Trafficking Monitoring Group: "Wrong kind of victim?" (2010), see: www.antislavery.org/-includes/documents/cm_docs/2010/a/1_atmg_report_for_web.pdf

Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 introduced a new offence of "trafficking people for exploitation", i.e. forms of exploitation other than sexual exploitation, including forced labour, slavery and organ removal. It covers trafficking to, within or out of the UK. It carried a maximum penalty (on conviction on indictment) of 14 years' imprisonment and/or a fine.

The final provision of Section 4 was amended in 2009, after concern was expressed that the original wording implied that children could give consent to being subjected to one of the forms of exploitation associated with human trafficking. The amendment followed a prosecution in 2008 for someone accused of trafficking a child in order to acquire benefits in the form of fraudulent social security payments (known as benefit fraud in the UK).

In the UK, a system of devolution is in place. That means that certain policy areas and legislation are not set by the central government, but by the devolved jurisdiction. Criminal justice is one of the devolved areas.

In Scotland, section 22 of the Criminal Justice (Scotland) Act 2003 introduced the specific offence of trafficking a person for the purpose of prostitution with a maximum penalty on conviction on indictment of 14 years' imprisonment. The offence of trafficking people for other purposes (Section 4 and 5 of the Asylum and Immigration (Treatment of Claimants) Act 2004) applies in Scotland as well as other parts of the UK. It came into force on 1 December 2004.

Scotland has adopted several pieces of legislation relating to prostitution that are different to those in force in other parts of the UK. The Prostitution (Public Places) (Scotland) Act 2007 made it an offence to solicit, in a public place, the services of "a person engaged in prostitution".

Section 4 of the Sexual Offences (Scotland) Act 2009 contains a new offence of "sexual coercion", specifying that is unlawful to cause another person to participate in sexual activity if that person has not consented and without any reasonable belief that the person was consenting. The implication is that traffickers could be prosecuted with this offence; section 13 of the same law specifies "circumstances in which conduct takes place without free agreement", including the use or threat of violence or the unlawful detention of the person concerned.

Section 14 of the Policing and Crime Act 2009 makes it an offence in England, Wales and Northern Ireland to pay "for sexual services of a prostitute subjected to force". The offence is committed "if someone pays or promises payment for the sexual services of a prostitute who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment". The term "exploitative conduct" is defined to include the use of "force, threats (whether or not relating to violence) or any other form of coercion" or the practice of any form of deception.

The UK adopted several laws to curb offences linked to forced labour. The first new measures were intended to regulate the activities of labour providers, known as 'gangmasters', and employment agencies, though only those involved in some parts of the economy. The Gangmasters (Licensing) Act, adopted in July 2004, created a compulsory licensing system for gangmasters and other employment agencies supplying workers for agricultural activities, gathering shellfish and related processing and packaging activities. The Gangmasters (Licensing) Act 2004 lists the range of subcontracting arrangements to which a new licensing regime applies; makes it an offence to operate as a gangmaster without a licence, to possess a false licence, or to obstruct enforcement officers. It makes all the offences arrestable and enables the assets of convicted gangmasters to be seized. The system is supervised by the Gangmasters Licensing Authority (GLA).

On 6 April 2010, a new offence created in 2009 entered into forced. Section 71 of the Coroners and Justice Act 2009, deals with slavery, servitude and forced or compulsory labour, made it a specific criminal offence in England, Wales and Northern Ireland to hold a person in slavery or servitude or to require a person to perform forced or compulsory labour. The maximum sentence is 14 years. The Act entered into forced on 6 April 2010.

The overall responsibility for the anti-trafficking policy in the UK lied with the Home Office and the Home Secretary. There is no institute of a National Rapporteur. Instead, the UK Government has an Inter-Departmental Ministerial Group on Human Trafficking, which con-

sists of 14 governmental departments that have a particular interest in human trafficking. In Scotland, the responsibility lies with the Scottish Government's Criminal Justice Directorate and the Scottish Cabinet Secretary for Justice.

Anti-trafficking policy in the UK is based in the UK Action Plan on Tackling Human Trafficking, which has first been published in March 2007 and so far has had two updates.

Identification, protection of rights, and referral

Since April 2009, the UK has been operating a national referral mechanism (NRM). There are two separate agencies that act as the competent authorities (the UK Border Agency and the UK Human Trafficking Centre). Cases are referred to these authorities, which at first issue a reasonable grounds decision, based on which a reflection period is granted. A conclusive decision whether or not a person is considered a victim of trafficking should be issued subsequently.

The NRM also specifies a series of "First Responders", frontline agencies and statutory bodies that are entitled to formally refer presumed trafficked persons to the competent authorities.

The process of formal identification is a rather complicated and bureaucratic procedure in the UK.

There is a possibility in certain cases for trafficked persons to obtain a residence permit, either if they cooperate with the criminal proceedings or owing to personal circumstances. However, it has been a policy not to provide trafficked persons with residence permit in order to pursue compensation.

Access to justice

Review of measures to protect trafficked persons in England and Wales in 2006 and 2007 revealed that witness protection schemes were potentially available for trafficked persons acting as witnesses in criminal proceedings (under the Youth Justice and Criminal Evidence Act 1999), but that no cases had yet met the criteria to require the protection available.

Protection measures for victims of crime in England and Wales are listed in a Code of Practice for Victims of Crime issued in 2006. Some of the key provisions of the Code include:

- A right to information about the crime within specified time scales, including the right to be notified of any arrests and court cases;
- Clear information from the Criminal Injuries Compensation Authority (CICA) on eligibility for compensation;
- To be told about Victim Support and either referred to them or offered their service;
- An enhanced service for vulnerable or intimidated victims;
- The flexibility for victims to opt in or out of services to ensure they receive the level of service they want.

As far as potential witnesses are concerned, the Witness Care Unit has a legal obligation to:

- Tell witnesses if they will be required to give evidence;
- Tell witnesses the dates of their court hearings;
- Give witnesses a copy of the 'Witness in Court' leaflet or other relevant leaflets, if individuals are required to give evidence;
- Tell witnesses about trial results and explain any sentence given within one day of receiving the outcome from the court.

However, a recent review showed that identified victims of trafficking are not always sufficiently protected and measures are applied *ad hoc*. There is no evidence to suggest that this has changed with the commencement of the national referral mechanism.

As regards access to compensation, there are four different routes under the UK legislation that trafficked persons can potentially utilise to claim compensation. In a 2008 research, Anti-Slavery International found that, because of numerous legal and practical barriers, trafficked persons are unlikely to receive compensation from the trafficker or a statutory agency.

Prevention

In December 2007, the UK Human Trafficking Centre launched the Blue Blindfold Campaign that intended to raise the awareness of law enforcement officials and the general public about the realities of trafficking in human beings. Its message "Open your eyes to human trafficking" has subsequently been used in local campaigns in several towns and regions of the UK. A training DVD was also produced for an intranet briefing of police officers.

While some statistics are available on the numbers of police officers who had been given information via the campaign, much less information is available about the impact of the campaign elsewhere.

Monitoring and evaluation system

There is no specialised monitoring body to assess the effectiveness and impact of the anti-trafficking policy in the UK. The Inter-Departmental Ministerial Group has previously been suggested to have sufficient overview and that not institute, such as national Rapporteur, was needed.

In the past five years, there have been two parliamentary inquiries, by the Home Affairs Select Committee and the Joint Committee on Human Rights into the issue of trafficking in human beings.

In reaction to the absence of a formal monitoring mechanism in the UK, past the entry into force of the Council of Europe Convention on Action against Trafficking in Human Beings, a group of nine NGOs in the UK decided to set up the Anti-Trafficking Monitoring Group in May 2009. Its aim is to monitor the implementation of the Council of Europe Convention in the UK.

The Group published its first report in June 2010, revealing results of the examination of how the UK and its devolved administrations are meeting their obligations under the Convention. The Monitoring Group started its work with the following specific questions:

1. Is the UK Government meeting its obligations under the Convention?
2. How effective and human rights-centred are anti-trafficking policies in the UK?
3. Do current strategies protect the human rights and promote the social reintegration of victims of trafficking?
4. Do current policy and practice guarantee gender equality?
5. Do anti-trafficking measures implemented in the UK follow a child-sensitive approach?
6. How could the current knowledge base on human trafficking in the UK be improved?
7. How can civil society monitor anti-trafficking responses by government institutions most effectively?
8. Would the appointment of an independent UK National Rapporteur on Trafficking improve policy implementation and monitoring?

Recommendations

- Restructure and reduce the administrative process of the National Referral Mechanism in order to act as a multi-agency identification and referral mechanism, increasing access to services for victims; introduce the right to appeal into the identification process; review the application of the definition of trafficking to ensure that it reflects the UK's obligations under the Convention and is consistently applied to all victims of trafficking; in cases of children embed it into the child protection system and give the services responsible for child protection the authority to make decisions; give guidance on cases where the age of a young person is disputed and strictly apply the requirement of the benefit of the doubt.
- Bring the system of identification and referral closer to the victims, on a devolved, regional and local level, building on the existing good practice multi-agency model.
- Introduce an independent and public review of all negative decisions made by the Competent Authority to ensure the accountability of decision-makers and the quality of decision-making.
- Ensure that no victims of trafficking are prosecuted for crimes that they committed while under coercion. In particular, stop child victims of trafficking from being prosecuted.
- Appoint an independent anti-trafficking watchdog, based on the model of the Dutch National Rapporteur on Trafficking in Human Beings, with statutory powers to request information from the police, the immigration authorities, social services and NGOs and to report to the Parliament.

8. EXECUTIVE SUMMARIES IN OTHER LANGUAGES

8.1 Резюме

През 2009 г, четири неправителствени организации (НПО-та) се споразумяха да вземат участие в съвместен проект озаглавен: „*Европейска неправителствена обсерватория по проблемите на трафика, експлоатацията и робството*" (съкратено име: *E-notes*), с широката цел да се проследи какви мерки са предприели европейските правителства за преустановяване на робството, трафика на хора и различните форми на експлоатация асоциирани с трафика на хора. Координацията на проекта бе поета от една италианска НПО, Associazione Ot the Road[242], заедно с една регионална антитрафик мрежа, La Strada International, и две национални НПО-та, ACCEM[243], със седалище Испания, и ALC[244], със седалище Франция.

Вместо да учредява перманентна институция за мониториране на правителствени действия, екипът на проекта *E-notes* се зае да събере информация за това, какво се случва във всяка една от 27-те страни членки на ЕС. Това означаваше да се разработи научен метод и да се намерят НПО-та и изследователи във всяка една от 27-те страни, които да вземат участие в проекта. Проектът стартира с акцентиране на ролята на **индикатори** за измерване на прогреса на антитрафик мерките предприети във всяка страна членка на ЕС (т.е. различните закони, политики, мерки и практики, за които се очаква да намалят нивата на трафика и да защитават и подкрепят всеки човек озовал се в ситуация на трафик). Този процес бе изразен чрез инструмент за проучвания, в който се идентифицира списък с повече от 200 стандартни въпроси, за които се смяташе, че ще помогнат да се оцени напредъка в антитрафик мерките, инициирани във всяка европейска държава.

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242. Associazione On the Road доставя широк спектър от услуги и защита на трафикирани лица, на лица търсещи обежище, бежанци, и мигранти в три италиански региона (Marche, Abruzzo, Molise). Организацията също е ангажирана в кампании за повишаване на информираността, работа в общността, изследавотелски проекти, развитие на мрежови инициативи и политики на местно, национално, и европейско ниво.

243. ACCEM доставя социални услуги и предприема действия в социалната и юридическата сфера, в полза на лица търсещи убежище, бежанци, хора които са прогонени от страната/домовете им и мигранти в Испания.

244. ALC е абривиатура на *Accomapagnement, Lieux d`accueil, Careffur educatif et social (Придружаване (на хора), приемни центрове, образователни и социални центрове*). ALC координира националната мрежа за безопасно настаняване на трафикирани лица, позната като „Ac.Se".

1. Стандартите, по които мониториращия процес събираше информация

Процесът на проучване започна в началото на 2010 г., точно когато ЕС се доближаваше до завършването на разглеждането за нов европейски инструмент, който да стандартизира антитрафик мерките в държавите членки на ЕС (който да замести *Рамковото решение на Съвета на Европа за борбата с трафика на хора*, приет през юли 2002 г.). През 2009г., Европейската комисия (ЕК) представи предложение за ново *Рамково решение* по въпросите на трафика на хора. Поради влизането в сила на Лисабонското споразумение, което прекъсна всички текущи законодателни процедури, преговорите в Съвета за приемане на ново рамково решение не бе възможно да продължат. В резултат, ЕК направи ново предложение за *Директива на Европейския парламент и Съвет за превенция и борба с трафика на хора, и за защита на жертвите,* отменяйки *Рамковото решение* от 2002 г. През март 2010 г., *Директивата* беше представена за разглеждане пред европейския парламент (ЕП). През септември 2010г, две от парламентарните комисии предложиха серия от поправки на Проектодирективата и процеса на постигане на споразумение между Съвета, Комисията и ЕП започна. Очакваше се, че директивата ще бъде приета преди края на 2010г.

Въпреки че общото представяне на основните положения в тази нова директива изглежда доста ясно, във времето, в което мониторирането по проекта E-notes беше провеждано, през май и юни 2010г, директивата все още не беше приета (нито бе приета до финализирането на проекта през октомври 2010г). Когато се решаваше на какви законови положения да се позоват при идентифицирането на стандарти за мониториране във всяка страна членка на ЕС (т.е. положения късаещи държавния отговор на трафика на хора), екипа на проекта избра да използва един различен регионален инструмент, *Конвенцията за действие срещу трафика на хора* на Съвета на Европа. Конвенцията бе приета през май 2005г и влезе в сила през февруари 2008г. Въпреки че бе ратифицирана в много държави извън ЕС, до август 2010г, всички освен една държава членка на ЕС (Чехия) бяха или ратифицирали Конвенцията на СЕ (19) или я бяха подписали (7) и следователно изразили намеренията си да я прилагат.

2. Използвани методи

Схемата на мониториране бе създадена от консултант в началото на 2010г. Бе отделено внимание на предишни публикации, които са

предложили подходящи **индикатори,** които страните членки на ЕС да могат да използват при оценяването на напредъка в синхронизирането на техните закони и практики с регионалните и международни стандарти (всички, от които основани на *Протокола на Обединените нации за превенция, намаляване и наказуемост на трафика на хора, на жени и деца в частност,* приет през 2000г., в допълнение на *Конвенцията на Обединените нации срещу транснационалната организирана престъпност*, 2000г). Допълнително бе обърнато внимание на коментари направени в публикации[245] на различни Европейски комисии за слабостите, които са били забелязани, в начина, по които държавите членки на ЕС са отчели дейностите насочени към спиране на трафика на хора или към защитата и подкрепата на хора, за които се предполага[246], че са били трафикирани. Някои публикации отбелязват, че е трудно да се получи информация от държавите членки (понякога актуализирана информация, а в някои случаи каквато и да е било информация) за техните антитрафик практики. Част от публикациите се позовават на липса на „хармонизирана база данни" и допускат, че няма кохерентна употреба на терминология или общи механизми на отчитане в държавите членки на ЕС. Съществуването на всички тези проблеми беше потвърдено по време на мониторирането по проекта E-notes.

Документ на ЕК издаден през 2006 г.[247] отчита, че страните членки осигуряват малко информация за правилата и практиките касаещи защитата или подкрепата на трафикирани лица. През 2008г., един работен документ[248] повторно заяви, че е трудно да се получи информация от страните членки за трафикираните лица, които получават помощ, но също така отбеляза, че до 2006 г., държавите, които са предоставяли информация на комисията са установили, че само малко над 1500 случая на трафик са били разследвани в 23 държави членки на ЕС, в рамките на годината. Документът отчете, че повечето страни членки на ЕС са въвели период за размисъл, за да

245. На пример: ЕК, комуникация с ЕП и ЕС по „Борба срещу трафика на хора- интегриран подход и предложения за план на действие" (референтен № в ЕК: COM(2005) 514, в сила от 18.10.2005); и работен документ на ЕК (референтен № в ЕК: COM (2008) 657), *Оценка и мониториране на прилагането на европейския план за добри практики, стандарти и процедури в борбата и превенцията на трафика на хора, октомври 2008г.*

246. Термина „предполага" (във връзка с трафикирани лица) се отнася за някой, за който се предполага, че е бил въвлечен в трафик, при положение, че няма ясна информация за това дали реално е бил жертва на трафик.

247. Отчета на ЕК за прилагането на Рамковото решение на съвета от 19.06.2002г. за борбата с трафика на хора (Референтен № в ЕК: COM (2006) 187, в сила от 02.05.2006г)

248. Виж текст под линия 245.

може хората, за които се предполага че са били въвлечени в трафик, да останат в страната си и да се възстановят, преди да бъде изискано да свидетелстват пред властите. Само пет държави обаче са съобщили броя на хората, които са се възползвали от услугата, а общия брой на тези случаи възлиза на едва 26 човека за цялата година!

За НПО-та, които работят в областта на антитрафика, (като или доставят услуги и подкрепа на лица, за които се предполага, че са въвлечени в трафик, или като се ангажират с инициативи за превенция на трафика), липсата на точност и прецизност в данните предоставени от страните членки на ЕС до ЕК е обезпокояваща. От друга страна, тя разкри, че никой, дори в ЕК, не е в позиция да разбере какво се случва в рамките на ЕС. Освен това, този недостатък също показа, че много от основните положения в регионалните и международните споразумения, касаещи трафика на хора или други проблеми свързани с човешките права са били игнорирани от страните (въпреки факта, че държавите са ги приели) и продължават да не се спазват.

Някои държави членки на ЕС са назначили национален докладчик по въпросите на трафика на хора, чиято функция е да информира съответните правителства (а и други институции) за напредъка, който се осъществява в всяка държава спрямо мерките предприети срещу трафика на хора, както и да дава препоръки за областите, които могат да бъдат подобрени. В средата на 2010г., процесът на мониториране отчете че, девет от 27-те държави членки на ЕС имат такъв национален докладчик, но не всички публикуват регулярни отчети, а някои се фокусират върху трафика със специфични цели (трафика на жени за проституция, например) без да докладват за действията, предприети срещу трафика с други цели. В крайна сметка, ако национални докладчици се назначат във всички европейски държави, те ще са в позиция да въведат стандартни дефиниции за термините и начините на отчитане на статистиката, свързана с трафика на хора, така че да могат да бъдат изведени значими сравнения между антитрафик мерките в различните европейски държави.

На този фон, основна цел на процеса на мониториране по проекта E-notes бе да се установи с каква информация разполагат всички държави членки на ЕС за своите закони, политики и практики по темата за трафика на хора, за това какъв е броя на хората идентифицирани като трафикирани, на тези, които са използвали някаква форма на защита, на тези които получават подкрепа и т.н. Тъй като мониторирането бе

проведено през май и юни 2010г., първоначалното намерение бе да се събере информация за ситуацията през 2009г. във всяка европейска държава. Скоро, обаче, стана ясно, че в много държави или нямаше информация за 2009г. или имаше непълна информация, докато наличната информация за 2008г. бе по-изчерпателна.

НПО-тата, които бяха помолени да излъчат изследовател, които да събира и структурира информацията за процеса на мониториране по проекта E-notes, бяха предимно организации, които имат опит с трафика на възрастни (и на жени по конкретно). Организациите също така събираха информация за трафика на деца, въпреки че се оказа трудно да получат информация за трафикирани деца. В много европейски държави, лицата въвлечени в трафик получават услуги от НПО-та, докато държавните агенции за защитата на децата имат отговорност за грижите за деца жертви на трафик.

Всеки изследовател трябваше да попълни изследователски протокол от 60 стр., който да осигури допълнителна информация в свободен текст по многобройните въпроси, на които не може да се даде отговор с „Да" и „Не" и да представи кратък „профил" на страната, като докладва по образеца на случаите на трафик в съответната държава и по мерките предприети срещу трафика от страна на правителството като цяло. Информацията подготвена от 27-те изследователи беше обработена и въведена в единна база данни през юли 2010 г. След това, данните бяха анализирани от същия консултант, които подготви протокола на изследването с цел да се идентифицират вероятни общи тенденции (например незачитане от страна на държави членки на ЕС на задълженията да се защитават и подкрепят трафикирани лица) и да се подготви доклад на направените заключения.

Изследователите трябваше да коментират дали съответната държава е принципно страна на произход, транзит или крайна дестинация на трафик, или комбинация от същите. Тази категоризация не взима под внимание случаите на трафик в рамките на самата държава. Сравнително малко държави бяха категоризирани като принадлежащи само на една от трите категории (две държави, Франция и Португалия, бяха описани като принципно крайна дестинация на трафик). За останалите 25 държави бе счетено, че са комбинация от горните категории: една – едновременно страна на произход и крайна дестинация на трафик; две - едновременно на транзит и крайна дестинация; девет – принадлежащи и на трите категории.

3. Заключения от процеса на мониториране

230-те въпроса от протокола на изследването целяха информация по различни въпроси и беше невъзможно да се направи еднозначен профил за това дали държавите членки на европейския съюз спазват поетите ангажименти и зачитат човешките права на трафикирани лица. Все пак, по пет от проблемите бе възможно да се оцени степента на постигнатия напредък. Но дори и в тези случаи, наличната информация бе толкова непълна и недостъпна, че нито една от споменатите статистики не може да бъде счетена за благонадеждна. Въпросните пет проблема са представени накратко в таблицата по-долу:

Таб. 1 Напредък в ЕС по ключови въпроси свързани с антитрафик мерките

1. Координация на антитрафик мерките на национално ниво	22 от 27-те държави членки на ЕС са създали национална структура, която да координира мерките предприети в областта на антитрафика. Страните, които не са въвели такава структура са Франция, Германия, Гърция и Малта. В Германия и Италия, мерките срещу трафика не се организират на национално или федерално ниво, но това не означава, че са неадекватни. Швеция е назначила национален координатор с цел да се развие координационна структура за борба с трафика, но само за случаите на трафик с цел сексуална експлоатация.
2. Идентификация на лица, за които се предполага, че са били въвлечени в трафик	Според данните, 11 от 27-те страни членки на ЕС имат единна правителствена агенция или структура за формална идентификация на всяко лице, за което се предполага, че е било въвлечено в трафик. 16 държави, нямат такава структура. В 6 от държавите, в които няма процес на идентификация на национално ниво, няма работещи стандартни процедури късаещи идентификацията на трафикирани лица в рамките на съответните държави (Австрия, България, Франция, Германия, Италия, Малта).
3. Предоставяне на период за размисъл от поне 30 дни	Период за размисъл и възстановяване на възрастни, за които се предполага, че са били въвлечени в трафик, е въведен в 25 от 27-те страни членки, което като цяло е добро съотношение на държави, които се придържат към минималните стандарти по тази точка. В Италия, няма въведен период на размисъл, но на практика понякога жертвите се възползват от такъв. В Литва съществува подобна ситуация. За 2008 г. има информация от 11 държави за общо 207 човека, които са се възползвали от период за размисъл. За 2009 г., 18 страни са подали информация за далеч по-голям брой на възползвали се от период за размисъл: 1 150 трафикирани лица. Този брой отразява известно повишение.

4. Процедури късаещи безопас-ното и, по възмож-ност, доброволно завръщане на жертви на трафик	За 6 държави е установено, че имат формални споразумения с други страни членки на ЕС или трети страни за ръководене на процеса на завръщане на трафикирани лица в тяхната страна (Франция, Латвия, Португалия, Испания, и Обединено Кралство Великобритания; Гърция има двустранно споразумение ограничено до трафика на деца). Оказва се, обаче, че съществуването на споразумения не е достатъчна гаранция за предотвратяването на злоупотреби. Изследването е показало, че когато властите планират завръщането на лица, за които се предполага, че са били въвлечени в трафик, в собствената им държава, само в 3 от 17-те страни членки, за които има информация, е била проведена рутинна оценка на риска (Италия, Португалия и Румъния) преди завръщането им (т.е оценка на възможните рискове за конкретния човек или членове на семейството му).
5. Достъп до обещетение и компенсация	В 12 държави (от 22-те, за които има информация), за 2008 г. е докладвано само едно трафикирано лице, което е получило обещетение или компенсация. 12 страни (от 20) са докладвали за изплатени обещетения в резултат на съдебни процедури или от различен източник през 2009 г. Австрия, Дания, Франция, Германия, Италия, Холандия, Испания, Швеция, и Великобритания

Би било неуместно да се оценява представянето на всяка държава въз основа на тези пет точки, (както е направено в годишен отчет на САЩ), тъй като в първите три категории попадат различни страни, за които в по-голямата част са идентифицирани слаби области, а в последните две категории има различни държави, които предприемат правилните мерки. Например, Италия е единствената страна спомената във връзка с всички пет точки, която се представя добре по много въпроси, но в същото време има антитрафик система, която се различава от тези на повечето страни членки на ЕС.

Освен тези пет основни въпроса, изследването наблюдава много други промени. То проверява дали в законодателството на всяка страна е обърнато внимание на всички различни категории на експлоатация свързани с трафика на хора (т.е. с цел "експлоатация чрез проституция и други форми на сексуална експлоатация", с цел експлоатация на труда или услуги от принудителен труд, робство, или в положение сходно с робството, или с цел отстраняване на човешки органи). Заключението в общи линии беше, че тези проблеми са адресирани. Съобщава се, че Естония и Полша са започнали преразглеждане на законодателството си, но все още не са завършили този процес. В Испания през декември 2010г. ще влезе в сила законодателство, което да синхронизира

дефиницията на трафика в наказателния кодекс с европейските стандарти и стандартите на Съвета на Европа.

Изследването също така цели да установи дали **определенията за трафик на хора** във всяка страна са достатъчно сходни. За да бъдат сравнени ще се използва информация за хора квалифицирани като "трафиканти" или "жертви". Много варианти бяха развити по този въпрос. Например, във Франция определението на престъпление „трафик" е широко, така че да може да се прилага на практика към всеки, който е заподозрян в сводничество. В резултат на това се оказа, че първоначално повече от 900 лица са били осъдени във Франция за трафик, в рамките на една година (2008 г.). По-детайлно проучване доказа, че малко над половината (521) са с присъди за "особено тежко сводничество" (престъпление сходно до определението „трафик" използвано в други държави от ЕС). Само 18 на брои са наложените присъдите за престъпления идентифицирани като „трафик" според регионалните дефиниции приети в Рамково решение на ЕС и Конвенцията на Съвета на Европа. Във Финландия положението е противоположно - случаи, които според регионалните стандарти трябва да бъдат разглеждани като трафик на хора са били оценени като такива, които включват само сводничество.

Основната цел на изследването е да установи какъв е процеса за определяне на хора като "трафиканти" и дали редовно е бил предоставян срок за размисъл или други форми на защита или помощ на жертвите на трафик. Резултатите предполагат, че и идентификационният процес и критериите за оценяване дали дадено лице е жертва на трафик варират значително в страните от Европейския съюз. Това доказва, че не съществува общ стандарт в рамките на ЕС.

Установено е, че в 20 от 27-те държави-членки е изградена **Национална структура за координиране на мерките предприети в борбата с трафика на хора**. За 22 от 27-те държави-членки се съобщава, че е бил приет Национален план за действие за борба с трафика на хора (въпреки че някои страни са се съсредоточили изцяло върху трафика с цел сексуална експлоатация). В повечето страни има полицейски участък, който е специализиран в борбата с трафика. В някои страни има процедура, призната на национално равнище, в която се посочва ролята, която различни организации трябва да имат в предоставянето на закрила и помощ на жертви на трафик и в пренасочването им към

подходящи услуги - Национален референтен механизъм или система. Общо 17 страни имат такава процедура, а в девет тя липсва.

В 11 от 27-те държави-членки, има единна правителствената агенция или структура, която официално е отговорна за идентифицирането на всеки, за който се предполага, че е бил жертва на трафик. В 16 други страни, структурата за идентифициране на жертви на трафик е различна. В Седем от страните, в които няма единен процес за идентифициране, няма и стандартна процедура, която да бъде използвана във официалната идентификация на лице, за което се предполага, че е било жертва на трафик. Това, обаче, не означава, че идентификацията (и произхождащата от това защита) е по-ефективна в страните с единна система. Когато става въпрос за идентификация на процедури, подробностите по процедурите, степента, до която се спазват, и самата ефективност на процедурите варират в широки граници в различните държави.

Изследователите успяха да получат само частична информация относно предполагаемият броя трафиканти, идентифицирани в рамките на 12-месечен период през 2008 г. и 2009 г. - общо 4010 в 16 страни (въпреки че някои от тези хора може да са били двойно преброени, т.е. първо преброени в страна крайна дестинация и впоследствие и в страна на произход). Властите окончателно са потвърдили, че малко повече от половината (55%) от случаите с предполагаеми жертви на трафик действително са били жертви. Същото е валидно и за информацията предоставена от 16 страни за общо 3 800 души, които са били насочени към услуги предназначени за трафикирани лица.

През 2008 г. или 2009 г има случаи на възрастни и деца, предполагаеми жертви на трафик, **изчезнали** преди процеса на идентифицация да е завършил. В 10 страни, предполагаеми деца жертви на трафик са докладвани за изчезнали. Други 10 страни са докладвали, че възрастните, които били временно идентифицирани като жертви на "трафик" са изчезнали.

Изследователите са събрали информация за различни аспекти на защитата, а именно:
• период за размисъл и възстановяване;
• оценка на риска, и
• връщане (т.е. репатриране на трафикираните лица в страната на произход).

Има получена непълна информация в някои страни относно **броя на жертви на трафик, които се ползват от услугата период за размисъл**. За 2008 г. е имало информация от 11 страни за общо 207 души, които са се възползвали от тази услуга. За 2009 г. е имало информация от 18 страни за 1150 души. През 2008 г., 1026 разрешителни за пребиваване са били издадени в общо девет страни. Средния брой от повече от 100 разрешителни на страна, обаче, не е показателен ечатление, тъй като, 664 разрешителни за пребиваване са били издадени само в Италия (и още 810 през 2009 г.), заедно с 235 в Холандия, което означава, че през 2008 г. останалите седем страни са издали общо 127 разрешителни за пребиваване на трафикирани лица (т.е., средно по-малко от 20 разрешителни за пребиваване за всека страна). Това подсказва, че има значителна разлика в законите или политиките между за издаване на разрешения за пребиваване на жертви на трафик в различните страни от ЕС.

Съобщава се, че **трафикираните деца** са били допуснати да останат в шест страни през тези две години: Франция, Полша и Великобритания, където им е бил отпуснат временен период, в който да останат, преди да навърши 18г., и Австрия и Дания, където разрешенията за пребиваване се считат за постоянни. В Италия, чуждестранни деца, независимо дали са жертви на трафик или не, могат да останат, докато достигат 18 годишна възраст. Въпреки това, и трафикираните деца могат да получат разрешение за пребиваване на същото основание като на трафикиран възрастен (по силата на регламент, известен като "член 18"). В Холандия на децата им е разрешено да останат, но от релевантната информация е трудно да се прецени дали разрешителните са постоянни.

По въпроса за връщане (или репатриране), изследователите се заеха да установят дали връщането е доброволно или принудително; каква е цифрата на предполагаеми жертви на трафик, който са били върнати и в какви условия. Потвърдено е, че шест държави от ЕС имат официални споразумения с другите държави за репатриране (тъй като пет от шест са страни крайна дестинация на трафик, споразуменията са най-вече с други държави, които се считат за страни на произход на трафик).

15 страни са предоставили информация за **завърнали се възрастни през 2008 г.**: 12 страни (Австрия, Кипър, Република Чехия, Дания, Франция, Гърция, Италия, Латвия, Холандия, Полша и Словения) са върнали 194 трафикирани възрастни в страната им на произход. През тази година (2008) Холандия е докладвала най-голям брой на репатрирани лица (37), Италия (31), следвана от Кипър (24), Германия

(23) и Дания (21). Данни относно репатрирани хора през 2009 г. е предоставена само от 10 страни. В този случай е докладвано, че 171 души са се завърнали в страната си на произход, от 10 различни страни, като от Гърция са повече от половината завърнали се. Австрия е докладвала 22 завърнали се, Полша - 23, а останалите седем страни отчитат общо 19 завърнали се. Очевидно съотношението на завърналите се спрямо общият брой на трафикираните лица е различен за всяка от тези страни. Отново, данните показват, че всяка страна има различни критерии при взимане на решение дали да върне предполагаема жертва на трафик и, в резултат на това, общият брой на завърналите се лица не е пропорционален на броя на жертвите на трафик идентифицирани в докладите.

През 2008 г. и 2009 г., на **гражданите идентифицирани от други държави-членки като жертви на трафик** им е била осигурена защита и помощ в 19 държави-членки на същата основа, както и на гражданите от така наречените "трети страни", извън ЕС. Въпреки това, в шест държави-членки (Германия, Унгария, Латвия, Литва, Румъния и Испания), чужденци от други страни-членки, идентифицирани като жертви на трафик не са получили добра защита и съдействие, както и граждани от "трети страни". Някои граждани на други държави от ЕС са имали проблеми да бъдат идентифицирани като жертви на "трафик" и са имали проблеми при получаване на помощ. Въпреки всичко, това показва, че в повечето западноевропейски страни жертвите на трафик от Централна Европа са получили нужната помощ. През 2008 и 2009г. в 14 от 25 страни на ЕС, гражданите на ЕС са били идентифицирани и подпомогнати на същото основание като трафикирани лица от страни извън ЕС.

По въпроса за това от какви форми на съдебна защита могат да се възползват трафикираните лица или деца свидетели, беше докладвано, че в около половината от държавите-членки на ЕС съществуват мерки за защита свидетели на трафик. Съдебната защита, която изследователите проучваха включваше даване на показания от страна на свидетел в предварително изслушване (например, пред съдия следовател, а не в публичен съдебен процес), чрез видеоконферентна връзка, или докато свидетелят е скрит от погледа на обвиняемия. Въпреки това, през 2008 г. или 2009 г., в пет страни (Чехия, Дания, Франция, Португалия и Обединеното кралство) има докладвани случаи за жертви на трафик, възрастен или дете, чиято самоличност е трябвало да остане конфиденциална, но е била разкрита в хода на наказателното производство.

Скорошно изследване на Анти Слейвъри Интернешънъл[249] и OSCE[250] заключава, че въпреки че жертвата на трафик има право на обезщетение и въпреки наличието на няколко компенсаторни механизми, действителното получаване на обезщетение за жертва на трафик на практика е изключително рядко. Независимо от това, в 12 страни (от общо 22, за които е имало информация) трафикирани лица са получили плащане по щета или обезщетение през 2008 г., и в 12 страни (от 20) през 2009 г., или в резултат на обжалване пред съда или от друг източник. Деветте страни, в които две поредни години се изплащат компенсации са Австрия, Дания, Франция, Германия, Италия, Холандия, Испания, Швеция и Обединеното кралство.

Изследването не проучи в детайли многобройните **методи за превенция**, но се фокусира върху намирането на достъпна информация за мигранти преди и след пристигането им в страната, в която трафикирани лица се считат за експлоатирани.

Съветът на Европейската Конвенция изисква от държавите "да обмислят назначаването на Национален докладчик или други механизми за контрол на дейността на държавните институции за борба с трафика и прилагането на изискванията на националното законодателство". Въпреки че разпоредбата само изисква от държавите да "обмислят" такова назначения, има достатъчно основания да се предположи, че предстоящата европейска директива ще бъде значително по-категорична по този въпрос, изисквайки всички държавите-членки да назначат независим национален докладчик или друг еквивалентен механизъм. През март 2009 г. на конференция, организирана по въпроса за националния доставчик се обяви, че 12 държави от ЕС вече са назначили национален докладчик (или еквивалентен механизъм) за наблюдение на националните мерки за превенция на трафик на хора. Изследователите потвърдиха, че девет от 27-те страни в ЕС имат национален докладчик по трафика на хора (Кипър, Чехия, Финландия, Латвия, Литва, Нидерландия, Португалия, Румъния и Швеция), а 16 страни нямат такъв механизъм. В някои (като например Швеция) трябва да се обърне внимание предимно на случаите на трафик с цел сексуална експлоатация. В няколко държави (като Белгия и Испания) различна държавна институция се занимава

249. J.Lam, K. Skrivankova, *Възможности и препятствия: Осигуряване на достъп до компенсация за трафикирани лица в Великобритания*, Анти Слейвъри Интернешънъл, Лондон, 2008 г.
250. OSCE/ODIHR, Компенсация за трафикирани и експлоатирани лица в област OSCE, Варшава, 2008 г.

със спазване на мерките за превенция на трафика. В три от деветте страни с докладчик (Латвия, Литва и Швеция) ролята на докладчика не е напълно независима от институциите ангажирани в борбата с трафика на хора, което ограничава независимостта им и потенциално намалява способността им да мониторират по строго независим начин.

4. Заключения и препоръки

Проектът E-notes показа, че има съществени разминавания между държавите-членки на ЕС по фундаментални въпроси свързани с антитрафик политиките в рамките на Европейския съюз. Пример за подобно разминаване са националните законнодателни системи на отделните държави, регламентиращи забраната за трафика на хора, дефинициите (или интерпретациите от страна на релевантни правителсвени агенции) за това, какво е трафик на хора, както и процеса на идентификация на трафикираните лица и наличието на координационни органи. Проектът също демонстрира, че някои основни положения залегнали в международното и националното законодателство, късаещи защитата на правата на трафикираните лица все още съществуват само на хартия и прилагането им почти не е започнало в повечето държави-членки. Организациите взели участие в проекта E-notes смятат, че както Европейският съюз и държавите-членки, така и гражданското общество като цяло трябва да насочат повече усилия в укрепване на основата на политическата рамка на национално и европейско ниво, за да може трафика на хора да бъде спрян.

Макар че са необходими съществени подобрения по отношение на прилагането на антитрафик политиките в ЕС, препоръките подготвени в рамките на проекта E-notes се фокусират върху защитата на правата на трафикираните лица, тъй като се смята, че това е съществената посока в усилията за противодействие на трафика на хора. В същото време, точно законовите положения късаещи превенцията на трафика и защитата на трафикираните лица са тези, който се прилагат в най-ниска степен.

Идентификация и насочване на трафикираните лица
Защитата на правата на трафикираните лица може да бъде осигупена само, когато всички предполагаеми жертви (независимо от сътрудничеството им с властите) бъдат идентифицирани като такива. Резултатите от проекта E-notes показват, че идентификацията на

жертвите е все още слабо звено. За да се подобри процеса на идентификация в страните-членки, от съществено значение е:

- Държавите-членки да изработят въпросници и/или индикатори, в сътрудничество с полицията, прокуратурата и доставчиците на услуги, който да улеснят идентификацията на предполагаемите жертви на трафик или друга форма на експлоатация. Допълнителни индикатори трябва да бъдат разработени за различните форми на експлоатация – трудова експлоатация, сексуална експлоатация, принудително просене, принудително въвличане в незаконни дейности и т.н. За идентификацията на деца жертви трябва да се изработят специфични индикатори.
- Идентификацията да не е отговорност само на една правителствена агенция, а трябва да бъде извършена от мултидисциплинарни екипи, които да включват доставчиците на услуги за трафикирани лица.
- Действащите национални структури за насочване т.е. или Национални референтни механизми или други механизми включени в прилагането на Стандартни Оперативни Процедури трябва да се основават на тясно и редовно сътрудничество между служителите на реда, имиграционните служители, инспекторите по труда, съответни търговски участъци, агенции за закрила на детето, прокурорски служби и НПО или други институции, предлагащи подобни услуги.
- Подобрена е достъпността за правосъдие за жертви на трафик, включително и искане за компенсация, като гарантира безплатна правна помощ за всички идентифицирани жертви на трафик.
- Всички държави-членки гарантират, че се извършва индивидуална оценка на риска за всички жертви на трафик при завръщането им в родината си.

Мониторинг

Съществено важно е да се осъществи допълнителен миниторинг на европейско и национално ниво, така че всички заинтересовани страни да имат по-добра представа, не само какво съществува като документ, но и какво реално се случва относно най-ефективните мерки за борбата с трафика на хора във всички страни. За по-добро разбиране на изпълнението, ефектите и влиянието на политиките срещу трафика на хора в ЕС е належащо да:

- Националните Докладчици или други равностойни механизми трябва да бъдат независими органи (както е договорено в Хагската Декларация през 1997г.) за да гарантират независим и съпоставим мониторинг на резултати от действията за борбата с трафика на

хора. Също така е важно, въздействието и непредвидимите или дори негативни ефекти на мерките за борба с трафика трябва да бъдат идентифицирани и докладвани.
- Трябва да има повече стандартизация на съответната терминология, статистика и начин на измерване (например, брой на лицата осъдени за трафик на хора);
- С цел да се избегне ненужно препокриване на дейностите по надзора трябва да има тясно сътрудничество между ЕС и неговите държави-членки, членовете на ГРЕТА и независимият контролен орган на Конвенцията на Съвета на Европа за борба с трафика на хора.

Законодателство
- Нужен е допълнителен мониторинг, който ще гарантира, че всички национални правни рамки включват определението на трафик на хора в договореното през 2002г. Рамково Решение и Конвенцията на Съвета на Европа през 2005г.;
- Оказва се, че има значителна нужда от подобряване разбирането на понятието „експлоатация" в много държави-членки на ЕС и редица други престъпления свързани с незаконната експлоатация. Също така и при случаите на хора обект на трафик в експоатация или с цел екплоатация, и когато лица са подложени на незаконна екплоатация без да са жертви на трафик.

Координиране на политиките на национално ниво за борба с трафика на хора
- Всички държави-членки, които все още не са координирали политиките си, трябва да създадат координационна структура и национален план за действие, за да дадат по-голяма последователност на политиките за борбата с трафика на хора. От съществено значение е подходящото разпределение на човешките и икономическите ресурси за ефективното функциониране и на двете. За всякакви бъдещи мониторингови изпълнения би било подходящо да се проверят разпределените ресурси във всяка държата-членка на ЕС относно финансиране на националната координационна структура и ресурсите относно подкрепа на дейностите на координиране.

8.2 Shrnutí

Čtyři nevládní neziskové organizace (NNO) zahájily v roce 2009 společný projekt „European NGOs Observatory on Trafficking, Expoitation and Slavery" (dále jen „E-notes"), jehož cílem byl monitoring politik jednotlivých vlád zemí Evropské unie zaměřených proti otroctví, obchodu s lidmi a různým souvisejícím formám vykořisťování. Italská NNO *Assiciatione On the Road*[251] tento projekt koordinovala, společně s mezinárodní sítí regionálních NNO *La Strada International*, a dvěma dalšími NNO – *ACCEM*[252] ve Španělsku a *ALC*[253] ve Francii.

Spíše než o založení stálého institutu k monitoringu vládních opatření usiloval E-notes o sběr informací k aktivitám ve všech 27 členských zemích EU. Tento cíl předpokládal stanovení jednotné výzkumné metodiky a vytvoření sítě NNO (a výzkumníků) ve 27 státech, které by na se výzkumu podílely. Důraz byl od počátku projektu kladen na roli **indikátorů**, vytvořených k měření progresu opatření proti obchodu s lidmi jednotlivých členských zemí EU (např. legislativa, politiky, opatření a praxe k potírání obchodu s lidmi a k pomoci obchodovaným osobám). Indikátory byly sestaveny do výzkumného dotazníku, který obsahoval více než 200 standardizovaných otázek zaměřených na uvedená opatření. Účelem standardizovaného dotazníku bylo zhodnotit úroveň opatření proti obchodu s lidmi v jednotlivých zemích EU.

1. Standardy monitoringu a sběru informací

Výzkum byl zahájen počátkem roku 2010, tedy v době, kdy Evropská rada dokončovala rozhodovací proces ohledně nového dokumentu EU ke sjednocení národních politik proti obchodu s lidmi ve členských zemích (tento nový dokument by měl nahradit *Rámcové rozhodnutí Rady o potírání obchodu s lidmi* z července 2002). V roce 2009 představila Evropská komise návrh nového rámcového rozhodnutí k obchodu s lidmi. Vzhledem k tomu, že v účinnost vstoupila Lisabonská smlouva, což na čas přerušilo veškeré legis-

251. *Associazione On the Road* poskytuje široké spektrum služeb a ochrany obchodovaným osobám, žadatelům o azyl, uprchlíkům i migrantům obecně v třech italských regionech (Marche, Abruzzo, Molise). Zabývá se rovněž prevencí a zajišťování informovanosti, komunitní prací, výzkumem, síťováním a rozvojem politik na lokální, národní i evropské úrovni.

252. *ACCEM* poskytuje sociální, právní a další služby žadatelům o azyl, uprchlíkům, vysídlencům a migrantům ve Španělsku.

253. *ALC* je NNO zabývající se především poskytováním sociálních a dalších služeb, provozováním kontaktních center a vzdělávacích a sociálních center. *ALC* také koordinuje národní síť pro zajišťování ubytování obchodovaným osobám (pod zkratkou „Ac.Sé").

lativní procesy, byla pozdržena rovněž vyjednávání Evropské rady o novém rámcovém rozhodnutí. Evropská komise v téže době vytvořila *nový návrh Direktivy Evropského parlamentu a Evropské rady k prevenci a potlačování obchodu s lidmi a k ochraně obětí*, která by nahradila rámcové rozhodnutí z roku 2002. V březnu 2010 byl tento návrh postoupen Evropskému parlamentu k projednání. V září 2010, dva z parlamentních výborů navrhly k direktivě řadu dodatků, které jsou dále projednávány mezi Evropskou komisí, Evropskou radou a Evropským parlamentem. Očekává se, že nová direktiva by měla být přijata do konce roku 2010.

Většina z opatření, která budou obsahem nové direktivy, je v hrubých rysech známá a jasná, avšak v době, kdy byl prováděn sběr dat pro E-notes, tedy v květnu a červnu 2010, nebyla direktiva ještě schválena (schválena nebyla ani v době dokončení této zprávy, tedy v říjnu 2010). Při rozhodování o tom, jaké právní závazky by měly být použity k vytvoření standardů pro monitoring v jednotlivých členských zemích EU (konkrétně závazky zemí v oblasti potírání obchodu s lidmi) projekt nakonec využil jiný právní dokument, kterým je *Úmluva Rady Evropy o opatřeních proti obchodu s lidmi.* Tato úmluva byla přijata v květnu 2005, a v účinnost vstoupila v únoru 2008. Ačkoliv byla úmluva ratifikována také řadou zemí mimo EU, v srpnu 2010 všechny členské země EU – kromě jedné (Česká republika) – tuto úmluvu ratifikovaly (19 zemí) nebo podepsaly (7 zemí), čímž vyjádřily úmysl ji naplňovat.

2. Použité metody

Způsob provedení monitoringu byl navržen konzultantem na počátku roku 2010. Pozornost byla věnována předchozím publikacím a dokumentům, které navrhovaly vytvoření relevantních „indikátorů" pro členské země EU, jež by zhodnotily postup a úspěšnost jednotlivých států při naplňování regionálních a mezinárodních standardů v oblasti legislativy a praktických opatření (které byly založeny především na *Protokolu k prevenci, potlačování a trestání obchodu s lidmi, zvláště se ženami a dětmi, doplňujícím Úmluvu OSN proti nadnárodnímu organizovanému zločinu* z roku 2000). Pozornost byla věnována také doporučením a komentářům v různých publikacích Evropské komise[254] o zaznamenaných nedostatcích v tom, jak jednotlivé členské státy

254. Např.: Evropská komise, *Sdělení Evropskému parlamentu a Evropské radě "Boj proti obchodu s lidmi – integrovaný přístup a návrh akčního plánu"* (Dokument EK COM(2005) 514, 18. října 2005); a Evropská komise – Pracovní dokument (COM(2008) 657), *Evaluace a monitoring implementace Plánu EU k opatřením, standardům a procedurám k potlačování a prevenci obchodu s lidmi.* Říjen 2008.

informují o svých opatřeních k potlačení obchodu s lidmi nebo o ochraně a pomoci pravděpodobně obchodovaným osobám[255]. Některé dokumenty konstatovaly obtíže v přístupu k informacím z členských zemí (někdy se jedná o aktuální informace, někdy o informace vůbec) o jejich politikách ve vztahu k obchodu s lidmi. Bylo také poukazováno na chybějící „jednotný sběr dat" a neexistující společnou terminologii a společné monitorovací mechanismy v rámci EU. Na všechny uvedené problémy narazil rovněž projekt E-notes.

Dokument Evropské komise z roku 2006[256] konstatoval, že členské státy poskytly pouze málo informací o svých pravidlech a opatřeních vztahujících se k ochraně a pomoci obchodovaným osobám. Pracovní dokument z roku 2008[257] rovněž zaznamenal obtíže v získávání informací od členských států k počtům obchodovaných osob, kterým byla poskytnuta pomoc, a zároveň přinesl zjištění, že v roce 2006 bylo v 23 členských státech (které poskytly tuto informaci) vyšetřováno 1500 případů obchodu s lidmi. Dalším závěrem byla informace, že většina zemí EU zavedla institut tzv. *reflection period* (doba na rozmyšlenou), který slouží k zajištění pobytu a zotavení předpokládané obchodované osoby před tím, než má poskytnout své svědectví orgánům činným v trestním řízení. Avšak pouze 5 zemí poskytlo informaci o tom, kolik osob využilo tento institut doby na rozmyšlenou, a jednalo se pouze o 26 osob za celý rok 2006!

Nedostatečná a nepřesná data, která členské státy poskytují Evropské komisi, považovaly za značný problém především NNO, které se specializují na obchod s lidmi (a zabývají se poskytováním služeb obchodovaným osobám nebo preventivními aktivitami). Na jedné straně to totiž znamenalo, že nikdo – Evropskou komisi nevyjímaje – nemá přehled o tom, jaká je situace v celé EU. Na straně druhé existovaly náznaky, že řada z opatření zakotvených v regionálních i nadnárodních úmluvách mohou být členskými státy ignorovány (přesto, že se k nim zavázaly) a zůstávají neimplementovány.

Některé členské státy EU ustanovily své Národní reportéry k problematice obchodu s lidmi, jehož úkolem má být informovat vlády (a další subjekty) o efektivitě opatření v boji proti obchodu s lidmi a navrhovat zlepšení. 9 z 27

255. Pojem „pravděpodobně obchodovaná osoba" se vztahuje k těm osobám, o kterých se lze důvodně domnívat, že byly obchodovány, avšak definitivní informace o jejich zkušenosti není k dispozici.
256. Zpráva Evropské komise k implementaci rámcového rozhodnutí Rady z 19. července 2002 o potlačování obchodu s lidmi (COM(2006) 187, 2. května 2006).
257. Viz výše – pozn. č. 254.

členských zemí EU mělo v polovině roku 2010 (kdy proběhl monitoring) ustanoveno svého Národního reportéra, ale pouze některé z nich zpracovává pravidelné zprávy a některé z nich se přitom zaměřují pouze na obchod s lidmi za specifickým účelem (především obchod se ženami za účelem prostituce) – bez informací o dalších typech obchodu s lidmi a opatřeních v této oblasti. Z dlouhodobého hlediska, pokud by všechny členské země EU ustanovily své Národní reportéry, vytvořilo by to dobrou výchozí pozici k vytvoření a zavedení jednotných definic pojmů a ke sběru statistických dat o obchodu s lidmi, takže by bylo možné vytvářet i relevantní srovnání a hodnocení politik různých členských států EU.

Navzdory popsaným překážkám se monitoring provedený v rámci E-notes zaměřil na zjištění dat a informací, které je možné od členských zemí EU získat – k jejich legislativě, politikám a opatřením v oblasti obchodu s lidmi, k počtům osob, které byly identifikovány jako obchodované, k počtům osob, kterým byla poskytnuta nějaká forma ochrany nebo asistence. Jelikož data byla sbírána během května a června 2010, záměrem bylo získat data za rok 2009. Ukázalo se však, že v řadě zemí nejsou data za rok 2009 k dispozici (nebo jsou neúplná), přičemž větší množství požadovaných informací bylo získáno za rok 2008.

Zúčastněné NNO z jednotlivých zemí prostřednictvím svých výzkumníků sebraly data požadovaná pro monitoring. Data se většinou vztahovala k obchodování s dospělými osobami (obzvláště se ženami). Informace o obchodu s dětmi byly sbírány rovněž, jejich sběr byl daleko obtížnější. V mnoha členských zemích EU poskytují služby obchodovaným osobám specializované NNO, zatímco státní úřady zodpovědné za ochranu dětí mají „monopol" v péči o obchodované děti.

Každý výzkumník vyplňoval 60-ti stránkový výzkumný protokol, doplňoval vysvětlující text v otázkách, kde odpovědi „ano/ne" nebyly dostačující, a sestavil krátký profil o své zemi zaměřující se na stručný popis situace v oblasti obchodování s lidmi a charakteristiku vládních opatření. Informace sesbírané 27 výzkumníky byly sestaveny do jednoduché databáze a podrobeny analýze v červenci 2010. Analýza byla provedena konzultantem, který celou metodologii připravil, a jejím účelem byla identifikace společných vzorců – především pokud jde o selhávání členských zemí EU v naplňování standardů v oblasti ochrany a pomoci obchodovaným osobám – a příprava závěrečné zprávy.

Výzkumníci poskytli údaj o tom, zda jsou jednotlivé země převážně zeměmi původu, tranzitu nebo destinace (z hlediska obchodu s lidmi), nebo zda jsou kombinací uvedeného. Tato kategorizace nepostihovala vnitrostátní obchod s lidmi.

Pouze několik zemí spadalo výhradně do jedné kategorie (dva státy, Francie a Portugalsko, byly popsány výhradně jako země destinace). Zbylých 25 zemí bylo popsáno jako kombinace uvedených kategorií: jedna jako země původu a destinace, deset jako země tranzitu a destinace, a 9 jako kombinace všech tří kategorií.

3. Hlavní zjištění monitoringu

Výzkumný protokol zahrnující 230 otázek se zaměřoval na informace k rozličným tématům, což komplikovalo vytvoření „černobílého" profilu každé členské země EU ve vztahu k plnění závazků a respektování lidských práv obchodovaných osob. V pěti tématech však bylo přesto možné zhodnotit stupeň vývoje jednotlivých zemí. Ale i v těchto případech byly dostupné informace nekvalitní nebo neúplné, takže žádný z uvedených statistických údajů není možné považovat za reliabilní. Těchto pět témat je shrnuto v tabulce níže.

Tabulka 1 Vývoj v EU v klíčových bodech politiky proti obchodu s lidmi

Téma	Situace v květnu 2010
Koordinace politiky proti obchodu s lidmi na národní úrovni	Národní koordinační struktura pro opatření proti obchodu s lidmi byla ustavena ve 22 z 27 členských zemí EU. Zeměmi bez koordinační struktury jsou Francie, Německo, Řecko a Malta. V Německu a Itálii nejsou politiky proti obchodu s lidmi organizovány na federální úrovni, což však neznamená, že by byly nedostatečné. Švédsko ustanovilo národního koordinátora s úkolem vybudovat koordinační strukturu, avšak pouze pro případy obchodu s lidmi za účelem sexuálního vykořisťování.
Identifikace pravděpodobně obchodovaných osob	Jedenáct z 27 členských zemí má jeden vládní subjekt či jednotnou strukturu odpovědnou za proces formální identifikace osob, které byly pravděpodobně obchodovány; 16 zemí takový mechanismus postrádá. Šest zemí, které nemají formální proces identifikace na národní úrovni, nemají ani žádnou standardní proceduru k identifikaci pravděpodobně obchodovaných osob, která by byla v zemi používána (Rakousko, Bulharsko, Francie, Německo, Itálie, Malta).
Existence institutu doby na rozmyšlenou alespoň na 30 dní	V 25 z 27 členských zemí existuje možnost doby na rozmyšlenou a zotavenou (*reflection period*) pro pravděpodobně obchodované dospělé osoby, tedy vysoký podíl zemí naplňuje tento standard. V Itálii tato možnost není formálně zakotvená, ale v praxi je někdy uplatňována. V Litvě je situace obdobná. Za rok 2008 byla k dispozici informace z 11 zemí, kde celkem 207 osob využilo institutu doby na rozmyšlenou. Za rok 2009 byla k dispozici informace od 18 zemí, a doby na rozmyšlenou využilo 1150 obchodovaných osob. Jedná se tedy o výrazný nárůst.

Zajištění bezpečných a dobrovolných návratů	Šest zemí mělo uzavřenu smlouvu s dalším členským státem EU nebo se třetí zemí k zajištění návratu do země původu (Francie, Lotyšsko, Portugalsko, Španělsko a Velká Británie; Řecká má bilaterální smlouvu, která se vztahuje pouze na obchodované děti). Uzavření takových smluv se zdá alespoň malou zárukou, že nedojde ke zneužití. Pokud je úřady plánován návrat pravděpodobně obchodované osoby do země původu, pouze ve 3 zemích (ze 17, o kterých byla tato informace k dispozici) je prováděno vyhodnocení rizik (pro osobu a pro její rodinu) před návratem jako standardní a rutinní záležitost (Itálie, Portugalsko a Rumunsko).
Přístup k odškodnění a kompenzaci	Ve 12 zemích (z 22, pro které byly informace k dispozici) obdržely obchodované osoby platbu jako odškodnění nebo kompenzaci v roce 2008, a ve 12 zemích (z 20) v roce 2009, buď v důsledku soudního rozhodnutí nebo z jiného zdroje. Devět zemí, ve kterých kompenzační platby proběhly v obou letech, byly Rakousko, Dánsko, Francie, Německo, Itálie, Nizozemí, Španělsko, Švédsko a Velká Británie.

Na základě uvedených pěti témat by bylo nepatřičné pokoušet se o zhodnocení a sestavení pořadí jednotlivých zemí podle jejich úspěšnosti (tak jak to činí např. výroční zpráva U.S. Department of State). V prvních třech kategoriích jde od různé země, které vykazují nedostatky, zatímco ve zbylých dvou kategoriích jde o země, které standardy splňují. Např. Itálie je země, která je zmíněna ve všech pěti kategoriích a která vykazuje dobré výsledky v mnoha ohledech, avšak systém její politiky proti obchodu s lidmi je odlišný od většiny dalších států EU.

Kromě uvedených pěti témat se samozřejmě monitoring zaměřil na mnoho dalších. Bylo zjišťováno, zda se **legislativa v jednotlivých zemích** zaměřuje na všechny formy vykořisťování spojené s obchodem s lidmi (prostituce a sexuální vykořisťování, pracovní vykořisťování, nucená práce, otroctví a praktiky podobné otroctví, odnětí lidských orgánů). Závěrem bylo, že ve většině zemí tomu tak je. Dva státy – Polsko a Estonsko – v současné době aktualizují svou legislativu, a ve Španělsku vstoupí nová legislativní definice obchodu s lidmi –v souladu s mezinárodním standardem – v účinnost v prosinci 2010.

Dalším zkoumaným tématem bylo, zda **definice obchodu s lidmi** v jednotlivých zemích umožňují rovněž srovnatelné definice pojmů „pachatel obchodu s lidmi" a „oběť obchodu s lidmi". V tom však byla shledána značná různost. Např. ve Francii je trestný čin obchodu s lidmi definován tak široce, že se vztahuje také na kohokoliv podezřelého z kuplířství. Výsledkem této definice je, že ve Francii bylo v roce 2008 odsouzeno 900 osob za obchod s lidmi. Při bližším zkoumání se však ukázalo, že více než polovina z uvedeného počtu (521) byly rozsudky za „závažné kuplířství" (které je ve většině zemí EU definováno jiným způsobem) a pouze 18 rozsudků se vztahovalo

k obchodu s lidmi dle definice Úmluvy Rady Evropy či z rámcového rozhodnutí z roku 2002. Ve Finsku je situace opačná – případy odpovídající mezinárodní definici obchodu s lidmi jsou zde stíhány a souzeny jako kuplířství.

Monitoring se zaměřil na popis **procesu identifikace obchodovaných osob** a na to, zda je skutečně důsledně nabízena doba na rozmyšlenou a další formy ochrany a pomoci. Výsledky ukázaly, že způsob identifikace a kritéria pro identifikaci se v jednotlivých zemích značně liší do té míry, jako by žádné společné standardy neexistovaly.

Národní struktury ke koordinaci opatření proti obchodu s lidmi byly ustaveny ve 20 z 27 zemí EU. Národní akční plán pro boj proti obchodu s lidmi (nebo obdobný dokument) byl přijat ve 22 z 27 členských států (ačkoliv některé z nich se zaměřovaly výhradně na obchod s lidmi za účelem sexuálního vykořisťování). Většina zemí má speciální policejní jednotku, která se na obchod s lidmi zaměřuje. V některých zemích existuje na národní úrovni systém rozdělení rolí různých organizací v poskytování služeb a ochrany obchodovaným osobám – tzv. Národní referenční mechanismus. Celkem 17 států takový systém má, v 9 zemích chybí.

V 11 z 27 členských států EU existuje jeden vládní subjekt nebo jednotná struktura, která je zodpovědná za formální identifikaci pravděpodobně obchodovaných osob. V 16 zemích tomu tak není. Sedm ze zemí, kde neexistuje takový úřad či jednotná struktura, nemá ani sjednocenou standardní proceduru, která by k formální identifikaci byla používána. To však neznamená, že by v zemích, které jednotný systém (a z něj vyplývající nabídku pomoci a ochrany) mají, byla identifikace efektivnější. I když totiž v zemích jednotný systém a procedura existují, značně se liší míra dodržování a efektivita těchto procesů.

Výzkum získal pouze neúplnou informaci o počtech pravděpodobně obchodovaných osob, které byly identifikovány v letech 2008 a 2009 – šlo celkem o 4010 osob v 16 zemích (některé z osob však mohly být započítány dvakrát, např. pokud byly identifikovány v cílové zemi, a zároveň posléze v zemi původu). Ve více než polovině případů (55%) pravděpodobně obchodované osoby byly později úřady formálně identifikované a uznané jako obchodované. Z uvedeného počtu pravděpodobně obchodovaných osob v roce 2009 mělo 3800 (v 16 státech) z nich **přístup k nabízeným službám**. Pokud jde o dospělé i děti, kteří byli pravděpodobnými oběťmi obchodu s lidmi, někteří se stali v letech 2008 a 2009 **nezvěstnými**, než byl proces identifikace dokončen. V 10 zemích se nezvěstnými staly děti, v 10 dalších zemích se nezvěstnými staly pravděpodobně obchodované dospělé osoby.

Výzkum se dále zaměřil na různé aspekty **ochrany**, především:

- doba na rozmyšlenou
- vyhodnocení rizik
- návraty (repatriace obchodovaných osob do země původu)

Informace o **počtech osob, které mohly využít dobu na rozmyšlenou**, byla v některých zemích neúplná. Za rok **2008** byla informace k dispozici za 11 zemí, a doba na rozmyšlenou byla udělena celkem 208 osobám. Za rok **2009** byla informace k dispozici za 18 zemí, a doba na rozmyšlenou byla udělena 1150 osobám. V roce 2008 bylo dále uděleno 1026 povolení k pobytu v celkem 9 státech. Průměrný počet více než 100 udělených pobytů na jednu zemi dává nepřesnou představu, protože 664 z udělených pobytů bylo vydáno v Itálii (a dalších 810 v roce 2009), a dalších 235 v Nizozemí, takže v roce 2008 bylo v sedmi zbývajících zemích uděleno 127 povolení k pobytu obchodovaným osobám (průměrně tedy méně než 20 v jednom státě). Z toho vyplývá, že legislativa a praxe, která má obchodovaným osobám zajistit povolení k pobytu, se v jednotlivých zemích EU značně liší.

Obchodované děti obdržely „strpění pobytu"[258] v šesti zemích v uvedených dvou letech: Francie, Polsko a Velká Británie, kde děti obdržely dočasný pobyt do dosažení věku 18-ti let, a Rakousko a Dánsko, kde obdržely trvalý pobyt. V Itálii mohou děti-cizinci zůstat do svých 18-ti let, ať už byly obchodovány nebo ne. Obchodované děti mohou také obdržet stejný druh povolení k pobytu, jako dospělé obchodované osoby. V Nizozemí mohou děti obdržet strpění pobytu, avšak nebyly získány informace o tom, zda mohou zůstat v zemi trvale.

V otázce návratů (repatriací) bylo zjišťováno, zda jde o návraty dobrovolné nebo nucené, kolik potenciálně obchodovaných osob bylo navráceno a za jakých podmínek. 6 členských států EU mělo uzavřenu smlouvu k provádění těchto návratů s dalšími zeměmi (5 ze 6 bylo zeměmi cílovými, smlouvy byly uzavřeny většinou se zeměmi původu).

K **návratům dospělých osob v roce 2008** byly k dispozici informace z 15 zemí: 194 osob bylo navráceno do země původu z 12 zemí (Rakousko, Kypr, Česká republika, Dánsko, Francie, Řecko, Itálie, Lotyšsko, Nizozemí, Polsko a Slovinsko). Největší počet osob byl v tomto roce navrácen z Nizozemí (37), dále z Itálie (31), Kypru (24), Německa (23) a Dánska (21). Informace o

258. Strpění pobytu („leave to remain") je obecným označením právního institutu, který umožňuje občanům třetích zemí setrvat legálně na území státu – dočasně či trvale.

návratech v roce 2009 byla dispozici za menší počet zemí – pouze za 10. V roce **2009** bylo navráceno celkem 171 osob do země původu z celkem 10 zemí, přičemž více než polovina těchto návratů byla provedena Řeckem. Dále se uskutečnilo 22 návratů z Rakouska a 23 z Polska, a na 7 zbývajících států připadalo pouze 19 návratů. Číselné údaje o provedených návratech jsou zjevně velmi odlišné od údajů o počtech pravděpodobně obchodovaných osob nebo identifikovaných obchodovaných osob v jednotlivých zemích. Různá data však především poukazují na různost kritérií v jednotlivých zemích, podle kterých je o návratech rozhodováno.

V letech 2008 a 2009 byly občanům jiných států EU, pokud byli identifikováni jako pravděpodobně obchodované osoby, poskytovány stejné formy ochrany a služeb jako občanům třetích zemí v 19 členských státech EU. V šesti státech (Německo, Maďarsko, Lotyšsko, Litva, Rumunsko a Španělsko) nebyly občanům jiných zemí EU identifikovaným jako obchodované osoby poskytnuty služby a ochrana na té úrovni, jako je poskytována občanům třetích zemí. Zaznamenány byly případy občanů států EU, kteří měli značné problémy s tím, aby byli identifikováni jako obchodované osoby nebo aby obdrželi odpovídající pomoc. Nicméně ve většině západoevropských zemí, kam jsou obchodováni občané ze zemí EU ve střední Evropě, je pomoc a ochrana pro tyto občany k dispozici. Ve 14 z 25 zemí EU byli občané zemí EU identifikováni a byla jim poskytnuta pomoc na stejné úrovni jako osobám mimo země EU.

V otázce ochrany **obchodovaných osob v trestním řízení** (především ochrana svědka) byly takové instituty k dispozici přibližně v polovině členských zemí EU. Hlavními instituty jsou přitom možnost poškozeného svědčit v předběžném řízení (před soudcem), tak aby nemusel svědčit v hlavním líčení před veřejností, a možnost poškozeného svědčit pomocí audiovizuálního přenosu bez nutnosti setkat se s obviněným. Nicméně v 5 státech (Česká republika, Dánsko, Francie, Portugalsko, Velká Británie) došlo v letech 2008 a 2009 k případům, kdy byla (původně skrývaná) identita obchodované osoby během trestního řízení odhalena.

Aktuální výzkumy organizací Anti Slavery International[259] a OBSE[260] konstatovaly, že navzdory právu na kompenzaci obchodovaným osobám a existenci několika kompenzačních mechanismů jsou v reálné praxi skutečná

259. J. Lam, K. Skřivánková, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, Londýn, 2008.
260. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Varšava, 2008.

odškodnění obchodovaným osobám naprostou výjimkou. Ve 12 zemích (z 22, kde byla tato informace k dispozici) nicméně došlo v roce 2008 k provedení platby obchodované osobě jako odškodnění nebo kompenzace, a ve 12 zemích (z 20) k tomu došlo v roce 2009, buď jako důsledek soudního řízení nebo z jiného zdroje. V devíti zemích došlo ke kompenzační platbě v obou sledovaných letech: Rakousko, Dánsko, Francie, Německo, Itálie, Nizozemí, Španělsko, Švédsko a Velká Británie.

Výzkum se nezaměřoval na detailní zachycení mnoha existujících metod prevence, ale popsal, jaké informace jsou k dispozici migrantům před a po příjezdu do zemí, kde dochází k vykořisťování obchodovaných osob.

Úmluva Rady Evropy vyžaduje, aby státy „zvážily ustavení Národního reportéra nebo obdobného mechanismu pro monitoring opatření proti obchodu s lidmi vládními institucemi a k implementaci standardů do národní legislativy". Ačkoliv znění úmluvy vyžaduje po zemích pouze „zvážení" takovéhoto institutu, budoucí direktiva EU bude pravděpodobně v tomto ohledu přísnější, a stanoví požadavek, aby členské země EU ustanovily nezávislého Národního reportéra nebo obdobný mechanismus. V březnu 2009 se k tomuto tématu konala konference, kde se ukázalo, že 12 členských zemí svého Národního reportéra (nebo obdobný mechanismus) k monitoringu politik proti obchodu s lidmi ustavilo. Výzkum potvrdil, že 9 z 27 zemí EU Národního reportéra má (Kypr, Česká republika, Finsko, Lotyšsko, Litva, Nizozemí, Portugalsko, Rumunsko a Švédsko), a v 16 zemích chybí. V některých zemích (např. Švédsko) je pozornost věnována primárně případům zahrnujícím obchod s lidmi za účelem sexuálního vykořisťování. V některých zemích (např. Belgie a Švédsko) je monitoringem politiky v oblasti obchodu s lidmi pověřena jiná státní instituce. Ve třech z devíti zemí, které ustanovily Národního reportéra (Lotyšsko, Litva a Švédsko), není role reportéra zcela nezávislá na operativní činnosti proti obchodu s lidmi, což omezuje jejich nezávislost a redukuje schopnost přísně objektivního monitoringu.

4. Závěry a doporučení

Projekt E-notes prokázal, že mezi jednotlivými členskými zeměmi EU existují podstatné rozdíly v základních aspektech politiky proti obchodování s lidmi a v její implementaci. Především se to týká národní legislativy k trestnosti obchodu s lidmi a definic obchodu s lidmi (nebo jejich interpretací odpovědnými vládními úřady), existence koordinačních skupin či mechanismů a procesu identifikace obchodovaných osob. Bylo také zjištěno, že některá

z ustanovení mezinárodní a národní legislativy, která jsou zaměřena na ochranu práv obchodovaných osob, existují pouze na papíře a jejich uplatňování ve většině zemí EU bylo stěží teprve zahájeno. Organizace, které byly do projektu E-Notes, jsou toho názoru, že Evropská unie, jednotlivé členské státy i občanská společnost by měla vyvíjet více úsilí k posílení politického rámce na národní úrovni i na úrovni EU k potlačení obchodu s lidmi.

V implementaci mnoha aspektů politiky EU proti obchodu s lidmi jsou tedy nutná podstatná zlepšení. Následující doporučení připravená v rámci projektu E-notes se zaměřují na ochranu práv obchodovaných osob, neboť jsme přesvědčeni, že má jít o klíč k úspěchu jakéhokoliv státu v boji proti obchodu s lidmi. V oblasti prevence obchodu s lidmi a ochrany obchodovaných osob jsou však příslušná opatření implementována nejméně.

Identifikace obchodovaných osob a zajištění jejich práv
Ochrana práv obchodovaných osob může být zajištěna pouze tehdy, jsou-li všechny pravděpodobné oběti (nezávisle na jejich spolupráci s úřady) jako takové identifikovány. Monitoring E-notes zjistil, že identifikace je stále slabým článkem. Aby se zlepšil proces identifikace v členských zemích EU, považujeme za nezbytné následující:

- Země EU by měly – ve spolupráci policie, státních zastupitelství a poskytovatelů služeb – vyvinout seznam indikátorů („checklist"), který by sloužil k identifikaci pravděpodobných obětí obchodu s lidmi za účelem jakéhokoliv vykořisťování. Další indikátory by měly být k dispozici pro každou formu vykořisťování, jako např. pracovní vykořisťování, vykořisťování v domácnosti, sexuální vykořisťování, nucené žebrání, nucení k nelegálním činnostem atd. Specifické indikátory by měly být vytvořeny také k identifikaci dětských obětí.
- Identifikace nemá být záležitostí jednoho vládního úřadu, ale má být prováděna multidisciplinárními týmy se zastoupením organizací, které poskytují služby obchodovaným osobám.
- Národní struktury, které zajišťují identifikaci obchodovaných osob a koordinují zajištění pomoci, tedy buď Národní referenční mechanismus nebo Standardizované metodické procedury, by měly být založeny na užší a pravidelné spolupráci mezi orgány činnými v trestním řízení, imigračními úřady, pracovními inspektoráty, zástupci odborových svazů, orgány ochrany dětí a nevládními organizacemi nebo dalšími poskytovateli služeb.
- Přístup obchodovaných osob k justici a spravedlnosti, včetně nárokování kompenzací, by měl být zajištěn garantováním bezplatné právní pomoci všem identifikovaným obchodovaným osobám.

- Všechny členské státy EU by měly zajistit individuální vyhodnocení rizik pro všechny obchodované osoby, pokud je navrhován jejich návrat do země původu.

Monitoring

Další monitoring – na úrovni EU i na úrovni jednotlivých zemí – je nezbytný, aby všichni aktéři lépe rozuměli nejenom tomu, co je psáno v dokumentech a co má být vykonáno k potlačení obchodu s lidmi, ale také tomu, co se skutečně děje v realitě. Pro lepší porozumění implementaci, efektům a dopadům politiky proti obchodu s lidmi v EU je nezbytné následující:

- Národní reportéři nebo ekvivalentní mechanismy by měly být nezávislé instituce (jak je zakotveno v Haagské deklaraci z roku 1997), aby byl garantován nezávislý a srovnatelný monitoring výsledků opatření proti obchodu s lidmi. Je rovněž důležité, aby dopady i nepředvídané nebo negativní výsledky byly identifikovány a popsány.
- Relevantní terminologie, statistiky a způsoby měření (např. počet stíhaných osob za obchod s lidmi) by měly být lépe standardizovány.
- Měla by být navázána užší spolupráce mezi EU, jednotlivými členskými zeměmi a členy GRETA, nezávislé monitorovací skupiny Úmluvy Rady Evropy o opatřeních proti obchodu s lidmi, aby se eliminovala zbytečná duplicita monitorujících aktivit.

Legislativa

- Další monitoring bude potřeba k zajištění toho, aby všechny národní právní rámce zahrnovaly definici obchodu s lidmi obsaženou v rámcovém rozhodnutí z roku 2002 a v Úmluvě Rady Evropy z roku 2005.
- Jako významná se jeví potřeba lepšího porozumění pojmu „vykořisťování" a dalších deliktů spojených s nelegálním vykořisťováním, a to v případech, kdy jsou osoby obchodovány za účelem vykořisťování nebo do vykořisťujícího prostředí, a v případech, kdy jsou osoby nelegálnímu vykořisťování vystaveny, aniž by byly obchodovány.

Koordinace politik proti obchodu s lidmi na národní úrovni

Všechny členské státy EU, které tak dosud neučinily, by měly vytvořit koordinační strukturu a národní akční plán k formulaci ucelené politiky proti obchodu s lidmi. Odpovídající personální i ekonomické zdroje jsou klíčové pro jejich fungování. Pro budoucí monitoring by bylo užitečné, aby byly sledovány rovněž zdroje, které jsou jednotlivými členskými zeměmi EU přiděleny k financování národní koordinační struktury a k podpoře koordinačních.

8.3 Resumé

Fire NGO'ere blev i 2009 enige om at deltage i et samlet projekt 'Europæisk NGO-observatorium for trafficking, udnyttelse og slaveri' (forkortet til E-notes) med det brede mål at overvåge, hvad regeringerne i den europæiske union (EU) gør for at standse slaveri, menneskehandel og de forskellige former for udnyttelse i forbindelse med trafficking. En italiensk NGO organisation 'Associazione On the Road'[261] koordinerede projektet sammen med et regionalt anti-trafficking netværk 'La Strada International' og to nationale NGO'er, 'ACCEM'[262] med base i Spanien, og 'ALC'[263] med base i Frankrig.

I stedet for at oprette en permanent institution til at overvåge regeringsinitiativerne, satte E-notes sig for at indsamle informationer om, hvad der sker i hvert af de 27 EU-medlemslande. Det medførte, at der skulle findes en undersøgelsesmetode, NGO'er og undersøgere i hvert af de 27 lande. Projektet begyndte med at sætte fokus på indikatorernes rolle for at måle fremskridtet inden for hver enkelt EU-medlemslands anti-trafficking initiativer (dvs. de forskellige love, politikker, forholdsregler og praksisser som forventes at reducere omfanget af menneskehandel og beskytte og hjælpe enhver, der har været offer for menneskehandel). Dette blev brugt til at udarbejde et undersøgelsesredskab, der bestod af en liste på mere end 200 standardspørgsmål til de enkelte landes initiativer, som, håbede man, ville hjælpe til med at vurdere fremskridtet i de anti-trafficking initiativer, der var igangsat i hvert af EU-landene.

1. Standarderne ud fra hvilke monitoreringsarbejdet søgte informationer

Undersøgelsesprocessen begyndte i starten af 2010, netop på det tidspunkt, hvor Det Europæiske Råd var ved at afslutte sine overvejelser over en ny EU-metode, der skulle standardisere anti-trafficking initiativer i EU-med-

261. Associazione On the Road yder en række tjenester og beskyttelse til handlede personer, asylsøgere, flygtninge og migranter i almindelighed i tre italienske regioner (Marche, Abruzzo, Molise). Den er også engageret i bevidsthedsgørelse, samfundsarbejde, undersøgelser, networking og udviklingsinitiativer på det lokale, nationale og europæiske plan.

262. ACCEM yder sociale tjenester, og arbejder på det sociale og lovmæssige område for at hjælpe asylsøgere, flygtninge, tvangsforflyttede personer og migranter i Spanien

263. ALC står for Accompagnement, Lieux d'accueil, Carrefour éducatif et social (Ledsagelse af mennesker, modtagelsescentre, uddannelses- og socialcentre). ACL koordinerer det nationale netværk for sikre bosteder for handlede mennesker, kendt som 'Ac.Sé').

lemslandene (en afløser for *Rådets rammebeslutning om bekæmpelse af menneskehandel*, vedtaget juli 2002). I 2009 fremlagde Europakommissionen forslag til en ny rammebeslutning om menneskehandel. På grund af vedtagelse af Lissabontraktaten, som afskaffede alle eksisterende lovgivningsprocedurer, kunne forhandlinger i Rådet om vedtagelse af en ny rammebeslutning ikke fortsætte. Europakommissionen fremsatte derfor *et nyt forslag til 'Europaparlamentets og Det Europæiske råds forslag til direktiv om forebyggelse og bekæmpelse af menneskehandel og beskyttelse af ofre herfor'*, der ophævede rammebeslutningen fra 2002. I marts 2010 blev dette forslag sendt til høring i Europaparlamentet. I september 2010 foreslog to af Parlamentets kommitterer en række forbedringsforslag til udkastet til direktivet, og arbejdet på at opnå enighed imellem Rådet, Kommissionen og Europaparlamentet begyndte. Man forventede, at direktivet kunne vedtages før udgangen af 2010.

Skønt de overordnede hovedtræk i udformningen af dette nye direktiv syntes ret klare på det tidspunkt, hvor E-notes monitoreringsarbejde blev udført, i maj og juni 2010, var direktivet stadig ikke vedtaget (og var det ej heller, da denne rapport blev afsluttet i oktober 2010).
Da det blev besluttet hvilke lovmæssige forpligtigelser, der skulle refereres til i forbindelse med at klassificere standarder for monitorering i de enkelte EU-medlemslande (dvs. forpligtigelser der angik den enkelte stats håndtering af menneskehandel), valgte projektet at bruge et andet regionalt værktøj, Europarådets *'Konvention om aktion mod menneskehandel.* Denne blev vedtaget i maj 2005 og trådte i kraft i februar 2008. I august 2010 havde alle EU-medlemsstater, bortset fra Tjekkiet, enten ratificeret Europarådets konvention (19) eller underskrevet den (7) og dermed udtrykt deres intentioner om at lade den træde i kraft.

2. Anvendte metoder

Monitoreringsarbejdet blev projekteret af en konsulent i begyndelsen af 2010. Man var opmærksom på tidligere publikationer, der havde foreslået velegnede indikatorer, som EU-medlemslandene kunne bruge i deres vurdering af de fremskridt, der skete i forbindelse med at bringe deres love og praksisser i overensstemmelse med regionale og internationale standarder (baseret på FN's *'Protokol til forebyggelse imod, ophør og afstraffelse af menneskehandel, specielt hvad angår kvinder og børn'*, vedtaget 2000 som supplement til FN's *'Konvention mod transnational organiseret forbrydelse'* (2000). Man var ligeledes opmærksom på notater i forskellige af Europakommis-

sionens publikationer[264] der påpegede svagheder i den måde, som EU-medlemslandene rapporterede om deres bestræbelser på at standse menneskehandel og beskytte og hjælpe mennesker, der formodentlig[265] havde været udsat for menneskehandel. Nogle publikationer fremhævede, at det det var vanskeligt at få informationer fra medlemslandene om deres anti-trafficking praksisser (det være sig up-to-date informationer såvel som informationer i det hele taget). Nogle publikationer refererede til en mangel på 'harmoniseret dataindsamling', idet de påpegede, at der i EU-medlemsstaterne ikke var nogen konsensus i brug af terminologier og afrapporteringsmåder. Alle disse problemer blev bekræftet i forbindelse med E-notes arbejdet.

Et Europakommissionsdokument udstedt i 2006[266] bemærkede, at medlemsstaterne afgav få informationer om deres regler og praksisser, hvad angår beskyttelse af og assistance til handlede personer. I 2008 gentog et Arbejdsdokument[267], at det var vanskeligt at få informationer fra medlemsstaterne om det antal af handlede personer, der havde modtaget hjælp, men gjorde samtidig opmærksom på, at de stater, der i 2006 havde afgivet informationer til Kommissionen, oplyste, at i 23 medlemsstater var godt 1500 taffickingsager blevet registreret i løbet af året. De fleste EU-medlemsstater havde en reflektionsperiode, hvor den potentielt handlede person kunne forblive i det pågældende land og komme til hægter, før vedkommende blev bedt om at aflægge vidneudsagn til myndighederne. Imidlertid var der kun fem lande, der rapporterede om, hvor mange personer, som havde haft gavn af dette, og det var i alt kun 26 på et helt år!

For de NGO'ere, der har specialiseret sig i anti-trafficking arbejde (stiller service og assistance til rådighed for formodede handlede personer, eller engagerer sig i initiativer til forebyggelse af trafficking), var den manglende nøjagtighed og præcision i de data EU-medlemsstaterne videregav til Europakommissionen problematiske. På den ene side antydede det, at ingen selv ikke i

264. Det er: Europakommissionen, Meddelelse til Europaparlamentet og Det Europæiske Råd om 'Bekæmpelse af menneskehandel – en integreret fremgangsmåde og forslag til en Handlingsplan' (Europakommissionen reference COM(2005) 514 afsluttet 18. oktober 2005); og Arbejdsdokument fra Europakommissionen (Europakommissionen reference COM(2008) 657 afsluttet), *Evaluering og monitorering af implementering af EU-planen om de bedste praksisser, standarder og procedurer for bekæmpelse og forebyggelse af menneskehandel*, oktober 2008.

265. Udtrykket 'potentiel' handlet person refererer til en person, som formodes handlet uden der findes endelige beviser herfor.

266. Europakommissionens rapport om implementering af 2002 Rådets rammebeslutning fra den 19. juli 2002 om bekæmpelse af menneskehandel (Europakommissionen reference COM(2006) 187 afsluttet 2. maj 2006).

267. Se fodnote 264 ovenfor.

Europakommissionen var i stand til at finde ud af, hvad der foregik i EU. På den anden side antydede det også, at mange af de fremlagte regionale og internationale afrapporteringer om menneskehandel og andre menneskerettighedssager blev ignoreret af staterne (på trods af, at de har vedtaget at tage sig af dem) og ikke blev ført ud i livet.

Nogle EU-medlemsstater har udpeget en national rapporteur på menneskehandelsområdet, som skal informere sin regering (og andre) om de fremskridt, der sker i det pågældende lands anti-trafficking indsats og anbefale forbedringer. Det fremgik af monitoreringsarbejdet (i midten af 2010), at ni ud af EU's 27 medlemsstater havde en sådan national rapporteur, men ikke alle publicerede jævnlige rapporter, og nogle fokuserede på menneskehandel inden for specielle områder (feks. handel med kvinder til prostitution) uden at rapportere om tiltag inden for andre former for menneskehandel. Hvis der var udpeget nationale rapporteurs i alle EU-stater, ville de på længere sigt have gode muligheder for at introducere standarddefinitioner og statistiske måleredskaber angående menneskehandel, så der kunne etableres meningsfyldte sammenligninger mellem de forskellige EU-staters menneskehandelsarbejde.

På denne baggrund gav E-notes monitoreringsprojekt sig til at undersøge, hvilke informationer der var tilgængelige i EU-medlemsstaterne. Det var informationer om love, politikker og praksisser, som angik menneskehandel, om hvor mange mennesker, der var blevet identificeret som handlet, og havde haft gavn af en eller anden form for beskyttelse og havde modtaget assistance, osv. Da arbejdet blev udført i maj og juni 2010, var det først og fremmest intentionen at indsamle informationer om situationen i de involverede lande i 2009. Det blev imidlertid hurtigt klart, at i mange lande var informationer om 2009 enten ikke tilgængelige eller meget mangelfulde, hvor imod der var adgang til mere fyldestgørende oplysninger om 2008.

De NGO'er, der var bedt om at finde undersøgere til indsamling og nedskrivning af E-notes monitoreringsarbejdet, var for de flestes vedkommende eksperter på menneskehandelsområdet (specielt på kvindehandel). Organisationerne registrerede også informationer om børnehandel, skønt mange af dem fandt det vanskeligt at få fat på informationer om børnehandel. I mange EU-stater modtager voksne, der er blevet handlet, hjælp fra NGO'er, hvorimod statslige organer, der er ansvarlig for beskyttelse af børn, har monopol på at tage sig af handlede børn.

Hver undersøger blev bedt om at udfylde en 60 siders undersøgelsesprotokol, at tilføje forklarende tekst til de punkter, hvor 'ja-' og 'nej'-svar ikke var tilstræk-

kelige, at tegne en 'profil' af deres land, at beskrive det mønster, der fremgik af trafficking-sagerne i deres land, og gøre rede for de respektive regeringers reaktion herpå. De informationer, der kom fra de 27 undersøgere, blev bearbejdet og lagt ind i en simpel database i juli 2010. Databasen blev analyseret af den konsulent, som havde projekteret monitoreringsarbejdet med henblik på at finde mulige mønstre – specielt forsømmelser i EU-medlemsstater, der ikke overholdt deres forpligtigelser til at beskytte og give assistance til handlede personer – og udarbejde en rapport på baggrund af informationerne.

Undersøgerne blev bedt om at svare på, om deres land som udgangspunkt var et oprindelses-, transit eller destinationsland eller en kombination af disse. Denne kategorisering fokuserede ikke på tilfælde af international traffikking. Relativt få lande blev kategoriseret i kun en af de tre kategorier (Frankrig og Portugal blev beskrevet som hovedsageligt destinationslande). De andre 25 lande var en kombination: Et var både oprindelses- og destinationsland, ti var både transit- og destinationslande, og ni var alle tre.

3. Monitorering

De 230 spørgsmål i undersøgelsesprotokollen blev stillet til talrige forskellige emner for at undgå at tegne en 'sort-hvid' profil af, hvorvidt EU-medlemslandene overholdt deres forpligtigelser og respekterede handlede personers menneskerettigheder. Ud fra fem specielle problemformuleringer var det imidlertid muligt at vurdere den grad af fremskridt, der var sket. Men selv i de tilfælde var de tilgængelige informationer så mangelfulde eller utilgængelige, at ingen af de nævnte statistikker kan anses for pålidelige. De fem nævnte problemformuleringer er opsummeret i den nedenstående tabel.

Tabel 1 Progression i EU på nøgleområder inden for anti-trafficking

Emne	Situationen maj 2010
Koordination af anti-trafficking initiativer på nationalt niveau	Der er i 22 ud af 27 medlemsstater etableret en national struktur til at koordinere anti-trafficking initiativer. De lande, der ikke har sådanne nationale koordineringsstrukturer er Frankrig, Tyskland, Grækenland og Malta. I Tyskland og Italien er anti-trafficking initiativer ikke organiseret nationalt eller føderalt, men det betyder ikke, at de var mangelfulde. Sverige har udpeget en national koordinator med den opgave at udvikle en koordineringsstruktur til bekæmpelse af trafficking, men kun i de tilfælde hvor trafficking har seksuelle formål.

Identifikation af potentielle handlede personer

11 ud af 27 medlemsstater har et regeringsorgan eller en struktur, der er ansvarlig for den formelle identifikation af alle potentielle handlede personer, 16 har ikke. Seks af landene, hvor der ikke er en nationalbaseret proces for identifikation, bruger ingen standard procedure til formelt at identificere potentielle handlede personer (Østrig, Bulgarien, Frankrig, Tyskland, Italien, Malta).

Reflektionsperiode på mindst 30 dage

I 25 ud af 27 medlemsstater er der for voksne, der formodes at være handlede, en periode til reflektion og 'kommen til hægter', – et pænt antal stater ser ud til at praktisere minimum standard på dette punkt. I Italien findes ingen reflektionsperiode, men i praksis stilles den sommetider til rådighed. Det samme er tilfældet for Litauen. Fra 2008 var der tilgængelige informationer om, at 207 personer i 11 lande havde fået en reflektionsperiode. Fra 2009 var der tilgængelige informationer fra 18 lande og langt flere personer var blevet tilgodeset: 1150 handlede personer. Dette afspejler en signifikant øgning.

Procedurer om sikker hjemsendelse og om muligt frivillig

Undersøgerne nævnte 6 lande, der havde formelle aftaler med andre EU-medlemsstater eller tredje lande om at styre processen, når en handlet person returneres til sit hjemland (Frankrig, Letland, Portugal, Spanien og England; Grækenland har en bilateral aftale, der angår handlede børn), de eksisterende aftaler er dog tilsyneladende kun en lille garanti for, at der ikke finder misbrug sted. Undersøgerne observerede dog, at når myndighederne planlagde at tilbagesende en voksen formodet handlet person tilbage til sit hjemland, blev der kun i tre ud af 17 EU-medlemsstater foretaget risikovurderinger som led i en hjemsendelsesrutine (Italien, Portugal, og Rumænien); dvs. vurderinger om mulige risici for personen eller medlemmer af hendes/hans familie.

Vurdering af erstatning og kompensation

I 12 lande (ud af 22 fra hvilke informationer var tilgængelige) blev der fra 2008 rapporteret om handlede personer, som havde modtaget betaling for skader eller som kompensation; fra 2009 gjaldt det 12 lande (ud af 20). Udbetalingerne skete enten som resultat af retssager eller kom fra andre kilder. Det fremgik af rapporteringen, at de ni lande, der havde udbetalt kompensation begge år var Østrig, Danmark, Frankrig, Tyskland, Italien, Holland, Spanien, Sverige og England.

I en bedømmelse af disse fem punkter, vil det være malplaceret at prøve at rangere de enkelte stater (som en årlig rapport fremlagt af De Forenede Staters Statsdepartement gør), for i de første tre kategorier drejer det sig for det meste om svagheder i forskellige lande, mens der, hvad de to sidste angår, er mange stater, som handler korrekt. For eksempel er Italien nævnt under alle fem punkter, men har et anti-trafficking system, som er meget forskelligt fra de fleste EU-landes.

Ud over disse fem nøglepunkter satte undersøgelsen fokus på mange andre udviklingsområder. Den kontrollerede, hvorvidt **de enkelte landes love** dæk-

kede alle kategorier af udnyttelse i forbindelse med trafficking (dvs. udnyttelse i prostitution og andre former for seksuel udnyttelse, tvunget arbejde, slaveri og fjernelse af menneskelige organer). Konklusionen var, at det gjorde landene generelt. To lande – Estland og Polen – er begyndt på at revidere deres lovgivning des angående, men er endnu ikke færdige hermed, og i Spanien træder straffelovgivningen vedrørende trafficking, som er på linje med EU's og Europarådets standarder, først i kraft december 2010.

Undersøgelsen havde også til hensigt at finde ud af, om **definitionerne af menneskehandel** i alle landene er så ens i forhold til mennesker, der bliver beskrevet som bagmænd eller ofre for menneskehandel, at de er sammenlignelige. På det punkt var der mange variabler. I Frankrig f.eks. er lovovertrædelser i forbindelse med trafficking defineret meget bredt, så den stort set gælder enhver, der er mistænkt for rufferi. Som et resultat heraf viste det sig, at mere end 900 personer inden for et år (2008) var blevet kendt skyldige i trafficking. Ved nærmere undersøgelse viste det sig imidlertid, at godt halvdelen (521) var skyldige i 'alvorligt rufferi' (en lovovertrædelse der ligger nærmere det, der defineres som menneskehandel i andre EU-stater) og blot 18 strafovertrædelse var identiske med 'menneskehandel', som det er defineret i EU's 2002 Rammebeslutning og Europarådets Konvention. I Finland er situationen modsat – sager, der ifølge regionale standarder burde være behandlet som trafficking, blev betragtet som rufferi og alfonseri.

Undersøgelsen spurgte, hvilken proces, der blev brugt til at **identificere personer som 'handlet'** og om der rutinemæssigt blev givet reflektionsperiode eller andre former for beskyttelse eller assistance. Resultatet viste, at både identifikationsprocessen og kriterierne for bedømmelse af hvorvidt en bestemt person var blevet handlet var kolossal forskellige i den Europæiske Unions lande, som om ingen fælles standard eksisterede.

Det viste sig, at 20 ud af 27 medlemsstater havde udfærdiget en **national struktur til koordinering af anti-trafficking initiativer.** 22 ud af 27 medlemslande havde en national plan for bekæmpelse af menneskehandel eller noget, der svarede hertil (skønt nogle alene fokuserede på trafficking med henblik på seksuel udnyttelse). De fleste lande havde en politienhed, der var specialiseret i anti-trafficking. I nogle lande er der procedurer, nationalt anerkendte, hvor forskellige organisationer har fået til opgave at give beskyttelse og assistance til handlede personer og henvise dem til behørig service - et nationalt henvisningssystem.17 lande har et sådant system, mens ni ikke har det.

I 11 ud af 27 medlemslande er en enkelt regeringsenhed eller struktur ansvarlig for den formelle identifikation af enhver, der formodes at være potentielt offer for menneskehandel, i 16 lande findes dette ikke. I syv af landene, som ikke har en fælles proces til identifikation, findes der ingen standard procedure for formel identifikation af potentielle ofre for menneskehandel. Dette medfører imidlertid ikke, at identifikationen (og den dermed følgende mulighed for beskyttelse) er mere effektiv i lande med kun et system. Når det kommer til identifikationsprocedurerne, viste det sig, at såvel detaljerne i de fulgte procedurer, som den grad i hvilken de blev respekterede og procedurernes effektivitet, var vidt forskellige i de respektive lande.

Undersøgerne var kun i stand til at indhente delvis information om **antallet af potentielle ofre for menneskehandel inden for en periode på 12 måneder i 2008 og 2009** – totalt 4010 i 16 lande (nogle af disse kan dog være dobbelttalte, dvs. først identificeret i et destinationsland og igen senere i oprindelseslandet). I godt halvdelen (55%) af sagerne blev de potentielle ofre for menneskehandel af myndighederne bekræftet som værende handlede. Ligeledes var der fra 16 lande information om antallet af **handlede personer, der havde været genstand for overførsel (til hjælp) i 2009**, nemlig 3800.

I de tilfælde, hvor både børn og voksne var potentielle ofre, forsvandt i 2008 og 2009 nogle, inden identifikationsprocessen var færdig. Potentielle børneofre er rapporteret forsvundet i 10 lande. 10 andre lande rapporterede, at voksne, der var midlertidigt identificeret som handlede, var forsvundet.

Undersøgerne indsamlede informationer om forskellige former for **protektion:**

- Reflektions- og 'kommen til hægter'-perioder
- Risikovurderinger og
- Hjemsendelse (dvs. den handlede persons repatriering i hjemlandet)

Undersøgerne fik informationer, nogle landes var ikke fyldestgørende, om **antallet af personer, som var givet reflektionsperiode**. I 2008 var det givet til 207 personer i 11 lande. I 2009 fik 1150 personer i 18 lande det. I 2008 gav ni lande 1026 personer opholdstilladelse. Gennemsnittet på mere end 100 tilladelser pr land gav imidlertid et unøjagtigt indtryk, da 664 blev givet alene i Italien (810 i 2009), og 235 i Holland, hvilket betyder, at i 2008 gav de syv andre lande tilsammen kun opholdstilladelse til 127 personer, som var blevet handlet (dvs. et gennemsnit på mindre end 20). Det mere end antyder, at love og politikker, der afgør, hvilke handlede personer der gives opholdstilladelse, afviger meget fra hinanden i EU-landene.

Det fremgik af rapporten, at **handlede børn** i løbet af de to år fik opholdstilladelse[268] i seks lande: Frankrig, Polen og England, hvor de fik midlertidig opholdstilladelse indtil kort før de fyldte 18 år, og Østrig og Danmark, hvor tilladelsen blev betragtet som permanent. I Italien har udenlandske børn, handlede eller ej, lov til at opholde sig der, indtil de er fyldt 18 år. Dog kan handlede børn opnå opholdstilladelse på samme basis som handlede voksne (ud fra et regulativ kendt som 'artikel 18'). I Holland blev børn givet opholdstilladelse, men det var svært ud fra de givne informationer at se, om tilladelsen var permanent.

Med hensyn til hjemsendelse (eller repatriering) prøvede undersøgerne at finde ud af, om returneringen var frivillig eller tvunget, hvor mange potentielle ofre for menneskehandel, der var hjemsendt og i hvilken tilstand. De kunne bekræfte, at seks EU-medlemslande havde formelle hjemsendelsesaftaler med andre stater (da fem af de seks lande er destinationslande, er aftalerne for det meste indgået med lande, der er betragtet som oprindelseslande).

15 lande informerede om **hjemsendelse af voksne i 2008:** 12 lande hjemsendte 194 personer til deres hjemlande (Østrig, Cypern, Den Tjekkiske Republik, Danmark, Frankrig, Grækenland, Letland, Holland, Polen og Slovenien). Det største antal hjemsendte blev i 2008 rapporteret fra Holland (37), derefter fulgte Italien (31), Cypern (24), Tyskland (23) og Danmark (21). Informationer om **hjemsendelse i 2009** var mere sparsomme og kom fra blot 10 lande. I 2009 hjemsendte 10 lande 171 personer til deres hjemlande, hvor Grækenland stod for over halvdelen. Østrig hjemsendte 22, Polen 23, så de syv andre lande hjemsendte til sammen kun 19 personer. Tydeligvis er antallet af de rapporterede hjemsendte personer meget forskelligt fra antallet af oplyste handlede og potentielt handlede personer i de respektive lande. De givne data viser, at der er meget forskellige kriterier i de enkelte lande for beslutningerne om hjemsendelse af en potentiel handlet person, og antallet af hjemsendelser var ikke proportionalt med antallet af potentielle handlede personer, der var identificeret eller givet reflektionsperioder.

I 2008 og 2009 fik **borgere fra andre EU-medlemsstater, som i andet land var identificeret som potentiel handlet person**, beskyttelse og assistance i 19 medlemsstater på samme basis som borgere fra såkaldte tredjelande uden for EU. I seks medlemsstater (Tyskland, Ungarn, Letland, Rumænien og Spa-

268. Opholdstilladelse er et omfattende udtryk for den legale tilladelse, der gives til ikke-indfødte, så de kan forblive i et land enten midlertidigt eller permanent.

nien) blev borgere fra andre EU-stater, identificeret som handlede, ikke beskyttet og assisteret så godt som borgere fra 'tredjelande'. Nogle borgere fra andre EU-stater har oplevet vanskeligheder i forbindelse med at blive identificeret som handlede og med at få hjælp. Ikke desto mindre betyder det, at i de fleste vesteuropæiske lande, hvor borgere fra EU-lande i Centraleuropa blev identificerede som handlede, fik disse borgere hjælp. I 14 ud af 24 EU-lande blev EU-borgere identificeret og hjulpet på samme basis som handlede personer uden for EU.

På spørgsmålet om hvilke former for **lovmæssig beskyttelse, der var til rådighed for handlede voksne** eller børn, der afgav vidneforklaring, siger rapporten, at cirka halvdelen af EU-medlemsstater havde forholdsregler til beskyttelse af disse. Den lovmæssige beskyttelse, som undersøgerne spurgte om, var om vidnet var i stand til at aflægge vidneforklaring ved et foreløbigt retsmøde og ikke behøvede at deltage i offentlige retshøringer, og om vidnet afgav videovidneforklaring og blev holdt skjult for den anklagede. I fem lande (Den Tjekkiske Republik, Danmark, Frankrig, Portugal og England) skete det dog i 2008 og 2009, at handlede voksne og børn, hvis identitet skulle holdes hemmelig, fik offentliggjort deres identitet i løbet af en straffesag.

Nyere undersøgelser foretaget af Anti-Slavery International[269] og OSCE[270] konkluderer, at skønt handlede personer har ret til kompensation, og skønt der eksisterer adskillige kompensationsmåder, er kompensationsudbetalinger til handlede personer meget sjælden. Det rapporteres dog, at i 12 lande (ud af 22) havde handlede personer modtaget skadeserstatning eller kompensation i 2008, og i 12 lande (ud af 20) i 2009, i forbindelse med en retssag eller fra andre kilder. De lande, som udbetalte kompensation i begge årene var Østrig, Danmark, Frankrig, Tyskland, Italien, Holland, Spanien, Sverige og England.

Undersøgelsen afslørede ikke de forskellige **forebyggelsesmetoder** i detaljer, men fokuserede på at finde ud af, hvilke informationer der var tilgængelige for migranter før og efter deres ankomst til det land, hvor det er rapporteret, at handlede personer er blevet udnyttet.

Rådet for Europa Konvention beder staterne om at 'overveje at etablere **nationale rapporteurs** eller andre redskaber til monitorering af statsinsti-

269. J. Lam, K Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK,* Anti-Slavery International, London, 2008.
270. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region,* Warsaw, 2008.

tutionernes anti-traffickingaktiviteter og implementering af national lovgivningskrav'. Skønt bestemmelsen kun beder staterne 'overveje' at træffe sådanne foranstaltninger, er der al mulig god grund til at formode, at det kommende EU-direktiv vil blive tydeligt forbedret på dette område, da det vil forlange, at EU-medlemsstaterne etablerer en uafhængig national rapporteur eller et lignede organ. I marts 2009 formodede en konference om nationale rapporteurs, at 12 EU-stater allerede havde etableret en national rapporteur (elle lignende organ) til at overvåge nationale initiativer i forbindelse med menneskehandel.

Undersøgerne bekræftede, at ni ud af EU's 27 lande havde en national rapporteur på trafficking området (Cypern, Den Tjekkiske Republik, Finland, Letland, Litauen, Holland, Portugal, Rumænien og Sverige), mens 16 ikke havde. Adskillige (f.eks. Sverige) beskæftigede sig fortrinsvis med sager, der involverede menneskehandel i forbindelse seksuelle formål. I andre stater (som Belgien og Spanien) er andre statsinstitutioner involveret i monitorering af anti-trafficking initiativer. I tre ud af de ni lande, der har en rapporteur (Letland, Litauen, og Sverige) var rapporteurens rolle ikke uafhængig af dem, der var involveret i anti-trafficking operationer, hvilket begrænsede deres uafhængighed, og potentielt reducerede deres muligheder for fuldstændig uafhængig monitorering.

4. Konklusioner og anbefalinger

E-notes projektet har vist, at der er væsentlige diskrepanser imellem EU-medlemsstaterne angående fundamentale aspekter på anti-trafficking politikker og praksisser inden for EU, f.eks. de nationale lovgivninger, der forbyder menneskehandel, og definitioner (eller relevante regeringsinstitutioners fortolkninger) af, hvad der konstruerer menneskehandel, eksistensen af koordinerende enheder og identifikationsprocessen i forbindelse med handlede personer. Det har også vist sig, at adskillige nationale og internationale lovbestemmelser, der skulle sikre beskyttelse af den handledes rettigheder, kun eksisterer på papiret og implementeringen af dem stort set ikke er begyndt i de fleste EU-medlemslande. De organisationer, der deltager i E-notes projektet, mener, at Den Europæiske Union, EU-medlemslandene og de civile samfund skulle yde en større indsats på nationalt og europæisk plan, for at styrke det politiske rammearbejde, der har til hensigt at standse menneskehandel.
Fordi væsentlige forbedringer er nødvendige, hvis implementeringen af mange aspekter af EU's anti-trafficking politikker skal respekteres, fokuserer

de følgende anbefalinger fra E-notes projektet på beskyttelse af handlede personers rettigheder, da vi er overbeviste om, at dette bør være kernen i enhver stats bestræbelser på at imødegå menneskehandel. I respekt for at forhindre menneskehandel og beskytte de handlede personer må i det mindste relevante beslutninger implementeres.

Identifikation og en struktur til støtte af handlede personer
Beskyttelsen af handlede personers rettigheder kan kun sikres, når alle formodede ofre (uafhængigt af om de samarbejder med myndighederne eller ej) bliver identificeret som sådanne. E-notes iagttagelserne viser, at identifikation stadig er et meget svagt led. For at forbedre identifikationsprocessen i medlemslandene mener vi, at det er vigtigt at:

- Medlemslandene udarbejder tjeklister og/eller indikatorer i samarbejde med lovhåndhæverne, anklagemyndighederne og serviceyderne, der kan hjælpe til med at identificere potentielle ofre for trafficking inden for enhver form for udnyttelse. Yderligere indikatorer skal kunne identificere alle andre former for udnyttelse så som udnyttelse på arbejdspladser, i husholdninger, seksuel udnyttelse, tvunget tiggeri, tvunget involvering i ulovlige aktiviteter etc. Der skal udarbejdes specifikke indikatorer til identificering af børn, som er ofre for menneskehandel;
- Identifikation er ikke en enkelt regeringsinstans' ansvar men bør ske i samarbejde med andre fagteams, der inkluderer organisationer, der yder service til handlede personer;
- De nationale strukturer, der eksisterer til støtte for handlede personer, hvad enten der er tale om 'National Referal Mechanisms' (NRM) eller andre, der er involveret i implementering af 'Standard Operational Procedures' (SOPS), bør baseres på tæt og hyppigt samarbejde mellem lovhåndhævnings- og anklagemyndigheder, immigrationsmyndigheder, arbejdstilsyn, relevante fagforeninger, børnebeskyttelsesinstitutioner, og NGO'er eller andre serviceydere.
- Adgang til retfærdig behandling af handlede personer, inklusiv krav om kompensation, skal forbedres ved at garantere gratis, lovlig hjælp til alle personer, der er identificerede som handlede;
- Alle medlemsstater sikrer sig, at der bliver fortaget en individuel risikovurdering i forhold til alle handlede personer, der tilbydes hjemsendelse til deres oprindelseslande.

Monitorering
Yderlig monitorering er væsentlig både på EU og national plan, så alle relevante involverede har en bedre forståelse, ikke bare af hvad der eksisterer på papiret af formuleringer om, hvad der bør ske i alle lande for at standse traf-

ficking, men også er vidende om, hvad der i virkeligheden foregår. For at opnå en god forståelse af implementering, effekt og virkning af anti-trafficking politikkerne i Den Europæiske Union er det vigtigt at:

- Nationale rapporteurs eller andre lignende institutioner skal være uafhængige enheder (som det er vedtaget i Haag-Deklarationen 1997), som garanter for uafhængige og sammenlignelige monitoreringer af resultaterne af anti-trafficking arbejdet. Det er også vigtigt, at de virkninger og uforudsete og måske negative effekter, der er ved anti-trafficking registreringerne bliver identificeret og rapporteret;
- Der bør være en mere standardiseret og relevant terminologi, statistikker og måleredskaber (f.eks. antallet af personer anklaget for trafficking);
- Der bør være tæt samarbejde mellem EU, dets medlemsstater og medlemmer af GRETA, den uafhængige monitoreringsenhed for Europarådets Konvention om aktion mod menneskehandel, for at undgå unødvendige overlap i monitorerings aktiviteterne.

Lovgivning

- Det er nødvendigt med yderlig monitorering for at sikre, at alt nationalt lovrelateret rammearbejde inkorporerer trafficking definitionen i Rammebeslutningen, vedtaget i 2002, og Europarådets Konvention fra 2005;
- Der viser sig at være et betydeligt behov i mange EU-medlemsstater for forståelse af begrebet 'udnyttelse' og de forskellige lovovertrædelser, der er forbundet med illegal udnyttelse, både når personer bliver handlet med henblik på udnyttelse, og når personer er genstand for illegal udnyttelse uden at være handlet.

Koordinering af anti-trafficking politikker på nationalt plan

- Alle stater, der endnu ikke har gjort det, bør udforme en koordinerende struktur og en national handlingsplan for at skabe større sammenhæng i deres anti-trafficking politikker. Passende ydelse af menneskelig og økonomisk bistand er afgørende for om begge dele fungerer effektivt. Det vil derfor være behørigt, at ethvert fremtidigt monitoreringsprojekt kontrollerer, hvilke ressourcer hver EU-medlemsstat yder i finansiel støtte til en national koordinerende struktur og til koordinerende aktiviteter.

8.4 Samenvatting

In 2009 namen vier NGOs (niet-gouvernementele organisaties) het initiatief voor een gezamenlijk project onder de titel 'European NGOs Observatory on Trafficking, Exploitation and Slavery' (afgekort E-notes). Doel was te monitoren wat overheden in de EU lidstaten deden om slavernij, mensenhandel en de verschillende daaraan gerelateerde vormen van uitbuiting, tegen te gaan. De coördinatie van het project lag in handen van een Italiaanse NGO, Associazione On the Road,[271] in samenwerking met een regionaal anti-mensenhandel netwerk, La Strada International, en twee nationale NGOs, ACCEM,[272] in Spanje and ALC,[273] in Frankrijk.

Het E-notes project koos ervoor om, in plaats van het opzetten van een permanent instituut, informatie te verzamelen over wat er in elk van de 27 lidstaten van de EU gebeurde. Dit betekende dat een onderzoeksmethode ontwikkeld moest worden en dat in alle 27 lidstaten NGOs en onderzoekers bereid moesten worden gevonden om deel te nemen aan het project. De nadruk bij de start van het project lag op de rol van **indicatoren** om de voortgang in de aanpak van mensenhandel in elke lidstaat te kunnen meten, d.w.z. wetgeving, beleid, maatregelen en praktijken waarvan verwacht kon worden dat ze mensenhandel zouden reduceren en slachtoffers hulp en bescherming zouden bieden. Dit werd vertaald in een onderzoeksinstrument, waarin door middel van een standaardvragenlijst van meer dan 200 vragen gepoogd werd de voortgang in de aanpak van mensenhandel in de verschillende lidstaten te meten.

1. De gebruikte standaarden

Het onderzoek startte begin 2010, op het moment dat de onderhandelingen van de Europese Raad over een nieuw EU instrument om anti-mensenhandel maatregelen in de EU lidstaten te standaardiseren bijna rond leken (ter vervanging van het EU Kaderbesluit inzake de bestrijding van mensenhan-

271. Associazione On the Road provides a wide range of services and protection to trafficked persons, asylum seekers, refugees, and migrants in general in three Italian regions (Marche, Abruzzo, Molise). It is also engaged in awareness raising, community work, research, networking and policy development initiatives at the local, national, and European level.
272. ACCEM provides social services and takes action in the social and legal domain to benefit asylum seekers, refugees, people who are displaced and migrants in Spain.
273. ALC stands for *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (Accompanying [people], Reception centres, Educational and Social centres). ALC coordinates the national network for secure housing for trafficked persons, known as "Ac.Sé").

del van juli 2002). In 2009 presenteerde de Europese Commissie een voorstel voor een nieuw Kaderbesluit Mensenhandel. Als gevolg van de inwerkingtreding van het Verdrag van Lissabon, waardoor alle lopende wetgevende procedures werden stopgezet, werden ook de onderhandelingen over het aannemen van een nieuw Kaderbesluit stilgelegd. De Europese Commissie agendeerde vervolgens een *nieuw voorstel voor een Richtlijn van het Europees Parlement en de Raad van Europa inzake het voorkomen en bestrijden van de handel in de mensen en de bescherming van slachtoffers,* met intrekking van het Kaderbesluit van 2002. In maart 2010 werd het voorstel ter behandeling voorgelegd aan het Europees Parlement. In september 2010 stelden twee van de comités van het Europese Parlement een serie wijzigingen in de concept Richtlijn voor en startte het proces van onderhandelingen tussen de Raad, de Commissie en het Europese Parlement. Verwachting was dat de nieuwe Richtlijn voor eind 2010 zou worden aangenomen. Hoewel de grote lijnen van de nieuwe Richtlijn redelijk helder lijken te zijn, was de Richtlijn ten tijde van de uitvoering van het E-notes onderzoek (mei-juni 2010) echter nog niet aangenomen (noch op het moment van de afsluitende rapportage in oktober 2010).

Bij de beslissing over de standaarden (d.w.z. de verplichtingen van staten met betrekking tot mensenhandel) op grond waarvan het onderzoek de anti-mensenhandel maatregelen in de EU-lidstaten zou kunnen monitoren, koos E-notes derhalve voor een ander regionaal instrument, *in casu* het Verdrag van de Raad van Europa tegen Mensenhandel. Dit verdrag werd in 2005 aangenomen en trad in werking in februari 2008. Hoewel het verdrag geratificeerd is door verschillende staten buiten Europa, hebben alle EU lidstaten, op een na (Tsjechië), het verdrag hetzij geratificeeerd (19) hetzij getekend (7), waarmee zij uitdrukking geven aan hun intentie het verdrag te implementeren.

2. Gebruikte methoden

De monitoring-methode werd begin 2010 ontwikkeld door een consultant. Daarbij werd rekening gehouden met eerdere publicaties waarin 'indicatoren' werden voorgesteld die bruikbaar waren om de voortgang in de EU lidstaten te meten bij het in overeenstemming brengen van hun wetgeving en praktijk met regionale en internationale standaarden (alle gebaseerd op het VN Protocol inzake de bestrijding en bestraffing van mensenhandel, tot aanvulling van het Verdrag van de Verenigde Naties tegen grensoverschrijdende georganiseerde misdaad, beide in 2000 aangenomen). Aandacht werd ook besteed aan de opmerkingen in verschillende publicaties van de Europese Com-

missie[274] over de zwakheden in de wijze waarop de EU lidstaten rapporteerden over de door hen genomen maatregelen ter bestrijding van mensenhandel en het bieden van hulp en bescherming aan (vermoedelijke[275]) slachtoffers hiervan. Verschillende publicaties wezen op de problemen bij het verkrijgen van informatie van de lidstaten over hun anti-mensenhandel praktijk. Soms ging het daarbij om het verkrijgen van actuele informatie, soms om informatie überhaupt. Sommige wezen op het ontbreken van geharmoniseerde data verzameling, met name het gebrek aan een consistente terminologie en gemeenschappelijk rapportagemechanismen. Al deze problemen werden bevestigd in het E-notes onderzoek.

In een publicatie van de Europese Commissie uit 2006[276] werd geconstateerd dat de lidstaten weinig informatie verschaften over hun regelgeving en praktijk met betrekking tot de bescherming van en hulp aan slachtoffers van mensenhandel. Dit werd bevestigd in een Werkdocument uit 2008[277]. Hierin werd herhaald hoe moeilijk het was informatie van de lidstaten te krijgen over het aantal slachtoffers van mensenhandel aan wie hulp was geboden. Tegelijkertijd werd, op basis van de gegevens van de lidstaten die wel informatie aan de Commissie hadden verschaft, geconcludeerd dat in de loop van 2006 iets meer dan 1.500 mensenhandelzaken in 23 lidstaten waren onderzocht. Gerapporteerd werd dat de meeste EU lidstaten een bedenktijd hadden ingevoerd om (vermoedelijke) slachtoffers van mensenhandel in staat te stellen (tijdelijk) in hun land te blijven en zich te herstellen, voordat van hen werd verwacht aangifte te doen of te getuigen. Slechts vijf lidstaten gaven echter informatie over het aantal slachtoffers dat van deze regeling gebruik had gemaakt, waarbij het uiteindelijk om een totaal aantal van 26 personen ging in een heel jaar!

Door NGOs die zich bezig hielden met mensenhandel (hulpverlening of preventie) werd dit gebrek aan accurate en volledige gegevens van de kant van de lidstaten als zorgelijk beschouwd. Aan de ene kant suggereerde dit dat nie-

274. Such as: European Commission, Communication to the European Parliament and Council on "*Fighting trafficking in human beings - an integrated approach and proposals for an action plan*" (European Commission reference COM(2005) 514 final of 18 October 2005); and European Commission Working Document (European Commission reference COM(2008) 657 final), *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, October 2008.
275. The term 'presumed' trafficked person refers to someone who is suspected of having been trafficked while definitive information about their experience is not available.
276. European Commission report on the implementation of the 2002 Council Framework Decision of 19 July 2002 on combating trafficking in human beings (European Commission reference COM(2006) 187 final of 2 May 2006).
277. See footnote 274 above.

mand, zelfs de Commissie niet, in de positie was om uit te vinden wat gaande was op dit gebied in de EU. Aan de andere kant suggereerde het ook dat veel van de artikelen in regionale en internationale anti-mensenhandel en mensenrechtenverdragen genegeerd werden door staten (ondanks het feit dat zij hiermee ingestemd hadden) en niet werden geïmplementeerd.

Sommige EU lidstaten hebben een Nationale Rapporteur Mensenhandel aangesteld om de regering (en anderen) te informeren over de voortgang in de implementatie van anti-mensenhandel beleid en aanbevelingen te doen voor verbetering. Negen van de 27 lidstaten hebben, volgens rapportage midden 2010, een dergelijke rapporteur aangesteld, maar deze publiceren niet allen op regelmatige basis rapporten. Bovendien focussen sommige Rapporteurs alleen op specifieke vormen van mensenhandel (m.n. handel in vrouwen ten behoeve van prostitutie), met verwaarlozing van de andere vormen van mensenhandel. Op de lange termijn zouden Nationale Rapporteurs – wanneer deze in alle lidstaten zouden worden aangesteld - in een goede positie zijn om definities en manieren van data verzameling te standaardiseren, zodat zinvolle vergelijkingen gemaakt kunnen worden tussen het mensenhandelbeleid van de verschillende EU lidstaten.

Tegen deze achtergrond, had het E-notes onderzoek ten doel uit te vinden welke informatie in de EU lidstaten beschikbaar was met betrekking tot hun wetgeving, beleid en praktijk op het gebied van mensenhandel, hoeveel slachtoffers van mensenhandel geïdentificeerd werden en enige vorm van bescherming geboden kregen, hoeveel hiervan hulp ontvingen enz. Omdat het onderzoek plaatsvond in mei en juni 2010 werd oorspronkelijke beoogd informatie te verzamelen over de situatie in de diverse lidstaten in 2009. Het werd echter al snel duidelijk dat in veel landen informatie over 2009 of nog niet verwerkt was of dat alleen incomplete informatie beschikbaar was, terwijl voor 2008 wel meer informatie voor handen was.

De expertise van de NGO's die werden gevraagd een onderzoeker te leveren, concentreerde zich in de meeste gevallen vooral op volwassen slachtoffers van mensenhandel (m.n. vrouwen). Zij verzamelden ook gegevens over kinderhandel, maar veel NGO's vonden het moeilijk informatie te achterhalen over minderjarige slachtoffers van mensenhandel. In veel EU lidstaten bieden NGO's hulp aan volwassen slachtoffers, terwijl overheidsinstanties het monopolie hebben in de hulpverlening aan minderjarige slachtoffers van mensenhandel.

Elke onderzoeker werd gevraagd om een 60 pagina's lang onderzoeksprotocol in te vullen, om aanvullende informatie te geven op verschillende punten waar een ja/nee antwoord niet geschikt was, en om een kort landenprofiel te

maken over de trends en patronen in mensenhandel in hun land en de reactie hierop van hun overheid. De informatie die door de 27 onderzoekers werd verzameld, werd verwerkt en ingevoerd in een eenvoudige database in juli 2010. De data werden geanalyseerd door dezelfde consultant die het onderzoeksprotocol had ontwikkeld, met als doel het identificeren van mogelijke patronen, m.n. in het falen van EU lidstaten in het nakomen van hun verplichting om slachtoffers van mensenhandel bescherming en hulp te bieden, en het voorbereiden van een rapport over de uitkomsten van het onderzoek.

De onderzoekers werd gevraagd aan te geven of hun land voornamelijk land van herkomst, transit of bestemming was, of een combinatie hiervan. Deze indeling had geen betrekking op interne mensenhandelzaken. Relatief weinig landen werden gekwalificeerd als slechts een van de drie. Twee landen, Frankrijk en Portugal, werden beschreven als voornamelijk bestemmingslanden. De andere 25 werden beschreven als een combinatie: een als zowel herkomst als bestemmingsland; tien als zowel transit als bestemmingsland; en negen als alledrie.

3. Uitkomsten van het onderzoek

De 230 vragen van het onderzoeksprotocol beoogden informatie te verzamelen over een scala aan onderwerpen. Dit maakte het moeilijk een 'zwart-wit' beeld te geven ten aanzien van de vraag of de verschillende EU landen hun verplichtingen nakomen en de mensenrechten van verhandelde personen respecteren. Op vijf punten was het mogelijk om de mate van voortgang te meten, maar zelfs op deze punten was zo weinig informatie beschikbaar of was de beschikbare informatie zo onvolledig, dat geen van de genoemde cijfers als betrouwbaar kan worden beschouwd. Deze vijf onderwerpen worden behandeld in de tabel hieronder.

Tabel 1 Voortgang in de EU op kernpunten van anti-mensenhandel beleid

Onderwerp	Situatie in mei 2010
Coordinatie van anti-mensenhandelbeleid en maatregelen op nationaal niveau	Van de 27 lidstaten kennen 22 een nationale structuur om anti-mensenhandel beleid en maatregelen te coördineren. Landen zonder een nationale coördinatiestructuur zijn: Frankrijk, Duitsland, Griekenland en Malta. In Duitsland en Italië is het mensenhandelbeleid niet op nationaal of federaal niveau georganiseerd, maar dit betekent niet dat maatregelen inadequaat zijn. Zweden heeft een Nationale Coördinator aangesteld met als taak de ontwikkeling van een coördinatiestructuur voor de bestrijding van mensenhandel, maar alleen voor mensenhandel ten behoeve van prostitutie/ seksuele doeleinden.

Identificatie van vermoedelijke slachtoffers van mensenhandel

Van de 27 lidstaten hebben 11 een enkele overheidsinstantie of structuur die verantwoordelijk is voor de formele identificatie van (vermoedelijke) slachtoffers; 16 hebben dit niet. Zes van deze landen hebben geen enkele standaard procedure hiervoor (Oostenrijk, Bulgarije, Frankrijk, Duitsland, Italië, Malta).

Beschikbaarheid van een bedenktijd van tenminste 30 dagen

In 25 van de 27 lidstaten is er een voorziening voor bedenktijd en herstel van volwassen (vermoedelijke) slachtoffers van mensenhandel. Een aanzienlijk deel lijkt zich hier aan de minimum standaarden te houden. Italië kent geen bedenktijd, maar in de praktijk wordt deze soms wel gegeven. Eenzelfde situatie bestaat in Litouwen. Voor 2008 was informatie beschikbaar voor 11 landen over in totaal 207 personen aan wie bedenktijd was verleend. Voor 2009 was informatie beschikbaar voor 18 landen. In dit jaar lijkt het aantal slachtoffers dat profiteerde van de bedenktijd significant gestegen, te weten 1.150 slachtoffers.

Procedures mbt terugkeer om te zorgen dat deze veilig en, indien mogelijk, vrijwillige zijn

Volgens de onderzoekers hebben 6 landen formele overeenkomsten met andere EU lidstaten of derde landen met betrekking de terugkeer van slachtoffers van mensenhandel naar hun land van herkomst (Frankrijk, Letland, Portugal, Spanje en Engeland. Griekenland heeft een bilaterale overeenkomst beperkt tot kinderen). Het bestaan van deze overeenkomsten lijkt echter weinig garantie te bieden dat de betrokken persoon niet opnieuw slachtoffer wordt van misbruik. Slechts 3 van de 17 lidstaten waarvoor informatie beschikbaar was, lijken standaard een risicoanalyse uit te voeren voordat de autoriteiten een (volwassen) slachtoffer retourneren naar zijn of haar land (Italië, Portugal en Roemenie), d.w.z. een analyse van de risico's die het slachtoffer en/of zijn/haar familie loopt in het geval van terugkeer.

Toegang tot schadevergoeding en compensatie

In 2008 ontvingen in 12 landen (van de 22 waarover informatie beschikbaar was) slachtoffers een schadevergoeding, hetzij via een rechterlijke uitspraak, hetzij via een andere bron. In 2009 gebeurde dit in 12 landen (van de 20). De 9 landen waar volgens de onderzoekers in beide jaren slachtoffers een schadevergoeding ontvingen waren: Oostenrijk, Denemarken, Frankrijk, Duitsland, Italië, Nederland, Spanje, Zweden en Engeland.

Op basis van deze 5 criteria is het niet mogelijk een rangorde van landen te maken met betrekking tot hun prestaties (zoals in het jaarlijkse mensenhandel rapport van de Verenigde Staten). Op de eerste 3 criteria zijn het voor het grootste deel verschillende landen die zwak presteren, terwijl er op de laatste 2 criteria een grote variëteit is in landen die het goed doen. Italië, bijvoorbeeld, is het enige land dat met betrekking tot alle 5 punten scoort, maar heeft een anti-mensenhandelstructuur die sterk afwijkt van die van de meeste andere EU landen.

Naast deze 5 kernpunten beoogde het onderzoek een scala aan andere ontwikkelingen in beeld te brengen. Zo werd onderzocht of de wetgeving in de diver-

se landen alle verschillende soorten van uitbuiting dekte (d.w.z. "uitbuiting van de prostitutie van een ander en andere vormen van seksuele uitbuiting", "gedwongen arbeid of diensten", "dienstbaarheid", "slavernij", "slavernij-achtige praktijken", en orgaanhandel). Conclusie was dat dit over het algemeen het geval was. In twee landen, Estland en Polen, was het proces van herziening van wetgeving wel gestart maar nog niet voltooid, terwijl in een land, Spanje, de wijziging van de strafwet om deze in overeenstemming te brengen met de EU en Raad van Europa standaard pas in december 2010 in werking zou treden.

Het onderzoek beoogde eveneens uit te vinden of de definities van mensenhandel in de lidstaten voldoende overeenkwamen om informatie over "handelaren" en "slachtoffers" te kunnen vergelijken. Op dit punt werden veel meer verschillen gevonden. Zo is in Frankrijk, bijvoorbeeld, mensenhandel zo breed gedefinieerd dat het van toepassing is op vrijwel iedereen die van pooierschap verdacht wordt. Als gevolg daarvan leken aanvankelijk in een enkel jaar (2008) 900 mensen in Frankrijk te zijn veroordeeld voor mensenhandel. Bij nader onderzoek bleek echter dat iets meer dan de helft van deze veroordelingen "pooierschap onder verzwarende omstandigheden" betrof (een delict dat lijkt op hetgeen in een aantal andere lidstaten als mensenhandel wordt gedefinieerd) en dat slechts 18 veroordelingen mensenhandel betroffen volgens de definitie van het EU Kaderbesluit (2002) en het Verdrag van de Raad van Europa. In Finland deed zich juist de omgekeerde situatie voor: zaken die volgens bovenstaande standaard als mensenhandelzaken zouden moeten worden behandeld werden slechts behandeld als pooierschap.

Ook werd onderzocht wat de procedures waren voor identificatie van (vermoedelijke) slachtoffers en of standaard een bedenktijd werd verleend of andere vormen van bescherming en hulp werden geboden. De uitkomsten suggereren dat de situatie in de verschillende lidstaten buitengewoon sterk uiteenloopt, zowel wat betreft identificatieprocedures als wat betreft de criteria om te bepalen of iemand al dan niet (vermoedelijk) slachtoffer is, alsof er geen gezamenlijke standaard beschikbaar is.

In 20 van de 27 lidstaten rapporteerden de onderzoekers het bestaan van een **nationale structuur om mensenhandelbeleid te coördineren.** Van de 27 lidstaten hebben 22 een Nationaal Actieplan ter bestrijding van mensenhandel (hoewel sommige hiervan uitsluitend betrekking hebben op mensenhandel voor "seksuele uitbuiting"). De meeste landen hebben een gespecialiseerde politie-eenheid. In sommige landen is er een landelijk aanvaarde procedure die de rollen van de verschillende organisaties bij de hulpverlening en bescherming van (vermoedelijke) slachtoffers van mensenhandel regelt en

ervoor zorg draagt dat zij naar de juiste instanties worden verwezen, oftewel een nationaal verwijssysteem ("National Referral Mechanism"). In totaal 17 landen kennen een dergelijk systeem, 9 kennen dat niet.
In 11 van de 27 lidstaten is een enkele overheidsinstantie verantwoordelijk voor de formele identificatie van (vermoedelijke) slachtoffers. Is 16 landen is dit niet het geval. Zeven van de landen die niet een bepaalde instantie hebben die verantwoordelijk is voor identificatie, hebben geen enkele standaard procedure hiervoor. Dat betekent echter niet dat identificatie (en daarmee de toegang tot bescherming) meer effectief is in landen die een enkelvoudig systeem hebben. Daarnaast wordt duidelijk dat zowel de details van de identificatieprocedures en de mate waarin deze daadwerkelijk gevolgd worden, als de effectiviteit ervan sterk uiteenloopt tussen de verschillende landen.

De onderzoekers slaagden er slechts gedeeltelijk in om informatie te verkrijgen over **het aantal (vermoedelijke) slachtoffers dat over een periode van 12 maanden in 2008 en 2009 werd geïdentificeerd**: in totaal 4.010 in 16 landen (sommige hiervan zijn mogelijk dubbel geteld, d.w.z. eerst geïdentificeerd in het land van bestemming en vervolgens ook in het land van herkomst). In iets meer dan de helft van de zaken (55 procent) werden vermoedelijke slachtoffers daarna ook als daadwerkelijke slachtoffers geïdentificeerd. Informatie over het aantal (vermoedelijke) slachtoffers dat in 2009 werd verwezen naar de hulpverlening was beschikbaar voor 16 landen en betrof in totaal 3.800 mensen.

Een aantal van de zowel volwassen als minderjarige slachtoffers verdween in 2008 en 2009 met onbekende bestemming voor voltooiing van het identificatieproces. Tien landen rapporteerden kinderen die verdwenen. Tien andere landen rapporteerden dat volwassen (vermoedelijke) slachtoffers waren verdwenen.

Informatie werd verzameld over verschillende aspecten van **bescherming**, m.n.:
- Bedenk- en hersteltijd;
- Risico analyses: en
- Terugkeer (d.w.z. terugkeer van het slachtoffer naar het land van herkomst).

Ook de informatie over het aantal personen dat bedenktijd werd verleend is voor sommige landen incompleet. Voor **2008** was informatie beschikbaar van 11 landen waar in totaal 207 personen bedenktijd kregen. Voor **2009** was informatie beschikbaar over 18 landen met in totaal 1.150 personen waaraan bedenktijd werd toegekend. Voor 2008 is bekend dat in 9 landen in totaal 1.026 verblijfsvergunningen werden toegekend. Het gemiddelde van 100 per land is echter misleidend, omdat 664 van deze vergunningen alleen al in Italië werden verleend (in 2009: 810), samen met 235 in Nederland. Dit betekent

dat in 2008 de overige 7 landen in totaal slechts 127 verblijfsvergunningen verleenden aan slachtoffers van mensenhandel. Dat is minder dan 20 per land. Dit suggereert dat wetgeving en beleid rondom het verstrekken van een verblijfsvergunning aanzienlijk varieert in de verschillende EU lidstaten.

Volgens de onderzoekers kregen **minderjarige slachtoffers** een verblijfsvergunning[278] in 6 landen in 2008 en 2009: in Frankrijk, Polen en Engeland een tijdelijke verblijfsvergunning tot vlak voor hun 18e jaar; in Oostenrijk en Denemarken een als permanent beschouwde verblijfsvergunning. In Italië wordt het kinderen toegestaan te blijven tot hun 18e jaar; verhandelde kinderen kunnen echter een verblijfsvergunning krijgen op dezelfde basis als volwassen slachtoffers (onder de zgn. art. 18 regeling). Ook in Nederland kregen kinderen een verblijfsvergunning, uit de beschikbare gegevens was echter niet op te maken of dit een tijdelijke of permanente vergunning betrof.

Met betrekking tot het aantal personen dat terugkeerde (of gerepatrieerd werd) is geprobeerd uit te vinden of dit vrijwillig of gedwongen was, hoeveel (vermoedelijke) slachtoffers teruggekeerd of teruggezonden waren en onder welke omstandigheden dit gebeurde. Het onderzoek bevestigt dat 6 lidstaten formele terugkeerovereenkomsten hebben met andere landen (5 hiervan zijn landen van bestemming; de overeenkomsten zijn overwegend met landen die als herkomstland worden beschouwd).

Voor 2008 is van 15 landen informatie beschikbaar over de terugkeer van volwassenen: 194 personen uit 12 landen werden teruggestuurd naar hun land van herkomst (Oostenrijk, Cyprus, Tsjechie, Frankrijk, Griekenland, Italië, Letland, Nederland, Polen en Slowakije). In dit jaar (2008) wordt het hoogste aantal gerapporteerd door Nederland (37), met Italië als tweede (31), gevolgd door Cyprus (24), Duitsland (23) en Denemarken (21). Voor 2009 was slechts informatie beschikbaar van 10 landen. In dit jaar werden 171 personen uit 10 landen teruggezonden naar hun land van herkomst, waarbij een land, Griekenland, goed was voor meer dan de helft hiervan. Verder werd de terugkeer van 22 personen gerapporteerd door Oostenrijk, 23 door Polen, en slechts 19 door de resterende 7 landen. Duidelijk mag zijn dat het aantal teruggekeerde personen uiteenlopende percentages vertegenwoordigt van het totaal aantal (vermoedelijke) slachtoffers resp. het aantal (vermoedelijke) slachtoffers dat naar de hulpverlening werd verwezen. Ook hier suggereren de gegevens dat de verschillende lidstaten uiteenlopende criteria hanteren

278. 'Leave to remain' is a generic term for describing the legal entitlement given to non-nationals to remain in a country on either a temporary or permanent basis.

met betrekking tot beslissingen over terugkeer. Het aantal teruggekeerde personen is niet evenredig aan het aantal personen dat geïdentificeerd werd als (vermoedelijke) slachtoffer of aan wie bedenktijd werd toegekend.

In 2008 of 2009 ontvingen in 19 lidstaten **burgers van andere EU lidstaten die waren geïdentificeerd als (vermoedelijk) slachtofffer** hulp en bescherming op dezelfde basis als burgers uit derde landen. In 6 landen (Duitsland, Hongarije, Letland, Litouwen, Roemenie en Spanje) ontvingen, volgens de onderzoekers, burgers van EU lidstaten echter niet hetzelfde niveau van hulp en bescherming als derdelanders. Diverse burgers van andere EU lidstaten ondervonden problemen met betrekking tot identificatie en toegang tot hulpverlening. Dit betekent dat, desondanks, in de meeste West Europese landen waarheen burgers van EU lidstaten in Oost Europa worden verhandeld, deze in staat waren om hulp te krijgen. In 14 van de 25 lidstaten ontvingen slachtoffers uit een EU land hulp en bescherming op dezelfde voet als slachtoffers van buiten de EU.

Met betrekking tot de vraag naar maatregelen ter **bescherming van (meer- of minderjarige) slachtoffer-getuigen tijdens de strafzaak**, rapporteerden ongeveer de helft van de lidstaten het bestaan van dergelijke voorzieningen. Onder andere werd gevraagd naar de mogelijkheid een getuigenverklaring af te leggen tijdens het vooronderzoek bij de rechter commissaris, in plaats van tijdens de (publieke) rechtszitting, en de mogelijkheid voor slachtoffers om te getuigen via een videolink of buiten het zicht van de verdachte. Over 2008 en 2009 werden in 5 landen (Tsjechië, Denemarken, Frankrijk, Portugal en Engeland) zaken gerapporteerd waarin de identiteit van het slachtoffer, ondanks dat deze geacht werd vertrouwelijk te blijven, toch publiek bekend werd in de loop van de strafzaak.

Recent onderzoek van Anti Slavery International[279] en de OSCE[280] concludeerde dat, hoewel slachtoffers recht hebben op schadevergoeding en ondanks het bestaan van verschillende procedures hiervoor, het in de praktijk uiterst zeldzaam is dat zij ook daadwerkelijk een schadevergoeding ontvangen. Desalniettemin rapporteerden 12 landen (van de 22 waarvoor informatie beschikbaar was) dat een of meer slachtoffers daadwerkelijk een (materiële of immateriële) schadevergoeding hadden ontvangen in 2008, hetzij via de strafzaak hetzij via een andere bron. In 2009 was dat het geval in 12 landen (van de 20 landen waarvoor informatie beschikbaar was). De 9 landen die voor beide jaren de betaling

279. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, Londen, 2008.
280. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warscha, 2008.

van schadevergoeding rapporteerden waren: Oostenrijk, Denemarken, Frankrijk, Duitsland, Italië, Nederland, Spanje, Zweden en Engeland.

Het onderzoek richtte zich niet in detail op de talloze **preventiemethoden**, maar concentreerde zich op de informatie die voor migranten beschikbaar is voor en na hun aankomst in een land waarvan bekend is dat slachtoffers van mensenhandel er worden uitgebuit.

Het Verdrag van de Raad van Europa verplicht staten "te overwegen een Nationale Rapporteur te benoemen of andere mechanismen om de anti-mensenhandel activiteiten van overheidsinstanties en de implementatie van de vereiste nationale wetgeving te monitoren". Hoewel het verdrag slechts verplicht dit te "overwegen", zijn er goede redenen om te veronderstellen dat de toekomstige EU Richtlijn significant strenger op dit punt zal zijn en zal vereisen dat elke lidstaat een onafhankelijke Nationale Rapporteur benoemd of een gelijkwaardig mechanisme vestigt. Een conferentie in maart 2009 over Nationale Rapporteurs, suggereerde dat 12 EU lidstaten al een dergelijke rapporteur of een vergelijkbaar mechanisme hadden ingesteld om hun anti- mensenhandel beleid te monitoren. Het onderzoek bevestigde dat 9 van de 27 lidstaten een Nationale Rapporteur inzake mensenhandel hadden (Cyprus, Tsjechië, Finland, Letland, Litouwen, Nederland, Portugal, Roemenie en Zweden); 16 hadden dit niet. Gerapporteerd werd dat verschillende landen (bijv. Zweden) primair aandacht besteden aan mensenhandel voor seksuele doeleinden. In diverse landen bestaat een ander overheidsmechanisme om mensenhandelbeleid te monitoren (bijv. België en Spanje). In 3 van de 9 landen met een Rapporteur (Letland, Litouwen en Zweden) is de Rapporteur niet volledig onafhankelijk van de instanties belast met de uitvoering van beleid. Dit beperkt hun onafhankelijkheid en reduceert in potentie hun vermogen om op een strikt onafhankelijke manier te opereren.

4. Conclusies en aanbevelingen

Het E-notes project laat zien dat er binnen de EU grote verschillen bestaan tussen de lidstaten op fundamentele onderdelen van beleid en praktijk met betrekking tot mensenhandel. Dit betreft onder meer: nationale wettelijke verboden op mensenhandel en de gehanteerde definities van mensenhandel (of de interpretatie hiervan door de relevante overheidsinstanties), het bestaan van een coördinatie-structuur en procedures om slachtoffers van mensenhandel te identificeren. Ook werd duidelijk dat verschillende van de voorzieningen in internationale en nationale wetgeving ter bescherming van de rechten van slachtoffers nog steeds alleen op papier bestaan en dat er in

de meerderheid van de lidstaten nog nauwelijks een begin is gemaakt met de implementatie hiervan. De organisaties die deelnamen aan E-notes zijn van mening dat de EU, de lidstaten zelf en het maatschappelijk middenveld hun inspanningen moeten vergroten om, zowel op nationaal als EU niveau, de basis voor het mensenhandelbeleid te versterken.

Hoewel er substantiële verbeteringen nodig zijn in de implementatie van een groot aantal onderdelen van het anti-mensenhandelbeleid in de EU, concentreren de volgende aanbevelingen zich vooral op de rechten van slachtoffers van mensenhandel, omdat wij ervan overtuigd zijn dat dit de kern moet zijn van de inspanningen van elke lidstaat om mensenhandel te bestrijden. De minst geïmplementeerd voorzieningen zijn die voor de preventie van mensenhandel en de bescherming van slachtoffers.

Identificatie en verwijzing van slachtoffers van mensenhandel
De bescherming van de rechten van slachtoffers van mensenhandel kan alleen gewaarborgd worden wanneer alle (vermoedelijke) slachtoffers (onafhankelijk van hun vermogen of bereidheid om samen te werken met de autoriteiten) als zodanig worden geïdentificeerd. Het E-notes onderzoek laat zien dat adequate identificatie nog steeds een zeer zwakke schakel is. Ter verbetering van het proces van identificatie in de lidstaten is het essentieel dat:

- Lidstaten checklists of indicatoren ontwikkelen, in samenwerking met politie, OM en hulpverleners, om de identificatie van (vermoedelijke) slachtoffers van mensenhandel voor alle vormen van uitbuiting te vergemakkelijken. Additionele indicatoren moeten worden ontwikkeld voor elke vorm van uitbuiting, zoals arbeidsuitbuiting, uitbuiting van huishoudelijk personeel, seksuele uitbuiting, gedwongen bedelen, gedwongen betrokkenheid bij illegale activiteiten, enz. Specifieke indicatoren moeten worden ontwikkeld voor de identificatie van minderjarige slachtoffers;
- Identificatie niet de verantwoordelijkheid is van een enkele overheidsinstantie, maar van een multidisciplinair team, waar ook hulpverleningsinstanties deel van uit maken;
- De nationale procedures en structuren voor de verwijzing van slachtoffers, hetzij in de vorm van 'National Referral Mechanisms (NRM)', hetzij via andere mechanismen die betrokken zijn bij de implementatie van *Standard Operational Procedures* (SOPS), gebaseerd zijn op nauwe en regelmatige samenwerking tussen politie, grensbewaking, arbeidsinspectie, relevante vakbonden, kinderbeschermingsinstanties, het OM en andere hulpverleningsdiensten;
- Toegang tot het recht ("access to justice") voor slachtoffers van mensenhandel, inclusief toegang tot schadevergoeding en compensatie, wordt verbeterd door gratis juridische hulp te waarborgen voor alle slachtoffers;

- Alle lidstaten verzekeren dat slachtoffers niet worden uitgezet voordat er een individuele risicoanalyse is gemaakt.

Monitoring

Voortgaande monitoring is essentieel, zowel op nationaal als EU niveau, opdat alle relevante stakeholders een beter inzicht hebben, niet alleen in wat er op papier staat dat zou moeten gebeuren om mensenhandel te stoppen, maar ook in wat er in de werkelijkheid gebeurt in hun land. Ten behoeve van een goed inzicht in de implementatie, de effecten en de impact van anti-mensenhandelbeleid isn de EU, is het nodig dat:

- Nationale Rapporteurs of gelijkwaardige mechanismen een onafhankelijke positie hebben (zoals overeengekomen in de Verklaring van Den Haag in 1997) ter waarborging van een onafhankelijke en vergelijkbare monitoring van de resultaten van anti-mensenhandel maatregelen; het is ook belangrijk dat tevens de onvoorziene of zelfs negatieve effecten van anti-mensenhandelmaatregelen worden geidentificeerd en gerapporteerd;
- Relevante termen, statistieken en manieren van meten meer worden gestandaardiseerd (bijv. het aantal personen vervolgd voor mensenhandel);
- Er een nauwe samenwerking bestaat tussen de EU, de EU lidstaten en de lidstaten van GRETA, het onafhankelijke monitoring mechanisme van het Verdrag inzake mensenhandel van de Raad van Europa, zodat onnodige overlap in monitoring wordt voorkomen.

Wetgeving

- Verdere monitoring is nodig om te waarborgen dat alle nationale wetgeving in overeenstemming is met de definitie van mensenhandel zoals zoals vastgelegd in het EU Kaderbesluit van 2002 en het Verdrag van Raad van Europa van 2005.
- In veel lidstaten lijkt er een significante behoefte te bestaan aan een beter begrip van het concept "uitbuiting" en de verschillende misdrijven in relatie tot illegale uitbuiting, zowel waar het gaat om mensenhandel voor uitbuiting als wanneer mensen onderworpen worden aan illegale uitbuiting zonder dat zij eerst verhandeld zijn.

Alle lidstaten die dat niet reeds hebben gedaan zouden een coordinatiestructuur moeten ontwikkelen, evenals een nationaal actieplan teneinde meer samenhang te brengen in hun mensenhandelbeleid. De allocatie van adekwate menskracht en financiele middelen is cruciaal voor het efficient functioneren hiervan. In dit kader is het aan te bevelen dat toekomstige monitoring activiteiten zich tevens richten op de allocatie van middelen door de verschillende lidstaten ten behoeve van een nationale coordinatie structuur en de ondersteuning van coordinatie activiteiten.

8.5 Kommenteeritud Kokkuvõte

2009. aastal otsustasid neli vabaühendust osaleda ühisprojektis nimega „Euroopa vabaühenduste inimkaubanduse, ekspluateerimise ja orjuse jälgimiskeskus" (lühidalt „E-märkmed"), et jälgida, mida teevad valitsused kogu Euroopa Liidus orjuse, inimkaubanduse ja inimkaubandusega seostuvate mitmesuguste ekspluateerimisvormide peatamiseks. Projekti koordineeris itaalia vabaühendus Associazione On the Road[281], koos piirkondliku inimkaubanduse vastase võrgustikuga La Strada International ja kahe riikliku vabaühendusega, kelleks olid Hispaanias tegutsev ACCEM[282] ja Prantsusmaal tegutsev ALC[283].

Selle asemel, et luua alaline institutsioon valitsuste tegevuse jälgimiseks otsustati projekti raames koguda teavet selle kohta, mis toimub kõigis 27s ELi liikmesriigis. See tähendas uurimismetoodika väljatöötamist ja igas liikmesriigis osalussooviga vabaühenduste ja uurijate leidmist. Projekti avaetapil pandi rõhku **näitajatele**, mis mõõdavad iga ELi liikmesriigi inimkaubanduse vastaste meetmete (nt inimkaubanduse taseme alanemisele ja inimkaubanduse ohvriks langenute kaitsmisele ja abistamisele suunatud erinevate seaduste, poliitikate, meetmete ja tavade) edu. Selle tulemusel valmis uuringuvahend – koostati nimekiri üle 200-st standardküsimusest nende meetmete kohta, mis loodetavasti aitab edendada igas ELi riigis algatatud inimkaubanduse vastaseid meetmeid.

1. Normid, mille kohta seire käigus teavet otsiti

Uurimisprotsess algas 2010. aasta alguses, just siis kui Euroopa Ülemkogus hakkas lõpule jõudma uue liikmesriikide inimkaubandusevastaste meetmete standardiseerimist käsitleva ELi instrumendi (mis asendaks 2002 aasta juunis vastu võetud ELi Nõukogu raamotsuse inimkaubanduse vastu võitlemise kohta) arutelu. 2009. aastal esitas Euroopa Komisjon uue inimkaubanduse vastu võitlemist käsitleva raamotsuse projekti. Tänu kõiki käimasolevaid seadusandlikke protseduure

281. Ühing Associazione On the Road pakub kolmes Itaalia piirkonnas (Marche, Abruzzo ja Molise) väga ernevaid teenuseid ja kaitset inimkaubanduse ohvriks langenud isikutele, varjupaigataotlejatele, pagulastele ja üldse sisserändajatele. Ühing tegeleb ka teadlikkuse tõstmisega, kogukonnatööga, teadusuuringutega, võrgustikutööga ja poliitikakujunduse alaste algatusega kohalikul, riiklikul ja Euroopa tasandil.

282. ACCEM osutab Hispaanias sotsiaalteenuseid ning tegutseb sotsiaal- ja õigusvaldkonnas, et tuua kasu varjapaigataotlejatele, pagulastele; ümberasustatud ja sisserännanud isikutele.

283. ALC tähendab *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* ([Inimeste] saatmine, vastuvõtukeskused, haridus- ja sotsiaalkeskused). ALC koordineerib riiklikku inimkaubanduse ohvriks langenud isikute turvakodude võrgustikku nimega Ac.Sé.

katkestava Lissaboni lepingu jõustumisele ei saanud nõukogu uue raamotsuse teemalised läbirääkimised jätkuda. Seejärel esitas Euroopa Komisjon uue, 2002. aasta raamotsust kehtetuks tunnistava Euroopa Parlamendi ja Nõukogu inimkaubanduse ennetamise ja tõkestamise ning ohvrite kaitsmise direktiivi eelnõu. Märtsis 2010 võttis Euroopa Parlament selle arutusele. Septembris 2010 esitasid kaks parlamendikomisjoni rea parandusettepanekuid direktiivi eelnõusse ja algas kokkulepete saavutamise protsess nõukogu, komisjoni ja Euroopa Parlamendi vahel. Eeldati, et direktiiv võetakse vastu enne 2010. aasta lõppu.

Samal ajal kui valdav osa uue direktiivi sätteid tundub üldjoones olevat üsna selged, ei olnud ajal, kui projekti seire toimus ehk mais ja juunis 2010 seda veel vastu võetud (direktiiv ei olnud vastu võetud ka käesoleva aruande lõplikul valmimisel 2010. aasta oktoobris). Selleks, et otsustada, mis õiguslikke kohustusi silmas pidada igas ELi liikmesriigis jälgitavate normide (s.o riigi inimkaubanduse vastumeetmeid puudutavate kohustuste) kindlakstegemisel, otsustati projekti raames kasutada erinevat piirkondlikku instrumenti, Euroopa Nõukogu konventsiooni, milles käsitletakse inimkaubanduse vastu võetavaid meetmeid. Konventsioon võeti vastu mais 2005 ja see jõustus veebruaris 2008. Kuigi selle on ratifitseerinud palju EL-i väliseid riike, olid augustiks 2010 kõik ELi liikmesriigid peale ühe (Tšehhi Vabariigi) kas ratifitseerinud Euroopa Nõukogu konventsiooni (19) või sellele alla kirjutanud (seitse) ja seeläbi väljendanud oma kavatsust see jõustada.

2. Kasutatud metoodika

Seire kavandas üks konsultant 2010. aasta alguses. Pöörati tähelepanu eelmistele publikatsioonidele, milles oli välja pakutud sobivaid näitajaid ELi liikmesriikidele, et kasutada neid nende edasimineku hindamisel oma seaduste ja tavade piirkondlike ja rahvusvaheliste normidega kooskõlla viimiseks. Kõik rahvusvahelised normid põhinevad ÜRO rahvusvahelise organiseeritud kuritegevuse vastu võitlemise konventsiooni (2000) täiendaval naiste ja lastega kaubitsemise ning muu inimkaubanduse ennetamise, pidurdamise ja karistamise protokollil, mis võeti vastu aastal 2000. Tähelepanu pöörati ka erinevates Euroopa Komisjoni publikatsioonides[284] tehtud kommentaaridele nõrkade külgede kohta, mis olid ära märgitud sel viisil, et ELi liikmesriigid raporteerisid oma inimkauban-

284. Nt Euroopa Komisjon, teatis Euroopa Parlamendile ja Nõukogule inimkaubanduse vastase võitluse kohta – ühtne lähenemine ja ettepanekud tegevuskava koostamiseks (Euroopa Komisjoni viide KOM(2005) 514 lõplik 18. oktoobrist 2005) ja Euroopa Komisjoni töödokument (Euroopa Komisjoni viide KOM(2008) 657 lõplik), Inimkaubanduse tõkestamise ja selle vastase võitluse häid tavasid, standardeid ning korda käsitleva ELi kava rakendamise hindamine ja järelevalve, oktoober 2008.

duse peatamiseks või eeldatavasti inimkaubanduse ohvriks langenud[285] inimeste kaitsmiseks ja abistamiseks võetud meetmetest. Mõnedes publikatsioonides märgiti, et liikmesriikidest oli nende inimkaubanduse vastaste tavade kohta raske teavet saada (mõnikord uusimat teavet, mõnikord mis tahes teavet). Mõnedes viidati ühtlustatud andmekogumise puudumisele, mainides, et liikmesriikides ei kasutatud termineid järjekindlalt ja puudusid ühtsed aruandesüsteemid. Kõiki neid probleeme kinnitati projekti „E-märkmed" seire käigus.

Ühes 2006. aastal ilmunud Euroopa Komisjoni dokumendis[286] märgiti, et liikmesriigid esitasid vähe teavet oma inimkaubanduse ohvriks langenud isikute kaitset või abistamist käsitlevate eeskirjade ja tavade kohta. 2008. aastal teatati ühes töödokumendis[287] uuesti, et liikmesriikidelt oli raske saada teavet abi saanud inimkaubanduse ohvriks langenud isikute arvu kohta, kuid märgiti seejuures, et 2006. aastaks olid komisjonile teavet andnud riigid avaldanud, et aasta jooksul oli 23 liikmesriigis uuritud veidi üle 1500 inimkaubanduse juhtumit. Kinnitati ka, et enamik ELi liikmesriike oli sisse viinud järelemõtlemisaja, et võimaldada inimkaubanduse ohvriks langenud isikutel oma riiki jääda ja taastuda, enne kui neil palutakse võimudele tunnisusi anda. Ent ainult viis riiki esitasid andmed selle kohta, kui palju inimesi sellest kasu saanud on, nimetatud koguarv oli üksnes 26 isikut aastas!

Inimkaubanduse vastasele tegevusele (kas siis eeldatavasti inimkaubanduse ohvriks langenud isikutele teenuste või abi osutamisele või inimkaubanduse ennetamisele suunatud algustele) spetsialiseeruvatele vabaühendustele tundus ELi liikmesriikide poolt Euroopa Komisjonile esitatavate andmete ebatäpsus murettekitav. Ühelt poolt tähendas see, et mitte kellegi, kaasa arvatud Euroopa Komisjoni positsioon ei võimalda kindlaks teha, mis üle kogu ELi toimub. Teiselt poolt ka seda, et riigid eiravad paljusid inimkaubandust ja teisi inimõiguste küsimusi puudutavate piirkondlike või rahvusvaheliste lepingute sätteid (vaatamata sellele, et on nendega nõustunud) ja neid ei rakendata.

Mõned ELi liikmesriigid on ametisse nimetanud riikliku voliniku inimkaubanduse küsimustes, et teavitada oma valitsust (ja teisi) edust, mis on saavutatud riigi inimkaubanduse vastaste meetmete osas ja soovitada parendamisvõimalusi. 2010. aasta keskel toimunud seirel teatati, et üheksal ELi 27-st liikmesriigil on selline riiklik volinik, kuid mitte kõik ei avalda ülevaateid ja

285. Termin „eeldatavasti inimkaubanduse ohvriks langenud isik" tähendab inimest, kelle puhul kahtlustatakse, et ta on inimkaubanduse ohvriks langenud, ent teave, mis temaga tegelikult juhtus, ei ole kättesaadav.
286. Euroopa Komisjoni aruanne nõukogu 2002. aasta 19. juuli inimkaubanduse vastast võitlust käsitleva 2002. aasta raamotsuse rakendamise kohta (Euroopa Komisjoni viide KOM (2006) 187 lõplik 2. maist 2006).
287. Vt eespool allmärkus 284.

mõned keskenduvad eriotstarbelisele inimkaubandusele (nt naistega kaubitsemine prostitutsiooni eesmärgil) ilma muul otstarbel toimuva inimkaubanduse vastaste meetmete kohta ülevaateid esitamata. Pikas perspektiivis, kui riiklikud volinikud nimetataks ametisse kõigis liikmesriikides, oleks neil hea positsioon inimkaubandusega seotud statistika mõõtmise tingimuste ja meetodite standardmõistete juurutamiseks, nii et saaks teha mõttekaid võrdlusi erinevate ELi riikide inimkaubanduse vastaste meetmete vahel.

Sellel taustal oli projekti „E-märkmed" seire eesmärgiks leida, mis teavet leidus kõigis ELi liikmesriikides nende inimkaubandust käsitlevate seaduste, poliitikate ja tavade kohta, kui palju inimesi loeti inimkaubanduse ohvriks langenuks ja mingist sorti kaitsest kasu saanuks, kui paljud said abi jne. Kuna seire toimus 2010. aasta mais ja juunis, kavatseti esialgu koguda teavet igas riigis valitseva olukorra kohta 2009. aasta jooksul. Ent varsti selgus, et paljudes riikides ei olnud kas 2009. aasta teavet saadaval või oli saadaval mittetäielik teave, samal ajal kui 2008. aasta kohta oli saadaval palju põhjapanevam teave.

Vabaühendused, millel paluti leida uurija, kes koguks ja koostaks teavet projekti „E-märkmed" seirele olid enamasti need, kelle oskusteadmised olid seotud inimkaubitsuse ohvriks langenud täiskasvanute (eriti naistega). Nad koostasid teavet ka lastekaubanduse kohta, kuigi paljud pidasid inimkaubanduse ohvriks langenud laste kohta teabe hankimist keeruliseks. Paljudes ELi riikides saavad inimkaubanduse ohvriks langenud täiskasvanud teenuseid vabaühendustelt, samal ajal kui inimkaubanduse ohvriks langenud laste eest hoolitsemise monopol on riiklikel lastekaitseasutustel.

Igal uurijal paluti täita 60-leheküljeline uuringuprotokoll, esitada täiendavat vabas vormis teksti küsimustele, mille puhul vastused „Jah" ja „Ei" ei sobinud ning visandama oma riigi lühiprofiili, tehes ülevaate nende riigi inimkaubanduse juhtumite seaduspärasustest ja oma valitsuse vastumeetmetest. Juulis 2010 töödeldi 27 uurija poolt ettevalmistatud teave ja sisestati lihtsasse andmebaasi. Seda analüüsis sama konsultant, kes oli koostanud uuringuprotokolli, et identifitseerida võimalikke mustreid – konkreetseid juhuseid, kus ELi liikmesriigid ei täida oma kohustusi inimkaubanduse ohvriks langenud isikute kaitsmisel ja abistamisel ja koostada neist järeldustest ülevaade.

Uurijatel paluti kommenteerida, kas nende kodumaa on peamiselt lähte-, transiit- või sihtriik või kombinatsioon kahest või kolmest eelpool nimetatust. See liigitus ei keskendunud sisemaise inimkaubanduse juhtudele. Vähesed riigid liigitati kui vaid üks neist kolmest kategooriast (kaht, Prantsusmaad ja Portugali kirjeldati kui peamiselt sihtriike). Ülejäänud 25 peeti kom-

binatsiooniks, neist üht nii lähte- kui sihtriigiks ja kümmet nii transiit-kui sihtriigiks ja üheksat kõigi kolme kombinatsiooniks.

3. Seire järeldused

Uuringuprotokolli 230 küsimust käsitlesid mitmeid eri teemasid, keeruline oli luua mustvalget ettekujutust ELi liikmesriikide poolsest kohustuste täitmisest ja inimkaubanduse ohvriks langenud isikute inimõigustega arvestamisest. Ent viies konkreetses küsimuses oli võimalik hinnata saavutatud edu määra. Isegi neil juhtudel oli olemasolev teave kas nii puudulik või mittekättesaadav, et ühtki mainitud statistilist näitajat ei saa pidada usaldusväärseks. Antud viis teemat on kokkuvõtlikult esitatud alljärgnevas tabelis.

Tabel 1 Eli edu inimkaubanduse vastaste meetmete tähtsaimates punktides

Teema	2010. aasta mais fikseeritud olukord
Inimkaubanduse vastaste meetmete koordineerimine riiklikul tasandil	Aruande põhjal on 22 liikmesriiki 27st moodustanud riikliku struktuuri inimkaubanduse vastaste meetmete koordineerimiseks. Riiklikud koordineerivad struktuurid puuduvad Prantsusmaal, Saksamaal, Kreekas ja Maltal. Saksamaal ja Itaalias ei organiseerita inimkaubanduse vastaseid meetmeid riiklikul ega föderaaltasandil, kuid see ei tähenda, et need oleksid ebapiisavad. Rootsi on ametisse nimetanud riikliku koordinaatori, kelle ülesanne on välja arendada koordineeriv struktuur inimkaubanduse tõkestamiseks, kuid ainult puhkudeks, mis hõlmavad inimkaubandust seksuaaleesmärkidel.
Eeldatavasti inimkaubanduse ohvriks langenud isikute identifitseerimine	Aruande põhjal on üheteistkümnel 27st liikmesriigist ühtne valitsusasutus või -struktuur, mis vastutab kõigi eeldatavasti inimkaubanduse ohvriks langenute ametliku identifitseerimise eest, olgu nad siis 16-aastased või mitte. Kuus riiki, kus puudub riigi tasandi identifitseerimisprotsess ei kasuta mingit üleriigiliselt kasutatavat standardprotseduuri inimeste, kes eeldatavasti on inimkaubanduse ohvriks langenud, ametlikuks identifitseerimiseks (Austria, Bulgaaria, Prantsusmaa, Saksamaa, Itaalia, Malta).
Vähemalt 30-päevase järelemõtlemisaja olemasolu	25 liikmesriigis 27-st on aruande järgi sätestatud järelemõtlemis- ja taastumisaeg eeldatavasti inimkaubanduse ohvriks langenud täiskasvanutele – näib, et igati tänuväärne osa riike püüab selles osas miinimumnorme järgida. Itaalias ei ole järelemõtlemisaega sätestatud, kuid praktikas on see mõnikord võimalik. Leedus teatati samast olukorrast. 2008. aasta kohta oli olemas teave 11 riigist kokku 207 inimese kohta, kellele järelemõtlemisaega võimaldati. 2009. aasta kohta oli saadaval teave 18 riigist ja aruannete põhjal sai kasu palju rohkem inimesi – 1150 inimkaubanduse ohvriks langenud inimest. Tundub, et see kajastab märkimisväärset kasvu.

Tagasitoimetamisega kaasnevad protseduurid eesmärgiga muuta see ohutuks ja võimalusel vabatahtlikuks	Uurijad märkisid ära kuus riiki, kellel olid ametlikud kokkulepped teiste ELi liikmesriikide või kolmandate riikidega inimkaubanduse ohvriks langenud isiku oma kodumaale tagasitoimetamise reguleerimiseks (Prantsusmaal, Lätil, Portugalil, Hispaanial ja Ühendkuningriigil; Kreekal on kahepoolne kokkulepe, mis piirdub kaubitsetud lastega), kuigi kokkulepete olemasolu tundub olevat väike tagatis sellele, et rikkumised aset ei leia. Kui võimud kavatsevad eeldatavasti inimkaubanduse ohvriks langenud täiskasvanu tema päritoluriiki tagasi toimetada, täheldasid uurijad, et ainult kolmes ELi liikmesriigis 17-st, mille kohta teave kättesaadav oli, viidi enne tagasitoimetamist rutiinse protseduurina läbi riskihindamisi (Itaalias, Portugalis ja Rumeenias). See tähendab, et hinnati võimalikke ohte inimesele endale ja tema pereliikmetele.
Ligipääs hüvitamisele ja kompenseerimisele	12 riigis (22st, mille kohta teave kättesaadav oli) oli inimkaubanduse ohvriks langenud isik aruande põhjal kahjutasu või hüvitist saanud 2008. aastal ja 12 riigis (20st) 2009. aastal, kas siis kohtumenetluse tulemusena või muust allikast. Üheksa riiki, kus aruande põhjal oli mõlemal aastal kompensatsioonimakseid tehtud, olid Austria, Taani, Prantsusmaa, Saksamaa, Itaalia, Madalmaad, Hispaania, Rootsi ja Ühendkuningriik.

Nende viie punkti põhjal oleks ebakohane püüda iga riigi tulemusi pingeritta seada (nagu teeb USA Riigidepartemangu iga-aastane aruanne), esimese kolme kategooria puhul identifitseeriti puudujääke enamasti erinevatel riikidel, samal ajal kui kahe viimase puhul erinevad need riigid, mis toimivad õigesti. Näiteks Itaalia on üks riik, mida mainitakse seoses kõigi viie punktiga, saades paljudes küsimustes häid tulemusi, kuid sealne inimkaubanduse vastane süsteem on enamikest teistest ELi riikidest üsna erinev.

Kõrvuti nende viie võtmeteemaga püüti seirel jälgida palju muidki arenguid. Püüti kontrollida, kas **iga riigi õigus** käsitles kõiki inimkaubandusega seotud ekspluateerimise arvukaid kategooriaid (nt inimestega kaubitsemine selleks, et ekspluateerida neid prostitutsiooni eesmärgil või muul moel seksuaalselt ära kasutada, ekspluateerida isiku tööjõudu või teenuseid sunnitööl, servituudis, orjuses või orjuse sarnastes vormides või nende kehaorganite eemaldamise eesmärgil). Kokkuvõte oli, et üldiselt vastus jaatav. Kaks riiki – Eesti ja Poola – on aruande kohaselt alustanud oma seaduste muutmist, kuid pole sellega lõpule jõudnud ja veel ühes riigis, Hispaanias, jõustuvad karistusseadustikus inimkaubanduse mõistet ELi ja Euroopa Nõukogu standarditega kooskõlla viivad õigusaktid detsembris 2010.

Seirel püüti ka välja selgitada, kas igas riigis kasutatav **inimkaubanduse mõiste** on piisavalt sarnane, et teave inimkaubitsejate või inimkaubanduse ohvritena kirjeldatud inimeste kohta oleks võrreldav. Selles osas leiti palju

rohkem erinevusi. Näiteks Prantsusmaal määratletakse inimkaubanduse alast süütegu nii laialt, et seda saab kohaldada praktiliselt igaühe suhtes, keda kahtlustatakse kupeldamises. Selle tulemusena selgus esialgu, et Prantsusmaal oli üheainsa (2008.) aasta jooksul inimkaubanduses süüdi mõistetud üle 900 isiku. Ent tähelepanelikumal uurimisel ilmnes, et veidi üle poole neist (521) olid „raskendatud kupeldamise" (sarnaneb teistes ELi liikmesriikides inimkaubandusena määratletud õigusrikkumise) juhtumid ja ainult 18 süüdimõistmist olid seoses süütegudega, mida ELi 2002. aasta raamotsus ja Euroopa Nõukogu konventsioon tunnistab inimkaubanduseks. Soomes on olukord vastupidine – juhtumeid, mida oleks piirkondlike normide järgi tulnud inimkaubandusena käsitleda, on käsitletud ainult kupeldamisena.

Seirel küsiti, mida hõlmas **inimeste inimkaubanduse ohvritena identifitseerimise** protsess ja kas isikutele võimaldati kavakindlalt järelemõtlemisaeg või muid kaitse või abi vorme. Tulemused näitasid, et nii identifitseerimisprotsessid kui kriteeriumid hindamiseks, kas teatud konkreetne inimene on langenud inimkaubanduse ohvriks, on Euroopa Liidu riikides kardinaalselt erinevad, kuna puudub ühtne standard.

Aruande põhjal on 20 liikmesriiki 27st moodustanud riikliku struktuuri **inimkaubanduse vastaste meetmete koordineerimiseks**. 22s liikmesriigis 27st on aruande põhjal vastu võetud riiklik tegevuskava inimkaubanduse vastu võitlemiseks või mõni samalaadne tegevusprogramm (kuigi mõned neist keskenduvad üksnes inimkaubandusele seksuaalse ekspluateerimise eesmärgil). Enamikel riikidel on inimkaubanduse vastasele tegevusele spetsialiseerunud politseiüksus. Mõnedes riikides on riiklikul tasandil tunnustatud protseduur, mis täpsustab eri organisatsioonide rolli inimkaubanduse ohvriks langenud inimestele kaitse või abi pakkumisel ja nende suunamisel asjakohastele teenustele (siseriiklik suunamismehhanism või -süsteem). Niisugune süsteem on kokku 17 riigil, kuid üheksas riigis seda ei ole.

Aruande põhjal on 11-l liikmesriigil 27st ühtne valitsusasutus või -struktuur, mis vastutab kõigi eeldatavasti inimkaubanduse ohvriks langenute ametliku identifitseerimise eest, samal ajal kui 16-s riigis seda ei ole. Seitse riiki riikidest, kus puudub ühtne tuvastusprotsessprotsess ei kasuta mingit üleriigiliselt kasutatavat standardprotseduuri inimeste, kes eeldatavasti on inimkaubanduse ohvriks langenud, ametlikuks identifitseerimiseks. Ent see ei tähenda, et identifitseerimine ja sellest tulenev kaitse kättesaadavus oleks ühtse süsteemiga riikides tõhusam. Identifitseerimisprotseduuride osas varieeruvad nii järgitavate protseduuride üksikasjad, nendest kinni pidamise määr kui ka protseduuride tõhusus riigiti suuresti.

Uurijad said üksnes hankida osalist teavet **2008. ja 2009. aastal 12-kuulise ajavahemiku jooksul identifitseeritud eeldatavast inimkaubanduse ohvriks langenud isikute arvu** kohta – kokku 4010 isikut 16 riigis (kuigi mõnda neist isikutest loendati võib-olla kaks korda, s.t loendati esiteks sihtriigis ja seejärel lisaks veel lähteriigis). Veidi üle pooltel (55 protsendil) juhtudest, kinnitasid võimud hiljem kindlalt, et eeldatavasti inimkaubanduse ohvriks langenud isikud olid ka tegelikult inimkaubanduse ohvriks langenud. Teavet eeldatavasti **inimkaubanduse ohvriks langenud isikute kohta, kelle suhtes kohaldati suunamist (teenustele) 2009. aastal** saadi sarnaselt eelnevaga 16 riigist kokku 3800 isiku kohta.

Nii täiskasvanute kui laste puhul, kes eeldatavasti ohvrid olid, jäid mõned 2008. või 2009. aastal **kadunuks**, enne kui identifitseerimisprotsess lõpule viidi. Eeldatavasti inimkaubanduse ohvriks langenud lapsi oli aruande järgi kadunuks jäänud 10 riigis. Eelmisest erineva kooslusega 10 riiki teatasid oma aruannetes, et täiskasvanud, keda oli esialgu identifitseeritud inimkaubanduse ohvriks langenutena, olid kadunuks jäänud.

- Uurijad kogusid teavet erinevate **kaitse** aspektide kohta, sealhulgas
- järelemõtlemis- ja taastumisajad;
- riskihindamised ja
- tagasitoimetamised (s.t inimkaubanduse ohvriks langenud isiku lähteriiki tagasisaatmine).

Uurijad said teavet, mõne riigi osas mittetäielikku, **inimeste arvu kohta, kellele anti järelemõtlemisaeg**. **2008**. aasta kohta oli olemas teave 11 riigist kokku 207 inimese kohta, kellele järelemõtlemisaega võimaldati. **2009**. aasta kohta oli olemas teave 18 riigist 1150 inimese kohta. 2008. aasta kohta on teada, et kokku üheksas riigis anti 1026 elamisluba. Keskmine tulemus üle 100 loa riigi kohta jättis aga ebatäpse mulje, sest 664 neist (ja veel lisaks 810 aastal 2009) anti välja ühes riigis, Itaalias, millele lisandus 235 Madalmaades, mis tõttu 2008. aastal andsid ülejäänud seitse riiki aruannete järgi inimkaubanduse ohvriks langenud isikutele üksnes kokku 127 elamisluba (s.o keskmiselt alla 20 loa riigi kohta). See näitab, et seadused või poliitikad, mis määravad, missugustele inimkaubanduse ohvriks langenud isikutele elamisload antakse, on erinevates ELi riikides väga erinevad.

Aruannete põhjal anti **inimkaubanduse ohvriks langenud lastele** nende kahe aasta jooksul luba[288] jääda kuude riiki, Prantsusmaale, Poolasse ja

288. „Riikijäämisluba" (ingl *leave to remain*) on üldine termin, mis kirjeldab mittekodanikele antud seaduslikku õigust jääda riiki kas ajutiselt või alaliselt.

Ühendkuningriiki, kus neile anti ainult lühikeseks ajaks, kuni 18-aastaseks saamiseni, ainult ajutine luba, ning Austriasse ja Taani, kus anti alaline riikijäämisluba. Itaalias lubatakse välismaistel lastel, nii inimkaubanduse ohvriks langenutel kui muudel, riiki jääda kuni 18-aastaseks saamiseni. Ent ka inimkaubanduse ohvriks langenud lapsed võivad hankida elamisloa samadel alustel inimkaubanduse ohvriks langenud täiskasvanutega (regulatsiooni alusel, mida tuntakse kui „artikkel 18"). Madalmaades anti lastele riikijäämisluba, kuid vastavate andmete põhjal oli raske hinnata, kas nad võisid riiki jääda alaliselt.

Tagasitoimetamise või repatrieerimise küsimuses püüdsid uurijad välja selgitada, kas tagasitoimetamised olid vabatahtlikud või sunniviisilised, kui palju eeldatavasti inimkaubanduse ohvriks langenud isikuid tagasi toimetati ja mis tingimustel. Nad kinnitasid, et kuuel ELi liikmesriigil on teiste riikidega ametlikud tagasitoimetamise kokkulepped (kuna neist kuuest viis on sihtriigid, kehtivad lepingud põhiliselt muude riikidega, mida käsitletakse lähteriikidena).

15 riigist oli kättesaadav teave **täiskasvanute tagasitoimetamise kohta 2008. aastal**: päritoluriiki toimetati tagasi 194 isikut 12 riigist (Austriast, Küproselt, Tšehhi Vabariigist, Taanist, Prantsusmaalt, Kreekast, Itaaliast, Lätist, Madalmaadest, Poolast ja Sloveeniast).Samal aastal (2008) teatati suurimast hulgast tagasitoimetamistest Madalmaadest (37), järgnesid Itaalia (31), Küpros (24), Saksamaa (23) ja Taani (21). **2009. aasta tagasitoimetamiste** kohta oli olemas teave väiksema hulga riikide, kõigest 10 riigi kohta. Selles osas toimetati aruannete põhjal 10 riigist 171 inimest nende päritoluriiki, kusjuures üks riik, Kreeka, moodustas tublisti üle poole tagasitoimetamistest. Muude riikide osas teatati Austriast 22 ja Poolast 23 tagasitoimetamisest, kusjuures aruannete järgi moodustasid seitse ülejäänud riiki kokku ainult 19 tagasitoimetamist. Ilmselt moodustasid tagasitoimetatute hulgad üsna erinevaid proportsioone suunamiste või eeldatavasti inimkaubanduse ohvriks langenud isikute koguarvust. Ent jällegi viitavad andmed sellele, et igas riigis on üsna erinevad kriteeriumid otsustamiseks, kas toimetada eeldatavasti inimkaubanduse ohvriks langenud isik tagasi kodumaale ja tagasitoimetatud isikute arv ei olnud vastavuses eeldatavasti inimkaubanduse ohvriks langenud isikutega, kes aruannete põhjal identifitseeriti või kellele anti järelemõtlemisaeg.

2008. või 2009. aastal tagati 10 liikmesriigis ühes riigis **eeldatavasti inimkaubanduse ohvriks langenud isikuna identifitseeritud muude ELi liikmesriikide kodanikele** kaitse ja abi samadel alustel kui nn ELi väliste

kolmandate riikide kodanikele. Ent kuues liikmesriigis (Saksamaa, Ungari, Läti, Leedu, Rumeenia ja Hispaania) ei tagatud aruannete põhjal inimkaubanduse ohvritena identifitseeritud muude liikmesriikide kodanikele mitte nii head kaitset ja abi kui kolmandate riikide kodanikele. Mõned muude ELi riikide kodanikud kogesid aruannete põhjal raskusi inimkaubanduse ohvritena identifitseerimisel või abi saamisel. See tähendab sellegipoolest, et enamikes Lääne-Euroopa riikides, kuhu ELi Kesk-Euroopa riikide kodanikke kaubitseti, said nad abi. 25 ELi riigist 14-s identifitseeriti ja abistati ELi kodanikke 2008. ja 2009. aastal samadel alustel väljastpoolt ELi kaubitsetud isikutega.

Vastuseks küsimusele, mis liiki **kohtusisene kaitse inimkaubanduse ohvriks langenud täiskasvanutele** või ohvrite tunnistajaks olevatele kättesaadav oli, teatati, et umbes pooltes ELi liikmesriikides olid kättesaadavad meetmed ohvrite tunnistajate kaitsmiseks. Kohtusisene kaitse, mille kohta uurijad pärisid, hõlmas seda, et ohvrite tunnistajatel lubati tunnistusi anda eelistungil (s.t juurdlust teostava kohtuniku ees) ja nad ei pidanud ilmuma avalikule kohtuistungile ning ohvrite tunnistajad said anda tunnistusi videolingi teel või varjatult süüdistatava pilgu eest. Sellele vaatamata teatati viies riigis (Tšehhi Vabariigis, Taanis, Prantsusmaal, Portugalis ja Ühendkuningriigis) juhtumitest 2008. ja 2009. aastal, mil inimkaubanduse ohvriks langenud täiskasvanu või laps, kelle identiteet oleks pidanud jääma konfidentsiaalseks, tegi selle kriminaalmenetluse käigus avalikuks.

Organisatsioonide Anti Slavery International[289] ja OSCE[290] hiljutine uuring leidis, et kuigi kehtib õigus maksta inimkaubanduse ohvriks langenud inimestele kompensatsiooni ja vaatamata sellele, et kehtivad mitmed kompensatsioonimehhanismid, esineb juhtumeid, kus mõni inimkaubanduse ohvriks langenud isik ka tegelikult kompensatsiooni saaks, äärmiselt harva. Vaatamata sellele oli 12 riigis (22st, mille kohta teave kättesaadav oli) mõni inimkaubanduse ohvriks langenud isik aruande põhjal kahjutasu või hüvitist saanud 2008. aastal ja 12 riigis (20st) 2009. aastal, kas siis kohtumenetluse tulemusena või muust allikast. Üheksa riiki, kus aruande põhjal oli mõlemal aastal kompensatsioonimakseid tehtud, olid Austria, Taani, Prantsusmaa, Saksamaa, Itaalia, Madalmaad, Hispaania, Rootsi ja Ühendkuningriik.

289. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
290. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

Uuring ei käsitlenud üksikasjalikult arvukaid **ennetusmeetodeid**, vaid keskendus välja selgitamisele, mis teave oli sisserändajatele kättesaadav enne ja pärast sellesse riiki saabumist, kus inimkaubanduse ohvriks langenud isikuid aruande põhjal ekspluateeriti.

Euroopa Nõukogu konventsioon kohustab riike kaaluma riigiasutuste inimkaubanduse vastase tegevuse jälgimiseks ja riiklike õigusaktide nõuete rakendamiseks **riiklike volinike** või muude mehhanismide ametisse nimetamist. Kuigi see säte kohustab riike üksnes kaaluma niisugust ametisse määramist, on suur alus kahtlustada, et peatselt ilmuv ELi direktiiv on selles küsimuses märkimisväärselt nõudlikum, kohustades ELi liikmesriike looma sõltumatu riikliku voliniku ametikoha või muu võrdväärse mehhanismi. Märtsis 2009 märgiti riiklike volinike küsimuses kokku kutsutud konverentsil, et 12 ELi riiki on juba inimkaubanduse vastaste siseriiklike meetmete jälgimiseks riikliku voliniku (või sellega võrdväärse mehhanismi) ametisse määranud. Uurijad kinnitasid üheksal ELi liikmesriigil 27st oli riiklik volinik inimkaubanduse küsimustes (Küprosel, Tšehhi Vabariigil, Soomel, Lätil, Madalmaadel, Portugalil, Rumeenial ja Rootsil), samal 16-s see puudub. Mitmed riigid (nt Rootsi) pööravad tähelepanu eeskätt inimestega seksuaalotstarbel kauplemist hõlmavatele juhtumitele. Mitmetes riikides (nt Belgia ja Hispaania) on inimkaubanduse vastaseid meetmete järelevalvesse kaasatud erinev riigiasutus. Kolmes riigis üheksast, kus volinik olemas on (Lätis, Leedus ja Rootsis) ei olnud voliniku roll täielikult sõltumatu inimkaubanduse vastastesse operatsioonidesse kaasatutest, mis piirab nende sõltumatust ja vähendab potentsiaalselt nende võimet järelevalvet rangelt sõltumatult teostada.

4. Järeldused ja soovitused

Projekt „E-märkmed" on näidanud, et ELi liikmesriikide vahel esinevad põhjalikud erinevused inimkaubanduse vastase poliitika ja praktika süvaaspektides, nagu siseriiklikud õigusaktid inimkaubanduse keelamiseks, ja määratlustes (või tõlgendustes vastavate valitsusasutuste poolt), milles inimkaubandus seisneb ja inimkaubanduse ohvriks langenud isikute identifitseerimise protsessis. See näitas ka, et mitmed rahvusvaheliste ja siseriiklike õigusaktide sätted, mis on mõeldud inimkaubanduse ohvriks langenud isikute õiguste kaitsmiseks eksisteerivad ikka veel üksnes paberil ja nende tõlgendamine on enamikes ELi liikmesriikides alles vaevalt algusjärgus. Projektis „E-märkmed" osalevad organisatsioonid usuvad, et Euroopa Liit, ELi liikmesriigid ise ja ka kodanikuühiskond peaksid tegema rohkem jõupingutusi inimkaubanduse peatamiseks mõeldud poliitikaraamistiku aluse tugevdamiseks riiklikul ja ELi tasandil.

Samal ajal kui ELi inimkaubanduse vastaste poliitikate paljude aspektide rakendamise osas on vaja põhjapanevaid parendusi, keskenduvad projekti „E-märkmed" käigus välja töötatud alljärgnevad soovitused inimkaubanduse ohvriks langenud isikute õiguste kaitsmisele, kuna oleme veendunud, et see peaks olema iga riigi inimkaubanduse vastu suunatud jõupingutuste keskmes. Ent inimkaubanduse ennetamiseks ja selle ohvriks langenud isikute kaitsmiseks kasutatakse vastavaid sätteid kõige vähem.

Inimkaubanduse ohvriks langenud isikute identifitseerimine ja suunamine
Inimkaubanduse ohvriks langenud isikute õiguste kaitsmist saab ainult siis kindlustada, kui kõik eeldatavad ohvrid (olenemata nende koostööst võimudega) identifitseeritakse selle nime all. Projekti „E-märkmed" järeldused näitavad, et identifitseerimine on ikka veel väga nõrk side. Et liikmesriikides toimuvat identifitseerimisprotsessi parandada, me arvame, et on oluline, et

- liikmesriigid töötaksid välja kontrollnimekirjad ja/või näitajad koostöös õiguskaitse, prokuratuuride ja teenuseosutajatega, et abistada eeldatavate mis tahes ekspluateerimisvormi otstarbel toimunud inimkaubanduse ohvrite identifitseerimisel. Iga ekspluateerimisvormi, nt tööjõu ekspluateerimine, kodune orjus, seksuaalne ekspluateerimine, sunnitud kerjamine, sunnitud osalemine ebaseaduslikes tegevustes jne tarvis peaks tuvastatama täiendavad indikaatorid. tuleks välja töötada spetsiifilised näitajad lapsohvrite identifitseerimiseks;
- identifitseerimine ei ole üheainsa valitsusasutuse kohustus, vaid seda peaksid tegema multidistsiplinaarsed meeskonnad, kuhu kuuluvad ka inimkaubanduse ohvriks langenud inimestele teenuseid osutavad organisatsioonid;
- riiklikud struktuurid, mille ülesanne on suunamine, kas siis siseriiklikud suunamismehhanismid või muud, standardse töökorra rakendamisse kaasatud struktuurid peaksid põhinema tihedal ja regulaarsel koostööl õiguskaitseametnike, immigratsiooniametnike, tööinspektorite, vastavate kutseühingute, lastekaitseametite, prokuratuuride ja vabaühenduste või muude teenusepakkujate vahel;
- õigusemõistmise, sealhulgas hüvitiste nõudmise kättesaadavust inimkaubanduse ohvriks langenud isikutele parandab tasuta õigusabi tagamine kõigile identifitseeritud inimkaubanduse ohvriks langenud isikutele;
- kõik liikmesriigid tagavad, et kõigi inimkaubanduse ohvriks langenud isikute suhtes kohaldatakse individuaalset riskihindamist, juhul kui tehakse ettepanek, et nad oma koduriiki naaseksid.

Järelevalve

Täiendav järelevalve on ülioluline nii ELi kui siseriiklikul tasandil, nii et kõik olulised huvigrupid mõistaksid paremini mitte ainult seda mis eksisteerib paberil selles mõttes, et mis tuleks igas riigis teha inimkaubanduse peatamiseks, vaid ka seda, mis tegelikult toimub. Euroopa Liidu inimkaubandusvastase poliitika rakendamise, tagajärgede ja mõju paremaks mõistmiseks on pakiline, et

- riiklikud volinikud või võrdväärsed mehhanismid peaksid olema sõltumatud organid (nagu lepiti kokku 1997. aastal Haagi deklaratsioonis), et tagada inimkaubanduse vastaste meetmete sõltumatu ja võrreldav järelevalve; oluline on ka see, et tuvastatakse ja teatataks inimkaubanduse vastaste meetmete mõju ja ettenägematuid või isegi negatiivseid tagajärgi;
- asjaomane terminoloogia, statistika ja mõõtmise moodused (nt inimkaubanduse eest süüdi mõistetud isikute arv) peaksid olema standardiseeritumad;
- ELi ja tema liikmesriikide ning GRETA, Euroopa Nõukogu konventsiooni, milles käsitletakse inimkaubanduse vastu võetavaid meetmeid sõltumatu järelevalveorgani vahel peaks olema tihe koostöö, et vältida järelevalvetegevuse ebavajalikku kattumist.

Õigusaktid

- Vajalik on täiendav järelevalve, et kindlustada, et kõik siseriiklikud õigusraamistikud rakendavad 2002. aasta raamotsuses ja 2005. aasta Euroopa Nõukogu konventsioonis kokku lepitud inimkaubanduse mõistet.
- Tundub, et paljudes ELi liikmesriikides on märkimisväärne vajadus mõista paremini ekspluateerimise mõistet ja illegaalse ekspluateerimisega seonduvaid mitmesuguseid süütegusid, nii siis kui inimestega kaubitsetakse nende ekspluateerimiseks ja kui inimesed langevad illegaalse ekspluateerimise ohvriks ilma, et nendega oleks kaubitsetud.

Inimkaubanduse vastaste poliitikate koordineerimine riiklikul tasandil

- Kõik liikmesriigid, mis ei ole seda veel teinud, peaksid looma koordineeriva struktuuri ja riikliku tegevuskava, et muuta oma inimkaubanduse vastaseid poliitikaid koherentsemaks. Inim- ja finantsressursside tõhusama funktsioneerimise tarvis on määrava tähtsusega nende asjakohane eraldamine. Seetõttu oleks õige igal seirel kontrollida, mis vahendeid eraldatakse igas ELi liikmesriigis riikliku koordineeriva struktuuri rahastamiseks ja koordineerivate tegevuste toetamiseks.

8.6 Tiivistelmä

Vuonna 2009 neljä kansalaisjärjestöä sopi yhteishankkeesta nimeltä 'European NGOs Observatory on Trafficking, Exploitation and Slavery' (lyh. E-notes), jonka tarkoituksena oli monitoroida Euroopan Unionin (EU) jäsenmaiden hallitusten toimenpiteitä ihmiskaupan ja sen kaltaisen hyväksikäytön sekä orjuuden estämiseksi. Projektin koordinoi italialainen kansalaisjärjestö Associazione On the Road,[291] yhdessä alueellisen ihmiskaupan vastaisen verkoston, La Strada Internationalin, sekä kahden kansallisen järjestön ACCEMin[292] (Espanja) ALC:n[293] (Ranska) kanssa.

Hallitusten toimia monitoroivan pysyvän toimielimen perustamisen sijaan E-notes hanke ryhtyi keräämään tietoa siitä, mitä kaikissa EU:n 27 jäsenmaassa tapahtui. Tätä varten kehitettiin sopiva tutkimusmetodi sekä etsittiin yhteistyöjärjestö ja maatutkija jokaisesta jäsenmaasta. Hankkeen aluksi painotettiin tärkeyttä löytää indikaattorit, joilla jokaisen EU-jäsenmaan ihmiskaupan vastaisten toimien edistymistä voitiin mitata (ts. lait, toimintavat ja käytännöt joiden odotetaan vähentävän ihmiskauppaa ja suojelevan ja auttavan sen uhreja). Työkaluksi eri maiden hallitusten toimien tutkimiseen laadittiin 200 kysymystä sisältävä tutkimusprotokolla, jonka avulla tultaisiin arvioimaan ihmiskaupan vastaisten toimenpiteiden edistymistä EU:n jäsenmaissa.

1. Kansainväliset arviointikriteerit

Tutkimusprosessi alkoi vuoden 2010 alussa, juuri kun Euroopan neuvosto oli päättämässä keskusteluaan siitä, tulisiko laatia uusi asiakirja EU-jäsenmaiden ihmiskaupan vastaisten toimenpiteiden standardoimiseksi, joka korvaisi vuoden 2002 neuvoston puitepäätöksen ihmiskaupan torjunnasta. Vuonna 2009 Euroopan komissio antoikin ehdotuksensa uudeksi ihmiskaupan puitepäätökseksi. Neuvottelut päätöksen hyväksymisestä kuitenkin keskeytyivät Lissabonin sopimuksen voimaanastumisen vuoksi. Tämän seurauksena

291. Associazione On the Road tarjoaa kolmella alueella Italiassa (Marche, Abruzzo, Molise) laaja-alaisesti palveluja ja suojelua ihmiskaupan uhreille, turvapaikanhakijoille, pakolaisille sekä maahanmuuttajille. Sen toimiin kuuluu myös tiedotus, yhdyskuntatyö, tutkimus sekä vaikuttamistyö paikallisella, kansallisella sekä Euroopan tasolla.
292. ACCEM tarjoaa sosiaalipalveluja ja sen toimintapiiriin kuuluvat sosiaaliset- sekä lainopilliset kysymykset, päämääränä turvapaikanhakijoiden, pakolaisten, siirtolaisten sekä pakkosiirtolaisten auttaminen Espanjassa.
293. ALC on lyhenne sanoista *Accompagnement, Lieux d'accueil, Carrefour éducatif et social.* ALC koodinoi kansallista "Ac.Sé"-verkostoa, joka järjestää turva-asuntoja ihmiskaupan uhreille.

Euroopan komissio jätti käsiteltäväksi uuden ehdotuksen Euroopan parlamentin ja neuvoston direktiiviksi ihmiskaupan ehkäisemisestä ja torjumisesta sekä uhrien suojelemisesta, joka voimaantullessaan kumoaisi vuoden 2002 puitepäätöksen. Ehdotus siirrettiin maaliskuussa 2010 Euroopan parlamentin käsiteltäväksi. Syyskuussa 2010 kaksi parlamentin komiteaa ehdotti joukon muutoksia direktiiviehdotukseen, jonka seurauksena neuvosto, komissio ja Euroopan parlamentti alkoivat päästä yhteisymmärrykseen. Direktiivin odotettiin hyväksyttävän ennen vuoden 2010 loppua.

Vaikka kyseisen direktiivin sisältö vaikuttaa suhteellisen selkeältä, silloin kun E-notes monitorointihanke oli meneillään, touko-kesäkuussa 2010, direktiiviä ei oltu vielä hyväksytty, niinkuin ei myöskään lokakuussa 2010, jolloin tämä raportti saatiin valmiiksi. Niinpä päätettäessä siitä mitkä lailliset velvoitteet olisivat olennaisia kaikkien EU-maiden kattavien monitorointistandardien kannalta, hankkeessa päätettiin käyttää toista alueellista asiakirjaa, Euroopan neuvoston yleissopimusta ihmiskaupan vastaisesta toiminnasta. Euroopan neuvoston yleissopimus hyväksyttiin vuonna 2005 ja astui voimaan 2008. Elokuuhun 2010 mennessä kaikki jäsenmaat paitsi Tshekki olivat joko ratifioineett (19) tai allekirjoittaneet (7) EN:n yleissopimuksen ja täten sitoutuneet sen täytäntöönpanoon. Myös useat EU:n ulkopuoliset valtiot ovat ratifioineet yleissopimuksen.

2. Tutkimusmetodit

Hankkeen suunnitteli konsultti vuoden 2010 alussa. Erityistä huomiota hanketta suunnitellessa kiinnitettiin aikaisempiin julkaisuihin, jotka olivat ehdottaneet ihmiskaupan vastaisen toiminnan arvioimiseen käytettäviä indikaattoreita jäsenmaille. Kaikki käytetyt indikaattorit perustuivat Yhdistyneiden Kansakuntien lisäpöytäkirjaan ihmiskaupan, erityisesti naisten ja lasten kaupan, ehkäisemisestä, torjumisesta ja rankaisemisesta, joka hyväksyttiin vuonna 2000 tukemaan YK:n kansainvälisen järjestäytyneen rikollisuuden vastaista sopimusta (2000). Huomiota kiinnitettiin myös Euroopan komission julkaisuissa[294] esiintyneisiin kommentteihin EU-jäsenmaiden heikosta raportoinnista toimistaan ihmiskaupan ehkäisemiseksi tai niiden ihmisten auttamisek-

294. Esim.: Euroopan komissio, tiedonanto Euroopan parlamentille ja neuvostolle: "*Fighting trafficking in human beings - an integrated approach and proposals for an action plan*" (Euroopan komissio, viite COM(2005) 514 lopull. 18.10.2005); sekä Euroopan komission valmisteluasiakirja (Euroopan komissio, viite COM(2008) 657 lopull.), *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, lokakuu 2008.

si, joiden oletetaan[295] joutuneen ihmiskaupan uhreiksi. Joissain julkaisuissa huomautettiin, että jäsenmailta oli vaikea saada tietoa – päivitettyä tietoa tai tietoa ylipäätään – niiden ihmiskaupan vastaisesta toiminnasta. Julkaisuissa viitattiin myös ”yhtenäistetyn tiedonkeruun” puutteeeseen, eli siihen, että terminologia ja raportointitavat jäsenmaiden välillä eivät olleet yhtenäisiä. Samat ongelmat huomattiin myös E-notes hankkeen yhteydessä.

Euroopan komission dokumentissa vuodelta 2006[296] todettiin, että jäsenmaat raportoivat varsin vähän säännöistään ja käytännöistään liittyen ihmiskaupan uhrien suojeluun ja auttamiseen. Eräässä valmisteluasiakirjassa[297] vuodelta 2008 todettiin jälleen, että jäsenmailta oli vaikea saada tietoa autettujen ihmiskaupan uhrien määrästä, mutta huomautettiin myös, että vuonna 2006 yli 1500 ihmiskauppatapausta oli tutkittu 23:ssa maassa. Tämä kävi ilmi niiden maiden raporteista, jotka olivat tiedottaneet asiasta komissiolle tuona vuonna. Asiakirjassa myös kerrottiin, että useimmat jäsenmaat olivat ottaneet käyttöön harkinta-ajan, jonka aikana oletetut ihmiskaupan uhrit saivat pysyä kyseisessä maassa ja toipua kokemuksistaan, ennen kuin he joutuivat tekemään yhteistyötä viranomaisten kanssa. Kuitenkin vain viisi maata oli raportoinut, kuinka moni ihminen oli oikeasti hyötynyt harkinta-ajasta – ja luku oli vain 26.

Jäsenmaiden puutteellinen ja epätarkka raportointi ihmiskaupan vastaisesta toiminnastaan oli erityisen ongelmallista ihmiskaupan vastaiseen toimintaan osallistuville kansalaisjärjestöille. Toisaalta kehno raportointi osoitti, ettei edes Euroopan komissio kykene ottamaan selvää jäsenmaiden ihmiskaupan vastaisen toiminnasta. Toisaalta näytti myös siltä, että jäsenmaat jättivät huomioimatta ja täytäntöön panematta suuren osan ihmiskauppaan tai muuten ihmisoikeuksiin liittyvistä sitoumuksistaan.

Jotkut EU-maat olivat nimittäneet kansallisen ihmiskaupparaportoijan tiedottamaan oman ihmiskaupan vastaisten toimenpiteiden edistymisestä sekä esittämään siihen parannusehdotuksia. Monitorointihankkeessa vuoden 2010 puolivälissä kävi ilmi, että yhdeksällä 27:stä jäsenmaasta oli oma raportoija, mutta kaikki eivät julkaise säännöllisiä raportteja ja jotkut keskittyivät vain tietyntyyppiseen ihmiskauppaan, kuten naisten hyväksikäyttöön prostituutiossa, jättäen huomiotta muita ihmiskaupan muotoja vastaan tehdyt toi-

295. Termi ”oletettu” viittaa tässä henkilöön, jonka epäillään joutuneen ihmiskaupan uhriksi, mutta asiasta ei ole vielä tarkkaa tietoa saatavilla.
296. Euroopan komission raportti neuvoston puitepäätöksen 2002/629/YOS, tehty 19 päivänä heinäkuuta 2002, ihmiskaupan torjunnasta täytäntöönpanosta (Euroopan komissio viite COM(2006) 187 lopull. 02.05. 2006).
297. ks. alaviite nr. 294.

menpiteet. Kansallisten raportoijien nimittäminen kaikkiin EU-maihin edesauttaisi termien yhtenäistämisestä sekä tilastojen ihmiskaupan vastaisten toimenpiteiden vertailtavuutta.

Näissä olosuhteissa E-Notes hanke ryhtyi selvittämään, mitä tietoa oli saatavilla jäsenmaiden ihmiskaupan vastaisesta toiminnasta. Hanke pyrki ottamaan selvää niin ihmiskauppaan liittyvistä laeista, menettelytavoista ja käytännöistä, kuin siitäkin, montako ihmistä oli todettu joutuneen ihmiskaupan uhriksi ja kuinka monelle tarjotusta avusta jossain muodossa oli ollut hyötyä. Koska hanke toteutettiin touko-kesäkuussa 2010, oli tarkoitus alunperin kerätä tietoa vuoden 2009 tilanteesta. Pian kävi kuitenkin ilmi, että monen maan kohdalla tietoa vuodesta 2009 ei ollut saatavilla ollenkaan, tai se oli puuttellista, kun taas tietoa vuodesta 2008 oli saatavilla paljon paremmin.

Kansalaisjärjestöt, joita pyydettin etsimään maatutkija keräämään ja tuottamaan tietoa E-notes hanketta varten, työskentelivät lähinnä ihmiskaupan uhreiksi joutuneiden aikuisten, erityisesti naisten kanssa. Tietoa kerättiin myös alaikäisistä ihmiskaupan uhreista, vaikkakin monet kokivat tämän tiedon saamisen vaikeaksi. Monissa EU- maissa ihmiskaupan uhreiksi joutuneita aikuisia auttavat kansalaisjärjestöt, kun taas lastensuojeluun erikoistuneet valtion laitokset huolehtivat ihmiskaupan uhreiksi joutuneiden lasten tarpeista.

Kutakin maatutkijaa pyydettiin täyttämään 60-sivuinen tutkimusprotokolla ja kirjoittamaan vapaata tekstiä kohtiin, joissa pelkkä ”kyllä/ei” vastaus ei riittänyt kuvaamaan maan tilannetta. Heitä pyydettiin myös laatimaan lyhyt maaprofiilin maastaan, jossa kerrottaisiin laajemmin sekä maansa ihmiskauppatilanteesta että sitä vastaan tehdyistä toimenpiteistä. Kaikkien 27 tutkijan tuottama tieto käsiteltiin ja syötettiin yksinkertaiseen tietopankkiin heinäkuussa 2010. Tiedot analysoi sama konsultti, joka oli valmistellut tutkimusprotokollan. Hänen tehtävänään oli kartoittaa mahdollisia laajempia kuvioita – EU-maiden laiminlyöntejä ihmiskauppasäädösten noudattamisessa, kuten uhrien suojelussa ja avustamisessa – sekä laatia raportti tuloksista.

Maatutkijoita pyydettin mainitsemaan, oliko heidän tutkimansa maa pääasiassa lähtö-, kauttakulku-,vai kohdemaa, tai näiden yhdistelmä. Tässä luokittelussa ei keskitytty maan sisäiseen ihmiskauppaan. Suhteellisen harva maa laskettiin kuuluvan vain yhteen kolmesta kategoriasta; vain kaksi, Ranska ja Portugali, luokiteltiin lähinnä kohdemaaksi. Loput 25 maata luokiteltiin yhdistelmäksi: yksi oli sekä lähtö- että kohdemaa, kymmenen olivat sekä kauttakulku- että kohdemaita, ja yhdeksän kuuluivat kaikkiin kolmeen luokkaan.

3. Tutkimustulokset

Tutkimusprotokollan 230 kysymystä pyrkivät kartoittamaan tietoa useista eri aiheista, eikä ollutkaan mahdollista luoda ”mustavalkoista” profiilia siitä, mitkä jäsenmaat noudattivat sitoumuksiaan ja kunnioittivat ihmiskaupan uhrien ihmisoikeuksia. Viiden allaolevan teeman kohdalla voitiin kuitenkin arvioida ihmiskaupan vastaisen toiminnan edistymistä. Näissäkin tapauksissa saatavilla oleva tieto oli kuitenkin joko niin puuttellista tai niin huonosti saatavilla, että mitään mainituista tilastoista ei voida pitää luotettavina.

Taulukko 1 Edistyminen ihmiskaupan vastaisiin toimenpiteisiin liittyvissä avainkysymyksissä EU:n sisällä

Teema	Tilanne toukokuussa 2010
Ihmiskaupan vastaisten toimien koordinointi kansallisella tasolla	22 jäsenmaata on tietojen mukaan perustanut ihmiskaupan vastaisen toiminnan kansallinen koordinointimekanismin. Ranskalla, Saksalla, Kreikalla ja Maltalla ei kyseistä koordinointikehystä tietojen mukaan ole. Saksassa ja Italiassa ihmiskaupan vastaisia toimintaa ei ole organisoitu kansallisella tai liittovaltiotasolla, mutta tämä ei tarkoita että toiminta olisi ollut tehotonta. Ruotsi on nimittänyt kansallisen koordinaattorin kehittämään koordinointikehystä ihmiskaupan torjumiseen, mutta toiminta keskittyy vain prostituutioon liittyvän ihmiskaupan ehkäisemiseen.
Oletettujen ihmiskaupan uhrien tunnistaminen	11 jäsenmaassa yksittäinen valtion virasto tai toimintakehys on vastuussa (mahdollisten) ihmiskaupan uhrien tunnistamisesta ja 16 jäsenmaassa kyseistä vastuutahoa ei ole. Kuudella niistä maista, joilla ei ole valtiotason menettelyä tunnistamista varten, ei ole minkäänlaista muodollista standardimenettelyä (mahdollisten) ihmiskaupan uhrien tunnistamiseen (Itävalta, Bulgaria, Ranska, Saksa, Italia, Malta).
Mahdollisuus vähintään 30 päivän harkinta-aikaan	25 jäsenmaassa on säädetty ihmiskaupan uhrien toipumis- sekä harkinta-ajasta ja suuressa osassa jäsenmaista harkinta-aika täyttää minimivaatimukset. Italiassa harkinta-ajasta ei ole säädetty, mutta käytännössä harkinta-aikoja kuitenkin joskus myönnetään. Sama tilanne on saatujen tietojen mukaan myös Liettuassa. Vuonna 2008 harkinta-aika oli myönttetty 207 henkilölle yhteensä 11 jäsenmaassa. Vuodelta 2009 tietoa oli saatavilla 18 maasta ja harkinta-aikoja oli myönnetty yhteensä 1150.
Turvallinen ja vapaaehtoinen paluu ja niihin liittyvät toimenpiteet	Kuusi jäsenmaata (Ranska, Latvia, Portugali, Espanja ja Iso-Britannia; lisäksi Kreikalla on kahdenvälinen sopimus joka koskee vain lasten palauttamista) oli solminut ihmiskaupan uhrien palauttamista koskevan sopimuksen joko toisen EU-maan tai jonkin kolmannen maan kanssa. Sopimusten olemassaolo ei kuitenkaan tarkoita sitä, etteikö väärinkäytöksiä tai laiminlyöntejä tapahtuisi. Ihmiskaupan uhrin pala-

uttamista edeltävä riskiarvio tehdään vain kolmessa (Italia, Portugali, Romania) niistä 17:sta EU-maasta, joista tietoa oli saatavilla. Riskiarvioilla tarkoitetaan arvioita niistä mahdollisista riskeistä, joita palautettavalle henkilölle tai hänen perheelleen palauttamisesta koituisi.

Hyvitys-ja vahingonkorvaus-mahdollisuudet

Vuonna 2008 ihmiskaupan uhreille oli 18 jäsenmaassa (niistä 22:sta joista tietoa oli saatavilla) maksettu vahingonkorvauksia. Vuonna 2009 12 jäsenmaassa (20:stä) oli maksettu korvauksia joko oikeuskäsittelyn tuloksena tai muusta lähteestä. Yhdeksässä maassa korvauksia oli maksettu molempina vuosina (Itävalta, Tanska, Ranska,Saksa, Italia, Alankomaat, Espanja, Ruotsi ja Iso-Britannia).

Jäsenmaiden ihmiskaupan vastaisen toiminnan arvioiminen näiden viiden kysymyksen perusteella, kuten Yhdysvaltojen ulkoministeriö vuotuisessa TIP-raportissaan tekee, ei kuitenkaan olisi tarkoituksenmukaista: ensimmäisessä kolmessa kategoriassa eri mailla on erilaisia heikkouksia, kun taas kahdessa viimeisessä kategoriassa eri mailla on erilaisia vahvuuksia. Esimerkiksi Italia on ainoa maa, joka mainitaan kaikissa viidessä kategoriassa ja suoriutuu monessa suhteessa hyvin, mutta toisaalta sen ihmiskaupan vastainen järjestelmä on hyvin erilainen muihin EU-maihin verrattuna.

Näiden viiden kysymksen lisäksi hanke alkoikin selvittää monia muita kehityssuuntia. Hankkeessa pyrittiin muun muassa selvittämään käsittelikö **kunkin maan laki** kaikkia ihmiskauppaan liittyviä hyväksikäytön muotoja, esimerkiksi ihmiskauppaa prostituutiotarkoituksessa sekä muita seksuaalisen hyväksikäytön muotoja, pakkotyötä, orjuutta tai sen kaltaisiin oloihin saattamista tai elinkauppaa varten. Lopputulos oli, että yleisesti ottaen asia oli näin. Kahden maan – Viron ja Puolan – kerrotaan alkaneen uudistaa lainsäädäntöään tässä asiassa, mutta eivät ole vielä saaneet prosessia päätökseen. Lisäksi yhdessä maassa (Espanja) rikoslain määritelmä ihmiskaupasta tulee olemaan linjassa EU:n ja Euroopan neuvoston standardien kanssa vasta joulukuussa 2010.

Hankeen tarkoituksena oli myös ottaa selvää olivatko **kunkin maan määritelmät ihmiskaupasta** riittävän samanlaiset, jotta tiedot ihmiskauppaan syyllistyneiden ja ihmiskaupan uhreiksi luokiteltavista henkilöistä olisivat vertailukelpoisia. Tulokset olivat hyvin vaihtelevia. Esimerkiksi Ranskassa ihmiskaupparikos on määritelty niin laajasti, että lähes kenen tahansa parituksesta epäillyn katsotaan syyllistyneen ihmiskauppaan. Tämän tuloksena aluksi näytti siltä, että vuonna 2008 Ranskassa yli 900 ihmistä oli tuomittu ihmiskaupasta. Lähemmin tarkasteluna kävi kuitenkin ilmi, että yli puolet (521) oli tuomioita törkeästä parituksesta, jonka määritelmä on lähellä muiden EU-

maiden ihmiskauppamääritelmää. Sen sijaan vain 18 tuomiota liityi rikoksiin, jotka täyttivät EU:n 2002 puitepäätöksessä ja Euroopan komission yleissopimuksessa hyväksytyt alueelliset määritelmät. Suomessa tilanne on päinvastainen ja esiin nousi tapauksia, jotka alueellisten standardien mukaan olisi voinut laskea ihmiskaupaksi, mutta joita Suomessa tarkasteltiin vain parituksena.

Hankkeessa selvitettiin myös, **mitä kussakin maassa tarkoitettiin ihmiskaupan uhrien tunnistamisella** sekä, olivatko uhrit oikeutettuja harkinta-aikaan tai muuhun apuun ja suojeluun. Tulokset viittasivat siihen, että tunnistamisprosessit sekä arviointikriteerit sille, oliko henkilö joutunut ihmiskaupan uhriksi vai ei, vaihtelivat suuresti EU-maiden välillä - ikään kuin yleisiä standardeja ei olisi olemassa.

20 jäsenmaata 27:stä on perustanut **kansallisen toimintakehyksen ihmiskaupan vastaisen toiminnan koordinoimiseksi**. 22 jäsenmaalla on puolestaan kansallinen ihmiskaupan vastaisen toiminnan toimintasuunnitelma tai vastaava, tosin jotkut niistä keskittyvät vain seksuaaliseen hyväksikäyttöön liittyvään ihmiskauppaan. Useimmilla mailla on asiaan erikoistunut poliisiyksikkö. Jotkut maat määrittelevät kansallisella tasolla eri organisaatioiden roolit ihmiskaupan uhrien avustamisessa ja suojelussa sekä huolehtivat heidän tarvitsemistaan palveluista auttamisjärjestelmän kautta. 17 jäsenmaalla on auttamisjärjestelmä, yhdeksällä ei.
11 jäsenmaassamaassa vain yksi valtion virasto on vastuussa oletettujen ihmiskaupan uhrien tunnistamisessa ja 16 jäsenmaassa tällaista menettelyä ei ole. Seitsemässä niistä maista, joissa yksittäistä tunnistamismenettelyä ei ole, ei myöskään ole minkäänlaista standardimenettelyä oletettujen ihmiskaupan uhrien tunnistamiseen. Tämä ei kuitenkaan tarkoita sitä, että niissä maissa, joissa on yksittäinen tunnistamisjärjestelmä, tunnistaminen – sekä siten myös mahdollisuus apuun ja suojeluun – olisi tehokkaampaa. Tunnistamismenettelyjen yksityiskohdat, niiden tehokkuudesta sekä siitä miten näitä menettelyjä noudatetaan vaihtelivat suuresti eri maissa.

Tutkijat onnistuivat hankkimaan vain osittaista tietoa **12 kuukauden aikana 2008 ja 2009 tunnistettujen oletettujen ihmiskaupan uhrien määrästä** – yhteensä 4010 henkilöä 16 maassa, tosin osa henkilöistä on saatettu laskea kahteen kertaan, ts. ensin kohdemaassa ja sen jälkeen lähtömaassa. Hieman yli puolessa (55%) tapauksista viranomaiset varmistivat jälkeenpäin oletetut uhrit nimenomaan ihmiskaupan uhreiksi. Samoin laskettiin, että **yli 3800 oletettua ihmiskaupan uhria, (tiedot 16 maasta) oli vuonna 2009 ohjattu auttamisjärjestelmään.**

Jotkut oletetuista uhreista (koskien sekä lapsia että aikuisia) **katosivat** vuosina 2008 tai 2009 ennen kuin tunnistamisprosessi oli saatu päätökseen. Alaikäisiä oletettuja ihmiskaupan uhreja oli kadonnut kymmenessä maassa. Toiset kymmenen maata puolestaan ilmoitti, että ihmiskaupan uhreiksi alustavasti tunnistettuja aikuisia oli kadonnut.

Tutkijat keräsivät tietoa eri **suojeluun** liittyvistä aspekteista, eritoten seuraavista:

- Harkinta- ja toipumisajat
- Riskien arviointi
- Paluut (ts. ihmiskaupan uhrin palauttaminen kotimaahansa).

Tutkijat keräsivät myös tietoa **ihmiskaupan uhreille myönnetyistä harkinta-ajoista.** Vuonna **2008** yhteensä 207 henkilölle oli myönnetty harkinta-aika (tiedot 11 jäsenmaasta). Vuodelta **2009** tietoa oli saatavilla 18 maasta ja harkinta-aikoja oli myönnetty yhteensä 1150. Vuonna 2008 myönnettiin tiettävästi 1026 oleskelulupaa yhteensä yhdeksässä maassa. Laskettu n.100 oleskeluluvan maakohtainen keskiarvo antoi epätarkan kuvan tilanteesta. Myönnetyistä luvista 664 oli pelkästään Italiassa (sekä 810 kpl vuonna 2009), sekä 235 Alankomaissa. Tämä tarkoittaa, että vuonna 2008 loput seitsemän maata tiettävästi myönsi yhteensä 127 oleskelulupaa ihmiskaupan uhreille (ts. alle 20 lupaa per maa). Tämä viittaa siihen, että lait ja käytännöt oleskelulupien myöntämisissä ihmiskaupan uhreille vaihtelevat huomattavasti EU-maiden välillä.

Ihmiskaupan uhriksi joutuneille lapsille oli myönnetty lupa jäädä maahan[298] kuudessa maassa näiden kahden vuoden aikana: Ranskassa, Puolassa ja Isossa Britanniassa oli myönnetty tilapäinen oleskelulupa 18. ikävuoteen asti, Itävallassa ja Tanskassa sen sijaan lupa katsottiin pysyväksi. Italiassa ulkomaalaiset lapset, olivat he ihmiskaupan uhreja tai eivät, saavat oleskella maassa 18. ikävuoteen asti. Ihmiskaupan uhriksi joutuneille lapsille voidaan myöntää oleskelulupa samoin perustein kuin ihmiskaupan uhriksi joutuneille aikuisille artikla 18:n mukaan. Alankomaissa lapsille oli myönnetty lupa jäädä maahan, mutta saatavilla olevan tiedon perusteella oli vaikea arvioida, olivatko myönnetyt luvat pysyviä.

Palauttamisiin liittyen tutkjat pyrkivät selvittämään, mitkä palautukset olivat vapaaehtoisia ja mitkä pakotettuja, kuinka monta oletettua ihmiskaupan uhria oli palautettu ja missä olosuhteissa. Tutkimukset vahvistivat, että kuudella EU-jäsenmaalla on palautussopimus muiden maiden kanssa. Koska

298. Yleinen termi, jolla tarkoitetaan ulkomaalaisen laillista lupaa jäädä maahan joko väliaikaisesti tai pysyvästi (Eng. leave to remain)

näistä kuudesta maasta viisi oli kohdemaita, sopimukset oli tehty lähinnä niiden maiden kanssa, joiden oli katsottu olevan lähtömaita.

Tietoa **vuonna 2008 palautetuista aikuisista** oli saatavilla 15 maasta: 194 henkilöä palautettiin kotimaahansa 12 maasta (Itävalta, Kypros, Tshekki, Tanska, Ranska, Kreikka, Italia, Latvia, Alankomaat, Puola ja Slovenia). Vuonna 2008 eniten palautettiin Alankomaista (37), Italiasta (31), Kyprokselta (24), Saksasta (23) ja Tanskasta (21). Tietoa **vuoden 2009 palautuksista** oli saatavilla vain kymmenestä maasta. Vuonna 2009 yhteensä 171 henkilöä palautettiin yhteensä kymmenestä maasta, joista yli puolet palautettiin Kreikasta. Lopuista 22 palautettiin Itävallasta, 23 Puolasta ja lopusta seitsemästä maasta palautettiin vain yhteensä 19 henkilöä.

On ilmeistä, että palautettujen henkilöiden lukumäärän ja autettujen uhrien tai oletettujen ihmiskaupan uhrien määrän välillä on suuri epäsuhta kussakin maassa. Kerätty tieto viittaa kuitenkin jälleen kerran siihen, että kriteerit oletettujen uhrien palauttamispäätöksille vaihtelivat paljon maittain ja palautettujen henkilöiden lukumäärä ei ollut suhteessa ihmiskaupan uhreiksi tunnistettujen ja myönnettyjen harkinta-aikojen kokonaislukumääriin.

Vuosina 2008 ja 2009, **oletetuiksi ihmiskaupan uhreiksi tunnistettuja EU-maiden kansalaisia** autettiin ja suojeltiin 19 jäsenmaassa samoin perustein kuin ns. kolmansien maiden kansalaisia EU:n ulkopuolelta. Kuitenkin kuudessa jäsenmaassa (Saksa, Unkari, Latvia, Liettua, Romania ja Espanja) muiden EU-maiden ihmiskaupan uhreiksi tunnistetut kansalaiset eivät saaneet samantasoista avustusta kuin ns. kolmansien maiden kansalaiset. Joillakin muiden EU-maiden kansalaislla on kerrottu olleen vaikeuksia tulla tunnistetuksi ihmiskaupan uhriksi tai saada apua. Tämä tarkoittaa kaikesta huolimatta sitä, että useimmissa Länsi-Euroopan maissa, joissa useimmat EU-maiden kansalaiset Keski-Euroopassa joutuivat ihmiskaupan uhriksi, uhreja oli kuitenkin autettu. Vuosina 2008 ja 2009, 14 jäsenmaassa (tieto 25 maasta) EU-kansalaiset tunnistettiin uhreiksi ja heitä autettiin samoin perustein kuin EU:n ulkopuolelta tulleita.

Liittyen **ihmiskaupan uhreiksi joutuneiden oikeudessa todistavien aikuisten tai lasten suojeluun,** kävi ilmi, että noin puolella EU:n jäsenmaista oli toimenpiteitä uhritodistajien suojelemiseksi. Tutkimuksessa oikeudenkäynnissä suojeluksi laskettiin uhritodistajien mahdollisuus todistaa esikuulusteluissa esimerkiksi tutkintatuomarin edessä ilman, että henkilön tarvitsisi osallistua julkiseen tuomioistuinkäsittelyyn, sekä uhrien mahdollisuus todistaa videoyhteyden kautta tai tulla suojatuksi syytetyn näkemäksi tulemiselta. Kuitenkin tutkimusten mukaan viidessä maassa (Tshekki, Tanska, Ranska, Portugali ja

Iso-Britannia) oli ollut tapauksia, joissa uhrin henkilöllisyys oli tullut julki oikeuskäsittelyssä, vaikka sen olisi pitänyt pysyä luottamuksellisena.

Anti-Slavery Internationalin[299] ja OSCE:n[300] viimeisimmissä tutkimuksissa todettiin, että vaikka uhreilla on oikeus vahingonkorvauksiin ja että useita korvausmekanismeja on olemassa, uhriksi joutuneet saavat korvauksia erittäin harvoin. Kuitenkin vuonna 2008 12 maassa, niistä 22:sta joista tietoa oli saatavilla, ihmiskaupan uhreille oli maksettu vahingonkorvauksia ja vuonna 2009 12 maassa (20:stä) oli maksettu korvauksia joko oikeuskäsittelyn tuloksena tai muusta lähteestä. Yhdeksässä maassa korvauksia oli maksettu molempina vuosina (Itävalta, Tanska, Ranska,Saksa, Italia, Alankomaat, Espanja, Ruotsi ja Iso-Britannia).

Tutkimuksissa ei keskitytty lukuisiin ihmiskaupan **ennaltaehkäisykeinoihin** erityisen yksityiskohtaisesti, vaan pyrittiin kartoittamaan, mitä tietoa oli saatavilla siirtolaisista ennen ja jälkeen heidän saapumisensa maahan, jossa ihmiskaupan uhrit olivat tietojen mukaan joutuneet hyväksikäytetyksi.

Euroopan neuvoston yleissopimus edellyttää maita ”harkitsemaan **kansallisen raportoijan** tai jonkin muun mekanismin nimittämistä kansallisen ihmiskaupan vastaisen toiminnan ja lainsäädännön toimeenpanon monitoroimiseksi”. Vaikka säädös edellyttää maita vain harkitsemaan kyseistä nimitystä, on täysi syy epäillä, että tuleva EU direktiivi tulee olemaan huomattavasti tiukempi tässä asiassa vaatien EU-maita nimittämään kansallisen raportoijan tai vastaavan mekanismin. Maaliskuussa 2009 pidetyssä kansallisia raportoijia käsittelevässä konferenssissa mainittiin, että 12 EU-maata oli jo nimittänyt oman kansallisen ihmiskaupparaportoijan tai kehittänyt vastaavan mekanismin monitoroimaan valtion ihmiskaupan vastaisia toimenpiteitä. Tutkijat vahvistivat, että yhdeksällä EU:n 27 jäsenmaasta oli oma ihmiskaupparaportoija (Kypros, Tshekki, Suomi, Latvia, Liettua, Alankomaat, Portugali, Romania ja Ruotsi), kun taas 16:lla ei ollut. Useiden maiden raportoijat kuitenkin keskittyivät tietojen mukaan ainoastaan seksuaaliseen hyväksikäyttöön liittyvään ihmiskauppaan (kuten esim. Ruotsissa). Monissa maissa (esim. Belgia ja Espanja) ihmiskaupan vastaista toimintaa monitoroi erillinen valtion laitos. Kolmessa niistä yhdeksästä maasta, joilla on oma raportoija (Latvia, Liettua ja Ruotsi), ei raportoijan rooli ole kuitenkaan täysin ihmiskaupan vastaisiin operaatioihin osallistuvista osapuolista riippumaton rajoittaen täten heidän riippumattomuuttaan ja potentiaalisesti heikentäen heidän kykyään arvioida toimintaa riippumattomasti.

299. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
300. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

3. Päätelmät ja suositukset

E-notes-hankkeen tuloksena kävi ilmi, että EU:n sisäisen ihmiskaupan vastaisen politiikan ja käytäntöjen peruskysymyksissä on huomattavia eroja EU-jäsenmaiden välillä, kuten esimerkiksi kansallisessa ihmiskaupan kieltävässä lainsäädännössä ja ihmiskaupan määritelmissä tai asianomaisten valtion toimielinten tulkinnoissa, työtä koordinoivien toimielimien olemassaolossa sekä ihmiskaupan uhrien tunnistamisessa. Hankkeessa ilmeni myös, että monet kansalliset ja kansainväliset säädökset, jotka on tarkoitettu ihmiskaupan uhrien oikeuksien turvaamiseksi, ovat olemassa vain paperilla ja niiden täytäntöönpano on hädin tuskin aloitettu suurimmassa osassa EU-maita. E-notes-hankkeeseen osallistuneet organisaatiot ovat sitä mieltä, että Euroopan Unionin, EU-jäsenmaiden sekä kansalaisyhteiskunnan tulisi keskittää enemmän huomiota ihmiskaupan vastaisen yleisen toimintakehyksen vahvistamiseen sekä kansallisella että EU-tasolla.

Monien EU:n sisäisten ihmiskaupan vastaisten toimenpiteiden täytäntöönpanossa on edelleen parantamisen varaa. Seuraavat suositukset keskittyvät kuitenkin lähinnä ihmiskaupan uhrien oikeuksien turvaamiseen, sillä olemme vakuuttuneita siitä, että tämän tulisi olla kaikkien valtioiden ihmiskaupan vastaisen työn ydin. Tästä huolimatta ihmiskaupan ehkäisemiseen ja uhrien suojeluun liittyvien säädösten täytäntöönpano oli tutkimuksen mukaan kaikkein heikointa.

Ihmiskaupan uhrien tunnistaminen ja auttaminen
Ihmiskaupan uhrien oikeudet voidaan turvata vain, mikäli uhrit, huolimatta heidän yhteistyöhaluisuudestaan viranomaisten kanssa, tunnistetaan. E-notes hankkeen tulokset osoittavat, että uhrien tunnistaminen on ihmiskaupan vastaisen toiminnan heikoin osa-alue. Siksi on tärkeää, että:

- Jäsenmaat kehittävät ihmiskaupan uhrien tunnistamista edesauttavia indikaattorilistoja yhdessä lainvalvontaviranomaisten, syyttäjien ja palveluntarjoajajärjestöjen kanssa. Indikaattorit tulisi kehittää eri hyväksikäytön muodoille, jotta ihmiskauppa voitaisiin riippumatta siitä, missä muodossa hyväksikäyttö tapahtuu. Alaikäisten uhrien tunnistamiseen tulisi kehitettää omat erityisindikaattorit.
- Uhrien tunnistaminen ei tulisi olla yksittäisen valtion toimielimen vastuulla, vaan se tulisi toteuttaa moniammatillisena yhteistyönä. Myös uhreille palveluja tarjoavat järjestöt tulisi sisällyttää näihin eri toimijoista kuuluviin asiantuntijaelimiin.
- Kansalliset auttamisjärjestelmät tulisi toteuttaa toteuttaa lainvalvontaviranomaisten, maahanmuuttoviranomaisten, työsuojeluviranomaisten,

ammattiliittojen, lastensuojeluviranomaisten, syyttäjäviranomaisten sekä kansalaisjärjestöjen ja muiden palveluntarjoajien yhteistyönä.
- Ihmiskaupan uhrien oikeuksien toteutumista, esimerkiksi vahingonkorvausten saamista, olisi parannettava takaamalla ilmainen oikeusapu kaikille tunnistetuille uhreille.
- Jäsenmaiden tulisi varmistaa, että kaikkien ihmiskaupan uhrien kohdalla suoritetaan riskiarviointi ennen uhrin palauttamista kotimaahansa.

Monitorointi

Monitoroinnin jatkaminen on olennaisen tärkeää niin EU:n kuin kansallisellakin tasolla. Vain näin voidaan saada tietoa sekä siitä, mitä säädöksiä on olemassa, että siitä, mitä niiden täytäntöönpanemiseksi kussakin maassa tulisi tehdä. Jotta saataisiin parempi käsitys Euroopan Unionin ihmiskaupan vastaisen politiikan täytäntöönpanosta, vaikutuksista ja seuraksista, on tärkeää, että:
- Kansalliset raportoijat tai vastaavat mekanismit ovat itsenäisiä toimielimiä (Haagin julistuksen 1997 mukaisesti), jotta tulosten itsenäinen ja vertailukelpoinen monitorointi voidaan taata. On myös tärkeää, että ihmiskaupan vastaisten toimien – ennalta-arvaamattomat ja mahdolliset negatiivisetkin – seuraukset tunnistetaan ja raportoidaan.
- Terminologiaa, tilastoja sekä mittauskeinoja (esimerkiksi ihmiskaupasta syytettyjen lukumäärä) tulisi yhdenmukaistaa.
- Päällekkäisyyksien välttämiseksi EU:n, sen jäsenmaiden sekä Euroopan neuvoston ihmiskaupan vastaisen toiminnan yleissopimuksen monitoroinnista huolehtivan GRETAn tulisi tehdä tiiviimpää yhteistyötä.

Lainsäädäntö
- Olisi varmistettava, että kaikkien jäsenmaiden lainsäädännön ihmiskauppamääritelmä on linjassa vuoden 2002 puitepäätöksen sekä Euroopan neuvoston vuoden 2005 yleissopimuksen kanssa.
- Useissa EU-maissa tuntuu olevan suuri tarve selventää käsitystä siitä, mitä ”hyväksikäytöllä” tarkoitetaan ja mitä kaikkia rikoksia siihen voi liittyä.

Ihmiskaupan vastaisten toimien kansallinen koordinointi
- Niiden jäsenmaiden, jossa ihmiskaupan vastaista toimintasuunnitelmaa tai ihmiskauppatyön koordinointikehystä ei vielä ole, tulisi pikimmiten kehittää sellaiset. Ihmiskaupan vastaiseen toimintaan tulisi myös ohjata riittävästi sekä taloudellisia että henkilöresursseja, jotta ihmiskaupan vastaisen toiminnan koordinointi ja täytäntöönpano olisi mahdollista. Tulevien monitorointihankkeiden tulisi selvittää, kuinka paljon kukin EU-maa ohjaa resursseja ihmiskaupan vastaisen toiminnan koordinointiin.

8.7 Note de synthèse

En 2009 quatre organisations non-gouvernementales (ONG) se sont mises d'accord pour participer à un projet commun intitulé « Observatoire des ONG européennes sur la traite des êtres humains, l'exploitation et l'esclavage » (en abrégé: E-notes), ayant comme objectif général d'observer ce que font les gouvernements dans l'ensemble de l'Union européenne (UE) pour mettre fin à l'esclavage, la traite des êtres humains et aux différentes formes d'exploitation associées à la traite des êtres humains. Une ONG italienne, Associazione On the Road,[301] a coordonné le projet en commun avec un réseau régional, La Strada International, et deux ONG nationales, ACCEM,[302] basée en Espagne, et ALC,[303] basée en France.

Au lieu de créer une institution permanente chargée d'observer les politiques gouvernementales, le projet E-notes a cherché à rassembler des informations sur ce qui se faisait dans chacun des 27 États membres de l'UE. Cela impliquait de développer une méthode de recherche, et d'obtenir la participation d'ONG et de chercheurs dans chacun des 27 pays. Pour commencer, le projet a mis l'accent sur le rôle d'**indicateurs** visant à mesurer le progrès des actions de lutte contre la traite de chacun des États membres de l'UE (en matière de législations nationales, politiques, mesures et pratiques susceptibles de lutter contre la traite des êtres humains et de protéger et d'assister toute personne victime de traite). Ces indicateurs ont été repris dans un outil de recherche et déclinés au travers d'une liste de plus de 200 indicateurs visant à évaluer les progrès réalisés dans ces domaines dans chaque pays de l'UE.

1. Les normes sur la base desquelles le projet d'observation a rassemblé les informations

Le processus de recherche a commencé début 2010 alors que le Conseil européen semblait finaliser l'examen d'un nouvel instrument communautaire destiné à standardiser les actions de lutte contre la traite des êtres humains dans

301. Associazione On the Road fournit une large gamme de services et de protection aux personnes victimes de traite, demandeurs d'asile, réfugiés et migrants en général dans trois régions italiennes (Marches, Abruzzes, Molise). Elle s'intéresse aussi à la sensibilisation, au travail communautaire, la recherche, la mise en réseau et aux initiatives de développement politique au niveau local, national et européen.
302. ACCEM fournit des services sociaux et entreprend des actions dans le domaine social et juridique en faveur des demandeurs d'asile, des réfugiés, des personnes déplacées et des migrants en Espagne.
303. ALC signifie *Accompagnement, Lieux d'accueil, Carrefour éducatif et social.* ALC coordonne le réseau national pour trouver des logements sûrs pour des personnes victimes de traite, connu comme « Ac.Sé ».

les États membres de l'UE (et devant remplacer la *Décision cadre du Conseil sur la lutte contre la traite des êtres humains*, adoptée en juillet 2002). En 2009, la Commission européenne avait en effet présenté un projet de nouvelle Décision cadre sur la traite des êtres humains. En raison de l'entrée en vigueur du Traité de Lisbonne qui a interrompu toutes les procédures législatives en cours, les négociations au sein du Conseil sur l'adoption de la nouvelle Décision cadre n'ont pas pu progresser. La Commission européenne a donc présenté une *nouvelle proposition de Directive du Parlement européen et du Conseil concernant la prévention de la traite des êtres humains et la lutte contre ce phénomène, ainsi que la protection des victimes*, abrogeant la Décision cadre de 2002. En mars 2010 ce projet a été soumis au Parlement européen pour examen. En septembre 2010 deux commissions du Parlement ont proposé une série d'amendements au projet de directive, et le processus d'établissement d'un accord entre le Conseil, la Commission et le Parlement européen a commencé. On s'attendait à ce que la directive soit adoptée avant la fin de 2010.

Les grandes lignes des dispositions de cette nouvelle directive semblent être assez claires, mais à l'époque où le projet d'observation E-notes a été réalisé, en mai et juin 2010, la directive n'était toujours pas adoptée (elle ne l'était toujours pas au moment où ce rapport a été finalisé en octobre 2010). Au moment de décider à quelles obligations juridiques se référer pour évaluer les progrès réalisés dans chaque État membre de l'UE en matière de lutte contre la traite des êtres humains, le projet a opté pour l'utilisation d'un autre instrument régional, à savoir la *Convention sur la lutte contre la traite des êtres humains* du Conseil de l'Europe. Celle-ci a été adoptée en mai 2005 et elle est entrée en vigueur en février 2008. En août 2010, tous les États membres de l'UE à l'exception de la République tchèque) avaient en effet soit ratifié la Convention du Conseil de l'Europe (19), soit l'avaient signée (7) et de ce fait exprimé leur intention de l'appliquer.

2. Les méthodes utilisées

Le projet d'observation a été conçu par un expert indépendant au début de 2010. Une attention particulière a été prêtée aux publications précédentes qui avaient déjà proposé des « indicateurs » d'évaluation des progrès réalisés en matière de mise en œuvre des normes régionales et internationales au sein des législations et pratiques des Etats membres de l'UE (lesquelles se basent toutes sur le *Protocole visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants* des Nations Unies, adopté en 2000 pour compléter la *Convention contre la criminalité transnationale organisée* de l'ONU (2000)). Une attention particulière à été également prêtée aux commentaires

faits dans diverses publications de la Commission européenne[304] sur les faiblesses constatées dans la manière dont les États membres rendent compte de leurs actions visant à lutter contre la traite des êtres humains ou à protéger et assister les personnes présumées[305] victimes de traite. Plusieurs publications ont ainsi constaté qu'il était difficile d'obtenir des informations de la part des États membres (parfois des informations actuelles, parfois des informations tout court) sur leurs pratiques en matière de lutte contre la traite. Quelques-uns renvoyaient à un manque de « collecte de données harmonisée », en suggérant que les États membres de l'UE n'utilisaient pas d'une manière conséquente la terminologie ou les mécanismes communs d'information. Tous ces problèmes ont été confirmés au cours du projet E-notes.

Un document de la Commission européenne publié en 2006[306] souligne le fait que les États membres livrent peu d'informations sur leurs législations et pratiques relatives à la protection ou l'assistance aux personnes victimes de traite. En 2008, un document de travail[307] soulignait à nouveau qu'il était difficile d'obtenir des informations des États membres sur le nombre des personnes victimes de traite qui avaient reçu une assistance, mais constatait qu'en 2006 les États qui avaient répondu à la Commission avaient révélé que plus de 1.500 cas de traite des êtres humains avaient fait l'objet d'enquêtes dans 23 États membres au courant de l'année. La Commission constatait en outre que la plupart des États membres de l'UE avaient introduit une période de réflexion pour permettre aux personnes présumées victimes de traite de se maintenir dans le pays et de se rétablir avant de décider quant à une éventuelle coopération avec les autorités. Cependant, seuls cinq pays avaient alors signalé combien de personnes avaient bénéficié de ce droit, et le total s'élevait à seulement 26 individus sur ces 5 pays sur toute l'année 2006!

Pour les ONG spécialisées dans le travail de lutte contre la traite (soit qu'elles fournissent des services – assistance – aux personnes présumées victimes de

304. Comme par exemple: Commission européenne, Communication au Parlement européen et au Conseil « *Lutter contre la traite des êtres humains – approche intégrée et propositions en vue d'un plan d'action* » (référence de la Commission européenne COM(2005) 514 final du 18 octobre 2005); et le document de travail de la Commission européenne (référence de la Commission européenne COM(2008) 657 final), *Évaluation et suivi de la mise en œuvre du plan de l'UE concernant les meilleures pratiques, normes et procédures pour prévenir et combattre la traite des êtres humains*, octobre 2008.
305. Le terme « présumé » se réfère à une personne dont on soupçonne qu'elle soit victime de traite sans que des informations définitives sur ce qu'elle a subi ne soient disponibles.
306. Rapport de la Commission européenne sur l'application de la Décision cadre de 2002 du Conseil du 19 juillet 2002 relative à la lutte contre la traite des êtres humains (référence de la Commission européenne COM(2006) 187 final du 2 mai 2006).
307. Voir note 304 ci-dessus.

traite, soit qu'elles s'engagent dans des initiatives visant à prévenir la traite), le manque d'exactitude ou de précision dans les données fournies par les États membres de l'UE à la Commission européenne était inquiétant. D'une part cela suggérait que personne, même pas la Commission européenne, n'était en mesure d'appréhender ce qui se passait dans l'ensemble de l'UE. D'autre part, cela suggérait également que bon nombre de dispositions des traités régionaux ou internationaux concernant la traite des êtres humains ou d'autres droits humains, bien qu'ayant été formellement adoptées, étaient ignorées par les États et n'étaient pas mises en application.

Quelques États membres de l'UE ont désigné un Rapporteur national sur la traite des êtres humains avec pour mission d'informer le gouvernement et d'autres instances sur les progrès réalisés en matière de lutte contre la traite dans le pays et de formuler des recommandations pour améliorer les pratiques nationales. Dans 9 des 27 États membres de l'UE, un tel Rapporteur national a été signalé dans le projet d'observation de la mi-2010. Mais tous les pays ne publient pas de rapports réguliers et quelques-uns, lorsqu'ils publient un tel rapport mettent l'accent sur la traite à des fins spécifiques (comme la traite de femmes en vue de la prostitution) sans signaler d'éventuelles actions de lutte contre la traite à d'autres fins. À long terme, si chaque Etat membre désignait un Rapporteur national, ces rapporteurs pourraient introduire des définitions standards des termes et des moyens de mesurer les données statistiques relatives à la traite des êtres humains de sorte à pouvoir établir des comparaisons sérieuses entre les actions des différents États de l'UE.

Dans ce contexte, le projet d'observation E-Notes a cherché à appréhender quelles informations étaient disponibles dans tous les États membres de l'UE sur leurs lois, politiques et pratiques en matière de traite des êtres humains, combien de personnes étaient identifiées comme « victimes de traite » et bénéficiaient d'une certaine forme de protection, combien recevaient une assistance, etc. Comme le projet a été réalisé en mai et juin 2010, l'intention initiale était de rassembler des informations sur la situation dans chaque pays en 2009. Cependant il s'est très vite avéré que dans beaucoup de pays les informations n'étaient soit pas disponibles pour l'année 2009, soit seulement de manière incomplète, tandis que des informations plus détaillées étaient disponibles pour 2008.

Les ONG auxquelles il avait été demandé d'identifier un chercheur qui rassemble et rédige les informations pour le projet d'observation E-notes étaient pour la plupart des ONG dont l'expérience se rapportait aux adultes victimes de traite (particulièrement des femmes). Elles ont également réuni des informations sur la traite des enfants, bien que nombre d'entre elles ont rencontré

d'importantes difficultés dans l'obtention d'informations sur les enfants victimes de traite. Dans de nombreux Etats de l'UE, les adultes victimes de traite peuvent être assistés ou accompagnés par des ONG, tandis que les agences gouvernementales responsables de la protection des enfants ont un monopole des soins aux enfants victimes de traite.

Chaque chercheur était invité à compléter un protocole de recherche de 60 pages, à fournir un texte libre supplémentaire sur de nombreux points auxquels des réponses par « oui » et « non » n'étaient pas adéquates, et à rédiger un « profil » succinct de son pays portant sur les formes de traite à l'œuvre dans son pays et les politiques adoptées par le gouvernement. Les informations préparées par les 27 chercheurs ont été traitées et saisies dans une simple base de données en juillet 2010. Elles ont été analysées par l'expert indépendant qui avait préparé le protocole de recherche, afin d'identifier des schémas possibles – des défaillances particulières de la part des États membres de l'UE à respecter leurs obligations de protection et d'assistance des personnes victimes de traite – et à préparer un rapport sur les résultats.

Les chercheurs étaient invités à formuler des commentaires sur le fait de savoir si leur pays était principalement un pays d'origine, de transit ou de destination, ou une combinaison de ces possibilités. Cette catégorisation ne portait donc pas sur les cas de traite interne. Relativement peu de pays ont été catégorisés comme appartenant seulement à l'une des trois catégories (deux, la France et le Portugal, étaient décrits comme principalement des pays de destination). Les autres 25 Etats ont été considérés comme des combinaisons: soit de pays d'origine et de destination (un seul cas) ; soit comme pays de transit et de destination (10 pays) ; soit comme une combinaison de toutes les trois possibilités (9 pays).

3. Résultats de l'enquête

Les 230 questions du protocole de recherche avaient pour objectif de récolter des informations sur de nombreuses questions très variées. Il est par conséquent très difficile d'en déduire un profil "noir et blanc" sur le fait de savoir si les Etats membres de l'UE respectent ou non leurs engagements et les droits humains des personnes victimes de traite des êtres humains. Cependant, il a été possible d'évaluer les progrès réalisés sur 5 points spécifiques. Il est à noter, que même sur ces points, l'information disponible était soit incomplète soit non accessible ce qui fait qu'aucune des statistiques présentées ci-dessous ne peut être considérée comme sure. Les cinq points suscités sont résumés dans le tableau ci-dessous:

Tableau 1: Progrès réalisés en Europe sur des points essentiels de la lutte contre la traite des êtres humains

Thématique	Situation en mai 2010
Coordination des politiques anti-traite au niveau national	22 Etats sur 27 Etats membres ont établi une structure de coordination nationale des politiques de lutte contre la traite. Les 5 pays qui n'en n'ont pas sont: la France, l'Allemagne, la Grèce, l'Italie, et Malte. En Italie et en Allemagne, les structures ne sont pas nationales mais régionales ou fédérales, ce qui ne signifie pas que ce soit inadéquat. La Suède a nommé un coordinateur national qui a pour mission de mettre en place une structure de coordination nationale, mais seulement en ce qui concerne la traite aux fins d'exploitation sexuelle.
L'identification des victimes présumées	11 Etats membres sur 27 ont dit avoir une agence unique responsable de l'identification formelle et officielle des victimes potentielles contre 16 qui n'en n'ont pas. Parmi ces derniers, 6 pays n'ont pas de procédures standardisée utilisée sur l'ensemble du territoire national pour identifier les victimes de la traite (Autriche, Bulgarie, France, Allemagne, Italie, Malte).
Période de réflexion de 30 jours	Seuls 2 pays n'ont pas adopté dans leur loi de période de réflexion pour les personnes susceptibles d'être victimes de traite des êtres humains – la plupart des Pays semblant adhérer à des standards minimum sur ce point. En Italie, il n'y a pas de législation instituant un délai de réflexion mais en pratique il est parfois disponible. En Lituanie, une situation similaire nous a été rapportée. En 2008, nous n'avons récolté des informations que pour 11 pays pour un total de 207 personnes qui auraient bénéficié de ce délai de réflexion. En 2009, l'information était disponible dans 18 Etats pour un total de 1150 personnes victimes ou potentiellement victimes, ce qui démontre une réelle amélioration.
Les procédures d'identification des risques en cas de retour	Six Etats membres sont apparus au terme des recherches comme ayant conclu des accords avec d'autres Etats membres ou des Etats tiers concernant le retour de personne victime de traite (France, Lettonie, Portugal, Espagne et Grande-Bretagne, sachant que la Grèce a un accord bilatéral limité aux enfants victimes de traite), même si ces accords semblent avoir constitué des garanties plutôt faibles contre d'éventuels abus. Seulement dans trois pays, les chercheurs ont constaté qu'il existait des procédures systématiques d'identification des risques encourus en cas de retour pour les personnes susceptibles d'être victimes de traite (Italie, Portugal et Roumanie).
Accès à des compensations	Sur les 22 Etats membres où l'information était disponible en 2008, des victimes de traite ont fait l'objet d'indemnisation dans 12 pays. De même en 2009, il est apparu que des personnes victimes de traite avait bénéficié d'une telle indemnité dans 12 pays sur 20 où l'information était disponible. Les 9 pays dans lesquels il est apparu que des victimes avaient bénéficié de cette indemnité sur les deux années sont: l'Autriche, le Danemark, la France, l'Allemagne, l'Italie, les Pays-Bas, l'Espagne, la Suède et la Grande-Bretagne.

Jugés sur ces cinq points, il serait inapproprié de vouloir essayer de créer une échelle des performances des Etats (comme le fait un rapport annuel du Département d'Etat américain) sachant que dans les trois premières catégories ce sont des Etats différents, dans la plupart des cas, qui sont identifiés comme présentant des faiblesses alors que dans les deux dernières catégories il y a une variété d'Etat qui font ce qui est jugé comme bon. Par exemple, l'Italie est le seul pays qui est cité dans les bons exemples sur ces cinq points mais qui a un système de lutte contre la traite qui est relativement différent de la plupart des autres pays européens.

Le projet a eu pour ambition d'évaluer beaucoup d'autres aspects que les cinq points abordés ci-dessus. Il a par exemple vérifié si **la loi de chaque pays** prenait en compte les différents types d'exploitation associés avec la traite des êtres humains (i.e. la traite en vue de « l'exploitation de la prostitution et des autres formes d'exploitation sexuelle », en vue de l'exploitation du travail ou des services d'une personne dans le cadre du travail forcé, l'esclavage ou les pratiques analogues à l'esclavage, la servitude en en vue du trafic d'organes). La conclusion à laquelle le projet est arrivé est que les pays dans leur ensemble prenaient en compte ces différents aspects. Deux pays, l'Estonie et la Pologne semblent avoir commencé à revoir leur législation quoique le processus n'ait pas encore abouti, et un pays, l'Espagne prévoit que la définition du Code pénal de la traite ne sera alignée avec celle de l'UE et du Conseil de l'Europe qu'en décembre 2010.

Le projet visait aussi à évaluer si les **définitions de la traite des êtres humains** dans chaque pays sont suffisamment comparables pour pouvoir comparer les données recueillies sur les auteurs et les victimes de traite. Sur ce point, nous avons pu observer une variation beaucoup plus importante d'un pays à l'autre. Par exemple, en France, l'infraction de traite des êtres humains est susceptible de concerner tous les faits de proxénétisme. Or souvent, les chiffres de condamnation du proxénétisme sont mis en avant par l'Etat pour justifier d'une lutte efficace contre la traite. Ainsi, plus de 900 personnes ont été condamnées pour des faits de proxénétisme en France en 2008. Pour autant, à peine plus de la moitié d'entre elles ont été condamnés pour des faits de proxénétisme aggravé, faits qui sont plus susceptibles de se rapprocher de la définition de la traite telle qu'elle existe dans d'autres pays de l'Union européenne. La même année, on compte seulement 18 condamnations au titre de la traite des êtres humains en France. Si en France toutes les situations de proxénétisme sont susceptibles d'être considérées comme relevant de la traite, elles sont réprimées au titre du proxénétisme. Similairement, en Finlande, des situations qui devraient avoir été considérées comme relevant de la traite sont jugées uniquement au titre du proxénétisme.

Le projet a aussi interrogé les procédures utilisées **pour identifier les personnes victimes de traite des êtres humains** ainsi que l'accès effectif des victimes à un délai de réflexion, à une protection et à une assistance. Les recherches menées suggèrent que les procédures d'identification ainsi que les critères utilisés pour évaluer si une personne est victime de traite varient considérablement parmi les pays de l'Union européenne, comme si aucun standard commun n'était accessible.

Des structures nationales de coordination des actions de lutte contre la traite ont été identifiées dans 20 des 27 pays membres de l'Union européenne. Un plan d'action national de lutte contre la traite ou un plan similaire semble avoir été adopté dans 22 des 27 Etats membres, même si certains de ces plans ne visent que l'exploitation sexuelle. La plupart des pays ont une unité de police spécialisée dans la lutte contre la traite. Dans certains pays, il existe une procédure reconnue au niveau national qui explicite le rôle des différentes organisations et institutions dans la protection et l'assistance des victimes de la traite et qui définit la procédure à suivre pour les orienter (Mécanisme ou Système d'orientation). Au total, 17 pays ont un tel système contre 9 qui n'en ont pas.

Dans 11 Etats sur 27, il existe une agence du gouvernement spécifique qui est seule chargée de l'identification formelle des potentielles victimes de la traite. Parmi les 16 pays qui n'ont pas une telle agence, il y a 7 Etats dans lesquels il n'y a aucune procédure standard d'identification des potentielles victimes de la traite des êtres humains. Cela ne signifie pas pour autant que l'identification (et l'accès à une protection qui devrait en découler) soit nécessairement plus efficace lorsqu'une telle agence existe. Dès lors qu'il s'agit de procédures d'identification, il est apparu qu'aussi bien le détail de la procédure à suivre que sa mise en œuvre réelle, à savoir son respect et son efficacité, pouvaient varier très largement d'un Etat à l'autre.

Les chercheurs n'ont pu obtenir que des résultats partiels concernant **le nombre des victimes présumées de la traite identifiées sur une période de 12 mois en 2008 et 2009**. 4010 personnes ont été identifiées au total dans 16 pays, bien que certains de ces individus puissent avoir été comptés à deux reprises, notamment lorsqu'ils ont été identifiés dans un pays de destination puis de nouveau dans leur pays d'origine. Dans un peu plus de la moitié des cas (55%), les personnes présumées victimes de traite ont été considérées définitivement comme victimes de traite des êtres humains par les autorités. De même, les recherches ont montré que selon l'information disponible dans 16 pays, 3800 personnes **présumées victimes de traite ont été orientées vers différents services d'aide et de protection en 2009**.

Dans le cas des adultes et des enfants présumés victimes de traite, certains ont été portés **disparus** en 2008 et 2009 avant que la procédure d'identification ait pu aboutir. Dans 10 pays des enfants présumés victimes de traite ont été rapportés comme ayant disparu. Dans 10 autres pays, des adultes qui avaient été provisoirement identifiés comme victimes de traite ont été rapportés comme ayant disparu.

Les chercheurs ont collecté des informations sur différents aspects de la **protection**, notamment:

- La période de réflexion et de redressement
- Les procédures d'évaluation des risques
- Les retours des personnes victimes de traite vers leurs pays d'origine (volontaires ou non).

Les chercheurs ont obtenu des informations incomplètes sur le **nombre de personnes qui se sont vues délivrer un délai de réflexion**. En **2008**, l'information disponible fait état d'un total de 207 personnes qui en ont bénéficié dans 11 pays. En **2009**, l'information était disponible dans 18 pays pour un total de 1150 personnes. En 2008, 1026 permis de séjour ont été rapportés comme ayant été délivrés dans 9 pays. Pour autant, on ne peut en déduire qu'une moyenne de 100 permis auraient été délivrés par pays, sachant qu'en 2008, 664 permis ont été délivrés rien qu'en Italie (et 810 l'ont été en 2009), de même que 235 permis étaient délivrés aux Pays-Bas. Cela laisse seulement 127 permis délivrés dans les 7 autres pays dans lesquels l'information était disponible, ce qui donne une moyenne de plutôt 20 permis par pays. Ces constats suggèrent qu'il existe une grande disparité entre les lois et les politiques qui définissent les critères selon lesquels les permis de résidence sont délivrés entre Etats membres de l'UE.

Dans 6 pays, **des enfants victimes de traite des êtres humains** ont été rapportés comme ayant bénéficié d'une autorisation de séjour ces deux dernières années: en Pologne et en Grande-Bretagne ils ont été autorisés à rester sur le territoire jusqu'à leur majorité, en Autriche et au Danemark, cette autorisation a été considérée comme permanente**.** En Italie les enfants étrangers, victimes de traite ou non, sont autorisés à rester sur le territoire national jusqu'à leur majorité, cependant les enfants peuvent obtenir un titre de séjour sur les mêmes bases que les adultes (selon une mesure législative connue sous le nom « d'article 18 »). Aux Pays-Bas, les enfants peuvent séjourner sur le territoire mais les informations disponibles ne permettent pas de conclure s'ils peuvent rester au-delà de leur majorité.

Sur la question des retours volontaires, les chercheurs ont tenté d'évaluer si les retours étaient volontaires ou forcés, combien de victimes présumées ont été renvoyées et dans quelles conditions. Ces recherches ont confirmé que 6 pays avaient des accords formels de rapatriement avec d'autres Etats (Sachant que 5 de ces 6 Etats sont des pays de destination, les accords en question ont principalement été passés avec d'autres Etats qui sont perçus comme pays d'origine).

Une information concernant **les retours d'adultes en 2008** était disponible dans 15 Etats de l'UE: 194 adultes étaient rapatriés dans leur pays d'origine dans 12 pays (Autriche, Chypre, République Tchèque, Danemark, France, Grèce, Italie, Lettonie, Pays-Bas, Pologne et Slovénie). Durant cette année 2008, la plupart des retours se sont produits au départ des Pays Bas (37), avec l'Italie derrière (31), suivie de Chypre (24), l'Allemagne (23) et le Danemark (21). L'information concernant **les retours en 2009** n'est apparue disponible que dans 10 pays. 171 adultes ont ainsi été rapportés avoir été rapatriés vers leur pays d'origine, plus de la moitié venant de Grèce. 22 adultes ont dit avoir été renvoyés par l'Autriche et 23 par la Pologne, les 7 pays restants ayant renvoyé 19 individus. Bien entendu, le nombre de retours de personnes victimes de traite représente des proportions bien différentes du nombre global des personnes présumées victimes de traite dans chacun des pays en question. Ici encore, les informations recueillies suggèrent qu'il existe des critères très variés d'un pays à l'autre selon lesquels il est décidé de renvoyer ou rapatrier une personne présumée victime de traite des êtres humains.

En 2008 et 2009, **les citoyens d'un autre Etat membre de l'UE qui ont été identifiés comme victime présumée** dans un pays pouvaient bénéficier de la même protection et de la même assistance que les étrangers d'un pays hors UE dans 19 Etats membres de l'UE. Cependant, dans 6 de ces Etats (Allemagne, Hongrie, Lettonie, Lituanie, Roumanie et Espagne) il a été rapporté que les citoyens d'un autre Etat de l'UE qui étaient identifiés comme victimes de traite ne bénéficiaient pas d'une protection équivalente à celle des étrangers des pays dit « tiers ». Certains ressortissants d'autres Etats membres de l'UE ont aussi fait état de difficulté dans leur parcours pour être identifiés comme victimes de traite ou pour accéder à une assistance. Néanmoins, dans la plupart des pays de l'Europe de l'Ouest dans lesquels les ressortissants des pays d'Europe centrale ont été victimes de traite ont pu bénéficier d'une assistance. En 2008 et 2009, dans 14 Etats sur 25, les ressortissants européens étaient identifiés et bénéficiaient de la même assistance que les ressortissants de pays non membres de l'UE.

Concernant les mesures de **protection disponibles pendant la procédure judiciaire pour les adultes** ou enfants victimes de traite et témoins, il nous a été rapporté qu'un peu moins de la moitié des Etats membres de l'UE disposaient de telles mesures. Ces mesures consistent dans l'ensemble de possibilité pour la victime d'être entendue au cours d'une audience préliminaire (par ex. devant un juge d'instruction) et de ne pas devoir se présenter à l'audience publique, ou encore des victimes témoins qui témoignent devant une caméra ou de façon dissimulée le jour de l'audience, de sorte à ne pas être identifiée par les accusés. Cependant, dans 5 pays (République Tchèque, Danemark, France, Portugal et Grande Bretagne), il est apparu qu'en 2008 et 2009 des affaires dans lesquelles l'identité de la victime qui était supposée demeurer confidentielle, a été révélée au cours de la procédure judiciaire.

Des recherches récentes menées par l'organisation Anti-Slavery International[308] et l'OSCE[309] ont montré que malgré l'existence d'un droit à des compensations pour les personnes victimes de traite des êtres humains et malgré l'existence de différents mécanismes de compensation, il est en pratique extrêmement rare qu'une personne victime de traite se voie effectivement versée une compensation. Cependant, dans 12 pays (parmi 22 dans lesquels l'information était disponible) au moins une personne victime de traite a fait l'objet d'un paiement pour compensation en 2008, de même qu'en 2009 dans 12 pays parmi 20 pour lesquels l'information était disponible. Dans 9 pays, des paiements ont été rapportés pour les années 2008 et 2009, soit en Autriche, au Danemark, en France, en Allemagne, en Italie, aux Pays-Bas, en Espagne et en Suède.

La recherche n'a pas pu explorer toutes les **méthodes de prévention** en détail mais s'est concentrée sur l'évaluation de l'information disponible aux migrants avant et après leur arrivée dans un pays où on a connaissance de personnes ayant été victimes de traite aux fins d'exploitation.

La Convention du Conseil de l'Europe requiert de chaque Etat partie qu'il « envisage de nommer des **Rapporteurs Nationaux** ou d'autres mécanismes chargés du suivi des activités de lutte contre la traite menées par les institutions de l'Etat et de la mise en œuvre des obligations prévues par la législation nationale. » Bien que cet article demande aux Etats seulement « d'en-

308. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
309. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

visager » nommer un tel Rapporteur, il y a de fortes chances que la prochaine directive européenne renforce ce point, rendant l'adoption d'un Rapporteur national indépendant ou d'un mécanisme équivalent obligatoire pour les Etats membres. En Mars 2009, une conférence tenue sur ce sujet laissait à penser que 12 Etats de l'UE avaient déjà nommé un Rapporteur national (ou un mécanisme équivalent) pour évaluer les réponses nationales apportées à la traite des êtres humains. Les chercheurs ont confirmé qu'une telle institution existait dans 9 pays de l'UE (Chypre, République Tchèque, Finlande, Lettonie, Lituanie, Pays-Bas, Portugal, Roumanie et Suède), alors que 16 n'en n'avaient pas. Plusieurs de ces Rapporteurs, selon nos informations, travaillent exclusivement sur la traite aux fins d'exploitation sexuelle, comme en Suède. Dans plusieurs Etats (tels qu'en Belgique et en Espagne), une autre institution d'Etat est engagée dans l'évaluation des politiques de lutte contre la traite. Dans trois des 9 pays où il existe un Rapporteur (Lettonie, Lituanie et Suède) le rôle du Rapporteur n'est pas complètement indépendant des instances chargées de la mise en œuvre des politiques de lutte contre la traite des êtres humains, ce qui constitue une limite à leur indépendance et réduit potentiellement leur capacité à évaluer la situation de façon indépendante.

4. Conclusions et recommandations

Le projet E-notes a montré qu'il demeurait des écarts substantiels entre les Etats membres sur des aspects fondamentaux des politiques et des pratiques de lutte contre la traite des êtres humains, tels que les législations nationales en matière de répression et de définition de la traite des êtres humains (ou les interprétations qui en sont faites par les agences de l'Etat concernées), l'existence d'organes de coordination et de procédures pour identifier les personnes victimes de traite. Ce projet a aussi montré que plusieurs éléments de droit international ou national qui ont été adoptés dans l'optique d'assurer la protection des droits des personnes victimes de traite demeurent lettre morte et que leur mise en œuvre peine à se mettre en place dans une majorité d'Etat membre de l'UE. Les organisations qui ont pris part au projet E-notes estiment que davantage d'efforts devraient être faits par l'Union européenne, par les Etats membres ainsi que par la société civile pour renforcer les bases du cadre d'action de lutte contre la traite des êtres humains.

Alors que des améliorations conséquentes seraient nécessaires concernant la mise en œuvre de nombreux aspects de la politique de lutte contre la traite, les recommandations suivantes préparées dans le cadre de ce projet, concernent essentiellement la garantie des droits réservés aux personnes

victimes de traite, sachant que nous sommes convaincus que ces préoccupations devraient être au cœur de toute politique de lutte contre la traite. Cela d'autant plus que ce sont généralement les aspects concernant la prévention de la traite et la protection des victimes qui sont les moins mis en œuvre par les Etats.

Identification et orientation des personnes victimes de traite des êtres humains

La protection des droits des personnes victimes de traite des êtres humains ne pourra être garantie à moins de s'assurer que toutes les victimes présumées sont identifiées comme telles. Les résultats de ce projet E-notes montrent que l'identification demeure un des plus faibles maillons des politiques de lutte contre la traite. Afin de renforcer les procédures d'identification, nous estimons essentiel d'agir sur les points suivants:

- les Etats membres développent des listes d'indicateurs en coopération entre les forces de l'ordre, les représentants de la justice et les services d'aide et de soutien aux personnes qui facilitent l'identification des victimes présumées de traite des êtres humains aux fins d'exploitation, quel que soit le domaine. Des indicateurs additionnels devraient être adoptés pour chaque forme d'exploitation, tel que l'exploitation par le travail, la servitude domestique, l'exploitation sexuelle, la mendicité forcée, la contrainte à commettre des actes illicites, etc. Des indicateurs spécifiques devraient en outre être adoptés concernant les enfants ;
- Les structures nationales qui existent en matière d'orientation, que ce soit un Mécanisme national d'orientation ou un autre mécanisme impliqué dans la mise en œuvre de procédures standardisées opérationnelles, devraient fonctionner sur la base d'une coopération étroite entre force de l'ordre, représentants des politiques d'immigration, inspecteurs du travail, syndicats concernés, agences de protection de l'enfance, représentants de la justice et autre instances chargées du soutien et de l'accompagnement des personnes ;
- L'accès à un soutien juridique gratuit facilitera l'accès à la justice des victimes de la traite, y compris en ce qui concerne l'accès à des compensations;
- Les Etats membres doivent s'assurer qu'une procédure d'évaluation des risques individuels soit mise en place dès lors que les victimes de traite des êtres humains se voient proposer un retour vers leur pays d'origine.

Evaluation

Davantage d'évaluation est essentiel au niveau de l'UE autant qu'au niveau des Etats membres, de sorte à s'assurer que tous les intervenants puissent

avoir une meilleure connaissance non seulement de ce qui existe sur le papier concernant ce qui est supposé être fait dans chaque pays pour lutter contre la traite, mais ce qui est mis en œuvre en pratique. Ainsi, pour s'assurer d'une meilleure connaissance de la mise en œuvre, des effets et de l'impact des politiques de lutte contre la traite des êtres humains dans l'Union européenne, il est urgent que:

- Des Rapporteurs nationaux ou des mécanismes similaires soient mis en place dans chaque Etat sous la forme d'organes indépendants (conformément à la Déclaration de la Haye adoptée en 1997), de sorte à garantir une évaluation indépendante et comparable des actions de lutte contre la traite. Il est aussi important que les impacts ainsi que les conséquences imprévues voire négatives des mesures de lutte contre la traite puissent faire l'objet d'une évaluation ;
- Une standardisation des terminologies, statistiques et méthodes de recensement (par ex. du nombre d'individus mis en cause pour traite des êtres humains) soit envisagée ;
- L'on s'assure d'une meilleure coopération entre l'Union européenne, ses Etats membres et les membres du GRETA, l'organe indépendant d'évaluation de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains, de sorte à éviter une perte d'efficacité dans les activités d'évaluation.

Concernant la législation

- Davantage d'évaluation est nécessaire pour s'assurer que toutes les législations nationales ont incorporé la définition de la traite telle qu'elle apparaît dans la Décision Cadre de 2002 et la Convention du Conseil de l'Europe.
- Il apparaît nécessaire dans de nombreux Etats de l'Union européenne de réfléchir à la notion d'exploitation et aux différentes formes d'exploitation illégale que celles-ci résultent de la traite ou non.

Coordination des politiques de lutte contre la traite au niveau national

- Tous les Etats membres qui n'ont pas encore adopté de structure de coordination et un plan d'action national devraient s'y atteler afin de donner plus de cohérence à leurs politiques de lutte contre la traite des êtres humains. Il est essentiel que la coordination et le plan d'action national soient dotés des moyens humains et économiques nécessaires à leur bon fonctionnement ou mise en œuvre. Il serait par conséquent important que tout exercice d'évaluation des politiques de lutte contre la traite s'intéresse aux fonds dédiés à une structure de coordination ainsi qu'à ses activités de coordination.

8.8 Zusammenfassung

Mit dem Ziel, die Aktivitäten der Regierungen der Europäischen Union (EU) gegen Sklaverei, Menschenhandel und die verschiedenen Formen der Ausbeutung, die mit Menschenhandel einhergehen, zu beobachten, kamen 2009 vier Nichtregierungsorganisationen (NGOs) überein, das gemeinsame Projekt ‚European NGOs Observatory on Trafficking, Exploitation and Slavery' (kurz: E-notes) durchzuführen. Die italienische NGO Associazione On the Road[310] koordinierte das Projekt gemeinsam mit einem regionalen Netzwerk gegen Menschenhandel, La Strada International und zwei nationalen NGOs, ACCEM[311] in Spanien und ALC[312] in Frankreich.

Statt der Einrichtung einer permanenten Institution zur Beobachtung von Regierungsaktivitäten hatte das E-notes Projekt die Absicht, Informationen über die Situation in jedem der 27 EU-Mitgliedsstaaten zu erheben. Dazu mussten eine Forschungsmethode entwickelt sowie teilnehmende NGOs und ForscherInnen in jedem der 27 Länder gefunden werden. Das Projekt begann mit einem Fokus auf der Rolle der Indikatoren zur Messung des Fortschritts der EU-Mitgliedsstaaten bezüglich ihrer Maßnahmen gegen Menschenhandel (verschiedene Gesetze, Strategien, Maßnahmen und Verfahren, welche das Ausmaß von Menschenhandel vermindern und jede betroffene Person beschützen und unterstützen sollen). Dazu wurde ein Forschungsinstrument mit über 200 Standardfragen zu diesen Maßnahmen entwickelt, mit der Erwartung, dass anhand dieser Fragen der Fortschritt der Maßnahmen gegen Menschenhandel der einzelnen EU-Länder eingeschätzt werden könne.

1. Standards als Grundlage für die Informationssuche des Monitoring

Der Forschungsprozess begann Anfang 2010, gerade als der Europarat seine Überlegungen zu einem neuen EU-Instrument zur Standardisierung von

310. Associazione On the Road bietet ein breites Spektrum an Dienstleistungen und Schutz für Betroffene von Menschenhandel, Asylsuchende, Flüchtlinge und MigrantInnen im Allgemeinen in drei italienischen Regionen (Marche, Abruzzo, Molise). Sie beteiligt sich auch an Sensibilisierungs- und Informationsmaßnahmen, Gemeinwesenarbeit, Forschung, Netzwerken, Initiativen zur Entwicklung von Verfahren auf regionaler, nationaler und europäischer Ebene.
311. ACCEM bietet soziale Dienste und setzt sich im sozialen und rechtlichen Bereich für Asylsuchende, Flüchtlinge, Vertriebene und MigrantInnen in Spanien ein.
312. ALC (Frankreich) steht für *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (Begleitung [von Menschen], Aufnahmezentren, Bildungseinrichtungen und soziale Einrichtungen). ALC koordiniert das "Ac.Sé", ein nationales Netzwerk für Unterkünfte für Betroffene von Menschenhandel).

Maßnahmen gegen Menschenhandel in den EU-Mitgliedsstaaten beendete (um den Rahmenbeschluss des Rates zur Bekämpfung des Menschenhandels vom Juli 2002 zu ersetzen). Im Jahr 2009 brachte die Europäische Kommission einen Entwurf für einen neuen Rahmenbeschluss zur Bekämpfung des Menschenhandels heraus. Aufgrund des Inkrafttretens des Vertrages von Lissabon, das jegliche laufenden Gesetzgebungsverfahren unterbrach, konnten die Verhandlungen des Rates über einen neuen Rahmenbeschluss nicht fortgeführt werden. Folglich legte die Europäische Kommission einen neuen Vorschlag für eine *Richtlinie des Europäischen Parlaments und des Rates zur Verhütung und Bekämpfung von Menschenhandel und zum Opferschutz* vor, der den Rahmenbeschluss von 2002 aufheben sollte. Im März 2010 wurde dieser vom Europäischen Parlament geprüft. Im September 2010 schlugen zwei der Parlamentsausschüsse eine Reihe von Änderungen zum Entwurf der Richtlinie vor. Daraufhin begann der Prozess der Einigung zwischen dem Rat, der Kommission und dem Europäischen Parlament. Es wurde erwartet, dass die Richtlinie noch im Jahr 2010 verabschiedet wird.

Obwohl die grundlegende Gliederung der Bestimmungen der neuen Richtlinie zur Zeit der Ausführung der E-notes Recherchen im Mai und Juni 2010 eindeutig festzustehen schien, wurde die Richtlinie noch nicht verabschiedet (auch im Oktober 2010 noch nicht, als dieser Bericht fertiggestellt wurde). Bei der Entscheidung darüber, auf welche gesetzlichen Verpflichtungen Bezug genommen werden soll, um Beobachtungsstandards für die einzelnen EU-Mitgliedsstaaten zu erstellen (Verpflichtungen bezüglich staatlicher Maßnahmen gegen Menschenhandel), wählte das Projekt ein anderes regionales Instrument, nämlich die *Europaratskonvention zur Bekämpfung des Menschenhandels*. Diese wurde im Mai 2005 verabschiedet und trat im Februar 2008 in Kraft. Sie wurde von zahlreichen Staaten außerhalb der EU ratifiziert und bis August 2010 hatten alle EU-Mitgliedsstaaten, mit einer Ausnahme (Tschechien), die Europaratskonvention entweder ratifiziert (19) oder unterzeichnet (sieben) und damit ihre Absicht, sie in Kraft zu setzen, zum Ausdruck gebracht.

2. Methoden

Die Vorgehensweise zur Erhebung des Monitoring wurde Anfang 2010 von einem Berater konzipiert. Dabei wurden frühere Publikationen berücksichtigt, welche angemessene Indikatoren für EU-Mitgliedsstaaten vorschlugen, die in der Einschätzung ihres Fortschritts bei der Angleichung ihrer Gesetze und Methoden an regionale und internationale Standards genutzt werden sollten (diese basieren auf dem *Protokoll der Vereinten Nationen zur Verhütung,*

Bekämpfung und Bestrafung des Menschenhandels, insbesondere des Frauen- und Kinderhandels, das im Jahr 2000 verabschiedet wurde, um das *Übereinkommen der Vereinten Nationen gegen die grenzüberschreitende organisierte Kriminalität (2000)* zu ergänzen). Auch verschiedene Kommentare aus Publikationen[313] der Europäischen Kommission über die festgestellten Schwächen der Art und Weise der Berichterstattung der EU-Mitgliedsstaaten über die Bekämpfung von Menschenhandel oder den Schutz und die Unterstützung für vermutlich[314] Betroffene von Menschenhandel wurden dabei berücksichtigt. Einige dieser Publikationen legten dar, dass es schwierig sei, Informationen von Mitgliedsstaaten über ihre Maßnahmen zur Bekämpfung von Menschenhandel zu erhalten (seien es aktuelle oder allgemeine Informationen). Einige stellten einen Mangel an übereinstimmenden Datensammlungen fest, der auf das Fehlen eines einheitlichen Gebrauchs von Terminologien oder gemeinsamen Berichterstattungsmechanismen der EU-Mitgliedsstaaten zurückzuführen sei. All diese Probleme wurden durch die Recherchen für E-notes bekräftigt.

In einem Dokument der Europäischen Kommission, welches im Jahr 2006[315] veröffentlicht wurde, wird festgestellt, dass die Mitgliedsstaaten sehr wenige Informationen über ihre Regeln und Verfahren bezüglich des Schutzes und der Unterstützung für Betroffene von Menschenhandel bereitstellen. In einem Arbeitspapier von 2008[316] wird wiederholt dargelegt, wie schwierig es ist, Informationen von den Mitgliedsstaaten über die Anzahl der Betroffenen von Menschenhandel, die Unterstützung erhielten, zu bekommen. Es wird jedoch auch festgestellt, dass im Jahr 2006 in den Staaten, die der Europäischen Kommission Informationen bereitgestellt hatten, im Laufe des Jahres in über 1.500 Fällen von Menschenhandel in 23 Mitgliedsstaaten ermittelt wurde. Es wird außerdem berichtet, dass die meisten EU-Mitgliedsstaaten eine Bedenkzeit eingeführt hatten, um vermutlich gehandelten Personen zu ermöglichen, in ihrem Land zu bleiben und sich zu erholen, bevor sie über eine ZeugInnenaussage entscheiden müssen. Jedoch haben nur fünf Länder angegeben, wie

313. z.B.: Europäische Kommission, Mitteilung an das Europäische Parlament und den Europarat über die "*Bekämpfung des Menschenhandels – ein integriertes Vorgehen und Vorschläge für einen Aktionsplan*" (Europäische Kommission Referenz KOM (2005) 514, endgültig vom 18. Oktober 2005); und Arbeitsunterlagen der Kommission (Europäische Kommission Referenz KOM (2008) 657, endgültig), *Evaluierung und Überwachung der Umsetzung des EU-Plans über bewährte Vorgehensweisen, Normen und Verfahren zur Bekämpfung und Verhütung des Menschenhandels*, Oktober 2008.

314. Die Bezeichnung „vermutliche" Betroffene von Menschenhandel bezieht sich auf Personen, von denen vermutet wird, dass sie gehandelt wurden, genaue Informationen über ihre Erfahrung jedoch nicht vorhanden sind.

315. Bericht der Kommission an den Rat und das Europäische Parlament auf der Grundlage von Artikel 10 des Rahmenbeschlusses des Rates vom 19. Juli 2002 zur Bekämpfung des Menschenhandels (Europäische Kommission Referenz KOM (2006) 187, endgültig vom 2. Mai 2006).

316. Siehe Fußnote 313 oben.

vielen Menschen Unterstützung in Form der Bedenkzeit zuteil gekommen ist – insgesamt nur 26 Menschen innerhalb eines ganzen Jahres!

Für die NGOs, die sich auf die Bekämpfung von Menschenhandel spezialisiert haben (entweder durch ein Angebot sozialer Dienste oder Dienstleistungen für vermutlich Betroffene von Menschenhandel oder durch Engagement in Initiativen zur Prävention von Menschenhandel), ist die mangelnde Sorgfalt oder Genauigkeit der von den EU-Mitgliedsstaaten an die Europäische Kommission bereitgestellten Daten ein beunruhigender Faktor. Auf der einen Seite weist dies darauf hin, dass niemand, auch nicht innerhalb der Europäischen Kommission, in der Lage war herauszufinden, was in der EU passiert. Auf der anderen Seite bedeutet dies auch, dass viele der Bestimmungen der regionalen oder internationalen Abkommen bezüglich Menschenhandel oder anderer menschenrechtlicher Problemen von den Staaten ignoriert (obwohl sie ihnen zugestimmt haben) und nicht ausgeführt wurden.

Einige der EU-Mitgliedsstaaten haben eine/n nationale/n RapporteurIn für Menschenhandel eingerichtet, um der eigenen Regierung (und anderen) über den Fortschritt der Maßnahmen des jeweiligen Landes zur Bekämpfung von Menschenhandel zu berichten und ihnen Verbesserungsvorschläge zu unterbreiten. Von neun der 27 EU-Mitgliedsstaaten wurde während der Recherche für das Mitte 2010 ausgeführte Monitoring angegeben, dass sie solch eine/einen Rapporteurin/Rapporteur haben, jedoch werden nicht von allen regelmäßige Berichte veröffentlicht und einige konzentrieren sich nur auf bestimmte Bereiche des Menschenhandels (z.B. Frauenhandel zum Zwecke der Prostitution), ohne über Maßnahmen gegen andere Zwecke des Menschenhandels zu berichten. Langfristig gesehen wäre die Einrichtung nationaler RapporteurInnen, wenn diese in allen EU-Staaten eingerichtet würden, ein gutes Instrument, um Standarddefinitionen für Begrifflichkeiten einzuführen sowie Wege zu finden, um Erhebungen bezüglich Menschenhandel durchzuführen, sodass aussagekräftige Vergleiche zu den Maßnahmen zur Bekämpfung von Menschenhandel zwischen den verschiedenen EU-Staaten vorgenommen werden können.

Vor diesem Hintergrund setzte sich das E-Notes Monitoring das Ziel, herauszufinden, welche Informationen in allen EU-Mitgliedsstaaten über ihre Gesetze, Politiken und Verfahren im Bereich Menschenhandel verfügbar waren sowie Informationen über die Zahl von Menschen, die als Betroffene von Menschenhandel identifiziert wurden und irgendeine Form von Schutz erhielten, zu erheben. Da die Recherchen im Mai und Juni 2010 ausgeführt wurden, war zunächst beabsichtigt, die Situation des jeweiligen Landes im

Jahr 2009 zu recherchieren. Es jedoch deutlich, dass in den meisten Ländern keine oder nur lückenhafte Informationen für 2009 verfügbar waren, während es für 2008 genauere Informationen gab.

Die NGOs, die gebeten wurden, eine Person für die Recherche zu finden, um die Informationen für das Monitoring zu erheben und zusammenzustellen, waren hauptsächlich solche, deren Expertise bei erwachsenen Betroffenen von Menschenhandel (vor allem Frauen) liegt. Sie stellten auch Informationen über Kinderhandel zusammen, allerdings wurde häufig festgestellt, dass diese Informationen schwer zugänglich waren. In vielen EU-Staaten erhalten gehandelte Erwachsene Unterstützung von NGOs, während für Kinderschutz Regierungsorganisationen alleinverantwortlich für die Betreuung von gehandelten Kindern sind.

Jede/r Forschende wurde gebeten, ein 60 Seiten langes Forschungsprotokoll auszufüllen und weitere Texte über Themen zu schreiben, die nicht mit „Ja" oder „Nein" beantwortet werden konnten, sowie ein kurzes Profil ihres/seines Landes zu verfassen, in dem über die Strukturen von Menschenhandelsfällen in ihrem/seinem Land und über staatliche Maßnahmen berichtet werden sollte. Die Informationen der 27 ForscherInnen wurden verarbeitet und im Juli 2010 in eine einfache Datenbank eingetragen. Die Daten wurden von dem gleichen Berater analysiert, der das Forschungsprotokoll konzipiert hatte, um mögliche Strukturen zu identifizieren - insbesondere in Bezug auf Fälle, in denen EU-Mitgliedstaaten ihre Verpflichtungen des Beschützens und Unterstützens von gehandelten Personen nicht umsetzten - und um einen Bericht über die Ergebnisse zu erstellen.

Die ForscherInnen wurden gebeten, ihr jeweiliges Land als hauptsächliches Ursprungs-, Durchgangs- oder Zielland oder eine Kombination dieser einzustufen. Diese Kategorisierung nahm jedoch nicht Fälle internen Menschenhandels in den Blick. Relativ wenige Länder wurden als nur eine dieser drei Kategorien benannt (zwei Länder, Frankreich und Portugal, wurden vorwiegend als Zielländer beschrieben). Die anderen 25 wurden als Kombinationen erachtet: eins als Ursprungs- sowie Zielland, zehn als Durchgangs- sowie Zielland und neun als alle drei Kategorien.

3. Forschungsergebnisse des Monitoring

Da die 230 Fragen des Forschungsprotokolls Informationen aus zahlreichen verschiedenen Bereichen erhoben hatten, war es schwierig, ein eindeutig ein-

ordnendes Profil der EU-Mitgliedsstaaten zu erstellen, welches deutlich macht, ob sie ihren Verpflichtungen nachkommen und die Menschenrechte der Betroffenen von Menschenhandel respektieren. Nichtsdestotrotz war es möglich, anhand von fünf bestimmten Themen den Fortschritt der Länder einzuschätzen. Trotzdem waren auch hier die Informationen teilweise unvollständig oder nicht erhältlich, sodass keine der genannten Statistiken als abschließend angesehen werden kann. Diese fünf Themen sind im Folgenden zusammengefasst.

Tabelle 1: Fortschritt in EU-Ländern bezüglich der Maßnahmen zur Bekämpfung von Menschenhandel anhand der dargestellten Eckpunkte

Thema	Situation im Mai 2010
Koordination von Maßnahmen zur Bekämpfung von Menschenhandel auf nationaler Ebene	Eine nationale Struktur für die Koordinierung von Maßnahmen gegen Menschenhandel wurde in 22 von den 27 Mitgliedsstaaten festgestellt. Als Länder ohne eine nationale Koordinierungsstruktur wurden Frankreich, Deutschland, Griechenland und Malta benannt. In Deutschland und Italien werden Maßnahmen gegen Menschenhandel nicht auf nationaler oder föderaler Ebene organisiert, dies bedeutet jedoch nicht, dass diese unzureichend sind. Schweden hat eine/n nationale/n KoordinatorIn ernannt, deren/dessen Aufgabe die Entwicklung einer Koordinationsstruktur zur Bekämpfung des Menschenhandels ist – jedoch nur für Fälle von Menschenhandel zum Zwecke der sexuellen Ausbeutung.
Identifizierung von vermutlich gehandelten Personen	In elf der 27 Mitgliedsstaaten wurde über eine einzige Regierungsbehörde oder -struktur, die für die formale Identifizierung einer vermutlich gehandelten Person verantwortlich ist, berichtet, während 16 keine solche Struktur haben. Sechs der Länder, in denen kein Identifikationsprozess auf nationaler Ebene vorhanden ist, haben keine Standardverfahren, die im ganzen Land angewendet werden, um vermutlich Betroffene von Menschenhandel formal zu identifizieren (Österreich, Bulgarien, Frankreich, Deutschland, Italien, Malta).
Vorhandensein einer Bedenkzeit von mindestens 30 Tagen	In 25 von 27 Mitgliedsstaaten wurde von einer Regelung für eine Bedenk- und Stabilisierungszeit für potenziell gehandelte Erwachsene berichtet – ein Großteil der Staaten scheint sich in diesem Punkt an die vorgegebenen Mindeststandards zu halten. In Italien gibt es keine Regelung für eine Bedenkzeit, diese wird jedoch in der Praxis manchmal gewährt. Von Litauen wird Ähnliches berichtet. In 2008 wurden in 11 Ländern insgesamt ca. 207 Menschen eine Bedenkzeit eingeräumt. In 2009 wurde von weitaus mehr Menschen berichtet, denen eine Bedenkzeit gewährt wurde: 1.150 Betroffene von Menschenhandel in 18 Ländern. Dies scheint eine bedeutende Zunahme widerzuspiegeln.

Maßnahmen für eine, wenn möglich freiwillige, sichere Rückkehr

Die ForscherInnen berichteten über sechs der untersuchten Länder, dass sie formale Abkommen mit anderen EU-Mitgliedsstaaten oder Drittländern haben, um den Rückkehrprozess der Betroffenen von Menschenhandel in ihr Heimatland zu steuern (Frankreich, Lettland, Portugal, Spanien und Großbritannien; Griechenland hat ein bilaterales Abkommen, das auf gehandelte Kinder beschränkt ist), wobei die Existenz eines Abkommens keine Garantie zu sein scheint, dass kein Missbrauch stattfindet. Bezüglich der Vorbereitung der Rückkehr einer vermutlich gehandelten erwachsenen Person in ihr Heimatland seitens der Behörden, haben die ForscherInnen festgestellt, dass nur in drei von den 17 EU-Mitgliedsstaaten, für die Informationen erhoben werden konnten, vor der Rückkehr eine Gefährdungsanalyse als Routineaufgabe ausgeführt wurde (Italien, Portugal und Rumänien); d.h. Einschätzungen der möglichen Risiken der Person oder ihrer Familienmitglieder eingeholt werden.

Zugang zu Entschädigung und Kompensation

In 12 Ländern (von den 22, für die Informationen erhältlich waren) wurde von einer gehandelten Person berichtet, die im Jahr 2008 Schadensersatz- oder Entschädigungszahlungen entweder als Ergebnis eines gerichtlichen Verfahrens oder aus anderer Quelle erhalten hat, und in 12 Ländern (von 20) im Jahr 2009. Die neun Länder, in denen in beiden Jahren Entschädigungen gezahlt wurden, waren Österreich, Dänemark, Frankreich, Deutschland, Italien, Niederlande, Spanien, Schweden und Großbritannien.

Diesen fünf Punkten nach zu urteilen, wäre es unangemessen zu versuchen, die Ergebnisse der einzelnen Staaten in einem Ranking zusammenzufassen (so wie der jährliche Bericht des Außenministeriums der USA dies tut), denn in den ersten drei Kategorien sind es zum größten Teil unterschiedliche Länder, bei denen Schwächen identifiziert wurden, während in den letzten zwei eine Vielfalt an Staaten das Richtige tun. Beispielsweise wird Italien in vielen Bereichen als erfolgreich in allen fünf Punkten dargestellt, sein System zur Bekämpfung von Menschenhandel unterscheidet sich jedoch auch von denen der meisten anderen EU-Länder.

Neben diesen fünf Eckpunkten hat das Monitoring Projekt viele andere Entwicklungen erhoben. Es wurde überprüft, inwiefern **die Gesetze der einzelnen Länder** die verschiedenen Kategorien von Ausbeutung im Bereich Menschenhandel einbeziehen (d.h. zum Zwecke der Ausbeutung in der Prostitution und andere Formen der sexuellen Ausbeutung, zum Zwecke der Ausbeutung der Arbeitskraft oder der Dienste in Zwangsarbeit, Knechtschaft, Sklaverei oder anderen Ausbeutungsverhältnissen, die der Sklaverei ähneln oder zum Zwecke der Entnahme menschlicher Organe). Das Ergebnis war, dass im Allgemeinen die verschiedenen Kategorien berücksichtigt wurden. Über zwei Länder – Estland und Polen – wurde berichtet, dass sie mit der Revidie-

rung ihrer Rechtsvorschriften begonnen haben, diese jedoch noch nicht abgeschlossen ist. In Spanien tritt die an die Standards der EU und des Europarates angepasste Definition von Menschenhandel im spanischen Strafgesetzbuch erst im Dezember 2010 in Kraft.

Das Monitoring wollte auch überprüfen, ob die **Definitionen von Menschenhandel** in den einzelnen Ländern sich ausreichend in ihrer Begriffsbestimmung von ‚MenschenhändlerInnen' oder 'Menschenhandelsopfern' ähneln, um vergleichbar zu sein. In diesem Punkt wurden weit mehr Unterschiede gefunden als erwartet. Beispielsweise ist die Definition von Menschenhandel in Frankreich so weit, dass sie im Prinzip auf jede/n angewandt werden kann, die/der der Zuhälterei verdächtigt wird. Infolgedessen schien es zunächst so, als wären in Frankreich über 900 Personen wegen Menschenhandels verurteilt worden. Nach einer genaueren Untersuchung stellte sich jedoch heraus, dass knapp über die Hälfte der Fälle (521) wegen „schwerer Zuhälterei" verurteilt wurden (eine Straftat, die der Definition von Menschenhandel in anderen EU-Staaten nahe kommt) und nur in 18 Fällen wegen einer Straftat verurteilt wurden, die den regionalen Definitionen des EU-Rahmenbeschlusses von 2002 und der Europaratskonvention entsprechen. In Finnland ist das Gegenteil der Fall – Fälle, die nach regionalen Standards als Menschenhandel hätten beurteilt werden sollen, wurden nur als Kuppelei oder Zuhälterei betrachtet.

Teil der Erhebung war auch die Frage nach dem Prozess der **Identifizierung von 'gehandelten Menschen'** und ob ihnen routinemäßig eine Bedenkzeit oder andere Formen des Schutzes und der Unterstützung gewährt wurden. Die Forschungsergebnisse zeigen, dass sowohl der Prozess der Identifizierung als auch die Kriterien für die Beurteilung, ob ein Menschenhandelsfall vorliegt, in den Ländern der Europäischen Union sehr unterschiedlich sind.

Eine **nationale Koordinierungsstruktur für Maßnahmen zur Bekämpfung von Menschenhandel** ist in 20 der 27 Mitgliedsstaaten vorhanden. Ein Nationaler Aktionsplan zur Bekämpfung von Menschenhandel oder Ähnliches wurde in 22 der 27 Mitgliedsstaaten erstellt (einige konzentrieren sich jedoch ausschließlich auf Menschenhandel zum Zwecke der sexuellen Ausbeutung). Die meisten Länder haben eine spezialisierte Polizeieinheit zur Bekämpfung des Menschenhandels. In einigen Ländern gibt es auf nationaler Ebene bestimmte Verfahren, welche die Rollen der verschiedenen Organisationen zum Schutz und zur Unterstützung der gehandelten Personen regeln und welche sie an angemessene Stellen weiterverweisen – ein ‚National Referral Mechanism' oder -System. Insgesamt haben 17 Länder ein solches System, wohingegen neun keines haben.

Elf von 27 Mitgliedsstaaten haben eine einzige Regierungsbehörde oder -struktur, die für die formale Identifizierung von potenziell Betroffenen von Menschenhandel verantwortlich ist, während dies in 16 Ländern nicht der Fall ist. Sieben der Länder, in denen kein alleiniger Prozess für die Identifizierung vorhanden ist, haben keinerlei standardisierte Verfahren für die formale Identifizierung von vermutlich Betroffenen von Menschenhandel im ganzen Land. Dies bedeutet jedoch nicht, dass die Identifizierung (und die daraus resultierende Möglichkeit von Schutzmaßnahmen) in Ländern mit einem einzelnen System effektiver ist. Es wurde berichtet, dass sich sowohl die Einzelheiten der Verfahren, die befolgt werden müssen und die Effektivität der Verfahren in den verschiedenen Ländern stark unterscheiden.

Die Forschenden des Projekts haben nur partiell Informationen über **Zahlen von vermutlich Betroffenen von Menschenhandel, die in einem Zeitraum von 12 Monaten in 2008 und 2009 identifiziert wurden**, erheben können – insgesamt 4.010 in 16 Ländern (wobei einige dieser Personen eventuell doppelt gezählt wurden, d.h. sie wurden erst in einem Zielland und danach in ihrem Herkunftsland gezählt). In etwas über der Hälfte (55 Prozent) der Fälle wurden vermutlich Betroffene von Menschenhandel später von den Behörden als definitiv gehandelt bestätigt. Die Information über die Zahl von **vermutlich Betroffenen von Menschenhandel, die weitervermittelt wurden (an Unterstützungsstrukturen)**, war in 16 Ländern verfügbar und umfasste insgesamt 3.800 Menschen.

In Fällen von Erwachsenen und Kindern, die vermutlich Opfer waren, wurden einige in den Jahren 2008 oder 2009 **vermisst** gemeldet**,** ehe der Identifizierungsprozess beendet war. Vermutlich gehandelte Kinder wurden in 10 Ländern als vermisst gemeldet. Weitere 10 Länder berichteten, dass Erwachsene, die vorläufig als ‚gehandelt' identifiziert worden waren, als vermisst gemeldet wurden.

Die Forschenden erhoben Informationen über die verschiedenen Aspekte des **Schutzes**, insbesondere über:

- Bedenk- und Stabilisierungszeiten,
- Gefährdungsanalyse und
- Rückkehr (d.h. Rückführung in das Herkunftsland einer gehandelten Person).

Die Forschenden erhielten – teilweise unvollständige – Informationen über die **Zahl der Personen, denen eine Bedenkzeit eingeräumt wurde.** Für **2008** gab nach es Informationen aus 11 Ländern insgesamt 207 Personen, denen

die Bedenkzeit gewährt wurde. Für **2009** waren Informationen aus 18 Ländern vorhanden, die ungefähr 1.150 Menschen eine Bedenkzeit gewährt hatten. Im Jahr 2008 wurden 1.026 Aufenthaltsgenehmigungen in insgesamt neun Ländern bewilligt. Der Durchschnittswert von über 100 Aufenthaltsgenehmigungen pro Land ergab ein ungenaues Bild, denn 664 der Genehmigungen wurden allein in Italien ausgestellt (und weitere 810 im Jahr 2009), 235 in den Niederlanden, was bedeutet, dass 2008 die anderen sieben Länder insgesamt nur 127 Aufenthaltsgenehmigungen an Betroffene von Menschenhandel ausgestellt hatten (d.h. im Durchschnitt weniger als 20 pro Land). Demzufolge gibt es bedeutende Unterschiede in den Gesetzen und Verfahren der verschiedenen EU-Mitgliedsstaaten über die Gewährung von Aufenthaltsgenehmigungen für Betroffene von Menschenhandel.

In diesen zwei Jahren wurde **gehandelten Kindern** in sechs Ländern ein Bleiberecht[317] eingeräumt: Frankreich, Polen und Großbritannien, wo ein befristetes Bleiberecht nur bis kurz vor dem 18. Lebensjahr gewährt wurde, sowie Österreich und Dänemark, wo das Bleiberecht als unbefristet ausgestellt werden kann. In Italien dürfen ausländische Kinder, ob gehandelt oder nicht, bis zum 18. Lebensjahr im Land bleiben. Jedoch können gehandelte Kinder auch auf der gleichen Grundlage wie gehandelte Erwachsene (nach einer Vorschrift namens „Artikel 18“) eine Aufenthaltsgenehmigung bekommen. In den Niederlanden wurde Kindern ein Bleiberecht gewährt, jedoch war es aufgrund der Daten problematisch festzustellen, ob sie unbefristet bleiben konnten.

Zum Thema Rückkehr (oder Rückführung), sollte herausgefunden werden, ob Rückführungen freiwillig oder erzwungen waren, wie viele potenziell Betroffene von Menschenhandel zurückgekehrt sind und unter welchen Bedingungen. Die Forschenden bestätigten, dass sechs EU-Mitgliedsstaaten formale Rückkehr-Abkommen mit anderen Staaten haben (Da fünf der sechs Länder Zielländer sind, gab es diese Vereinbarungen hauptsächlich mit Staaten, die als Herkunftsländer gesehen werden).

Informationen über **die Rückkehr von Erwachsenen im Jahr 2008** waren aus 15 Ländern erhältlich: 194 kehrten aus 12 Ländern (Österreich, Zypern, Tschechien, Dänemark, Frankreich, Griechenland, Italien, Lettland, Niederlande, Polen und Slowenien) in ihre Herkunftsländer zurück. In diesem Jahr (2008) kam die größte Zahl von RückkehrerInnen aus den Niederlanden

317. ‘Bleiberecht’ (‘Leave to remain’) ist ein allgemeiner Begriff, der die rechtliche Genehmigung beschreibt, die Nicht- Staatsangehörigen gewährt wird, um entweder befristet oder unbefristet in einem Land zu bleiben.

(37), die zweitgrößte aus Italien (31), gefolgt von Zypern (24), Deutschland (23) und Dänemark (21). Über **Rückführungen im Jahr 2009** gibt es Informationen aus lediglich 10 Ländern. Es wurde berichtet, dass 171 Personen aus 10 Ländern in ihre Herkunftsländer zurückgekehrt sind, dabei konnte ein Land, Griechenland, über die Hälfte der RückkehrerInnen aufweisen. Außerdem wurden 22 RückkehrerInnen aus Österreich, 23 aus Polen und aus den übrigen sieben Ländern insgesamt nur 19 gemeldet. Offensichtlich sind die Verhältnisse zwischen der Zahl von RückkehrerInnen und der Gesamtzahl der vermittelten vermutlich Betroffenen von Menschenhandel in den einzelnen Ländern sehr unterschiedlich. Wiederum deuten die Daten hier darauf hin, dass jedes Land unterschiedliche Kriterien hat, auf deren Grundlage entschieden wird, ob vermutlich Betroffene von Menschenhandel zurückgeführt werden sollen. Weiterhin war die Zahl der RückkehrerInnen nicht proportional zu der Zahl vermutlich Betroffener von Menschenhandel, die identifiziert oder denen Bedenkzeiten gewährt wurden.

In den Jahren 2008 oder 2009 erhielten **Staatsangehörige anderer EU-Mitgliedsstaaten, die in einem Land als vermutlich Betroffene von Menschenhandel identifiziert wurden**, Schutz und Unterstützung in 19 Mitgliedsstaaten auf der gleichen Grundlage, wie sie Staatsangehörige der sogenannten ‚Drittländer' außerhalb der EU bekamen. Jedoch erfuhren BürgerInnen anderer EU-Staaten, die als Betroffene von Menschenhandel identifiziert wurden, in sechs Mitgliedsstaaten (Deutschland, Ungarn, Lettland, Litauen, Rumänien und Spanien) weniger Schutz und Unterstützung als BürgerInnen von ‚Drittländern'. Einige BürgerInnen der anderen EU-Staaten hatten den Berichten nach Schwierigkeiten, als ‚gehandelt' identifiziert zu werden oder Unterstützung zu bekommen. Insgesamt bzw. in der überwiegenden Anzahl der Fälle haben BürgerInnen, die aus EU-Ländern in Mitteleuropa nach Westeuropa gehandelt wurden, aber Unterstützung erhalten. In 14 von 25 EU Ländern wurden EU-BürgerInnen identifiziert und auf der gleichen Grundlage wie Betroffene von Menschenhandel aus Ländern außerhalb der EU unterstützt.

Die Frage nach den Formen des **Rechtsschutzes, die für Erwachsene und Kinder, die von Menschenhandel betroffen** waren und die als OpferzeugInnen aussagten, zur Verfügung standen, ergab, dass über die Hälfte der EU-Mitgliedsstaaten Maßnahmen zum Schutz von OpferzeugInnen anbietet. Der Rechtsschutz, den die Forschenden untersuchten, schloss OpferzeugInnen mit ein, die in einer richterlichen Vernehmung aussagen konnten (z.B. vor einer/m Ermittlungsrichterin/er) ohne in einer öffentlichen Verhandlung erscheinen zu müssen, sowie OpferzeugInnen, die über eine Videoschaltung oder von der Sicht der/s Angeklagten abgeschirmt aussagen konnten. Den-

noch wurde in 2008 oder 2009 von Fällen in fünf Ländern berichtet (Tschechien, Dänemark, Frankreich, Portugal und Großbritannien), in denen die Identität einer/s gehandelten Erwachsenen oder eines Kindes geheim gehalten werden sollte, diese jedoch im Laufe des Strafverfahrens öffentlich wurde.

Neue Untersuchungen von Anti-Slavery International[318] und der OSZE[319] ergaben, dass, obwohl es ein Recht auf Entschädigung für Betroffene von Menschenhandel gibt und trotz der Existenz einiger Kompensationsmechanismen, eine betroffene Person äußerst selten Entschädigungszahlungen erhält. Nichtsdestotrotz haben im Jahr 2008 Betroffene von Menschenhandel in 12 Ländern (von den 22, für die Informationen erhältlich waren) Entschädigungs- oder Kompensationszahlungen zugesprochen bekommen, während es im Jahr 2009 12 Länder (von 20) waren, entweder als Ergebnis eines Verfahrens oder aus anderer Quelle. Die neun Länder, in denen in zwei aufeinander folgenden Jahren Entschädigungszahlungen geleistet worden sind, waren Österreich, Dänemark, Frankreich, Deutschland, Italien, Niederlande, Spanien, Schweden und Großbritannien.

Das Projekt untersuchte nicht die zahlreich vorhandenen Präventionsmethoden im Detail, sondern konzentrierte sich auf die Informationen, die den MigrantInnen vor und nach ihrer Ankunft in dem Land, aus dem berichtet wurde, dass Menschen ausgebeutet wurden, zur Verfügung standen.

Die Europaratskonvention verlangt von den Ländern, „die Einrichtung von **nationalen RapporteurInnen** oder anderen Mechanismen zum Monitoring der Maßnahmen zur Bekämpfung von Menschenhandel von staatlichen Institutionen und die Ausführung von nationalen Gesetzgebungsbestimmungen in Erwägung zu ziehen". Obwohl die Vorschrift von den Staaten ausschließlich verlangt, dies „in Erwägung zu ziehen", gibt es Grund genug zu erwarten, dass die in Kürze erscheinende EU-Richtlinie sich deutlich stärker zu diesem Punkt äußern wird, indem es zur Bedingung für die EU-Mitgliedsstaaten gemacht wird, eine/einen unabhängige/unabhängigen nationale/nationalen RapporteurIn oder einen gleichwertigen Mechanismus einzurichten. Eine Konferenz im März 2009 zum Thema der nationalen RapporteurInnen zeigte, dass 12 EU-Staaten bereits eine solche (oder einen vergleichbaren Mechanismus) eingerichtet hatten, um nationale Maßnahmen gegen Menschenhandel zu beobachten. Die ForscherInnen haben bestätigt, dass neun der 27 EU-

318. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
319. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

Länder eine/n nationale/n RapporteurIn für Menschenhandel haben (Zypern, Tschechische Republik, Finnland, Lettland, Litauen, die Niederlande, Portugal, Rumänien and Schweden), während 16 Länder keine solche Stelle eingerichtet haben. Von einigen Ländern (Schweden beispielsweise) wurde berichtet, dass sie sich in erster Linie um Fälle kümmern, in denen es um Menschenhandel zum Zwecke der sexuellen Ausbeutung geht. In einigen Staaten (z.B. Belgien und Spanien) ist eine andere staatliche Einrichtung am Monitoring der Maßnahmen gegen Menschenhandel beteiligt. In drei der neun Länder mit RapporteurIn (Lettland, Litauen und Schweden) ist deren Rolle nicht vollkommen unabhängig von solchen Stellen, die an Maßnahmen gegen Menschenhandel beteiligt sind, und ist somit in ihrer Unabhängigkeit begrenzt, wodurch möglicherweise ihre Fähigkeit verringert ist, in einer strikt unabhängigen Weise zu beobachten und zu kontrollieren.

4. Fazit und Empfehlungen

Das E-notes Projekt hat gezeigt, dass es innerhalb der EU wesentliche Unterschiede zwischen den EU-Mitgliedsstaaten bezüglich der grundlegenden Aspekte der Maßnahmen und Verfahren gegen Menschenhandel, beispielsweise in der nationalen Gesetzgebung zum Verbot von Menschenhandel und Definitionen (oder Interpretationen der jeweiligen Regierungsbehörden) von Menschenhandel, dem Vorhandensein von Koordinierungsstellen und dem Prozess der Identifizierung von Betroffenen von Menschenhandel gibt. Außerdem wurde deutlich, dass einige Bestimmungen der internationalen und nationalen Gesetzgebung, welche den Schutz der Rechte der gehandelten Personen sichern, ausschließlich auf dem Papier existieren und deren Ausführung in den meisten EU-Mitgliedsstaaten noch kaum begonnen hat. Das E-Notes-Projekt zeigt, dass die Europäische Union, die EU-Mitgliedsstaaten selbst und die Zivilgesellschaft sich noch mehr bemühen müssen, um das Fundament der politischen Rahmenbedingungen, welche Menschenhandel beenden sollen, auf nationaler sowie auf EU-Ebene zu stärken.

Während wesentliche Verbesserungen hinsichtlich der Ausführung vieler Aspekte der Richtlinien gegen Menschenhandel in der EU nötig sind, richtet sich der Fokus der folgenden Empfehlungen des E-notes Projektes auf den Schutz der Rechte der Betroffenen von Menschenhandel, da wir davon überzeugt sind, dass dies das Kernstück jeglicher staatlicher Bemühungen gegen Menschenhandel sein sollte. Dennoch werden die relevanten Bestimmungen hinsichtlich der Prävention von Menschenhandel und dem Schutz von gehandelten Menschen am wenigsten angewandt.

Identifizierung und Weitervermittlung von gehandelten Personen

Der Schutz der Rechte von gehandelten Personen kann nur gewährleistet werden, wenn alle potenziell Betroffenen (unabhängig von ihrer Kooperation mit den Behörden) als solche identifiziert werden. Die Ergebnisse des E-notes Projekts zeigen, dass die Identifizierung noch immer ein sehr schwaches Glied in der Kette ist. Für die Verbesserung des Identifizierungsprozesses in den Mitgliedsstaaten ist es unseres Erachtens nach essentiell, dass:

- Mitgliedsstaaten in Kooperation mit der Strafverfolgung, der Staatsanwaltschaft und den Unterstützungsstrukturen eine Checkliste und/oder Indikatoren entwickeln, welche die Identifizierung von vermutlich Betroffenen von Menschenhandel zum Zwecke irgendeiner Form der Ausbeutung erleichtern sollen. Weitere Indikatoren sollen für jede Form der Ausbeutung ermittelt werden, wie beispielsweise Arbeitsausbeutung, häusliche Knechtschaft, sexuelle Ausbeutung, erzwungenes Betteln, erzwungene Beteiligung an illegalen Aktivitäten etc. Spezifische Indikatoren für die Identifizierung von Betroffenen im Kindesalter müssen entwickelt werden;
- die Identifizierung nicht die Verantwortung einer einzelnen Regierungsbehörde ist, sondern von multidisziplinären Teams unter Einbeziehung von Organisationen, die Unterstützungsstrukturen für gehandelte Personen anbieten, ausgeführt werden soll
- nationale Strukturen zur Weitervermittlung, entweder *National Referral Mechanisms* (NRM) oder andere Strukturen, die an der Ausführung von *Standard Operational Procedures* (SOPs) beteiligt sind, auf eine enge und regelmäßige Kooperation zwischen StrafverfolgungsbeamtInnen, EinwanderungsbeamtInnen, ArbeitsinspektorInnen, den relevanten Gewerkschaften, Kinderschutzdiensten, Staatsanwaltschaft und NGOs oder anderen Unterstützungsorganisationen gegründet sein sollten;
- der Zugang zu Justiz für gehandelte Personen, einschließlich der Kompensationsansprüche, durch eine Gewährleistung von kostenlosem Rechtsbeistand für alle identifizierten gehandelten Personen verbessert wird;
- alle Mitgliedsstaaten die Durchführung einer individuellen Gefährdungsanalyse für alle gehandelten Personen gewährleisten, wenn vorgeschlagen wird, dass sie in ihr Heimatland zurückkehren.

Monitoring

Weiteres Monitoring auf EU- sowie auf nationaler Ebene ist von großer Bedeutung, damit die relevanten AkteurInnen ein besseres Verständnis für die tatsächliche Praxis der Menschenhandelsbekämpfung und nicht nur für Maßnahmen der einzelnen Länder zur Beendigung von Menschenhandel, die theoretisch umgesetzt werden sollten und die jedoch nur auf dem Papier existieren, bekommen.

Für ein gutes Verständnis der Ausführung, der Auswirkungen und der Bedeutung von Maßnahmen gegen Menschenhandel in der Europäischen Union sind folgende Voraussetzungen dringend geboten:

- nationale RapporteurInnen oder andere äquivalente Mechanismen sollten unabhängige Stellen sein (wie in der Erklärung von Den Haag 1997 vereinbart), um ein unabhängiges und vergleichbares Monitoring der Ergebnisse der Maßnahmen gegen Menschenhandel zu gewährleisten. Weiterhin ist es wichtig, dass die Bedeutung und die unvorhersehbaren oder negativen Auswirkungen von Maßnahmen gegen Menschenhandel erkannt und gemeldet werden.
- Es muss mehr Standardisierung hinsichtlich der relevanten Terminologien, Statistiken und Messungen geben (z.B. Zahlen von Angeklagten wegen Menschenhandel)
- Um eine unnötige Überschneidung des Monitorings zu vermeiden, sollte es eine enge Zusammenarbeit zwischen der EU, den Mitgliedsstaaten und den Mitgliedern von GRETA, der unabhängigen Monitoring Stelle der Europarats-Konvention zur Bekämpfung des Menschenhandels, geben.

Gesetzgebung

- Weiteres Monitoring ist notwendig, um zu gewährleisten, dass alle nationalen Gesetzesrahmen die Definitionen von Menschenhandel enthalten, welche in dem Rahmenbeschluss von 2002 und in der Europarats-Konvention von 2005 vereinbart wurden.
- Es hat sich herausgestellt, dass es in vielen EU-Mitgliedsstaaten an einem umfassenden Verständnis von „Ausbeutung" sowie der verschiedenen Straftaten, die mit illegaler Ausbeutung zusammenhängen, fehlt. Ein gemeinsames Verständnis sowohl von Personen, die in die Ausbeutung oder zum Zwecke der Ausbeutung gehandelt werden, als auch von Personen, die Opfer illegaler Ausbeutung werden, ohne dass sie gehandelt wurden, ist nicht vorhanden.

Koordinierung von Maßnahmen gegen Menschenhandel auf nationaler Ebene

- Die Mitgliedsstaaten, die es noch nicht getan haben, sollten für eine höhere Kohärenz ihrer Maßnahmen gegen Menschenhandel eine Koordinationsstruktur und einen nationalen Aktionsplan einrichten. Für beides ist eine angemessene Zuweisung von Personal und finanziellen Mitteln für ein effizientes Funktionieren entscheidend. Folglich wäre es angebracht, für jegliche zukünftigen Monitorings zu überprüfen, welche Ressourcen in jedem EU-Mitgliedsstaat für die Finanzierung einer nationalen Koordinationsstruktur und für die Unterstützung von Koordinationsaktivitäten zur Verfügung stehen.

8.9 Εκτελεστική περίληψη

Το 2009, τέσσερις μη κυβερνητικές οργανώσεις συμφώνησαν να συμμετάσχουν σε ένα κοινό πρόγραμμα με τίτλο «Ευρωπαϊκό Παρατηρητήριο Μη Κυβερνητικών Οργανώσεων κατά της Εμπορίας Ανθρώπων, της Εκμετάλλευσης και της Δουλείας» (συνοπτικά αποκαλούμενο E-notes) με τον ευρύτερο στόχο την παρακολούθηση των δράσεων των κυβερνήσεων των κρατών-μελών της ΕΕ που στοχεύουν στην αντιμετώπιση της εμπορίας ανθρώπων και άλλων μορφών εκμετάλλευσης που συνδέονται με αυτήν. Το πρόγραμμα αυτό συντονίστηκε από την Ιταλική μη κυβερνητική οργάνωση Associazione On the Road[320] σε συνεργασία με το περιφερειακό δίκτυο κατά της εμπορίας ανθρώπων La Strada International και δύο εθνικές μη κυβερνητικές οργανώσεις, την ACCEM[321] με έδρα την Ισπανία και την ALC[322] με έδρα τη Γαλλία.

Προκειμένου να επιτευχθούν οι στόχοι του E-notes, αντί να δημιουργηθεί μία μόνιμη δομή για την παρακολούθηση των κυβερνητικών δράσεων, προκρίθηκε η συλλογή πληροφοριών σχετικά με το τί ακριβώς συμβαίνει σε κάθε μία από τις 27 χώρες της ΕΕ. Αυτό σήμαινε ότι έπρεπε να δημιουργεί μια συγκεκριμένη μεθοδολογία και να βρεθούν μη κυβερνητικές οργανώσεις και ερευνητές σε κάθε μία από τις 27 χώρες της ΕΕ, πρόθυμοι να συμμετάσχουν στο πρόγραμμα. Το πρόγραμμα ξεκίνησε δίνοντας έμφαση στο ρόλο των **δεικτών** για τη μέτρηση της προόδου κάθε κράτους-μέλους στη λήψη μέτρων καταπολέμησης της εμπορίας ανθρώπων (π.χ. νομοθετικό πλαίσιο, πολιτικές, μέτρα και πρακτικές που αποσκοπούν στη μείωση της έντασης του φαινομένου και την καλύτερη προστασία και αρωγή των θυμάτων). Αυτή η προσπάθεια οδήγησε στη δημιουργία ενός ερευνητικού εργαλείου που περιείχε περισσότερες από 200 ερωτήσεις για την διερεύνηση των παραπάνω ζητημάτων με την ελπίδα ότι θα βοηθούσε στην εκτίμηση της προόδου που κάθε κράτος-μέλος της ΕΕ έχει επιτύχει στην αντιμετώπιση της εμπορίας ανθρώπων.

320. Η ΜΚΟ Associazione On the Road προσφέρει προστασία και μία ευρεία γκάμα υπηρεσιών σε θύματα εμπορίας ανθρώπων, σε αιτούντες άσυλο, πρόσφυγες και μετανάστες σε τρεις επαρχίες της Ιταλίας (Marche, Abruzzo, Molise). Επίσης δραστηριοποιείται στην οργάνωση δράσεων ευαισθητοποίησης, έρευνας, δικτύωσης και προώθησης νέων πολιτικών σε τοπικό, εθνικό και ευρωπαϊκό επίπεδο.

321. Η ΜΚΟ ACCEM προσφέρει κοινωνικές υπηρεσίες στήριξης και δραστηριοποιείται στο κοινωνικό και νομικό πεδίο προς όφελος των αιτούντων άσυλο, προσφύγων, εκτοπισμένων ατόμων και μεταναστών στην Ισπανία.

322. Η ΜΚΟ ALC (Accompagnement, Lieux d'accueil, Carrefour educatif et social- Συνοδεία, Κέντρα υποδοχής, εκπαιδευτικά και κοινωνικά κέντρα) συντονίζει το εθνικό δίκτυο για την ασφαλή στέγαση θυμάτων εμπορίας ανθρώπων στην Ισπανία, γνωστό και ως Ac.Se.

1. Τα διεθνή πρότυπα για τα οποία ζητήθηκαν πληροφορίες

Η ερευνητική διαδικασία ξεκίνησε στις αρχές του 2010, την ίδια εποχή που το Ευρωπαϊκό Συμβούλιο είχε σχεδόν τελειώσει την εξέταση ενός νέου Ευρωπαϊκού εργαλείου με σκοπό να ευθυγραμμιστούν τα μέτρα κατά της εμπορίας ανθρώπων στα κράτη-μέλη της ΕΕ (το νέο εργαλείο σκοπό είχε να αντικαταστήσει την Απόφαση Πλαίσιο του Συμβουλίου για την καταπολέμηση της εμπορίας ανθρώπων που είχε υιοθετηθεί τον Ιούλιο του 2002). Το 2009 η Ευρωπαϊκή Επιτροπή παρουσίασε μία πρόταση για μία νέα απόφαση πλαίσιο για την εμπορία ανθρώπων. Λόγω της θέσης σε ισχύ της συνθήκης της Λισαβόνας το 2009, που ανέστειλε όλες τις εκκρεμείς νομοθετικές διαδικασίες, οι διαπραγματεύσεις στο συμβούλιο σχετικά με την υιοθέτηση της νέας απόφασης πλαίσιο δεν μπορούσαν να συνεχιστούν. Για το λόγο αυτό, η Ευρωπαϊκή Επιτροπή υπέβαλε μία νέα πρόταση για μία *Οδηγία του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου για την πρόληψη και καταπολέμηση της εμπορίας ανθρώπων και την προστασία των θυμάτων*, αποσύροντας την Απόφαση Πλαίσιο του 2002. Το Μάρτιο του 2010 αυτή η νέα πρόταση τέθηκε προς εξέταση από το Ευρωπαϊκό Κοινοβούλιο. Το Σεπτέμβριο του 2010, δύο από τις επιτροπές του Κοινοβουλίου πρότειναν μία σειρά αλλαγών στο σχέδιο της Οδηγίας και ξεκίνησε η διαδικασία επίτευξης συμφωνίας μεταξύ του Συμβουλίου, της Επιτροπής και του Ευρωπαϊκού Κοινοβουλίου. Με βάση τα παραπάνω η υιοθέτηση της Οδηγίας αναμενόταν πριν το τέλος του 2010.

Παρόλο που η νέα οδηγία είναι αρκετά σαφής ως προς το περιεχόμενό της, δεν είχε ακόμη υιοθετηθεί το Μάιο-Ιούνιο 2010, διάστημα κατά το οποίο η έρευνα του προγράμματος E-NOTES ήταν σε εξέλιξη (ούτε και τον Οκτώβριο 2010, στάδιο της τελικής επεξεργασίας της αναφοράς αυτής). Όταν τελικά ήρθε η ώρα να αποφασιστεί σε ποιες ακριβώς νομικές υποχρεώσεις θα επικεντρωνόταν η έρευνα αυτή, στα πλαίσια εντοπισμού του είδους και του επιπέδου των θεσμών που υπάρχουν σε κάθε κράτος-μέλος της ΕΕ, αποφασίστηκε τελικά να χρησιμοποιηθεί ως σημείο αναφοράς ένα διαφορετικό περιφερειακό εργαλείο, *η Σύμβαση του Συμβουλίου της Ευρώπης κατά της Εμπορίας Ανθρώπων*. Η σύμβαση αυτή υιοθετήθηκε το Μάιο του 2005 και τέθηκε σε ισχύ το Φεβρουάριο του 2008. Η σύμβαση αυτή έχει ήδη επικυρωθεί από αρκετές χώρες εκτός ΕΕ. Τον Αύγουστο 2010, όλες οι χώρες της ΕΕ εκτός από μία (Τσεχία) είχαν είτε επικυρώσει τη Σύμβαση (19 χώρες), είτε υπογράψει (επτά χώρες), και με τον τρόπο αυτό είχαν εκφράσει τη συναίνεσή τους να εφαρμόσουν τη Σύμβαση.

2. Μεθοδολογία

Η έρευνα σχεδιάστηκε από έναν εμπειρογνώμονα στις αρχές του 2010. Ιδιαίτερη προσοχή δόθηκε σε προϋπάρχουσες εκδόσεις που πρότειναν κατάλληλους «δείκτες» για κράτη-μέλη της ΕΕ για την αξιολόγηση της προόδου που είχαν κάνει σε θέματα ευθυγράμμισης των νόμων και των πρακτικών τους με περιφερειακά και διεθνή πρότυπα (όλα εκ των οποίων βασίζονται στο *Πρωτόκολλο των Ηνωμένων Εθνών για την Πρόληψη, Καταστολή και την Τιμωρία της Εμπορίας Ανθρώπων* που υιοθετήθηκε το 2000 για να συμπληρώσει τη *Σύμβαση των Ηνωμένων Εθνών κατά του Διεθνικού Οργανωμένου Εγκλήματος* (2000)). Ιδιαίτερη προσοχή δόθηκε σε σχόλια που είχαν ήδη περιληφθεί σε διάφορες εκδόσεις της Ευρωπαϊκής Επιτροπής[323] σχετικά με αδυναμίες που είχαν επισημανθεί στον τρόπο με τον οποίο τα κράτη-μέλη έδιναν αναφορά για τις ενέργειές τους να σταματήσουν την εμπορία ανθρώπων ή να προστατεύσουν και να βοηθήσουν θύματα ή πιθανολογούμενα θύματα.[324] Ορισμένες εκδόσεις ανέφεραν ότι υπήρξαν δυσκολίες στη συγκέντρωση πληροφοριών από τα κράτη-μέλη (κάποιες φορές υπήρξε έλλειψη επίκαιρης πληροφόρησης, και σε ορισμένες περιπτώσεις οποιασδήποτε πληροφόρησης), σχετικά με τις πρακτικές που έχουν υιοθετήσει κατά της εμπορίας ανθρώπων. Υπήρξαν επίσης αναφορές για απουσία συλλογής στοιχείων σε κοινή βάση, υποδηλώνοντας ότι δεν υπήρχε συστηματική χρήση ορολογίας και κοινοί μηχανισμοί αναφοράς στα κράτη-μέλη. Όλα αυτά τα προβλήματα επιβεβαιώθηκαν και κατά τη διάρκεια της έρευνας στα πλαίσια του E-NOTES.

Ένα έγγραφο της Ευρωπαϊκής Επιτροπής που δημοσιεύτηκε το 2006[325] σημείωνε ότι οι χώρες μέλη παρείχαν πολύ λίγες πληροφορίες για τους κανονισμούς και τις πρακτικές που ακολουθούσαν σχετικά με την προστασία και την αρωγή θυμάτων εμπορίας. Το 2008 ένα έγγραφο εργασίας[326] επανέλαβε ότι ήταν δύσκολο να ληφθούν πληροφορίες από τις

323. Ενδεικτικά: European Commission, *Communication to the European Parliament and Council on "Fighting trafficking in human beings- an integrated approach and proposals for an action plan"*, (European Commission reference COM (2005) 514 final of 18 October 2005); and European Commission Working Document, European Commission reference COM(2008) 657 final), *Evaluation and Monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, October 2008.

324. Ο όρος «πιθανολογούμενα» θύματα εμπορίας ανθρώπων αναφέρεται σε πρόσωπα τα οποία πιθανολογείται ότι έχουν διακινηθεί, ελλείψει οριστικής πληροφόρησης για το τι πραγματικά τους συνέβη.

325. European Commission report on the implementation of the 2002 Council Framework Decision of 19 July 2002 on combating trafficking in human beings (European Commission reference COM (2006) 187 final of 2 May 2006).

326. Βλέπε ανωτέρω, υποσημείωση 323.

χώρες μέλη σχετικά με τον αριθμό των θυμάτων εμπορίας που έλαβαν αρωγή, αλλά σημείωσε ότι λίγο περισσότερες από 1.500 υποθέσεις εμπορίας είχαν ερευνηθεί σε 23 χώρες μέλη κατά την διάρκεια του έτους. Ανέφερε επίσης ότι οι περισσότερες χώρες της ΕΕ είχαν υιοθετήσει κάποια περίοδο περίσκεψης προκειμένου να επιτρέψουν στα πιθανολογούμενα θύματα να παραμείνουν στη χώρα και να αναρρώσουν πριν να τους ζητηθεί να καταθέσουν στις Αρχές. Παρ' όλα αυτά, μόνο πέντε χώρες ανέφεραν πόσα θύματα είχαν επωφεληθεί από τις διατάξεις αυτές και το σύνολο έφτασε μόλις τα 26 άτομα σε έναν ολόκληρο χρόνο!

Για τις ΜΚΟ που ειδικεύονται στην καταπολέμηση της εμπορίας ανθρώπων, (είτε παρέχοντας υπηρεσίες και αρωγή σε πιθανολογούμενα θύματα, είτε εμπλεκόμενες σε πρωτοβουλίες για την καταπολέμηση της εμπορίας), η έλλειψη παροχής σαφών και διακριβωμένων στοιχείων από χώρες- μέλη της ΕΕ προς την Ευρωπαϊκή Επιτροπή είναι ιδιαίτερα ανησυχητική. Από τη μία μεριά υποδηλώνει ότι κανείς, ούτε και στην Ευρωπαϊκή Επιτροπή, είναι σε θέση να ανακαλύψει τί ακριβώς συμβαίνει στην ΕΕ. Από την άλλη, σημαίνει επίσης ότι τα κράτη αγνοούν πολλές από τις διατάξεις και τους κανόνες των περιφερειακών και διεθνών συνθηκών για την εμπορία ανθρώπων και άλλα θέματα ανθρωπίνων δικαιωμάτων (παρά το γεγονός ότι έχουν συμφωνήσει με αυτούς), και ότι οι κανόνες αυτοί παραμένουν ανεφάρμοστοι.

Ορισμένα κράτη-μέλη έχουν θεσπίσει τη θέση του Εθνικού Εισηγητή για θέματα εμπορίας ανθρώπων με σκοπό να κρατούν ενήμερη την κυβέρνηση (και άλλους φορείς) για την πρόοδο που έχει σημειώσει η χώρα σε θέματα αντιμετώπισης της εμπορίας, καθώς και για να κάνουν συστάσεις για τη βελτίωση της κατάστασης. Εννέα από τα 27 κράτη-μέλη της ΕΕ δήλωσαν κατά την έρευνα που διεξήχθη στα μέσα του 2010 ότι έχουν θεσπίσει έναν τέτοιο θεσμό (εθνικός εισηγητής). Θα πρέπει όμως να σημειωθεί ότι δεν δημοσιεύουν όλες οι χώρες ετήσιες αναφορές για την καταπολέμηση του φαινομένου, ενώ σε μερικές χώρες οι Εθνικοί Εισηγητές επικεντρώνονται σε ορισμένες μόνο μορφές εμπορίας ανθρώπων (όπως σεξουαλική εκμετάλλευση γυναικών), χωρίς να παρέχουν πληροφορίες για τα μέτρα που ελήφθησαν για να καταπολεμηθούν άλλες μορφές εμπορίας. Μακροπρόθεσμα, εάν όλες οι χώρες της ΕΕ θέσπιζαν το θεσμό του Εθνικού Εισηγητή, θα διευκολυνόταν η υιοθέτηση ομοιόμορφων ορισμών και κοινών τρόπων συλλογής και μέτρησης στατιστικών στοιχείων σχετικά με τα μέτρα καταπολέμησης της εμπορίας στα διαφορετικά κράτη-μέλη.

Με βάση τα ανωτέρω στοιχεία, η έρευνα που διεξήχθη στα πλαίσια του προγράμματος E-NOTES, έθεσε ως στόχο να εντοπίσει τι είδους

πληροφορίες ήταν διαθέσιμες σε όλα τα κράτη-μέλη της ΕΕ σχετικά με τη νομοθεσία, τις πολιτικές και τις πρακτικές που εφαρμόζονται σε θέματα εμπορίας ανθρώπων, πόσα άτομα αναγνωρίστηκαν ως θύματα και έλαβαν κάποια μορφή προστασίας και αρωγής κλπ. Η έρευνα αυτή έγινε το Μάιο και τον Ιούνιο 2010 και η αρχική πρόθεση ήταν να συλλεχθούν πληροφορίες σχετικά με την κατάσταση που επικρατούσε σε κάθε χώρα το 2009. Γρήγορα όμως έγινε φανερό ότι σε πολλές χώρες είτε δεν υπήρχαν καθόλου πληροφορίες για το 2009, είτε υπήρχαν ελλιπείς πληροφορίες, ενώ κάπως πιο συγκεκριμένα στοιχεία ήταν διαθέσιμα για το 2008.

Οι ΜΚΟ από τις οποίες ζητήθηκε να υποδείξουν ερευνητές για τη συλλογή πληροφοριών και τη συγγραφή αναφορών στα πλαίσια του E-notes, ήταν κυρίως οργανώσεις οι οποίες ειδικεύονται σε ενήλικα θύματα εμπορίας ανθρώπων (κυρίως γυναίκες). Οι ίδιοι ερευνητές συγκέντρωσαν και στοιχεία σχετικά με την εμπορία παιδιών, παρόλο που πολλοί δυσκολεύτηκαν στον εντοπισμό των πληροφοριών αυτών. Σε πολλές Ευρωπαϊκές χώρες, τα ενήλικα θύματα εμπορίας ανθρώπων λαμβάνουν αρωγή και βοήθεια από μη κυβερνητικές οργανώσεις, ενώ αντίθετα οι κρατικές δομές έχουν συνήθως το μονοπώλιο όσον αφορά την φροντίδα των ανηλίκων θυμάτων.

Από κάθε ερευνητή ζητήθηκε να συμπληρώσει ένα πρωτόκολλο έρευνας 60 σελίδων και να υποβάλλει και συμπληρωματικές απαντήσεις σε ερωτήσεις που δεν μπορούσαν να απαντηθούν με ένα απλό ναι ή όχι, καθώς επίσης και να συντάξει ένα σύντομο προφίλ για τη χώρα του σχετικά με τα ειδικά χαρακτηριστικά υποθέσεων εμπορίας και τις ενέργειες και τα μέτρα που λαμβάνει η πολιτεία. Οι πληροφορίες που συγκεντρώθηκαν από τους ερευνητές επεξεργάστηκαν και στη συνέχεια εισήχθησαν σε μία απλή βάση δεδομένων τον Ιούλιο του 2010. Τα στοιχεία αναλύθηκαν από τον επικεφαλής της έρευνας ο οποίος είχε ετοιμάσει και το ερευνητικό πρωτόκολλο, με σκοπό να εντοπιστούν κοινά χαρακτηριστικά -κυρίως όσον αφορά τις αδυναμίες των κρατών-μελών να σεβαστούν τις υποχρεώσεις τους για αρωγή και προστασία των θυμάτων- και να ετοιμαστεί μία αναφορά με τα ευρήματα.

Οι ερευνητές κλήθηκαν να σχολιάσουν εάν η χώρα τους είναι κατά βάση χώρα προέλευσης, διέλευσης ή προορισμού, ή ένας συνδυασμός όλων των παραπάνω. Αυτή η κατηγοριοποίηση δεν εστίασε σε υποθέσεις εσωτερικής εμπορίας ανθρώπων. Σχετικά λίγες χώρες προσδιορίστηκαν ως χώρες που ανήκουν σε μία μόνο από τις τρεις κατηγορίες (δύο, η Γαλλία και η Πορτογαλία, θεωρήθηκαν κατά κύριο λόγο χώρες προορισμού). Οι άλλες 25 χώρες προσδιορίστηκαν ως συνδυασμοί των ανωτέρω κατηγοριών: μία ως

χώρα προέλευσης και προορισμού, δέκα ως χώρες διέλευσης και προορισμού, και εννέα ως χώρες προέλευσης, διέλευσης και προορισμού.

3. Τα ευρήματα της έρευνας

Οι 230 ερωτήσεις του ερευνητικού πρωτοκόλλου αναζητούσαν πληροφορίες σε πολλά και διαφορετικά θέματα, γεγονός που δυσκόλεψε σημαντικά τη δυνατότητα να δοθεί μία κατηγορηματική απάντηση στην ερώτηση εάν οι χώρες- μέλη συμμορφώνονται με τις υποχρεώσεις τους και σέβονται τα ανθρώπινα δικαιώματα των θυμάτων. Παρόλα αυτά, σε πέντε διαφορετικά ζητήματα κατέστη τελικά δυνατό να εκτιμηθεί ο βαθμός της προόδου των χωρών. Αλλά ακόμη και σε αυτές τις περιπτώσεις, οι πληροφορίες ήταν είτε ελλιπείς, είτε μη διαθέσιμες, σε τέτοιο βαθμό μάλιστα, ώστε να μην μπορούν να θεωρηθούν ακριβείς. Αυτά τα πέντε θέματα αναφέρονται περιληπτικά πιο κάτω:

Πίνακας 1- Η πρόοδος στην Ευρωπαϊκή Ένωση σε σημαντικά ζητήματα καταπολέμησης της εμπορίας ανθρώπων

Θέμα	Η κατάσταση το Μάιο 2010
Συντονισμός πολιτικών κατά της εμπορίας ανθρώπων σε εθνικό επίπεδο	Σε 22 από τις 27 χώρες-μέλη της ΕΕ αναφέρθηκε η ύπαρξη μίας εθνικής δομής για το συντονισμό των ενεργειών κατά της εμπορίας. Οι χώρες χωρίς εθνικό συντονιστικό όργανο είναι: Γαλλία, Γερμανία, Ελλάδα και η Μάλτα. Στη Γερμανία και την Ιταλία οι ενέργειες κατά της εμπορίας δεν οργανώνονται σε εθνικό ή ομοσπονδιακό επίπεδο, αυτό όμως δεν σημαίνει ότι είναι ανεπαρκείς. Η Σουηδία έχει διορίσει έναν Εθνικό Συντονιστή επιφορτισμένο με τη δημιουργία μίας συντονιστικής δομής κατά της εμπορίας, αλλά μόνον όσον αφορά υποθέσεις σεξουαλικής εκμετάλλευσης.
Αναγνώριση πιθανολογούμενων θυμάτων εμπορίας	Έντεκα από τις 27 χώρες έχουν μία κυβερνητική αρχή ή δομή που είναι αποκλειστικά υπεύθυνη για την επίσημη αναγνώριση πιθανολογούμενων θυμάτων, ενώ σε 16 χώρες δεν υπάρχει αντίστοιχη δομή. Έξι από τις χώρες- μέλη όπου δεν υπάρχει εξειδικευμένη αρχή αναγνώρισης δεν έχουν καμία θεσμοθετημένη διαδικασία που να εφαρμόζεται σε εθνικό επίπεδο για την αναγνώριση θυμάτων (Αυστρία, Βουλγαρία, Γαλλία, Γερμανία, Ιταλία, Μάλτα).
Περίοδος περίσκεψης τουλάχιστον 30 ημερών	25 από τις 27 χώρες έχουν θεσπίσει περίοδο περίσκεψης για ενήλικα πιθανολογούμενα θύματα και οι περισσότερες χώρες τηρούν τα κατώτερα όρια (30 ημέρες). Στην Ιταλία ο νόμος δεν προβλέπει περίοδο περίσκεψης, αλλά στην πράξη παρέχεται ορισμένες φορές. Στη Λιθουανία ισχύει κάτι αντίστοιχο με την Ιταλία. Για το έτος 2008, συγκεντρώθηκαν πληροφορίες από 11 χώρες που χορήγησαν προθε-

σμία περίσκεψης σε 207 άτομα. Το 2009, συγκεντρώθηκαν στοιχεία από 18 χώρες που χορήγησαν προθεσμία περίσκεψης, από τα οποία προκύπτει σημαντικά μεγαλύτερος αριθμός ωφελουμένων ατόμων: συνολικά 1150 θύματα. Αυτή ήταν μία σημαντική αύξηση.

Διαδικασίες για την ασφαλή και ει δυνατόν οικιοθελή επαναπατρισμό θυμάτων στις χώρες τους.

Οι ερευνητές ανέφεραν ότι έξι χώρες έχουν επίσημες συμφωνίες με άλλες χώρες- μέλη της ΕΕ, αλλά και με τρίτες χώρες, οι οποίες ρυθμίζουν τη διαδικασία επαναπατρισμού θυμάτων εμπορίας στη χώρα τους (Γαλλία, Λετονία, Πορτογαλία, Ισπανία και Ηνωμένο Βασίλειο- η Ελλάδα έχει υπογράψει μία διμερή συμφωνία με την Αλβανία για τον επαναπατρισμό ανηλίκων), παρόλο που η ύπαρξη τέτοιων συμφωνιών φαίνεται να παρέχει λίγες εγγυήσεις για την αποτροπή καταπάτησης θεμελιωδών δικαιωμάτων. Σύμφωνα με τους ερευνητές, στην περίπτωση που οι αρχές σχεδιάζουν τον επαναπατρισμό ενός πιθανολογούμενου ενηλίκου θύματος στη χώρα καταγωγής του, μόνο σε τρεις από τις 17 χώρες για τις οποίες υπήρχαν διαθέσιμες πληροφορίες, συντάσσεται πάντα έκθεση ανάλυσης/αξιολόγησης κινδύνου (Ιταλία, Πορτογαλία και Ρουμανία) πριν από την επιστροφή, π.χ. αξιολόγηση πιθανών κινδύνων για το θύμα ή για μέλη της οικογένειάς της/του.

Πρόσβαση σε ένδικα μέσα και αποζημίωση.

Σε 12 χώρες (από τις 22 για τις οποίες υπήρχαν διαθέσιμες πληροφορίες το 2008 και από τις 20 για τις οποίες υπήρχαν πληροφορίες το 2009) αναφέρθηκαν περιπτώσεις θυμάτων που έλαβαν αποζημίωση, είτε ως αποτέλεσμα δικαστικής απόφασης, είτε από άλλη πηγή. Οι εννέα χώρες στις οποίες δόθηκαν αποζημιώσεις σε θύματα κατά τη διάρκεια και του 2008 και του 2009 ήταν: Αυστρία, Δανία, Γαλλία, Γερμανία, Ιταλία, Ολλανδία, Ισπανία, Σουηδία και Ηνωμένο Βασίλειο.

Με βάση τα στοιχεία που συγκεντρώθηκαν όσον αφορά τα ανωτέρω πέντε σημεία, δεν θα ήταν συνετό να γίνει κατηγοριοποίηση της επίδοσης κάθε χώρας (όπως για παράδειγμα κάνει η ετήσια έκθεση του Αμερικανικού Υπουργείου Εξωτερικών), καθώς στις τρεις πρώτες κατηγορίες είναι κατά κύριο λόγο διαφορετικές χώρες που έχουν δυσκολίες, ενώ στις δύο τελευταίες κατηγορίες εντοπίζονται πολλές χώρες που σέβονται τις διεθνείς τους υποχρεώσεις. Για παράδειγμα, η Ιταλία αναφέρεται να έχει καλές επιδόσεις και στις πέντε κατηγορίες, έχει όμως υιοθετήσει ένα σύστημα κατά της εμπορίας ανθρώπων που είναι αρκετά διαφορετικό από αυτό των περισσότερων ευρωπαϊκών χωρών.

Εκτός από αυτά τα σημεία κλειδιά, στόχος της έρευνας ήταν να εξεταστούν και διάφορες άλλες εξελίξεις. Μεταξύ αυτών ήταν να εξεταστεί εάν το **νομοθετικό πλαίσιο** σε κάθε χώρα αντιμετωπίζει όλες τις μορφές εκμετάλλευσης που σχετίζονται με την εμπορία (πχ. σεξουαλική εκμετάλλευση, εργασιακή εκμετάλλευση, ειλωτεία και δουλεία ή πρακτικές

που προσομοιάζουν με δουλεία, αφαίρεση οργάνων). Το γενικό συμπέρασμα ήταν ότι, σε γενικές γραμμές, το νομοθετικό πλαίσιο χώρες της ΕΕ καλύπτει όλες τις ανωτέρω μορφές εκμετάλλευσης. Για δύο χώρες, την Εσθονία και την Πολωνία, αναφέρθηκε ότι έχουν ξεκινήσει διαδικασίες νομοθετικής αναθεώρησης, οι οποίες όμως δεν έχουν ακόμη ολοκληρωθεί και για την Ισπανία, ότι επίκειται αναθεώρηση του νόμου για την εναρμόνιση του ποινικού ορισμού της εμπορίας με τους ορισμούς της ΕΕ και του Συμβουλίου της Ευρώπης, η οποία θα τεθεί σε ισχύ το Δεκέμβριο 2010.

Η έρευνα αυτή επίσης αποσκοπούσε να διερευνήσει κατά πόσο ο **ορισμός της εμπορίας ανθρώπων** σε κάθε χώρα ήταν παρόμοιος όσον αφορά τις έννοιες «διακινητής» και «θύμα εμπορίας», έτσι ώστε οι έννοιες αυτές να είναι συγκρίσιμες. Όσον αφορά αυτό το σημείο, παρατηρήθηκαν αρκετές αποκλείσεις. Για παράδειγμα, στη Γαλλία, ο ορισμός της εμπορίας ανθρώπων είναι τόσο ευρύς που πρακτικά περιλαμβάνει και όλους τους υπόπτους για μαστροπεία. Αυτό είχε σαν αποτέλεσμα να εμφανίζεται αρχικά ότι περισσότερα από 900 άτομα είχαν καταδικαστεί στη Γαλλία για εμπορία ανθρώπων, μέσα σε ένα μόλις χρόνο (2008). Με μια πιο προσεκτική ματιά όμως, έγινε φανερό ότι πάνω από τις μισές καταδίκες (521) ήταν για επιβαρυντικές περιστάσεις μαστροπείας (ένα αδίκημα που βρίσκεται πολύ κοντά στην εμπορία ανθρώπων όπως ορίζεται στις περισσότερες χώρες της ΕΕ) και μόλις 18 καταδίκες για αδικήματα που ορίζονται ως εμπορία ανθρώπων σύμφωνα με τους ορισμούς που έχουν υιοθετηθεί με την Απόφαση Πλαίσιο του 2002 της ΕΕ και από το Συμβούλιο της Ευρώπης. Στη Φιλανδία πάλι, η κατάσταση είναι ακριβώς η αντίθετη: υποθέσεις που σύμφωνα με διεθνείς και περιφερειακούς ορισμούς θα έπρεπε να θεωρηθούν υποθέσεις εμπορίας ανθρώπων, τελικά θεωρήθηκαν ως μαστροπεία ή εκμετάλλευση πόρνης.

Η έρευνα τέλος εξέτασε ποια είναι η διαδικασία για την **αναγνώριση θυμάτων** και εάν στα θύματα παρεχόταν συστηματικά περίοδος περίσκεψης ή άλλου είδους προστασία ή αρωγή. Τα ευρήματα έδειξαν ότι τόσο η διαδικασία αναγνώρισης, όσο και τα κριτήρια με βάση τα οποία εξετάζεται εάν κάποιος είναι θύμα εμπορίας διαφέρουν σημαντικά μεταξύ των χωρών της ΕΕ, σε βαθμό που κανείς θα πίστευε ότι δεν υπάρχουν καθόλου κοινοί κανόνες, πρότυπα και ορισμοί.

Σε 20 από τις 27 χώρες της ΕΕ αναφέρθηκε η ύπαρξη **εθνικών δομών για το συντονισμό της καταπολέμησης της εμπορίας ανθρώπων**. 22 από τις 27 χώρες έχουν υιοθετήσει ένα Εθνικό Σχέδιο Δράσης για την Καταπολέμηση της Εμπορίας Ανθρώπων (σε μερικές περιπτώσεις όμως τα σχέδια αυτά επικεντρώνονται αποκλειστικά στην εμπορία με σκοπό την σεξουαλική

εκμετάλλευση). Οι περισσότερες χώρες έχουν κάποια μονάδα/τμήμα στην αστυνομία η οποία ειδικεύεται στην καταπολέμηση της εμπορίας ανθρώπων. Σε ορισμένες χώρες υπάρχει επίσης μία διαδικασία, αναγνωρισμένη σε εθνικό επίπεδο, που εξειδικεύει τους ρόλους και τις αρμοδιότητες διαφορετικών οργανώσεων και φορέων στη παροχή προστασίας ή αρωγής σε θύματα και στην μετέπειτα παραπομπή τους σε αρμόδιες υπηρεσίες, δηλαδή ένας Εθνικός Μηχανισμός Αναφοράς. Συνολικά 17 χώρες έχουν έναν τέτοιο μηχανισμό, ενώ εννέα δεν έχουν.

Σε 11 από τις 27 χώρες-μέλη της ΕΕ, ένας συγκεκριμένος κρατικός φορέας είναι υπεύθυνος για την επίσημη αναγνώριση πιθανολογούμενων θυμάτων εμπορίας, ενώ σε 16 χώρες δεν υπάρχει αντίστοιχος θεσμός. Επτά από τις χώρες όπου δεν υπάρχει μία συγκεκριμένη και ενιαία διαδικασία αναγνώρισης, δεν έχουν καμία διαδικασία για την επίσημη αναγνώριση θυμάτων που να εφαρμόζεται σε όλη την επικράτεια. Αυτό βέβαια δεν σημαίνει ότι η αναγνώριση (και η επακόλουθη προστασία) είναι πιο αποτελεσματική σε χώρες όπου υπάρχει ένα ενιαίο σύστημα αναγνώρισης. Στο θέμα της αναγνώρισης των θυμάτων, τόσο οι λεπτομέρειες της διαδικασίας που ακολουθείται, όσο και ο βαθμός στον οποίο οι διαδικασίες αυτές γίνονται σεβαστές και η αποτελεσματικότητα τους, διαφέρουν σημαντικά από χώρα σε χώρα.

Οι ερευνητές μπόρεσαν να λάβουν μόνο αποσπασματικές πληροφορίες σχετικά με τον **αριθμό των πιθανολογούμενων θυμάτων εμπορίας που αναγνωρίστηκαν σε μία περίοδο 12 μηνών, από το 2008 και 2009**, σύνολο 4100 άτομα σε 16 χώρες (μερικά από τα άτομα αυτά μπορεί να έχουν καταμετρηθεί δύο φορές, π.χ. την πρώτη φορά στη χώρα προορισμού και στη συνέχεια στη χώρα προέλευσης). Σε λίγο περισσότερες από τις μισές περιπτώσεις (55 %), τα αρχικώς πιθανολογούμενα θύματα επιβεβαιώθηκαν στη συνέχεια από τις αρχές ως θύματα εμπορίας. Παρομοίως, πληροφορίες από 16 χώρες σχετικά με τον **αριθμό πιθανών θυμάτων που στη συνέχεια παραπέμφθηκαν σε διάφορες υπηρεσίες το 2009** αφορούσαν ένα σύνολο 3800 ατόμων.

Ορισμένα παιδιά αλλά και ενήλικα πιθανολογούμενα θύματα εξαφανίστηκαν το 2008 ή το 2009, πριν να ολοκληρωθεί η διαδικασία αναγνώρισης. Πιθανολογούμενα ανήλικα θύματα εξαφανίστηκαν σε 10 χώρες. Άλλες 10 χώρες ανέφεραν περιπτώσεις ενηλίκων που είχαν αναγνωριστεί ως πιθανά θύματα που επίσης εξαφανίστηκαν.

Οι ερευνητές συγκέντρωσαν στοιχεία για διάφορες πτυχές της **προστασίας** που παρέχεται σε θύματα εμπορίας, κυρίως:

- Περίοδος περίσκεψης και ανάρρωσης

- Αξιολόγηση κινδύνου
- Επιστροφές (δηλ. επαναπατρισμούς των θυμάτων στις χώρες καταγωγής τους).

Οι ερευνητές σε ορισμένες χώρες δεν μπόρεσαν να συγκεντρώσουν επαρκείς πληροφορίες σχετικά με τον **αριθμό των ατόμων που έλαβαν προθεσμία περίσκεψης**. Για το **2008** υπήρχαν διαθέσιμες πληροφορίες από 11 χώρες για ένα σύνολο 207 επωφελούμενων ατόμων. Για το **2009**, υπήρξαν διαθέσιμες πληροφορίες από 18 χώρες για ένα σύνολο 1150 ανθρώπων. Το 2008, εκδόθηκαν 1026 άδειες διαμονής σε σύνολο εννέα χωρών. Αυτό θα σήμαινε ότι κατά μέσο όρο σε κάθε χώρα εκδίδονταν περισσότερες από 100 διαμονής, στην πραγματικότητα όμως οι 664 από τις άδειες αυτές εκδόθηκαν στην Ιταλία (το 2009 έφτασαν τις 810) και οι 235 στην Ολλανδία. Αυτό σημαίνει ότι το 2008, οι υπόλοιπες επτά χώρες έδωσαν μόλις 127 άδειες διαμονής σε θύματα εμπορίας (δηλαδή κατά μέσο όρο λιγότερες από 20 η καθεμία). Αυτή η κατάσταση υποδηλώνει ότι οι νόμοι και οι πολιτικές που καθορίζουν ποια θύματα δικαιούνται άδεια διαμονής διαφέρουν σημαντικά μεταξύ των χωρών της Ευρωπαϊκής Ένωσης.

Όσον αφορά τα **ανήλικα θύματα**, αναφέρθηκε ότι έλαβαν άδειες διαμονής[327] σε έξι χώρες μέσα στο 2008 και 2009: στη Γαλλία, Πολωνία και Ηνωμένο Βασίλειο όπου έλαβαν προσωρινές άδειες μέχρι λίγο πριν τη συμπλήρωση του 18ου έτους και στην Αυστρία και την Δανία, όπου έλαβαν άδεια επί μακρόν διαμένοντος. Στην Ιταλία, οι ανήλικοι αλλοδαποί, είτε είναι θύματα εμπορίας, είτε όχι, έχουν το δικαίωμα να παραμείνουν μέχρι τη συμπλήρωση του 18ου έτους. Επιπλέον, τα ανήλικα θύματα μπορούν και αυτά να αποκτήσου άδεια διαμονής, όπως τα ενήλικα θύματα εμπορίας (σύμφωνα με μία ρύθμιση γνωστή ως «άρθρο 18»). Στην Ολλανδία, παρέχεται στα παιδιά το δικαίωμα να παραμείνουν στη χώρα, όμως η έλλειψη σχετικών στοιχείων καθιστά δύσκολο να πει κανείς εάν μπορούν να παραμείνουν σε μόνιμη βάση.

Στο θέμα των επιστροφών (ή επαναπατρισμών), οι ερευνητές προσπάθησαν να μάθουν εάν οι επιστροφές ήταν οικιοθελείς ή αναγκαστικές, πόσα πιθανολογούμενα θύματα επέστρεψαν στις χώρες τους και υπό ποιες συνθήκες. Οι ερευνητές επιβεβαίωσαν ότι έξι χώρες της ΕΕ έχουν επίσημες συμφωνίες με άλλες χώρες για τον επαναπατρισμό θυμάτων (καθώς οι πέντε από τις έξι είναι χώρες προορισμού, οι συμφωνίες ήταν κυρίως με χώρες προέλευσης).

327. Ο όρος «άδεια διαμονής» δηλώνει το δικαίωμα που παραχωρείται σε αλλοδαπούς να παραμείνουν σε μία χώρα είτε προσωρινά, είτε μόνιμα.

Όσον αφορά τις **επιστροφές ενηλίκων το 2008,** υπήρξαν στοιχεία από 15 χώρες: 194 ήταν επιστροφές στις χώρες προέλευσης των θυμάτων από 12 χώρες (Αυστρία, Κύπρος, Τσεχία, Δανία, Γαλλία, Ελλάδα, Ιταλία, Λετονία, Ολλανδία Πολωνία και Σλοβενία). Τον ίδιο χρόνο (2008) ο μεγαλύτερος αριθμός επιστροφών αναφέρθηκε από την Ολλανδία (37) και την Ιταλία (31) και ακολουθούσαν η Κύπρος (24), η Γερμανία (23) και η Δανία (21). Σχετικές πληροφορίες για **το 2009** υπήρξαν από λιγότερες χώρες, μόνο από 10. Στην περίπτωση αυτή 171 άτομα επαναπατρίστηκαν στις χώρες προέλευσής τους, με μία χώρα, την Ελλάδα, να έχει κάνει περισσότερους από τους μισούς επαναπατρισμούς. Επίσης, 22 επιστροφές αναφέρθησαν από την Αυστρία και 23 από την Πολωνία, με τις υπόλοιπες επτά χώρες να αναφέρουν ένα σύνολο μόλις 19 επιστροφών. Είναι προφανές ότι οι αριθμοί των ατόμων που επαναπατρίστηκαν αντιπροσωπεύουν διαφορετικά ποσοστά από τον συνολικό αριθμό των πιθανολογούμενων θυμάτων σε κάθε χώρα. Παρόλα αυτά, τα στοιχεία δηλώνουν ότι σε κάθε χώρα υπάρχουν διαφορετικά κριτήρια με βάση τα οποία αποφασίζεται εάν κάποιο θύμα θα επαναπατριστεί και οι αριθμοί των επιστροφών δεν αντιστοιχούν στον αριθμό των θυμάτων που αναγνωρίστηκαν ή στα οποία χορηγήθηκε προθεσμία περίσκεψης.

Το 2008 και το 2009, **υπήκοοι χωρών-μελών της ΕΕ που είχαν αναγνωριστεί ως πιθανά θύματα εμπορίας**, έλαβαν αρωγή και προστασία με τους ίδιους όρους όπως και οι υπήκοοι τρίτων χωρών (μη κοινοτικοί υπήκοοι) σε 19 χώρες της ΕΕ. Όμως σε έξι χώρες (Γερμανία, Ουγγαρία, Λετονία, Λιθουανία, Ρουμανία και Ισπανία) αναφέρθηκε ότι οι κοινοτικοί υπήκοοι δεν λαμβάνουν το ίδιο καλές υπηρεσίες αρωγής και προστασίας όπως οι υπήκοοι τρίτων χωρών. Επίσης αναφέρθηκε ότι ορισμένοι κοινοτικοί υπήκοοι είχαν δυσκολίες στο να αναγνωριστούν ως «θύματα» εμπορίας και στο να λάβουν βοήθεια. Αυτό όμως δεν αναιρεί το γεγονός ότι στις περισσότερες χώρες της Δυτικές Ευρώπης, στις οποίες διακινούνται υπήκοοι χωρών της ΕΕ που βρίσκονται στην Κεντρική Ευρώπη, τα άτομα αυτά έλαβαν βοήθεια. Σε 14 από τις 25 χώρες, Ευρωπαίοι πολίτες αναγνωρίστηκαν ως θύματα εμπορίας και έλαβαν βοήθεια το 2008 και το 2009, με τους ίδιους όρους όπως και μη κοινοτικοί υπήκοοι.

Στην ερώτηση **ποιες μορφές δικαστικής προστασίας είναι διαθέσιμες για ενήλικα και ανήλικα θύματα** εμπορίας που καταθέτουν ως μάρτυρες, αναφέρθηκε ότι σε περίπου από τις μισές χώρες- μέλη της ΕΕ έχουν θεσμοθετηθεί μέτρα προστασίας των θυμάτων-μαρτύρων. Τα μέτρα προστασίας στο δικαστήριο περιλαμβάνουν τη δυνατότητα να δοθεί κατάθεση σε προκαταρτικό στάδιο της δίκης (πχ. στον ανακριτή) και να μην

υποχρεωθεί το θύμα να καταθέσει σε δημόσια συνεδρίαση του δικαστηρίου, καθώς και η δυνατότητα τα θύματα να καταθέσουν μέσω τηλεδιάσκεψης (video-link), ή χωρίς να υπάρχει οπτική επαφή με τον κατηγορούμενο (πχ πίσω από παραβάν). Εντούτοις, αναφέρθηκαν περιπτώσεις σε πέντε χώρες (Τσεχία, Δανία, Γαλλία, Πορτογαλία και Ηνωμένο Βασίλειο) όπου το 2008 και το 2009 διέρρευσε η ταυτότητα ενήλικου ή ανήλικου θύματος που κατέθετε ως μάρτυρας σε ποινική δίκη κατά των διακινητών του.

Πρόσφατη έρευνα που εκπονήθηκε από την οργάνωση Anti-Slavery International[328] και τον ΟΑΣΕ[329] κατέληξε στο συμπέρασμα ότι ενώ υπάρχει δικαίωμα αποζημίωσης για τα θύματα και παρά την ύπαρξη πλήθους μηχανισμών αποζημίωσης, στην πράξη η αποζημίωση θυμάτων εμπορίας ανθρώπων είναι εξαιρετικά σπάνια. Μολαταύτα, σε 12 χώρες (από τις 22 για τις οποίες υπήρξαν πληροφορίες) αναφέρθηκε ότι θύματα εμπορίας έλαβαν αποζημίωση είτε από αστικές αξιώσεις, είτε ως πολιτικοί ενάγοντες, είτε από άλλη πηγή. Οι εννέα χώρες στις οποίες δόθηκαν αποζημιώσεις σε θύματα το 2008 και το 2009 ήταν οι εξής: Αυστρία, Δανία, Γαλλία, Γερμανία, Ιταλία, Ολλανδία, Ισπανία, Σουηδία και Ηνωμένο Βασίλειο.

Η έρευνα δεν ασχολήθηκε διεξοδικά με τις διάφορες **μεθόδους πρόληψης**, αλλά εστίασε στο να διακριβώσει τι είδους πληροφορίες είναι διαθέσιμες σε μετανάστες πριν αλλά και μετά την άφιξή τους σε χώρες όπου παρατηρείται το φαινόμενο της εμπορίας ανθρώπων.

Η Σύμβαση του Συμβουλίου της Ευρώπης κατά της Εμπορίας Ανθρώπων ζητά από κάθε χώρα να «εξετάσει το ενδεχόμενο διορισμού **Εθνικού Εισηγητή** ή καθιέρωσης άλλου μηχανισμού για την παρακολούθηση των δραστηριοτήτων κατά της διακίνησης και εμπορίας από τις κρατικές αρχές και την εκπλήρωση των απαιτήσεων της εθνικής νομοθεσίας». Παρόλο που το σχετικό άρθρο απλώς ζητά από τις χώρες «να εξετάσουν το ενδεχόμενο», υπάρχει κάθε λόγος να υποθέσουμε ότι η προσεχής Ευρωπαϊκή Οδηγία θα είναι πολύ πιο δεσμευτική σε αυτό το σημείο, εισάγοντας την υποχρέωση για όλες τις χώρες της ΕΕ να θεσπίσουν το θεσμό του ανεξάρτητου Εθνικού Εισηγητή ή άλλου αντίστοιχου μηχανισμού. Το Μάρτιο του 2009 οργανώθηκε ένα συνέδριο για το θεσμό των Εθνικών Εισηγητών όπου διαπιστώθηκε ότι 12 χώρες-μέλη της ΕΕ είχαν ήδη διορίσει Εθνικό Εισηγητή (ή θεσπίσει αντίστοιχο μηχανισμό)

328. J. Lam, K. Skrivankova, *Opportunities and Obstacle: Ensuring access to compensation for trafficked persons in the UK,* Anti-Slavery International, London, 2008.
329. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region,* Warsaw, 2008.

για να παρακολουθεί τις εθνικές προσπάθειες για την αντιμετώπιση της εμπορίας ανθρώπων. Οι ερευνητές επιβεβαίωσαν ότι εννέα από τις 27 χώρες-μέλη έχουν Εθνικό Εισηγητή (Κύπρος, Τσεχία, Φινλανδία, Λετονία, Λιθουανία, Ολλανδία, Πορτογαλία, Ρουμανία και Σουηδία), ενώ 16 δεν έχουν. Για αρκετές χώρες, (πχ Σουηδία), αναφέρθηκε ότι δίνεται μεγαλύτερη προσοχή κυρίως σε υποθέσεις εμπορίας με σκοπό τη σεξουαλική εκμετάλλευση. Σε κάποιες άλλες χώρες, (πχ. Βέλγιο και Ισπανία), υπάρχει ένας διαφορετικός κρατικός θεσμός (όχι Εθνικός Εισηγητής) για την παρακολούθηση της αντιμετώπισης του φαινομένου της εμπορίας ανθρώπων. Σε τρεις από τις εννέα χώρες που έχουν Εθνικό Εισηγητή, (Λετονία, Λιθουανία και Σουηδία), ο ρόλος του Εισηγητή δεν ήταν εντελώς ανεξάρτητος από άλλους φορείς που δραστηριοποιούνται στην καταπολέμηση του φαινομένου. Αυτό έχει σαν αποτέλεσμα να περιορίζεται η ανεξαρτησία του θεσμού.

4. Συμπεράσματα και συστάσεις

Το πρόγραμμα E-notes κατέδειξε σημαντικές διαφορές και ανακολουθίες μεταξύ των κρατών-μελών της ΕΕ σε θεμελιώδεις πλευρές πολιτικών και πρακτικών για την καταπολέμηση της εμπορίας ανθρώπων στην Ευρωπαϊκή Ένωση, πχ. η εθνική νομοθεσία για την καταστολή της εμπορίας και οι ορισμοί (ή η ερμηνεία τους από σχετικές κρατικές αρχές) για το τι ακριβώς είναι η εμπορία ανθρώπων. Επίσης διαπιστώθηκε ότι αρκετές διατάξεις της διεθνούς και εθνικής νομοθεσίας που αποσκοπούν στην προστασία των δικαιωμάτων των διακινούμενων ατόμων υπάρχουν μόνο στα χαρτιά και παραμένουν ανεφάρμοστες στην πλειονότητα των χωρών της ΕΕ. Οι οργανώσεις που έλαβαν μέρος στο πρόγραμμα E-notes θεωρούν ότι θα πρέπει να γίνουν περισσότερες προσπάθειες από την Ευρωπαϊκή Ένωση, τα κράτη-μέλη και την κοινωνία των πολιτών για να ενισχυθούν οι πολιτικές για την καταπολέμηση του φαινομένου, τόσο σε εθνικό όσο και σε κοινοτικό επίπεδο.

Παρόλο που πρέπει να γίνουν σημαντικές βελτιώσεις όσον αφορά την εφαρμογή μέτρων και πολιτικών κατά της εμπορίας ανθρώπων στην ΕΕ, οι συστάσεις που ακολουθούν εστιάζουν στην προστασία των δικαιωμάτων των διακινούμενων ατόμων-θυμάτων, καθώς είμαστε πεπεισμένοι ότι αυτά θα πρέπει να βρίσκονται στον πυρήνα κάθε προσπάθειας για την αντιμετώπιση της εμπορίας ανθρώπων. Δυστυχώς όμως, έχει διαπιστωθεί ότι η εφαρμογή των σχετικών διατάξεων είναι ιδιαιτέρως προβληματική όσον αφορά την προστασία των δικαιωμάτων των θυμάτων.

Αναγνώριση και παραπομπή θυμάτων εμπορίας

Η προστασία των θυμάτων εμπορίας μπορεί να επιτευχθεί μόνο όταν όλα τα πιθανολογούμενα θύματα (ανεξάρτητα από τη συνεργασίας τους με τις αρχές) αναγνωρίζονται ως τέτοια. Τα αποτελέσματα που προγράμματος E-notes δείχνουν ότι η αναγνώριση παραμένει ένας πολύ αδύνατος κρίκος στην προστασία. Προκειμένου να βελτιωθεί η διαδικασία της αναγνώρισης στις χώρες-μέλη θεωρούμε ότι τα παρακάτω σημεία είναι ιδιαιτέρως σημαντικά:

- Οι χώρες της ΕΕ θα πρέπει να δημιουργήσουν κατάλληλους δείκτες, σε συνεργασία με αστυνομικές και εισαγγελικές αρχές και παρόχους υπηρεσιών σε θύματα, προκειμένου να συμβάλουν στην καλύτερη αναγνώριση των πιθανολογούμενων θυμάτων κάθε είδους εκμετάλλευσης (εργασιακής, ειλωτείας, σεξουαλικής, αναγκαστικής επαιτείας, εξώθησης σε παράνομες δραστηριότητες κλπ.). Όσον αφορά τα παιδιά, θα πρέπει να δημιουργηθούν ειδικοί δείκτες.
- Η αναγνώριση δεν είναι αποκλειστική ευθύνη ενός μεμονωμένου κρατικού θεσμού, αλλά θα πρέπει να γίνεται από διεπιστημονικές ομάδες όπου θα συμμετέχουν και οργανώσεις που παρέχουν υπηρεσίες σε θύματα.
- Οι υπάρχουσες εθνικές δομές για παραπομπή, δηλαδή οι Εθνικοί Μηχανισμοί Αναφοράς (NRM), είτε άλλες δομές που εμπλέκονται στην εφαρμογή τυποποιημένων πλάνων διαχείρισης (SOPS), θα πρέπει να βασίζονται σε στενή και σταθερή συνεργασία μεταξύ αστυνομικών και δικαστικών αρχών, αρχών αρμόδιων για τη μετανάστευση, επιθεωρητών εργασίας, επαγγελματικών ενώσεων και σωματείων, αρχών για την προστασία ανηλίκων, εισαγγελικών αρχών, μη κυβερνητικών οργανώσεων και άλλων παρόχων υπηρεσιών.
- Η πρόσβαση σε δικαστική προστασία για θύματα εμπορίας, περιλαμβανομένης και της δυνατότητας να ζητηθεί αποζημίωση, θα βελτιωθεί εφόσον εξασφαλιστεί δωρεάν νομική βοήθεια για όλα τα αναγνωρισμένα θύματα.
- Όλα τα κράτη-μέλη θα πρέπει να διασφαλίσουν ότι για κάθε θύμα που πρόκειται να επαναπατριστεί, έχει προηγηθεί εξατομικευμένη αξιολόγηση κινδύνου.

Παρακολούθηση

Η περαιτέρω παρακολούθηση του φαινομένου κρίνεται απαραίτητη, τόσο σε ευρωπαϊκό όσο και σε εθνικό επίπεδο, έτσι ώστε όλοι οι σχετικοί φορείς να αποκτήσουν καλύτερη κατανόηση, όχι μόνο όσων ισχύουν επίσημα, αλλά και του τί ακριβώς συμβαίνει στην πράξη. Για καλύτερη κατανόηση της εφαρμογής, των αποτελεσμάτων αλλά και του αντίκτυπου που έχουν τα

μέτρα καταπολέμησης της εμπορίας ανθρώπων στην Ευρωπαϊκή Ένωση πρέπει να γίνουν άμεσα τα εξής:

- Οι Εθνικοί Εισηγητές, ή άλλοι αντίστοιχοι μηχανισμοί, θα πρέπει να είναι ανεξάρτητες αρχές (όπως έχει συμφωνηθεί στη Διακήρυξη της Χάγης, 1997), έτσι ώστε να εγγυώνται ανεξαρτησία και συγκρίσιμες και κοινές μεθόδους παρακολούθησης και αξιολόγησης των ενεργειών κατά της εμπορίας. Είναι επίσης πολύ σημαντικό να μελετηθεί ο αντίκτυπος και τα απρόβλεπτα ή ακόμη και αρνητικά αποτελέσματα που μπορούν να έχουν τα μέτρα καταπολέμησης της εμπορίας ανθρώπων.
- Θα πρέπει να γίνουν προσπάθειες για να υιοθετηθεί κοινή ορολογία, στατιστικές και τρόποι μέτρησης του φαινομένου (πχ. αριθμός ατόμων στα οποία ασκήθηκε ποινική δίωξη για εμπορία ανθρώπων).
- Στενή συνεργασία μεταξύ της ΕΕ και των κρατών-μελών, καθώς και των μελών της GRETA, του ανεξάρτητου φορέα παρακολούθησης της Σύμβασης του Συμβουλίου της Ευρώπης κατά της Εμπορίας Ανθρώπων, προκειμένου να αποφευχθεί η αλληλοεπικάλυψη στην παρακολούθηση της δράσης των κρατών.

Νομοθεσία

- Περαιτέρω παρακολούθηση κρίνεται απαραίτητη προκειμένου να εξασφαλιστεί ότι όλες οι εθνικές νομοθεσίες ενσωματώνουν τον ορισμό της εμπορίας ανθρώπων, όπως συμφωνήθηκε στην Απόφαση Πλαίσιο του 2002 και τη Σύμβαση του Συμβουλίου της Ευρώπης του 2005.
- Υπάρχει έντονη ανάγκη σε πολλές Ευρωπαϊκές χώρες για καλύτερη κατανόηση της έννοιας της «εκμετάλλευσης» και των σχετικών αδικημάτων που συνδέονται με την παράνομη εκμετάλλευση, και στην περίπτωση που άτομα διακινούνται με σκοπό την εκμετάλλευση και στην περίπτωση που πέφτουν θύματα παράνομης εκμετάλλευσης, χωρίς όμως να έχουν προηγουμένως διακινηθεί.

Συντονισμός πολιτικών κατά της εμπορίας ανθρώπων σε εθνικό επίπεδο

- Όσες χώρες-μέλη της ΕΕ δεν το έχουν πράξει ακόμη, θα πρέπει να δημιουργήσουν μία συντονιστική δομή και να υιοθετήσουν ένα Εθνικό Σχέδιο Δράσης προκειμένου να καταστήσουν πιο αποτελεσματικές τις πολιτικές τους κατά της εμπορίας ανθρώπων. Η σωστή κατανομή ανθρώπινων και οικονομικών πόρων είναι κρίσιμη για την αποτελεσματική λειτουργία των δομών αυτών. Επομένως θα ήταν χρήσιμο, οποιαδήποτε μελλοντική έρευνα σε θέματα εμπορίας ανθρώπων, να εξετάσει και τους πόρους που κάθε χώρα διαθέτει για τη χρηματοδότηση μίας εθνικής συντονιστικής δομής και για την υποστήριξη λοιπών δράσεων συντονισμού.

8.10 Összefoglaló

2009-ben négy civil szervezet összefogásával indult el a *Az európai civil szervezetek kutató munkája az emberkereskedelemről, kizsákmányolásról és rabszolgaságról.* (rövidítése E-notes), hogy monitorozza a különböző Európai Uniós kormányok munkáját, annak érdekében, hogy megállítsák a rabszolgamunkát, emberkereskedelmet és a kizsákmányolás különféle formáit, amelyek összefüggésbe hozhatóak az emberkereskedelemmel. Az olasz Associazione On the Road[330] volt a projekt koordinátora, velük együttműködésben dolgozott a helyi emberkereskedelem ellen kiterjedt hálózattal rendelkező La Strada International, a Spanyol ACCEM[331] és a Francia ALC[332].

Egy ideiglenes intézmény felállítása helyett, hogy monitorozza a kormány tevékenységét, az E-notes projekt mind a 27 EU tagállamból információt gyűjtött arról, hogy mi történt 2008-ban és 2009-ben. Ehhez kidolgoztak egy kutatási metódust, amelyet mind a 27 országban civil szervezetek kutatói végeztek el. A projekt kiemelt hangsúlyt fektetett az indikátorok szerepére, hogy megmérjék minden EU tagállam reakciójának progresszivitását az emberkereskedelem elleni küzdelemben (pl.: a különféle jogszabályokról és idevonatkozó törvényekről, mérésekről és gyakorlatról, amelyek csökkenteni hivatottak az emberkereskedelem mértékét, valamint védeni és segíteni az áldozatokat). Egy több mint 200 kérdésből álló ívet állítottak össze a projekt vezetők, hogy ezekre a kritikus pontokra választ találjanak és, hogy a fejlődés mértékét értékeljék, amely az egyes országokban megvalósult.

1. Szabványok, melyek kapcsán a monitorozás információt gyűjtött

A kutatás 2010 elején kezdődött el, éppen akkor, amikor úgy tűnt, hogy az Európai Bizottság fontolóra vette, hogy egy új eszközt használjon az emberkereskedelem elleni reakciók szabványosítására az EU-s tagállamokban (viszaállítani a *Bizottság keretmegállapodását az emberkereskedelemben folytatott*

330. Associazione On the Road provides a wide range of services and protection to trafficked persons, asylum seekers, refugees, and migrants in general in three Italian regions (Marche, Abruzzo, Molise). It is also engaged in awareness raising, community work, research, networking and policy development initiatives at the local, national, and European level.
331. ACCEM provides social services and takes action in the social and legal domain to benefit asylum seekers, refugees, people who are displaced and migrants in Spain.
332. ALC stands for *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (Accompanying [people], Reception centres, Educational and Social centres). ALC coordinates the national network for secure housing for trafficked persons, known as "Ac.Sé").

küzdelem kapcsán, 2002. július-ban adoptálták). 2009-ben az Európa Tanács javaslatot nyújtott be egy új kekeretmegállapodásra az emberkereskedelemről. A Lisaboni Szerződés bejegyzése alapján, amely félbeszakított minden folyamatban lévő procedúrát, a bizottsági tárgyalások az új keretmegálapodás elfogadásáról nem folytatódhattak. Következésképpen, az Európa Tanács napirendre hozott egy új javaslatot az Európa Parlament és a Bizottság irányelveiről az emberkereskedelm ellen folytatott küzdelem megelőzéséről, az áldozatok védelméről, ezzel hatályon kívül helyezve a 2002-es keretmegállapodást. Ezt 2010 márciusában az Európa Parlament vizsgálatába bocsátották. 2010 szeptemberében két parlamenti bizottság módosításokat javasolt a tervezett irányelvről és az egyezmény létrehozásáról a Bizottság, a Tanács és az Európa Parlapment között. Az irányelv elfogadását várhatóan 2010 vége előtt megteszik.

Amíg a nagyobb áttekintése az új irányelvnek egészen átlátható, addig az E-notes projekt ideje alatt legalábbis 2010. május és júniusban, az irányelvek még mindig nem voltak elfogadva. (2010. októberében sem, amikor ez a jelentés készült). Amikor eldöntötték, hogy mely jogi kötelezettségre kell utalni, hogy a szabványokat azonosítsák a monitorozáskor minden EU tagállamban (pl.: az állam kötelező reakciója az emberkereskedelemmel kapcsolatban), a projekt úgy döntött, hogy egy másik regionális eszközt használ az *Európa Bizottság egyezménye az emberkereskedelem ellen* fellépéséről. Ezt 2005 márciusában fogadták el és 2008 februárban vált jogerőssé. Annak ellenére, hogy számos országban az EU-n kívül ratifikálták az egyezményt, 2010 augusztusáig, a Cseh köztársaság kivételével minden más országban az Európai Bizottság egyezménye által (19) ratifikálták illetve aláírták (7) az egyezményt, ezáltal kifejezve hajlandóságukat arra, hogy be is tartsák az ott leírtakat.

2. Használt metódusok

A monitorozási feladatot egy tanácsadó tervezte meg 2010 elején. Különös figyelmet fordítva a korábbi publikációkra, amelyek megfelelő "indikátorok" használatát javasolták az EU tagállamainak a jogi törvények betartása és a gyakorlatban elért fejlődés értékelésekor, hogy összhangba kerüljön helyi és nemzetközi szabványokkal. (Az összes amely *„Az emberkereskedelem, különösen a nők és gyermekek kereskedelmének megelőzéséről, visszaszorításáról és büntetéséről", az ún. Palermo Protokollban (2000) volt megalapozva.).* A különféle kommentárokat is figyelmebe vette a szakértő, amelyek az EU tagállamok gyengeségeiről számoltak be az emberkereskedelem megállítása vagy a segítség és védelem szolgáltatásáról a feltételezett áldozatok számára. Némely publikációban leírták, hogy nehéz volt információt szerezni a tagállamoktól

(néha friss, néha bármilyen információ) az emberkereskedelem elleni gyakorlatukról. Egy-két szöveg a „harmonizált adat gyűjtés" hiányára hivatkozott, hogy a tagállamok nem használtak egyezményes terminológiákat vagy közös mechanizmust a jelentéseknél. Ezek a problémák mind visszaigazolódtak az E-notes projekt gyakorlata során.

Az Európa Tanács 2006-os dokumentuma szerint a tagállamok kevés információt adtak a saját szabályozásukról és gyakorlatukról, az emberkereskedelem áldozatainak védelméről és a segítségnyújtás kapcsán. Egy 2008-as dokumetum megismételte, hogy nehéz információhoz jutni a tagállamoktól ebben a témában, de megjegyezte, hogy 2006-ig, azon államok adatai alapján, amelyek jelentést tettek a Tanácsnak, 1500 emberkereskedelemmel kapcsolatos esetet tártak fel 23 tagállamban egy év alatt. A legtöbb EU tagállam bevezetett egy ún. védett időszakot, amikor a feltételezett áldozat az országban maradhat, amíg kilábal az első traumából. Ezalatt nem kötelezhető tanúvallomást tenni és kérdésekre válaszolni a hivatalos szerveknek. Mindezek ellenére csupán 5 ország számolt be arról, hogy hány kedvezményezettje volt ennek az időszaknak. Az egész év alatt összesen 26 személy került az említettek közé.

Azok a civil szervezetek, amelyek az emberkereskedelem ellen szakosodtak (vagy szolgáltatást nyújtanak, vagy segítséget a feltételezett áldozatoknak, illetve különféle megelőzési kampányokat indítanak) arról számoltak be, hogy a tagállamok alapossága vagy precizitása az adatok közlésénél az Európa Bizottságnak mindig problematikus volt. Egyrészről senki, még az Európa Tanácstól sem volt jogosult arra, hogy kiderítse, mi történik az EU-ban, másrészről a legtöbb regionálisan és nemzetközileg elfogadott bánásmódot az államok figyelmen kívül hagyták az emberkereskedelem vagy más emberjogi kérdések kapcsán (mindazok ellenére, hogy egységesen elfogadták őket) és nem valósították meg az előírásokat.

Néhány EU-s tagállam kijelölt egy nemzeti raportőrt az emberkereskedelem ellen, hogy informálja a kormányát és másokat a fejlődésről, amelyet az adott ország tettek az emberkereskedelem elleni harcban és, hogy tanácsot adjon, hogy mely terület vár fejlesztésre. 27 országból 9-nek kellett 2010 közepén monitorozási feladatot végeznie.

27 EU-s tagállamból 9-ben van nemzeti raportőr a 2010. közepén tett jelentések alapján, viszont nem mindegyikük tesz rendszeres jelentéseket, némelyek csak kiemelt témákat helyeznek megfigyelésük középpontjába (mint pl. a prostitúció) anélkül, hogy referálnának arról, hogy történik-e cselekvés az emberkereskedelem elleni küzdelem témakörben. Hosszútávon, ha minden

EU tagállam kijelölne egy nemzeti raportőrt, akkor jó helyzetben lennének ahhoz, hogy bevezessenek szabvány definíciókat arról, hogy hogyan kell statisztikai méréseket végezni az emberkereskedelemről. Így, egy jelentéssel teli összehasonlítás lehetne végezni az emberkereskedelemmel kapcsolatos különféle reakciókról az egyes tagállamokban.

Ezzel a háttérrel ellentétben az E-notes projekt felállított egy monitorozó tevékenységet, hogy megtalálja az elérhető információkat az összes EU tagállam jogi törvénykezéséről, szabályozásáról és gyakorlati tevékyenységükről az emberkereskedelem témakörében. Pl. hány ember volt azonosított mint áldozat, hányan jogosultak bármilyen védettségre, hányan kaptak segítséget, stb. A kutatás a 2009-es adatokat és szituációt dolgozta fel, és néhány esetben az is kiderült, hogy a 2009-es információk nincsenek feldolgozva még 2010 május júniusában sem, így némelykor 2008-as adatokkal kellett megelégedi.

A felkért szervezetek kijelölt kutatói, az E-notes projekt monitorozási feladatára, a legtöbben már rendelkeztek tapasztalattal felnőtt (főleg női) áldozatok ügyében. A feladatuk része volt, hogy gyermek, illetve kiskorú áldozatokról is gyűjtsenek információt, viszont a legtöbben nehézségekbe ütköztek, hogy információhoz jussanak. Sok EU-s tagállamban a felnőtt áldozatok civil szervezetektől kapnak segítséget, viszont a gyermek és fiatalkorú áldozatok ügyében gyakran egy-egy állami szerv monopol helyzettel rendelkezik és nem ad ki információt.

Minden kutatónak egy 60 oldalas protokollt kellett kitöltenie. Számos pontnál, melyeknél az Igen-Nem válasz nem volt kielégítő, ki kellett fejteniük a válaszokat. Minden fejezet egy külön területtel foglalkozott. A kutatóknak minden kisebb fejezetnél egy bemutató leírást kellett adnia a saját országának gyakorlatáról és a kormány részvételéről. A 27 ország kutatójától begyűjtött információ egy adatfeldolgozóba került 2010 júliusában. A korábban kijelölt szakértő analizálta a beérkezett adatokat, hogy azonosítsa a lehetséges mintákat, az EU tagállamok hibalehetőségeit, tiszteletben tartva az államok kötelezettségeit, a segítségnyújtás és védelem mértékét az áldozatokkal szemben.

A kutatókat megkérdeztük, hogy hazájuk elsősorban származási, cél-, vagy tranzitország, illetve a kombinációja-e valamennyinek. Ez a kategorizálás nem vonatkozik az országon belül történt esetekre. Hozzávetőlegesen kevés olyan ország volt, amely csak egy kategoriát jelölt volna meg a háromból (Portugália és Franciaország volt az a kettő, amelyek elsősorban csak célországok). A többi 25 közül 1 volt származás és célország, 10 tranzit- és célország és további 9 mind a három kategóriába beletartozott.

3. A monitorozás eredményei

A kutatásban szereplő 230 kérdés különféle témákban keresett válaszokat és gyűjtött információt, amely megnehezítette, hogy egyszerű "fekete-fehér" válasz-kategóriák alakuljanak ki, arról, hogy az EU-s országokban betartották-e az egyezményeket és, hogy tiszteletben tartották-e az áldozatok emberjogait.

5 esetben lehetséges volt a progresszivitás mértékét értékelni. Viszont még ezeknél az eseteknél is azt lehet mondani, hogy az információ vagy nem volt teljes, vagy nem volt elérhető hiteles statisztika. Ez az 5 eset látható az alábbi táblázatban:

1. Fejlődési kulcspontok az emberkereskedelem ellen tett küzdelemben az EU-ban

Kérdések	A helyzet megfigyelése 2010. május
A helyzet megfigyelése 2010. május Az emberkereskedelem elleni harc koordinációja és reakciók országos szinten	Egy országos koordinációs struktúra felállítása az emberkereskedelem ellen a 27 tagállamból 22-ben megtörtént. Azok az országok, ahol nincs a következők Francia-, Német-, Görögország és Málta. Német- és Olaszországban az emberkereskedelem ellen tett lépések nem országosan vagy szövetségi szinten vannak megszervezve, de ez nem jelenti azt, hogy ők inadekvátak. Svédországban kijelöltek egy nemzeti koordinátort, akinek feladata egy koordinációs struktúra kialakítása az emberkereskedelem elleni küzdelemért, viszont csak azokat az esetek tartoznak hozzá, amelyek szexuális vonatkozásúak.
A feltételezett áldozat azonosítása (Identification)	11 tagállam a 27-ből rendelkezik állami szervezettel, vagy struktúrával, amely arra felelős, hogy azonosítsa illetve felismerje mindazokat, akik feltételezett áldozatok. 16 országban nincs ilyen, 6 országban nincs országos szintű procedúra, sem szabvány kidolgozva az azonosításra használatban, hogy a feltételezett áldozatok hivatalosan identifikálva legyenek. (Ausztria, Bulgária, Francia-, Német-, Olaszország és Málta).
Védett időszak minimum 30 nap	A 27 tagállamból 25-ben létezik segítségnyújtás és ellátás a védett időszakban, a tagállamok többsége megadja a minimum szabvány előírást, hogy a feltételezett áldozatok felépüljenek a traumából. Olaszországban nincs rendelkezés a védett időszakról, a gyakorlatban viszont ez néha elérhető. Litvániában hasonló a szituáció az olaszhoz. Az elérhető információkból az derült ki, hogy 2008-ban 11 országban 207 áldozat részesült védett időszakban összesen. 2009-ben már 18 ország jelentette, hogy kedvezményezettjei voltak. Ebben az évben 1.150 áldozatot regisztráltak összesen ezekből az országokból.

Visszatérés folyamata, biztonság	A kutatások alapján 6 ország működik együtt hivatalosan más EU tagállamokkal vagy harmadik országokkal, hogy az áldozat visszatérését saját hazájába közösen irányítsák. (Franciaország, Lettország, Portugália, Spanyolország és Nagy Britannia. Görögországban van egy kétoldalú megállapodás, amely a kiskorú- és gyermekáldozatokra vonatkozik.), az együttműködés megléte, mégis csekély garancia arra, hogy elkerüljék a további erőszakot. Amikor a hivatalos szervek egy feltételezett nagykorú áldozatot visszaküldenek a hazájába 17 tagállamból csak 3 országban referáltak arról, hogy van működő és elérhető kockázati felmérés (Olaszország, Portugália és Románia) a visszatérést megelőzően Pl.: az áldozat illetve családtagjainak biztonsága érdekében.
Jogorvoslat és kártérítés	12 országban 22-ből (amelyektől volt elérhető információ) jelentettek példát arra, hogy emberkereskedelem áldozata kárpótlásban vagy kártérítésben részesült 2008-ban. 2009-ben pedig 20 országból 12-ben fordult ez elő. A kompenzáció vagy bírósági eljárás vagy más procedúra eredménye volt.) 9 ország volt, amelyben mind a két évben előfordult erre példa: Ausztria, Dánia, Francia-, Német-, Olasz-, Spanyol-, Svédország, Hollandia és Nagy Britannia.

A fent említett öt pont alapján kevéssé lehet általános jelentést készíteni az egyes országokról. Az első három kategória inkább mutatja az országok gyengeségeit, mig a másik két rublika számos országot felsorol, amelyek megfelelnek az elvárt követelményeknek. Olaszország például említést kap mind az öt kategóriában és jól szerepel néhány kérdés kapcsán, nem úgy mint az emberkereskedelem elleni rendszerben, amely nagyban eltér a többi EU-s tagállam szisztémájától.

Az öt kulcspont mellett, a tanulmány még sok más fejlődési terület megfigyelését is előírja. A tanulmány kiemeli, hogy minden országban ellenőrizni kell, hogy vajon a helyi törvények az emberkereskedelemhez kapcsolódó kizsákmányolás összes fajtáját lefedik-e (pl. a prostitúció, vagy más formái a szexuális kizsákmányolásnak, az emberi munkaerő kizsákmányolása, kényszermunkával elért szolgáltatások, pl. szolgaság, rabszolgaság vagy rabszolgasághoz hasonló tevékenységek, illetve szervkereskedelem). A végeredmény az volt, hogy a törvények általában lefedik ezeket a területeket. Két ország – Észtország és Lengyelország – arról számoltak be, hogy már elkezdték átírni a törvénykezési szabályokat de még nem készültek el az új szabályok. Spanyolország az az ország, ahol a törvényhozás az emberkereskedelem fogalmát még csak most veszi fel a büntető törvénykönyvbe az EU-val és az Európai Tanáccsal összhangban, ám ezek a törvények csak 2010 decemberében lépnek majd hatályba.

A tanulmány vizsgálta azt is, hogy maga az emberkereskedelem definiciója országonként megegyezik-e eléggé ahhoz, hogy összemérhető információt adjon azokról, akiket "kereskedőknek" vagy "emberkereskedelem áldozatának" nevezünk. Ezen a ponton országonként nagyon sok eltérést találtak. Franciaországban például, az emberkereskedelem vétsége nagyon széleskörűen meghatározott. Vonatkozhat látszólag bárkire, aki akár csak lányok futtatásával gyanusítható. Ennek eredményeként eleinte úgy tűnt, hogy több, mint 900 ember lett elítélve emberkereskedelem bűncselekménye miatt egyetlen év alatt Franciaországban (2008). Azonban ha alaposabban megvizsgáljuk kiderül, hogy alig több, mint a fele (521) volt elítélve lányok futtatásáért.

A tanulmány megkérdezi azt is, hogy a tagállamok milyen eljárást folytatnak, hogy valakit "emberkereskedelem áldozatává" nyilvánítsanak illetve, hogy ezeknek az embereknek biztosítottak-e védett időszakot vagy más formáját a védelemnek vagy segítségnyújtásnak. A tanulmány azt állította, hogy mind a beazonosítási folyamat, mind pedig az elbírálás kritériuma igen eltérő az Európai Unió tagállamai között. Semmilyen közös mintát nem követnek annak érdekében, hogy megállapítsák, hogy valaki valóban emberkereskedelem áldozata-e.

Az Európai Unió 27 tagállamából 20-ban építettek fel nemzeti struktúrát az emberkereskedelem megszüntetésére. Nemzeti Akció Terv az Emberkereskedelem Leküzdéséért és hasonló nagyszabású tervek születtek 22 országban az Unió 27 országa közül (az emberkereskedelmen belül néhány terv kifejezetten a szexuális kizsákmányolás megszüntetéséről szól). A legtöbb országban működik már olyan rendőri csoport, ami kifejezetten az emberkereskedelem felszámolására lett kiképezve. Néhány országban létezik olyan, nemzetileg elfogadott eljárás, ami meghatározza a különböző szervezetek feladatait az emberkereskedelem áldozatai védelemére és segítségnyújtására, illetve ellátja őket a megfelelő szolgáltatásokkal mint pl. a *Emberkereskedelem Elleni Harc Munkacsoport*. Ez a rendszer 17 országban már működik és 9-ben még nem.

A tagállamok 11 országában hivatalosan egy egyszerű kormányzati iroda vagy szervezet felelős a feltételezett áldozat beazonosítására, míg másik 16 országban egyébként történik. 7 ország van, ahol nem létezik semmilyen folyamat a beazonosításra és nincs semmilyen általános eljárás az országban arra nézve, hogy kit lehet emberkereskedelem áldozatának nevezni. Ez azonban nem jelenti azt, hogy a beazonosítás (és az áldozatok rendelkezésére bocsátott védelem) hatékonyabb azokban az országokban, amelyek már rendelkeznek egy önálló rendszerrel. Ha az azonosítás eljárásáról beszélünk, akkor azt tapasztaljuk, hogy a hatáskörben és a hatékonyságban nagy eltéréseket mutatnak a különböző országok.

A 2008 –2009 –es időszak 12 hónapjában a kutatók csak részinformációhoz jutottak a feltételezett áldozatok számát illetőleg. Összesen 4010 esetről tudnak 16 országban (meglehet néhány áldozatot kétszer is számoltak először a célországban, majd később a származási országban). Az esetek alig több mint a felében (55%) volt valóban áldazatnak nyilvánítva a feltételezett áldozat. Így az emberkereskedelem áldozatainak száma a 2009-es évre ebben a 16 országban 3 800-ra csökkent.

Sokan a feltételezett áldozatok közül felnőttek, kiskorúak és gyerekek is eltűntek mielőtt a 2008-, vagy a 2009-es azonosítás folyamata lezárult volna. 10 ország is jelezte, hogy kikorúak tűntek el. Másik 10 országból pedig nagykorú áldozatok eltűnését jelezték.

A kutatók információt gyűjtöttek a védelem különböző fajtáiról is:

- Védett időszak és a Felépülés szakasza
- Kockázati felmérés
- Visszatérés a származási országba

A kutatók hozzájutottak olyan információkhoz, miszerint néhány országban az emberkereskedelm áldozatainak száma, akik megkapták a védett időszakot, nem volt pontosan meghatározva. 2008-ban 11 országból voltak adatok, miszerint 207-en részesültek védett időszakban, ugyanakkor 2009-ben már 18 országból voltak adatok, amikor is már 1.150-en. 2008-ban 1.026 tartózkodási engedély volt kiadva összesen 9 országban, ami átlagosan több, mint 100 engedélyt jelent országonként, ami téves benyomást kelt, holott 664 ezekből az engedélyekből Olaszországban lett kiállítva (és további 810 2009-ben), 235 Hollandiában, ami azt jelenti, hogy 2008-ban a hét másik ország összesen állított ki 127 tartózkodási engedélyt áldozatok részére (ez átlagban kevesebb, mint 20 engedély országonként). Ezek az adatok is jól tükrözik, mennyire eltérőek a törvények és szabályok azzal kapcsolatban, hogy mely áldozatok kaphatnak tartózkodási engedélyt az EU különböző tagállamaiban.

Ezalatt a két év alatt a jelentések beszámolnak az emberkereskedelem gyermek-, és fiatalkorú áldozatairól is, akik különleges tartózkodási státuszt kaptak. 6 országban Francia-, Lengyelország és az Egyesült Királyság időszakos tartózkodási engedélyt ad ki olyan kiskorúaknak, akik hamarosan betöltik életük 18. évét, Ausztria és Dánia pedig végleges tarózkodási engedélyt ad. Olaszországban a külföldi állampolgárságú gyerekek, ha emberkereskedelem áldozatai, ha nem, automatikusan maradhtanak, amíg elérik a 18. életévüket. Ugyanakkor az emberkereskedelem fiatalkorú áldozatai ugyanolyan alapon kapják meg a tartózkodási engedélyt, mint a felnőtt áldozatok (a 18-as számú

rendelet alapján). Hollandiában a gyerekek megkapták a tartózkodási engedélyt, de egy fix dátum bonyolulttá tette, hogy ők valaha megkapják-e a végleges tartózkodási engedélyt vagy sem.

A hazatérést, hazaszállítást illetően a kutatók kikötötték, hogy minden esetben meg kell vizsgálni, hogy a hazatérés szabadon vagy kényszer hatása alatt történik-e. Hány valószínűsített áldozat tért vissza saját hazájába és milyen körülmények között fogadták. A kutatók megerősítették, hogy 6 uniós államnak van hivatalos megállapodása más államokkal arról, hogy az áldozatok visszatérhetnek saját hazájukba (a hatból öt célország, a megállapodás általában olyan országokkal van, amelyek származási országok).

2008-ban 15 országból voltak adatok az emberkereskedelem nagykorú áldozatainak hazatérésről. 12 országból 194-en tértek vissza eredeti hazájukba (Ausztria, Ciprus, Csehország, Dánia, Franciaország, Görögország, Olaszország, Lettország, Hollandia, Lengyelország, Szlovénia). Ebben az évben (2008) a legnagyobb számban Hollandiából tértek vissza hazájukba (37), majd Olaszországból (31), Ciprus (24), Németország (23), Dánia (21). 2009-ben már csak 10 országból voltak elérhetőek ezek az adatok és a hazatérők száma már csak 171 volt, melynek több, mint felét Görögországból jelentették be. Továbbá, 22-en Ausztriából, 23-an pedig Lengyelországból tértek haza. A többi 7 országból összesen 19-en mentek vissza hazájukba. A visszatérések száma jól mutatja a hivatalos vagy feltételezett áldozatok számának nagy eltérését a különböző országokban. Az adatok azt mutatják, hogy minden országban más kritériumok alapján küldenek haza áldozatokat és a hazatérések száma nincs arányban azon feltételezett áldozatok számával, akik védett időszakban részesültek.

2008-ban vagy 2009-ben az EU-s tagállamok állampolgárai, akik feltételezett áldozatok voltak, ugyanazon az alapon kaptak védelmet és segítségnyújtást 19 tagállamban. A hivatkozás alapja az EU-n kívüli bizonyos "harmadik állambeli" nemzetiségűekre vonatkozott. Annak ellenére, 6 tagállamban (Német-, Magyar-, Lettország, Litvánia, Románia és Spanyolország) a "harmadik állambeliek" nem kaptak olyan mértékben védelmet és segítséget, mint ahogyan az nekik járt volna. Bizonyos EU tagállamok állampolgárai arról számolnak be, hogy nagyon nehéz megkapniuk a menekült státuszt vagy a védelmet. Azonban ez azt is jelenti, hogy azok az állampolgárok, akiket a közép-kelet-európa országaiból vittek Nyugat-Európába, azok védelmet tudtak szerezni. A 2008-as vagy a 2009-es évben 25-ből 14 országban lettek EU állampolgárok emberkereskedelem áldozataként regisztrálva és védelmet is kaptak azon a címen, hogy ők eredetileg nem EU tagállamok állampolgárai.

Arra a kérdésre, hogy a bíróság biztosít-e védelmet azok számára, akik szemtanúi voltak felnőtt-, vagy fiatalkorú személyek ellen az emberkereskedelem tárgyában elkövetett bűncselekménynek, a következő választ kaptuk: körülbelül az EU tagállamok felében létezik védelem a szemtanúk részére, akik emberkereskedelem ügyében nyilatkoznak. A bírósági védelemmel kapcsolatban a kutatók arról érdeklődtek, hogy ez mit is foglal pontosan magába. Benyújthat-e a szemtanú bizonyítékot az előzetes meghallgatáson (például egy vizsgálóbíró előtt) úgy, hogy nem jelenik meg a nyilvános tárgyaláson, illetve adhat-e bizonyítékot a szemntanú video linken keresztül, vagy van-e lehetőség arra, hogy tanúvallomást tegyen a tárgyaláson úgy, hogy személye a vádlott előtt titokban marad. Öt országban (Cseh Köztársaság, Dánia, Franciaország, Portugália és Anglia), több esetet is jelentettek 2008 illetve 2009-ből, ahol az emberkereskedelmi áldozatok felnőtt vagy fiatalkorú áldozatának kilétét bizalmasan kellett volna kezelni, de egy büntetőügyi eljárás nyilvános tárgyalásán mégis felfedték kilétüket.

Az *Anti-Slavery International* és az *EBESZ* egy friss kutatásukban arra a következtetésre jutott, hogy habár van jogszabály az áldozatok kárpótlására és ezen kívül a kártérítésnek több mechanizmusa is létezik, mégis igen ritka, hogy emberkereskedelem áldozatai a gyakorlatban pénzügyi kárpótláshoz jussanak. 2008-ban 12 országból jelezték (22 országból voltak elérhető információk), hogy kártérítést vagy kárpótlást kaptak áldozatok. A 2009-es évben pedig 12 országból (a 20-ból). A kárpótlást vagy bírósági határozat alapján adták, vagy más forrásból teremtették elő az emberkereskedelem áldozatainak. Az a 9 ország, ahol mindkét évben kaptak kártérítést az áldozatok, a következők: Ausztria, Dánia, Francia-, Német-, Olaszország, Hollandia, Spanyolország, Svédország és Anglia.

A kutatás nem foglalkozott részletesen a különféle megelőzés módszereivel, hanem inkább arra összpontosított, hogy milyen információ állt a migránsok rendelkezésére mielőtt, illetve miután egy olyan országba megérkeztek, ahol kizsákmányolják az áldozatokat.

Az Európa Tanács egyezménye megköveteli a tagállamoktól, hogy "fontolják meg egy Nemzeti Raportőr és némely mechanizmusok kiépítését, amelyek monitorozzák az ország intézményeinek emberkereskedelem elleni tevékenységeit, illetve beépítik a nemzeti törvényhozásba az EU követelményeit". Meglehet ez a rendelkezés csupán azt követeli meg az államoktól, hogy fontolják meg különböző mechanizmusok kiépítését, minden okunk megvan azt gondolni, hogy a közelgő új EU irányelv már sokkal szigorúbb lesz ezzel a ponttal kapcsolatban és meg fogja követelni, hogy az EU

tagállamok létrehoznak egy független Nemzeti Raportőrt, vagy más ezzel egyenértékű szervezetet. 2009 márciusában egy konferenciát rendeztek a Nemzeti Raportőrök ügyében, ahol 12 tagállam már arról számolt be, hogy rendelkezik Nemzeti Raportőr (vagy valami ezzel egyenértékű) szervvel, ami azt vizsgálja, hogy hogyan reagál az ország az emberkereskedelmhez kapcsolódó problémákra. A kutatók megállapították, hogy 9 EU tagállam a 27-ből már rendelkezik Nemzeti Raportőr szolgálattal az emberkereskedelem terén (Ciprus, Cseh Köztársaság, Finnország, Lettország, Litvánia, Hollandia, Portugália, Románia és Svédország), amíg 16 országban még nincs ilyen szerv. Néhányan, (mint például Svédország) arról számoltak be, hogy elsősorban az emberkereskedelem szexuális vonatkozású eseteivel foglalkoznak. Számos államban (mint például Belgium vagy Spanyolország) különböző állami intézmények vannak bevonva az emberkereskedelem elleni műveletekbe, így ezek az állami intézmények korlátozva vannak függetlenségükben és lehetőségeik is lényegesen le vannak csökkentve, hogy független úton tudnák monitorozni az emberkereskedelmi folyamatokat.

4. Konklúzió

Az E-notes projekt a kutatásai alapján az derült ki, hogy jelentős eltérések mutatkoznak az alapvető aspektusokban az EU tagállamai között az emberkereskedelem ellen folytatott szabályozásban és gyakorlatban. Akárcsak a nemzeti törvényhozás és jogalkotás, az emberkereskedelem megakadályozása és meghatározása (illetve a hivatalos állami szervek interpretációja), hogy mi az emberkereskedelem jelentése, a kooordinációs szervek jelenléte és az áldozat azonosításának folyamata mind eltérő a tagállamokban. Ez azt is mutatja, hogy számos nemzetközi és állami jogi rendelkezés, amely arra hivatott, hogy biztosítsa az áldozat védelmét és jogait még mindig csak papíron létezik, és a megvalósításuk szinte el sem kezdődött a legtöbb EU tagállamban. Az E-notes projektben résztvevő szervezetek úgy tartják, hogy az Európai Unió többet kellene, hogy törődjön a kérdéssel a tagállamokon és a civil társadalmon keresztül. Meg kellene erősíteni a szabályozás alapját, amely az emberkereskedelem megállítását tűzte ki célul EU-s és nemzeti szinten is.
Az EU-ban az emberkereskedelem elleni szabályozásban elért jelentős változások tiszteletben tartása mellett, az E-notes project-ben javaslatok készültek a védelem és az áldozatok jogaival kapcsolatban, minekutána meggyőződésünk, hogy ez a magja minden országban az emberkereskedelem elleni küzdelemnek. A prevenció és az áldozatok védelme fontos és tiszteletben tartandó, viszont a törvénykezés megvalósítása nem lehet sivár.

Az áldozat azonosítása és bemutatása

Az áldozat jogianak védelme csak akkor biztosított, ha a feltételezett áldozatot (fügetlenül attól, hogy együtt működik-e a hivatalos szervekkel) azonosítják mint áldozat. Az E-notes kutatás eredménye azt mutatja, hogy az azonosítás egy igen gyenge láncszem. Ahhoz, hogy az azonosítás folymata fejlődést mutasson a tagállamokban, azt gondoljuk, hogy elengedhetetlen feltételek a következők:

- A tagállamoknak létrehozni egy checklistát és/vagy indikátorokat - öszhangban a jogi előírásokkal, a bírósággal és a szolgáltató szervekkel - amelyek segítik a feltételezett áldozatok azonosítását a kizsákmányolás minden területén. További indikátorok felismerése a kizsákmányolás minden területén, úgy mint a kényszermunka, háztartásbeli szolgaság, szexuális kizsákmányolás, kényszer koldulás, kényszeres részvétel törvénytelen tettekben stb. Külön indikátorok létrehozása a fiatal-, és gyermekkorúak esetében.
- Az azonosítás nem egy különálló kormányszerv feleőssége, mint ikább egy multidiszciplináris csapaté, amelynek tagjai azok a szervezetek, akik segítik az áldozaokat.
- Nemzeti struktúra, amely a bemutatáshoz szükséges, vagy Nemzeti Koordinációs Mechanizmus, vagy más, ami magába foglalja a szabvány operációs folyamatok megvalósítását. A joggyakorlat megvalósítói, az idegenrendészet, a munkaügyi hivatal, a releváns szervek, a gyermekvádelem, a törvényhozók, a civil szervezetek és más segítőszervezetek között egy rendszeres együttműködést kell kialakítani.
- Az igazságszolgáltatás az áldozatok számára - beleértve a kártérítést - minden azonosított áldozat számára garantált ingyenes segítségnyújtás kell legyen.
- Az összes EU tagállam biztosítsa, hogy minden emberkereskedelem áldozatát megillet egy teljeskörű kockázati felmérés, mileőtt visszatér saját hazájába.

Monitorozás

További monitorozás szükséges EU-s és országos szinten is, így nemcsak azokra az anyagokra lenne rálátás, amelyek leirják, hogy elvileg mit kéne tenni, hanem minden releváns támogató ki tudna alakítani egy tisztább képet, hogy mi történik valójában a gyakorlatban az emberkereskedelem megállításának érdekében. A megvalósításhoz elengedhetetlen, hogy az Európai Unió kialakítsa a következőket:

- A Nemzeti Raportőr vagy más vele egyenértékű mechanizmusoknak független szervekké válása (ahogy ezt a Hágai Szerződésben 1997-ben lefektették), hogy garantáltan független és másokéval összevethető moni-

torozás eredményt kapjunk az emberkereskedelem ellen tett cselekvésről. Továbbá, mérni, azonosítani és jelenteni az emberkereskedelem elleni küzdelem előre nem látható vagy negatív hatásait.
- Még több szabvány létrehozása a fontos terminológiákról, statisztikákról és a mérés módjáról (pl.: az emberkereskedelem bűncselekményében elítélt személyek száma).
- Közvetlen együttműködés az EU-s tagállamok, a GRETA tagjai és az Európai Bizotság Egyezményének az emberkereskedelem elleni független monitorozó szerv között, hogy a felesleges átfedéseket a monitorozó tevékanység során elkerüljék.

Jogi szabályozás
- További monitorozásra van szükség, hogy biztosak lehessünk abban, hogy minden állam jogi törvénykezése megegyezik a 2002-ben született keretmegálapodásban és a 2005-ben az EU Bizottság által kiadott Egyezményben megfogalmazott emberkereskedelem fogalmával.
- Olybá tűnik, hogy sok EU-s tagállamban szignifikáns szükséglet tisztázni a kizsákmányolás fogalmát és a különféle árnyalatait, amelyek a kizsákmányoláshoz tartoznak, mind abban az esteben, amikor az emberek kizsákmányolás áldozataivá válnak vagy kizsákmányolás céljából lesznek az emberkereskedelem áldozatai

Az emberkereskedelem elleni szabályozás koordinációja országos szinten
- Azok a tagállamok, amelyekben még nincs koordinációs struktúra és nemzeti cselekvési terv, hogy mégtöbb összefüggést adjanak a törvénykezés mellé, el kéne készítsék ezeket. Ahhoz, hogy ez a két dolog megvalósuljon, megfelelő emberi és gazdasági forrás biztosítása a feltétel. Következésképpen, a jövőben elkészített monitorozási gyakorlatoknak meg kell vizsgálnia, hogy mely juttatások állnak rendelkezésre a különféle tagállamokban, hogy finanszírozzák az emberkereskedelem ellen tett koordinációs struktúrát és, hogy támogassák a koordinációs cselekvéseket.

8.11 Sintesi

Nel 2009 quattro organizzazioni non governative (ONG) decisero di prendere parte ad un comune progetto dal titolo "*European NGOs Observatory on Trafficking, Exploitation and Slavery*" (abbreviato E-notes, tr. "Osservatorio europeo delle ONG sulla tratta, lo sfruttamento e la schiavitù"), con l'ambizioso obiettivo di monitorare cosa i governi europei stavano facendo per contrastare la schivitù, la tratta degli esseri umani e le varie forme di sfruttamento ad essa associate. Una ONG italiana, l'Associazione On the Road,[333] ha coordinato il progetto, a cui hanno partecipato un network anti-tratta, La Strada International, e due ONG nazionali, ACCEM,[334] spagnola, e ALC,[335] francese.

Invece di dare vita ad una istituzione permanente avente lo scopo di monitorare l'azione dei governi, il progetto E-notes ha optato per raccogliere informazioni su cosa stava accadendo nei 27 paesi membri dell'Unione europea. Questo ha richiesto di sviluppare una metodologia di ricerca adeguata e di trovare in tutti i 27 Paesi membri ONG e ricercatori disponibili a collaborare. Il progetto ha sin dall'inizio posto l'enfasi sul ruolo degli indicatori per misurare i progressi nel contrasto alla tratta di ogni Paese europeo (i.e. le diverse leggi, politiche e pratiche che sono dirette a ridurre la presenza del fenomeno della tratta e a proteggere e assistere le persone trafficate). Il tutto è stato concretizzato in uno strumento di ricerca di circa 200 domande che affronta questi nodi e che ci si augurava avrebbe contributivo a valutare i progressi nel contrasto alla tratta in ogni Paese europeo.

1. Gli standard su cui il monitoraggio si è fondato

L'attività di ricerca ha avuto inizio nel 2010, quando il Consiglio europeo sembrava prossimo a concludere le sue considerazioni in merito ad un nuovo strumento europeo volto a standardizzare le risposte contro la tratta nei diversi Stati membri dell'Unione europea (in sostituzione della Decisione Quadro

333. L'associazione On the Road fornisce un'ampia gamma di servizi e protezione alle persone trafficate, ai richiedenti asilo, rifugiati e ai migranti in generale in tre regioni italiane (Marche, Abruzzo, Molise). Si impegna inoltre nel favorire la presa di coscienza del tema della tratta, nel lavoro di comunità, nella ricerca, nel networking e nello sviluppo e implementazione di politiche a livello locale, nazionale e europeo.
334. ACCEM fronisce servizi e agisce in campo sociale e legislativo a favore di richiedenti asilo, rifugiati, profughi e stranieri in Spagna.
335. ALC sta per *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (Accompagnamento [persone], luogo di accoglienza, centro educativo e sociale). ALC coordina il network nazionale di case sicure per le persone trafficate, noto come "Ac.Sé").

sulla lotta alla tratta degli esseri umani, adottata nel luglio 2002). Nel 2009 la Commissione europea aveva presentato una proposta per una nuova Decisione Quadro sulla tratta. A causa dell'entrata in vigore del trattato di Lisbona, che interrupe ogni processo legislativo in corso, le negoziazioni in merito all'adozione di una nuova Decisione Quadro non poterono proseguire.

La Commissione europea, di conseguenza, presentò una nuova proposta per una Direttiva del Parlamento europeo e del Consiglio sulla Prevenzione e la lotta alla tratta degli esseri umani e la protezione delle vittime destinata ad abrogare la Decisione Quadro del 2002. A marzo 2010 la proposta è stata dal Parlamento europeo rimessa per considerazioni. In settembre, due Commissioni parlamentari hanno proposto una serie di emendamenti alla bozza di Direttiva e la procedura per raggiungere un accordo tra il Consiglio, la Commissione e il Parlamento europeo ha avuto inizio. La Direttiva dovrebbe essere adottata prima della fine del 2010.

Sebbene le linee generali della nuova direttiva sembrassero chiare, al momento in cui il monitoraggio previsto nel progetto E-notes si doveva svolgere, nel maggio e giugno 2010, la Direttiva non era ancora stata adottata (e nemmeno lo sarà al momento della conclusione di questo report, nell'ottobre 2010). Quando si dovette decidere quale strumento normativo utilizzare per identificare gli standard (ovvero, gli obblighi a cui gli Stati sono tenuti nella lotta alla tratta degli esseri umani) su cui basare il monitoraggio in ogni Stato membro, il progetto scelse di adottare uno strumento diverso, la Convenzione del Consiglio d'Europa sulla lotta contro la tratta degli esseri umani. Questo strumento venne adottato nel maggio 2005 ed è in vigore dal febbraio 2008. Benché ratificato da numerosi Stati al di fuori dell'Unione europea, ad agosto 2010, tutti gli Stati dell'Unione, tranne la Repubblica Ceca, hanno ratificato (19 Paesi) la Convenzione del Consiglio d'Europa o l'hanno firmata (i restanti 7 Paesi).

2. Metodologia utilizzata

Lo strumento e la metodologia di monitoraggio è stata realizzata da un consulente all'inizio del 2010. È stata prestata attenzione a precedenti pubblicazioni che suggerivano agli Stati membri appropriati 'indicatori' da utilizzare nella valutazione di conformità di leggi e pratiche nazionali rispetto agli standard nazionali e internazionali (che sono tutti basati sul Protocollo addizionale della Convenzione delle Nazioni Unite contro la criminalità organizzata transnazionale per prevenire, reprimere e punire la tratta di persone, in particolare donne e bambini, adottato nel 2000). Sono stati inoltre considerati i commen-

ti presenti in diverse pubblicazioni della Commissione europea[336] sulle carenze dei Paesi membri nel riferire in merito alle azioni intraprese contro la tratta degli esseri umani o per proteggere e assistere persone che si presume[337] siano state trafficate. La difficoltà di ottenere informazioni dagli Stati membri (in alcuni casi informazioni aggiornate, in altri casi ogni tipo di informazioni) sulle azioni contro la tratta è un tema presente in più pubblicazioni. Alcune si sono soffermate sulla mancanza di una comune metodologia di raccolta dati, sottolineando come non vi fosse alcun uso coerente della terminologia o alcuna metodologia comune nella reportistica. Tutti questi problemi sono stati confermati nel lavoro di monitoraggio svolto da E-notes.

Nel 2006[338] un documento della Commissione europea osservava che poche erano le informazioni fornite dagli Stati membri riguardanti regole e prassi relative alla protezione e assistenza delle persone trafficate. Nel 2008 un documento di lavoro[339] ribadiva la difficoltà di ottenere informazioni dagli Stati membri sul numero di persone trafficate che avevano ricevuto assistenza ed osservava che nel 2006 risultavano, in base alle informazioni fornite dagli Stati, soltanto poco più di 1500 casi di tratta investigati nei 23 Paesi membri nel corso dell'anno. Si osservava inoltre che nella maggior parte dei Paesi membri era stato introdotto il cd. periodo di riflessione al fine di permettere alla presunta persona trafficata di rimanere nel paese e ristabilirsi prima di fornire prove all'autorità. Ciononostante solo cinque Paesi indicavano il numero di beneficiari del periodo di riflessione e si trattava di sole 26 persone nell'intero anno!

La mancanza di accuratezza e precisione nei dati forniti dagli Stati membri alla Commissione europea risultava problematica per le ONG specializzate nel contrasto alla tratta (sia nella fornitura di servizi di assistenza alle presunte persone trafficate che nella prevenzione della tratta). Da un lato, tale mancanza evidenziava una situazione in cui nessuno, nemmeno la Commissione europea, era in grado di conoscere la situazione in Europa. Dall'altro, suggeriva che molte delle previsioni dei trattati nazionali e internazionali sulla trat-

336. Quali: Commissione Europea, Comunicazione al Parlamento Europeo e al consiglio in merito "Lotta contro la tratta degli esseri umani – un approccio integrato e proposte per un piano d'azione" (COM(2005) 514 definitivo del 18 Ottobre 2005); e documento di lavoro della Commissione europea (COM(2008) 657 definitivo), "Valutazione e monitoraggio dell'attuazione del piano UE sulle migliori pratiche, le norme e le procedure per contrastare e prevenire la tratta di esseri umani", Ottobre 2008.
337. Il termine 'presunta' persona trafficata si riferisce a chi si ritene possa essere stata oggetto di tratta ma non sono (ancora) disponibili informazioni definitive sulla sua esperienza.
338. Relazione della Commissione Europea al Consiglio e al Parlamento Europeo sulla base dell'articolo 10 della decisione quadro del Consiglio del 19 luglio 2002 sulla lotta alla tratta degli esseri umani (COM(2006) 187 definitivo del 2 Maggio 2006).
339. Vedi nota 336 sopra.

ta o su altri temi attinenti ai diritti umani erano stati ignorati dagli Stati (nonostante avessero dato il loro consenso) e pertanto non implementati.

Alcuni degli Stati membri hanno nominato un Relatore nazionale sulla tratta per informare il proprio governo (e gli altri) sui progressi effettuati nel contrasto alla tratta e fornire indicazioni per un miglioramento. Nove dei 27 paesi membri oggetto del monitoraggio hanno indicato di avere un Relatore nazionale, ma non tutti pubblicano regolarmente rapporti e alcuni sono focalizzati su alcune forme di tratta (come la tratta di donne nella prostituzione) e non fornisco alcuna informazione sulle azioni intraprese contro la tratta per altri scopi. Nel lungo periodo, se la figura del Relatore nazionale sarà introdotta in tutti gli Stati europei, si avranno condizioni favorevoli per introdurre definizioni comuni dei termini e metodologie uniche di misurazione statistica legate alla tratta, così da poter effettuare comparazioni di senso tra le azioni di contrasto alla tratta e di assistenza alle vittime nei diversi Paesi europei.

Su questo sfondo, l'attività di monitoraggio di E-notes ha avuto l'aspirazione di scoprire quali informazioni erano disponibili in tutti i Paesi membri sulle leggi, le politiche, le pratiche in materia di tratta, quante persone erano state identificate come trafficate e avevano beneficato di qualche forma di protezione, quante stavano beneficiando di assistenza, etc. Siccome il monitoraggio ha avuto luogo nel maggio e nel giugno del 2010, l'intenzione iniziale era raccogliere informazioni sulla situazione in ogni Paese nel corso del 2009. È però risultato subito chiaro che in molti paesi le informazioni erano non disponibili o lo erano solo in parte, mentre per l'anno 2008 si potevano ottenere informazioni più complete.

Le ONG coinvolte nella scelta del ricercatore per la raccolta dei dati e delle informazioni utili al monitoraggio vantavano esperienza in particolare in merito alla tratta di persone adulte (in particolare donne). Le informazioni relative alla tratta di minori sono state comunque compilate, sebbene molti ricercatori hanno sottolineato la difficoltà di reperire informazioni su questo target. In molti paesi europei, le ONG offrono servizi agli adulti, mentre agenzie statali sono responsabili della protezione dei minori e hanno così il monopolio della cura dei minori trafficati.

Ogni ricercatore ha compilato un questionario quali-quantitativo di 60 pagine e ha fornito informazioni aggiuntive su diversi aspetti per i quali una semplice risposta affermativa o negativa non sarebbe stata appropriata. Ha inoltre scritto un breve profilo del proprio paese, dando conto della fenomenologia della tratta e delle risposte del governo. Le informazioni fornite dai 27 ricercatori sono state imputate in un semplice database nel luglio 2010. Il database è stato

analizzato dallo stesso consulente che aveva preparato il questionario quali-quantitativo, al fine di identificare possibili modelli – in particolare in merito alle mancanze degli Stati membri nel rispettare gli obblighi di assistenza e protezione delle persone trafficate – e preparare il rapporto relativo ai risultati.

Ai ricercatori è stato chiesto di indicare se il paese analizzato era principalmente un paese di origine, di transito o di destinazione o una combinazione di alcuni di questi. Questa categorizzazione non ha considerato i casi di tratta interna. Pochi Paesi sono stati indicati come appartenenti ad una sola categoria (due, Francia e Portogallo, sono stati descritti come principalmente Paesi di destinazione). Gli altri 26 sono stati indicati come una combinazione: un Paese come origine e destinazione di tratta; dieci come paesi di transito e destinazione; e nove come appartenenti a tutte e tre le categorie.

3. Risultati del monitoraggio

Le 230 domande del questionario quali-quantitativo spaziavano su numerosi argomenti, rendendo difficile indicare 'nero su bianco' se gli Stati membri stavano rispettando gli impegni presi e quindi tutelando i diritti umani delle persone trafficate. Ciononostante, su cinque temi è stato possibile valutare i progressi fatti. Anche in questi casi però le informazioni disponibili erano così incomplete o non disponibili che nessuna delle statistiche menzionate poteva essere considerata affidabile. I cinque temi sono riassunti nella tabella che segue.

Tabella 1 Progressi nell'Unione europea su aspetti chiavi delle azioni di contrasto alla tratta e di assistenza alle vittime

Argomento	Situazione al maggio 2010
Coordinamento delle azioni di contrasto alla tratta e di assistenza alle persone trafficate a livello nazionale	Una struttura nazionale di coordinamento delle azioni di contrasto alla tratta e di assistenza alle vittime risulta presente in 22 su 27 Stati membri. I paesi privi di una struttura nazionale di coordinamento risultano essere Francia, Germania, Grecia e Malta. In Germania e in Italia le azioni di contrasto alla tratta e di assistenza alle vittime non sono organizzate a livello nazionale o federale, ma questo non significa che siano inadeguate. La Svezia ha designato un Coordinatore Nazionale con il compito di sviluppare una struttura di coordinamento per combattere la tratta, ma esclusivamente per i casi relativi alla tratta a scopo di sfruttamento sessuale.
Identificazione delle presunte persone trafficate	Undici su 27 Stati membri hanno un'unica struttura governativa responsabile per effettuare la formale identificazione di chiunque si presuma sia stato trafficato, mentre i restanti 16 ne sono privi. Sei dei

paesi dove non c'è alcuna procedura di identificazione a livello nazionale non hanno alcuna procedura standard per l'identificazione delle presunte persone trafficate nel Paese (Austria, Bulgaria, Francia, Germania, Italia, Malta).

Disponibilità di un periodo di riflessione e recupero di almeno 30 giorni

In 25 su 27 Stati membri risultano essere presenti disposizioni che stabiliscono un periodo di riflessione e recupero per gli adulti che si presume siano stati trafficati. Una buona parte degli Stati sembra aderire agli standard minimi su questo punto. In Italia non esistono disposizioni che garantiscano un periodo di riflessione ma nella prassi viene riconosciuto. In Lituania è presente una situazione analoga. Nel 2008 le informazioni, disponibili per 11 Paesi, indicano 207 beneficiari del periodo di riflessione. Per il 2009 le informazioni sono state disponibili per 18 Paesi e i beneficiari sono stati in numero molto maggiore: 1150 persone trafficate. Questo indica un significativo aumento.

Procedure relative al rientro al fine di renderlo sicuro e possibilmente volontario

Sei Paesi sono indicati come titolari di accordi con altri Paesi europei o con Paesi Terzi per il ritorno delle persone trafficate al proprio Paese di origine (Francia, Lettonia, Portogallo, Spagna e Regno Unito; la Grecia è firmataria di un accordo bilaterale limitato ai minori trafficati). Ciononostante minime sembrano essere le garanzie che gli accordi possono dare rispetto all'assenza di abusi. Quando le autorità pianificano il rientro di un presunto adulto trafficato al suo Paese di origine, soltanto in tre Paesi europei sui 17 per i quali le informazioni erano disponibili, viene effettuata normalmente la valutazione dei rischi (i.e. la valutazione dei possibili rischi per l'individuo o i membri della sua famiglia), prima di disporre il rentro. Si tratta di Italia, Portogallo e Romania.

Accesso a forme di riparazione e risarcimento

In 12 paesi (sui 22 per cui erano disponibili informazioni) nel 2008, e in 12 paesi (su 20) nel 2009, un risarcimento o altra forma di riparazione risulta essere stata ottenuta all'esito di un procedimento giudiziario o attraverso fonti diverse. I nove paesi dove casi di risarcimento o riparazione si sono avuti in entrambi gli anni sono Austria, Danimarca, Francia, Germania, Italia, Paesi Bassi, Spagna, Svezia e Regno Unito.

Sarebbe inappropriato classificare, sulla base di questi 5 indicatori, la performance dei singoli Stati (come il rapporto annuale rilasciato dal Dipartimento di Stato degli Stati Uniti d'America fa), perché sono diversi i paesi che presentano una situazione di debolezza (così é per i primi tre indicatori) o esiste, come negli ultimi due indicatori, una gamma ampia di Stati che operano in modo corretto. Ad esempio l'Italia è un paese menzionato su tutti e 5 i fronti, con una buona performance su tutti gli aspetti, ma un sistema di contrasto alla tratta molto diverso dalla maggior parte dei Paesi europei.

Accanto a questi 5 punti chiavi, il monitoraggio si è concentrato su altri aspetti. Ha verificato se **la legislazione in ogni Paese** si riferiva a tutte le tipo-

logie di sfruttamento associate alla tratta (i.e. a scopo di "sfruttamento della prostituzione e di altre forme di sfruttamento sessuale", a scopo di sfruttamento del lavoro delle persone o di servizi in condizioni di lavoro forzato, servitù, schiavitù o pratiche analoghe alla schiavitù, o a scopo di espianto di organi). In generale questo accade. Due Paesi – Estonia e Polonia – stanno rivedendo la loro legislazione, ma il processo non è ancora giunto al termine, e in un altro Paese, la Spagna, la definizione di tratta presente nel codice penale, che ha portato la legislazione in linea con gli standard Europei e del Consiglio d'Europa, entrerà in vigore nel Dicembre 2010.

Il monitoraggio ha inoltre cercato di chiarire se le **definizioni di tratta di esseri umani** nei diversi paesi siano sufficientemente simili da permettere di comparare le informazioni relative alle persone descritte come 'trafficanti' o 'vittime di tratta'. Su questo punto si sono registrate maggiori discrepanze. Ad esempio, in Francia il reato di tratta è definito così ampiamente che si potrebbe applicare ad ogni caso di sfruttamento della prostituzione. Di conseguenza, ad un primo sguardo più di 900 persone in Francia risultano essere state condannate per tratta in un unico anno (2008). Ad un esame più attento, le condanne per "sfruttamento della prostituzione aggravato" (un reato più vicino a come viene definita la tratta negli altri paesi) risultavano essere poco più della metà (521) e soltanto 18 erano le condanne relative a reati riconosciuti come 'tratta' in base agli standard adottati nell'Unione europea con la decisione quadro del 2002 e la Convenzione del Consiglio d'Europa. In Finlandia la situazione si presenta opposta – casi che sarebbero stati considerati tratta in base agli standard internazionali sono stati invece considerati favoreggiamento o sfruttamento della prostituzione.

Il monitoraggio ha interessato anche la procedura di **identificazione delle persone come 'trafficate'**, verificandone non solo l'esistenza ma anche la garanzia della concessione di un periodo di riflessione o di altre forme di protezione e assistenza. I risultati indicano che sia le procedure di identificazione che i criteri per valutare se un individuo è stato oggetto di tratta variano in modo rilevante tra i paesi dell'Unione Europea, al punto che si direbbero inesistenti ogni standard comuni.

Una **struttura nazionale di coordinamento delle azioni di contrasto alla tratta e di assistenza alle vittime** risulta essere presente in 20 su 27 Stati membri. Un piano nazionale di contrasto alla tratta degli esseri umani viene indicato come esistente in 22 su 27 Stati membri (sebbene alcuni si focalizzano esclusivamente sulla tratta a scopo di sfruttamento sessuale). Molti paesi hanno un'unità delle forze dell'ordine specializzata nel contrasto alla tratta.

In alcuni paesi esiste una procedura riconosciuta a livello nazionale che precisa le funzioni che le diverse organizzazioni devono esercitare nel fornire assistenza e protezione e nell'inviare le persone trafficate agli appropriati servizi – un Sistema Nazionale di Referral. In totale 17 Paesi hanno un sistema di questo tipo, mentre 9 ne sono privi.

In 11 su 27 Stati un'unica struttura governativa è responsabile per la formale identificazione di chiunque si presuma essere stato oggetto di tratta, mentre nei restanti 16 Paesi non esiste alcuna struttura di questo tipo. Sette dei Paesi dove non esiste alcuna procedura unica di identificazione a livello nazionale non hanno alcuna procedura standard per l'identificazione delle presunte vittime di tratta Questo non implica che l'identificazione) e la conseguente disponibilità di protezione) sia più efficace nei paesi con un unico sistema. Per quanto riguarda le procedure di identificazione, i dettagli delle stesse, quanto sono rispettate e la loro efficacia risulta variare in modo rilevante nei paesi considerati.

I ricercatori sono riusciti ad ottenere soltanto informazioni parziali **sul numero delle presunte persone trafficate in un periodo di 12 mesi nel 2008 e nel 2009**. In 16 Paesi si sono registrate 4.010 persone trafficate. È possibile che alcuni degli individui siano stati contati due volte, una volta nel paese di destinazione e nuovamente nel paese di origine. Nel 55% dei casi le presunte vittime di tratta sono state successivamente indicate come tali dagli autori. Per quanto riguarda, invece, il numero di presunte **persone trafficate che sono state inviate ai servizi di assistenza e protezione nel 2009**, sempre in riferimento ai 16 Paesi per cui è stato possibile raccogliere dati, si parla di 3.800 persone.

Nel 2008 e nel 2009, sia nel caso di adulti che di minori, alcune presunte persone trafficate sono scomparse prima della conclusione della procedura di identificazione. In 10 Paesi presunti minori trafficati sono scomparsi e in altri 10 paesi una situazione simile si è verificata per gli adulti.

I ricercatori hanno inoltre raccolto informazioni su vari aspetti relativi alla protezione, precisamente:

- il periodo di riflessione e recupero;
- la valutazione dei rischi;
- il rientro (cioè le procedure di rimpatrio delle persone trafficate).

Le informazioni raccolte dai ricercatori **sul numero di persone a cui è stato garantito un periodo di riflessione e recupero** sono state parzialmente incomplete in alcuni Paesi. Relativamente al **2008**, le informazioni sono risultate disponibili per 11 Paesi per un totale di 207 beneficiari. Nel **2009**, le infor-

mazioni sono state disponibili per 18 Paesi, per un totale di 1.150 persone. Nel 2008, 1.026 permessi di soggiorno risultano essere stati concessi in nove Paesi. La media di 100 permessi di soggiorno rilasciati per Paese, fornisce un quadro del tutto impreciso, considerando che 664 sono state rilasciati in Italia (e ben 810 nel 2009), e 235 nei Paesi Bassi. Ciò indica che nei rimanenti 7 Paesi sono stati rilasciati soltanto 127 permessi di soggiorno (con una media inferiore ai 20 per Paese). Appare evidente che leggi e politiche in merito al rilascio dei permessi di soggiorno variano sensibilmente tra i paesi europei.

In 6 Paesi nel biennio considerato ai **minori trafficati** è stata garantita una possibilità di rimanere nel paese[340]. Si tratta di Francia, Polonia e Regno Unito, dove il permesso di rimanere perdura fino a poco prima del compimento dei 18 anni, e Austria e Danimarca dove il permesso ha natura permanente. In Italia, i minori, trafficati o no, possono rimanere in Italia fino al diciottesimo anno d'età. E i minori trafficati possono ottenere un permesso di soggiorno al pari degli adulti (in ottemperanza al cd. "articolo 18"). Nei Paesi Bassi i minori hanno ricevuto un permesso di rimanere ma i dati raccolti non hanno permesso di chiarire se si tratti di una facoltà permanente.

Per quanto riguarda le procedure di rientro ci si è concentrati sulla natura del rientro (volontario o forzato), sul numero di persone rientrate e in quali condizioni. Sei Paesi membri hanno formali accordi di rientro con altri Stati (ben cinque sono paesi di destinazioni e gli accordi interessano principalmente paesi di origine).

Per quanto riguarda il **2008,** 194 sono stati gli adulti oggetto di procedure di rientro in 12 Paesi (Austria, Cipro, Repubblica Ceca, Danimarca, Francia, Grecia, Italia, Lettonia, Paesi Bassi, Polonia e Slovenia). Nel corso dell'anno il maggior numero di rientri ha interessato i Paesi Bassi (37), e a seguire Italia (31), Cipro (24), Germania (23) e Danimarca (21). Le informazioni sui **rientri nel 2009** sono risultate disponibili per un numero inferiore di Paesi, soltanto 10. 171 persone sono state oggetto di procedure di rientro e oltre la metà di questi dalla Grecia. A completamento del quadro, 22 rientri sono avvenuti dall'Austria e 23 dalla Polonia. I restanti 7 Paesi sono stati interessati da 19 casi. Appare evidente che il numero di persone oggetto di procedure di rientro rappresenta un numero molto diverso rispetto a quelle inviate ai servizi di protezione e assistenza o indicate come presunte vittime di tratta. Nuovamente va sottolineata la grande varietà di criteri adottati nei Paesi membri per decidere se disporre il rientro di una presunta persona traffica-

340. Con 'possibilità di rimanere nel paese' si fa riferimento alla possibilità di soggiornare legalmente sul terriotrio data ai non nazionali sia su base permanente che temporanea.

ta e il numero dei rientri non è in alcun modo proporzionale alle persone identificate come trafficate o ai beneficiari del periodo di riflessione.

Nel biennio 2008-2009, in 19 Stati **i cittadini europei identificati come presunte persone trafficate** hanno ricevuto protezione e assistenza come i cittadini provenienti dai Paesi Terzi. In 6 Paesi membri (Germania, Ungheria, Lettonia, Lituania, Romania e Spagna) i cittadini europei identificati come persone trafficate non sembrerebbero aver ricevuto protezione e assistenza pari a quella fornita ai cittadini dei Paesi Terzi. Alcune persone trafficate europee hanno sottolineato la difficoltà incontrata nell'essere identificate come tali o nell'ottenere assistenza. Nonostante ciò in molti Paesi dell'Europa Occidentale dove cittadini dell'Europa Centrale erano stati trafficati l'assistenza risulta essere presente. In 14 su 25 Paesi europei, i cittadini dell'Unione sono stati identificati e assistiti nel 2008 e nel 2009 al pari delle persone provenienti dall'esterno dell'Unione europea.

Rispetto alle forme di **protezione nel corso dei procedimenti giudiziari** per adulti o minori testimoni, sono presenti misure di protezione in circa la metà dei Paesi europei. Le misure di protezione considerate sono state, in particolare, la possibilità di usufruire di incidente probatorio o di forme di protezione dalla vista della persona accusata durante il processo. Nonostante questo in cinque paesi (Repubblica Ceca, Danimarca, Francia, Portogallo e Regno Unito) sono stati riportati casi in cui un adulto o minore trafficato la cui identità doveva rimanere confidenziale è stata invece resa pubblica nel corso del processo.

Recenti ricerche fatte da Anti-Slavery International[341] e OSCE[342] hanno sottolineato come nonostante l'esistenza di un diritto al risarcimento o altre misure di compensazione, la reale possibilità di ottenere soddisfazione sia in pratica estremamente rara. Nonostante ciò, nel 2008 in 12 paesi sui 22 su cui erano disponibili informazioni, vi sono stati casi di risarcimento in denaro o un'altra forma di compensazione all'esito di un procedimento giudiziario o attraverso altre fonti. Nel 2009 questo è avvenuto in 12 paesi su 20. I paesi dove questa situazione si è verificata in entrambi gli anni sono stati Austria, Danimarca, Francia, Germania, Italia, Paesi Bassi, Spagna, Svezia e Regno Unito.

La ricerca non si è focalizzata sui numerosi **metodi di prevenzione** ma su quali informazioni sono disponibili ai migranti prima e dopo il loro arrivo nei paesi dove le persone trafficate vengono sfruttate.

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341. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, Londra, 2008.
342. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Varsavia, 2008.

La Convenzione del Consiglio d'Europa richiede che ogni Stato "prenda in considerazione la nomina di Relatori nazionali o individui altri organismi incaricati del monitoraggio delle attività contro la tratta condotte dalle istituzioni statali e dell'attuazione degli obblighi previsti dalla legislazione nazionale". Sebbene la previsione richieda unicamente agli Stati di prendere in considerazione la nomina di tali organismi, ci sono molte ragioni di pensare che la prossima Direttiva europea sarà significativamente più forte, facendone un requisito che gli Stati membri devono avere, sotto forma di Relatori Nazionali o altri organismi equivalenti. Nel marzo 2009 una conferenza sui Relatori Nazionali osservava che 12 Paesi europei avevano già nominato un Relatore Nazionale (o meccanismi equivalenti) per monitorare le risposte nazionali alla tratta di esseri umani. La ricerca effettuata ha confermato che nove dei 27 Paesi europei hanno nominato un Relatore nazionale sulla tratta (Cipro, Repubblica Ceca, Finlandia, Lettonia, Lituania, Paesi Bassi, Portogallo, Romania e Svezia), mentre 16 non lo hanno fatto. Diversi Paesi (come la Svezia) si concentrano esclusivamente sui casi relativi alla tratta degli esseri umani a scopo di sfruttamento sessuale. In diversi Stati (come il Belgio e la Spagna) il monitoraggio delle azioni di contrasto alla tratta e di assistenza alle persone trafficate è demandato ad una diversa istituzione nazionale. In 3 dei Paesi che registrano la presenza di un relatore (Lettonia, Litania e Svezia), non si tratta di una figura pienamente indipendente da chi è coinvolto nelle azioni di contrasto alla tratta. Viene così limitata l'indipendenza e potenzialmente anche la possibilità di monitorare concretamente in modo indipendente.

4. Conclusioni e raccomandazioni

Il progetto E-notes ha mostrato rilevanti disparità tra gli Stati membri dell'Unione europea su alcuni aspetti fondamentali delle politiche e delle pratiche di contrasto alla tratta, come la legislazione nazionale che punisce la tratta degli esseri umani e le definizioni (o interpretazioni date dalle istituzioni governative) di cosa costituisca tratta; o l'esistenza di organi di coordinamento e la procedura di identificazione delle persone trafficate. Ha inoltre mostrato che diverse previsioni legislative, nazionali e internazionali, volte ad assicurare la protezione delle persone trafficate sono ancora lettera morta, mancando una qualsivoglia attuazione nella maggioranza dei Paesi europei. Le organizzazioni che hanno preso parte al progetto E-notes ritengono che un maggiore sforzo debba essere fatto a livello europeo dagli Stati membri e dalla società civile per rafforzare le politiche che a livello nazionale ed europeo sono volte a fermare la tratta degli esseri umani.

Siccome riteniamo che il cuore degli sforzi degli Stati membri debba essere diretto alla protezione dei diritti delle persone trafficate, in quanto elemento centrale del contrasto alla tratta, le raccomandazioni che qui presentiamo sono focalizzate su questo aspetto. Il che non significa negare la necessità di sostanziali miglioramenti da effettuare nella implementazione delle politiche di contrasto alla tratta sotto altri aspetti. Riteniamo comunque che il versante della prevenzione e protezione delle persone trafficate rappresenti quello dove l'implementazione delle previsioni normative è più carente.

Identificazione e referral delle persone trafficate

La protezione dei diritti delle persone trafficate può essere assicurata soltanto se le vittime (a prescindere dalla loro collaborazione con le autorità) vengono identificate come tali. I risultati del progetto E-notes presentano un quadro dove l'identificazione è un punto estremamente debole. Al fine di migliorare il processo di identificazione negli Stati membri consideriamo essenziale che:

- Gli Stati membri sviluppino checklist e/o indicatori, in cooperazione con le forze dell'ordine, la magistratura e i servizi di assistenza, come strumento per coadiuvare l'identificazione delle presunte persone trafficate. Ulteriori indicatori dovrebbero essere individuati per tutte le forme di sfruttamento, quali lo sfruttamento lavorativo, la servitù domestica, lo sfruttamento sessuale, l'accattonaggio forzato, il coinvolgimento forzato in attività illecite, etc. Specifici indicatori per l'identificazione delle vittime minorenni dovrebbero essere sviluppati;
- L'identificazione non è responsabilità di una singola agenzia governativa ma dovrebbe essere realizzata da un team multidisciplinare che includa le organizzazioni di assistenza alle persone trafficate;
- Le strutture nazionali di Referral esistenti, sia sotto la forma Sistema Nazionale di Referral (in inglese, *National Referral Mechanism* - NRM) o di altri meccanismi che implementano Procedure operative standard (in inglese, *Standard Operational Procedures* - SOPs) dovrebbero basarsi su una stretta e regolare cooperazione tra forze dell'ordine, gli operatori pubblici dei settori Immigrazione e Lavoro, i sindacati, le agenzie di protezione dei minori, gli operatori giudiziari, le ONG e i servizi sociali;
- L'accesso alla giustizia per le persone trafficate, ivi compresa la richiesta di risarcimento, va migliorata garantendo assistenza legale gratuita a tutte le persone trafficate;
- Procedure di valutazione del rischio vanno assicurate in tutti gli Stati membri per tutte le persone trafficate nei casi di rientro.

Monitoraggio

Ulteriori monitoraggi sono essenziali, tanto a livello europeo quanto nazionale, al fine di permettere agli *stakeholder* di avere una migliore comprensione, non solo e non tanto, di cosa sulla carta deve essere fatto ma anche di cosa è necessario sul piano pratico. Per una migliore comprensione dell'implementazione, degli effetti e dell'impatto delle politiche di contrasto alla tratta nell'Unione europea, è urgente che:

- Relatori Nazionali o altri meccanismi equivalenti dovrebbero essere organi indipendenti (come indicato nella Dichiarazione dell'Aja del 1997), così da garantire un monitoraggio indipendente e comparabile dei risultati delle azioni di contrasto alla tratta e di assistenza alle vittime. È inoltre importante che l'impatto e gli effetti imprevisti o negativi delle azioni di contrasto alla tratta e di assistenza alle vittime vengano riconosciuti;
- Vi sia una maggiore standardizzazione della rilevante terminologia, delle statistiche e delle modalità di misurazione (e.g., il numero di persone sottoposte a procedimento penale per tratta);
- Vi sia una più stretta collaborazione tra l'Unione europea, i suoi Stati membri e i soggetti coinvolti in GRETA, l'organo di monitoraggio indipendente previsto nella Convenzione contro la tratta del Consiglio d'Europa, al fine di evitare inutili sovrapposizioni nelle attività di monitoraggio.

Legislazione

- Ulteriori monitoraggi sono necessari per assicurare che tutte le legislazioni nazionali si adeguino alla definizione di tratta indicata nella Decisione Quadro del 2002 del Consiglio europeo e nella Convenzione del Consiglio d'Europa del 2005.
- Risulta necessaria una migliore comprensione in molti Stati membri del significato del termine "sfruttamento" e delle diverse fattispecie criminali legate allo sfruttamento illegale, tanto relativamente alla tratta a scopo di sfruttamento quanto nella situazione in cui le persone sono soggette a sfruttamento illegale senza essere state trafficate.

Coordinamento di politiche di contrasto alla tratta a livello nazionale

- Tutti gli Stati membri che non vi hanno ancora ottemperato dovrebbero creare una struttura di coordinamento e un Piano nazionale al fine di dare maggiore coerenza alle politiche di contrasto alla tratta e di assistenza alle persone trafficate. Appropriate risorse umane ed economiche sono cruciali per l'effettivo funzionamento di entrambe. Sarebbe quindi utile che successivi monitoraggi verificassero quante risorse sono allocate nei singoli Stati membri per supportare la struttura di coordinamento nazionale e le attività di coordinamento.

8.12 Ziņojuma kopsavilkums

Četras nevalstiskās organizācijas (NVO) 2009. gadā piekrita piedalīties kopīgā projektā ar nosaukumu „Eiropas NVO novēro cilvēku tirdzniecību, ekspluatāciju un paverdzināšanu" (angļu val. saīsināti — *E-notes*), kura plašākais mērķis bija novērot, ko Eiropas Savienības (ES) dalībvalstu valdības dara, lai apturētu paverdzināšanu, cilvēku tirdzniecību un dažādas ar cilvēku tirdzniecību saistītas ekspluatācijas formas. Projektu koordinēja Itālijas NVO Associazione On the Road[343] kopā ar vienu no reģionālajiem pret cilvēku tirdzniecību vērstajiem tīkliem La Strada International un divām nacionālajām NVO —ACCEM[344], kas atrodas Spānijā, un ALC[345], kas atrodas Francijā.

Tā vietā, lai izveidotu pastāvīgu institūciju valdību darbības novērošanai, *E-notes* projekts radīja nepieciešamību savākt informāciju par notiekošo katrā no 27 ES dalībvalstīm. Tas nozīmēja, ka bija nepieciešams izveidot pētījuma metodi un atrast NVO un pētniekus katrā no 27 valstīm, kas piedalījās projektā. Projekts sākās ar uzsvaru uz **indikatoru** lomu progresa mērījumam par katras ES dalībvalsts rīcību cilvēku tirdzniecības novēršanā (t.i., dažādi likumi, politika, pasākumi un prakse, kas paredzēti cilvēku tirdzniecības līmeņa samazināšanai un ikviena cilvēku tirdzniecībā pasargāšanai). Iegūtā informācija tika pārvērsta pētniecības instrumentā, izveidojot sarakstu ar vairāk nekā 200 standartjautājumiem par minēto rīcību, kas, kā tika cerēts, palīdzēs izvērtēt progresu attiecībā uz katrā ES dalībvalstī uzsākto darbību cilvēku tirdzniecības novēršanā.

1. Standarti novērošanas pētījuma informācijas meklēšanai

Izpētes process sākās 2010. gada sākumā – laikā, kad Eiropas Padome tuvojās jauna ES instrumenta pret cilvēku tirdzniecību izstrādes noslēgumam. Šis instruments bija paredzēts standarta izveidošanai

343. Associazione On the Road sniedz plaša spektra pakalpojumus cilvēku tirdzniecības upuriem, patvēruma meklētājiem, bēgļiem un migrantiem galvenokārt trīs Itālijas reģionos (Marke, Abruco, Molize). Organizācija arī veicina sabiedrības izpratni, iesaistās sabiedriskā darbā, pētniecībā, tīklu un politiku veidošanas iniciatīvās vietējā, valsts un Eiropas līmenī.

344. ACCEM sniedz sociālos pakalpojumus un piedalās sociāla un juridiska atbalsta nodrošināšanā patvēruma meklētājiem, bēgļiem, pārvietotajiem un migrantiem Spānijā..

345. ALC nozīmē *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (Cilvēku pavadīšana, pieņemšanas centri, izglītības un sociālie centri). ALC koordinē valsts mēroga tīklu, kas paredzēts drošai cilvēku tirdzniecībā cietušo personu izmitināšanai, kas zināms kā "Ac.Sé")..

attiecībā uz ES dalībvalstu rīcību cilvēku tirdzniecības novēršanai (instrumentam bija jānomaina 2002. gada jūlijā pieņemtais *Padomes Pamatlēmums par cilvēku tirdzniecības apkarošanu)*. 2009. gadā Eiropas Komisija nāca klajā ar priekšlikumu par jaunu pamatlēmumu par cīņu pret cilvēku tirdzniecību. Tā kā stājās spēkā Lisabonas līgums, kas pārtrauca visas tajā laikā notiekošās juridiskās procedūras, Padomē nevarēja risināties sarunas par jaunā pamatlēmuma pieņemšanu. Rezultātā Eiropas Komisija izstrādāja *jaunu priekšlikumu Eiropas Parlamenta un Padomes direktīvai par cilvēku tirdzniecības novēršanu un apkarošanu un cietušo aizsardzību*, atceļot 2002. gada Pamatlēmumu. 2010. gada martā priekšlikums tika iesniegts apspriešanai Eiropas Parlamentā. 2010. gada septembrī divas Parlamenta komisijas ierosināja vairākus labojumus direktīvas projektā, un sākās vienošanās process starp Padomi, Komisiju un Eiropas Parlamentu. Tika sagaidīts, ka direktīvu pieņems līdz 2010. gada beigām.

Lai gan šīs jaunās direktīvas plaši izklāstītie nosacījumi šķiet diezgan skaidri, laikā, kad tika īstenota *E-notes* projektā paredzētā novērošana – 2010. gada maijā un jūnijā, direktīva vēl aizvien nebija pieņemta (tā nav pieņemta arī līdz 2010. gada oktobrim – šī ziņojuma galīgās versijas izstrādes brīdim). Izlemjot, kādas juridiskās saistības ievērot, izstrādājot standartus novērošanai katrā ES dalībvalstī (t.i., saistības attiecībā uz dalībvalstu rīcība pret cilvēku tirdzniecību), projekta ietvaros tika izraudzīts atšķirīgs reģionālais instruments, Eiropas Padomes *Konvencija par cīņu pret cilvēku tirdzniecību.* Tā tika pieņemta 2005. gada maijā un stājās spēkā 2008. gada februārī. Lai gan šo Eiropas Padomes Konvenciju līdz 2010. gada augustam bija ratificējušas vairākas valstis ārpus ES, ratificējušas (19) vai parakstījušas (septiņas) ES dalībvalstis un tādējādi paudušas nodomu to ieviest, viena ES dalībvalsts (Čehijas Republika) to nebija izdarījusi.

2. Izmantotās metodes

Novērošanas metodes 2010. gada sākumā izveidoja konsultants. Uzmanība tika pievērsta iepriekšējām publikācijām, kurās bija ieteikti ES dalībvalstīm atbilstoši „indikatori" šo valstu progresa izvērtēšanai, kā tās harmonizē savu likumdošanu un praksi ar reģionālajiem un starptautiskajiem standartiem (kuriem visiem pamatā ir Apvienoto Nāciju *Protokols par cilvēku, it īpaši sieviešu un bērnu, tirdzniecības novēršanu, aizliegšanu un sodīšanu*, kas pieņemts 2000. gadā, papildinot ANO *Konvenciju pret transnacionālo organizēto noziedzību* (2000). Uzmanība tika pievērsta dažādās Eiropas

Komisijas publikācijās[346] izteiktiem komentāriem par vājajām pusēm, kas pamanītas tajā, kā ES dalībvalstis ziņoja par savu rīcību cilvēku tirdzniecības apturēšanā vai cilvēku, kuri tikuši uzskatīti[347] par cilvēku tirdzniecības upuriem, aizsardzībā un palīdzības sniegšanā viņiem. Dažās publikācijās bija atzīmēts, ka grūti iegūt informāciju no dalībvalstīm (dažreiz jaunāko informāciju, dažreiz – jebkuru informāciju) par to praksi, vēršoties pret cilvēku tirdzniecību. Dažreiz bija norādīts, ka trūkst „harmonizētas datu vākšanas", minot, ka nav konsekventa terminoloģijas lietojuma vai vienota ziņošanas mehānisma, ko izmantotu ES dalībvalstis. Visas minētās problēmas apstiprinājās *E-notes* projekta īstenošanas gaitā.

Eiropas Komisijas dokumentā, kas izdots 2006. gadā[348], norādīts, ka dalībvalstis sniegušas maz informācijas par to likumiem un praksi attiecībā uz cilvēku tirdzniecībā cietušu personu aizsardzību vai palīdzību viņām. 2008. gada darba dokumentā[349] atkārtots, ka bijis grūti iegūt informāciju no dalībvalstīm par cilvēku tirdzniecībā to cietušo personu skaitu, kuras saņem atbalstu, bet minētajā dokumentā norādīts, ka līdz 2006. gadam valstis, kuras sniegušas informāciju Komisijai, atklājušas, ka gada laikā 23 dalībvalstīs izmeklēti vairāk nekā 1500 cilvēku tirdzniecības gadījumi. Tika ziņots, ka lielākā daļa ES dalībvalstu ieviesušas nogaidīšanas periodu, ļaujot par cilvēku tirdzniecībā cietušām uzskatītajām personām palikt savā valstī un atgūties, pirms viņām lūgts uzrādīt varas institūcijām pierādījumus. Tomēr tikai piecas valstis ziņojušas, cik daudzi cilvēki guvuši labumu no šādas situācijas, un kopējais indivīdu skaits visa gada laikā sasniedza tikai 26 personas!

NVO, kas specializējas cilvēku tirdzniecības novēršanā (vai nu sniedzot pakalpojumus – palīdzību – par cilvēku tirdzniecībā cietušām uzskatītajām personām, vai iesaistoties iniciatīvās, kas paredzētas cilvēku tirdzniecības novēršanai), satrauc datu precizitātes trūkums, kurus ES dalībvalstis sniedz Eiropas Komisijai. No vienas puses uzsvērts, ka neviens, pat Eiropas Komisijā, nespēj atklāt, kas notiek ES. No otras puses, tiek arī apgalvots, ka

346. Piemēram: Eiropas Komisijas paziņojums Eiropas Parlamentam un Padomei "*Cīņa pret cilvēku tirdzniecību — integrēta pieeja un ierosinājumi rīcības plānam*" (Eiropas Komisijas norāde *COM(2005) 514* galīgā redakcija, 2005. gada 18. oktobris); un Eiropas Komisijas darba dokuments (Eiropas Komisijas norāde *COM(2008) 657* galīgā redakcija), *ES plāna par labāko praksi, standartiem un procedūrām cilvēku tirdzniecības apkarošanai un novēršanai īstenošanas izvērtēšana un pārraudzība*, 2008. gada oktobris.
347. Termins „uzskatīts" par cilvēku tirdzniecībā cietušu personu attiecas uz cilvēku, par kuru ir aizdomas, ka viņš cietis no cilvēku tirdzniecības, kamēr nav pieejama galīga informācija par šī cilvēka pieredzi.
348. Eiropas Komisijas ziņojums par Padomes 2002. gada 19. jūlija pamatlēmuma par cilvēku tirdzniecības apkarošanu īstenošanu (Eiropas Komisijas norāde *COM(2006) 187* galīgā redakcija, 2006. gada 2. maijs).
349. Skat. 346. atsauci.

dalībvalstis ignorē (neskatoties uz faktu, ka piekritušas) daudzus reģionālo vai starptautisko līgumu noteikumus attiecībā uz cilvēku tirdzniecību vai citiem cilvēktiesību jautājumiem, un minētie noteikumi netiek īstenoti.

Dažas ES dalībvalstis iecēlušas valsts ziņotājus cīņai pret cilvēku tirdzniecību, kas informētu šīs valsts valdību (un citus) par progresu, kas sasniegts valsts rīcībā pret cilvēku tirdzniecību un kas ieteiktu iespējamus uzlabojumus. 2010. gada vidū novērošanas projekta ietvaros tika ziņots, ka deviņām no 27 ES dalībvalstīm ir šādi valsts ziņotāji, bet ne visi regulāri publicē ziņojumus un daži koncentrējas uz konkrētiem cilvēku tirdzniecības jautājumiem (piemēram, sieviešu tirdzniecību prostitūcijas nolūkā), neziņojot par rīcību, kas vērsta pret cita veida cilvēku tirdzniecību. Ja visās ES dalībvalstīs būtu iecelti valsts ziņotāji, viņiem būtu izdevība ieviest standartus terminu definīcijām un tās statistikas mērīšanai, kas attiecas uz cilvēku tirdzniecību, lai būtu iespējams pamatoti salīdzināt dažādu ES dalībvalstu rīcību pret cilvēku tirdzniecību.

Uz šī fona *E-notes* projekta ietvaros veiktās novērošanas mērķis bija noskaidrot, kāda informācija pieejama visās ES dalībvalstīs par šo valstu likumdošanu, politiku un praksi saistībā ar cīņu pret cilvēku tirdzniecību, cik daudzi cilvēki identificēti kā cilvēku tirdzniecības upuri, kādu aizsardzību saņem, cik daudzi saņem palīdzību utt. Projekta īstenošanas laikā 2010. gada maijā un jūnijā sākotnējais nodoms bija savākt informāciju par situāciju katrā valstī 2009. gadā. Tomēr drīz vien kļuva skaidrs, ka daudzās valstīs vai nu vispār nebija pieejama informācija par 2009. gadu, vai arī tā bija nepilnīga, kamēr salīdzinoši pilnīgāka informācija bija pieejama par 2008. gadu.

NVO, kas bija lūgtas nozīmēt pētnieku informācijas vākšanai un sagatavošanai *E-notes* novērošanas projekta ietvaros, pārsvarā specializējās darbā ar pieaugušajiem (īpaši sievietēm), kuri bija kļuvuši par cilvēku tirdzniecības upuriem. Tās arī vāca informāciju par bērnu tirdzniecību, lai gan daudzām organizācijām informācijas vākšana par cilvēku tirdzniecībā cietušiem bērniem sagādāja grūtības. Daudzās ES dalībvalstīs pieaugušie, kuri kļuvuši par cilvēku tirdzniecības upuriem, saņem pakalpojumus no NVO, turpretim bērnu aizsardzību parasti realizē atbildīgās valsts institūcijas.

Katrs pētnieks tika lūgts aizpildīt 60 lappuses garu pētījuma protokolu, sniegt papildu komentārus brīvā formā par vairākiem jautājumiem, uz kuriem nebija iespējams atbildēt ar „Jā" vai „Nē", un ieskicēt īsu attiecīgās valsts „profilu", ziņojot par cilvēku tirdzniecības veidiem viņa valstī un par valdības

reakciju. Informācija, ko sagatavoja 27 pētnieki, tika apstrādāta un ievadīta vienkāršā datu bāzē 2010. gada jūlijā. Šo informāciju analizēja konsultants, kurš sagatavoja pētījuma protokolu, lai identificētu iespējamos modeļus – konkrētus trūkumus ES dalībvalstu attieksmē pret saistībām aizsargāt cilvēku tirdzniecībā cietušas personas un palīdzēt viņām – un sagatavotu ziņojumu par iegūtajiem datiem.

Pētniekiem tika lūgts komentēt jautājumu, vai viņu valsts bija galvenokārt izcelsmes valsts, tranzītvalsts vai mērķa valsts, vai arī vairāku minēto aspektu apvienojums. Šīs klasifikācijas mērķis nebija vietējās cilvēku tirdzniecības gadījumi. Salīdzinoši maz valstu tika klasificētas kā tikai viena no trim kategorijām (divas valstis – Francija un Portugāle – tika raksturotas galvenokārt kā mērķa valstis). Pārējās 25 valstis tika uzskatītas par minēto aspektu apvienojumu: viena valsts – par izcelsmes un mērķa valsti, desmit – par tranzītvalstīm un mērķa valstīm un deviņas valstis – par visu trīs aspektu apvienojumu.

3. Novērošanas pētījumā iegūtie dati

Pētījuma protokolā iekļautajos 230 jautājumos tika lūgta informācija par dažādām tēmām, nedodot iespēju izveidot „melnbaltu" skatījumu uz to, vai ES dalībvalstis ievēro saistības un ciena cilvēku tirdzniecībā cietušo personu cilvēktiesības. Tomēr piecos konkrētos jautājumos bija iespējams izvērtēt sasniegtā progresa pakāpi. Taču pat šajos gadījumos pieejamā informācija bija vai nu tik nepilnīga, vai nepieejama, ka nevienu no minētājiem statistikas datiem nevar uzskatīt par drošu. Minētie pieci jautājumi apkopoti turpmāk sniegtajā tabulā.

1. Tabula. ES progress pamatjautājumos par rīcību pret cilvēku tirdzniecību

Jautājums	2010. gada maijā atzīmētā situācija
Pret cilvēku tirdzniecību vērstas rīcības koordinēšana valsts līmenī	Tiek ziņots, ka 22 no 27 dalībvalstīm izveidota valsts institūcija, kas koordinē pret cilvēku tirdzniecību vērstu rīcību. Valstis, kam nav šādas koordinējošas valsts institūcijas, ir Francija, Vācija, Grieķija un Malta. Vācijā un Itālijā pret cilvēku tirdzniecību vērsta rīcība netiek organizēta valsts vai federālā līmenī, bet tas nenozīmē, ka šī rīcība nav atbilstoša. Zviedrijā iecelts nacionālais koordinators, kura uzdevums ir izveidot koordinācijas institūciju cīņai pret cilvēku tirdzniecību, bet tikai attiecībā uz gadījumiem, kas saistīti ar cilvēku tirdzniecību seksuālu pakalpojumu nolūkā.

To personu identifikācija, kas uzskatāmas par cilvēku tirdzniecībā cietušām	Ziņots, ka vienpadsmit no 27 dalībvalstīm ir atsevišķa valsts aģentūra vai institūcija, kas atbildīga par formālu to personu identifikāciju, kas uzskatītas par cilvēku tirdzniecībā cietušām, turpretī 16 dalībvalstīs šādu aģentūru vai institūciju nav. Sešās valstīs (Austrijā, Bulgārijā, Francijā, Vācijā, Itālijā, Maltā), kur nenorisinās identifikācijas process valsts līmenī, visā valstī nav noteiktas standartprocedūras formālai tādu personu identifikācijai, kas uzskatītas par cilvēku tirdzniecībā cietušām.
Vismaz 30 dienas ilga nogaidīšanas perioda pieejamība	25 no 27 dalībvalstīm ir noteikums par nogaidīšanas un atgūšanās periodu pieaugušajiem, kas uzskatīti par cilvēku tirdzniecībā cietušām personām. Lielākā daļa dalībvalstu, šķiet, šajā jautājumā ievēro minimālos standartus. Itālijā nav noteikuma par nogaidīšanas periodu, bet praksē tas dažreiz ir pieejams. Ziņots, ka Lietuvā ir līdzīga situācija. Par 2008. gadu no 11 valstīm bija pieejama informācija par kopumā 207 cilvēkiem, kam piešķirts nogaidīšanas periods. Par 2009. gadu no 18 valstīm bija pieejama informācija un tika ziņots, ka atbalstu saņēmuši krietni vien vairāk cilvēku: 1150 cilvēku tirdzniecībā cietušo personu. Tādējādi atspoguļojas ievērojams pieaugums.
Procedūras, kas sekmē drošu un, ja iespējams, brīvprātīgu cilvēku atgriešanu	Pētnieki minējuši sešas valstis, kurām ir oficiālas vienošanās ar citām ES dalībvalstīm vai trešajām valstīm, lai regulētu cilvēku tirdzniecībā cietušas personas atgriešanu viņas valstī (Francija, Latvija, Portugāle, Spānija un Apvienotā Karaliste; Grieķijai ir divpusēja vienošanās, kas aprobežojas ar cilvēku tirdzniecībā cietušiem bērniem), lai gan vienošanās, šķiet, sniedz maz garantijas, ka ļaunprātīga izmantošana nenotiks. Kad varas institūcijas plāno atgriezt izcelsmes valstī pieaugušu personu, kas uzskatīta par cilvēku tirdzniecībā cietušu, pētnieki novēroja, ka pirms cilvēka atgriešanas tikai trijās (Itālijā, Portugālē un Rumānijā) no 17 ES dalībvalstīm, par kurām bija pieejama informācija, notika risku izvērtēšana kā ierasta prakse; t.i., tika izvērtēti iespējamie riski indivīdam vai viņa ģimenes locekļiem.
Atlīdzības un kompensācijas pieejamība	Tika ziņots, ka, vai nu tiesas procesa rezultātā, vai no cita avota, 12 valstīs (no 22 valstīm, par kurām bija pieejama informācija) cilvēku tirdzniecībā cietušas personas saņēma maksājumus par zaudējumiem vai kā kompensāciju 2008. gadā un 12 valstīs (no 20) – 2009. gadā. Deviņas valstis, par kurām ziņots, ka tajās cilvēki saņēmuši kompensācijas maksājumus abos minētajos gados, bija Austrija, Dānija, Francija, Vācija, Itālija, Nīderlande, Spānija, Zviedrija un Apvienotā Karaliste.

Spriežot pēc šiem pieciem punktiem, ir neatbilstoši mēģināt klasificēt katras valsts darbību (kā tas darīts ikgadējā Savienoto Valstu Valsts departamenta ziņojumā), jo trīs pirmajās kategorijās norādīts, ka lielākoties dažādām valstīm ir vājās puses, kamēr pēdējās divās kategorijās

daudzas valstis rīkojas pareizi. Piemēram, Itālija — viena no valstīm, kas minēta visos piecos punktos, daudzos jautājumos rīkojas labi, izņemot attiecībā uz sistēmu, kas vērsta pret cilvēku tirdzniecību, kur situācija lielākajā daļā ES valstu atšķiras.

Līdz ar pieciem pamatpunktiem projekta mērķis bija daudzu citu attīstības iezīmju novērošana ar mērķi pārliecināties, vai **likumdošana visās valstīs** attiecas uz visām ekspluatācijas kategorijām, kas saistītas ar cilvēku tirdzniecību (t.i., ar mērķi „ekspluatēt prostitūcijai un citiem seksuālās ekspluatācijas veidiem", ar mērķi ekspluatēt personu darbam vai pakalpojumiem piespiedu darbā, kalpībā, verdzībā vai verdzībai līdzīgā praksē, vai ar mērķi izņemt orgānus no personas ķermeņa). Secinājums bija — parasti likumdošana skāra visas ekspluatācijas kategorijas. Ziņots, ka divās valstīs — Igaunijā un Polijā — sākts pārskatīt likumdošanu, bet vēl viss nav paveikts, un vienā valstī — Spānijā — likumdošana, kas ietver krimināllikumā paredzētu cilvēku tirdzniecības definīciju atbilstoši ES un Eiropas Padomes noteiktajiem standartiem, stāsies spēkā tikai 2010. gada decembrī.

Pētījuma mērķis bija arī noskaidrot, vai **cilvēku tirdzniecības definīcijas** visās valstīs ir pietiekami līdzīgas, lai būtu iespējams salīdzināt informāciju par cilvēkiem, kas raksturoti kā „cilvēku tirgotāji" vai „cilvēku tirdzniecības upuri". Tika atklāts, ka šajā aspektā ir daudz atšķirību. Piemēram, Francijā cilvēku tirdzniecības noziegums definēts plaši, tāpēc tas īstenībā attiecas gandrīz uz ikvienu, ko tur aizdomās par sutenerismu. Rezultātā sākotnēji šķita, ka Francijā tikai vienā gadā (2008) vairāk nekā 900 indivīdu notiesāti par cilvēku tirdzniecību. Tomēr, izpētot sīkāk, noskaidrojās, ka tikai nedaudz vairāk nekā puse minēto personu (521) notiesātas par „sutenerismu, kas notikusi vainu pastiprinošos apstākļos" (šāda nozieguma definīcija ir tuvāka tai, ko cilvēku tirdzniecības gadījumos lieto citās ES dalībvalstīs), un tikai 18 personas notiesātas par noziegumiem, kas atzīti kā „cilvēku tirdzniecība" saskaņā ar reģionālajām definīcijām, kas pieņemtas ES 2002. gada Pamatlēmumā un Eiropas Padomes Konvencijā. Somijā situācija ir pretēja — gadījumi, kas, saskaņā ar reģionāliem standartiem, uzskatāmi par cilvēku tirdzniecību, izskatīti vienīgi kā sutenerisms.

Pētījuma jautājums bija, kāds ir process, kura gaitā **cilvēkus identificē kā „cilvēku tirdzniecības upurus"**, un vai šiem cilvēkiem parasti tiek piedāvāts nogaidīšanas periods vai citi aizsardzības, vai palīdzības veidi. Iegūtie dati parādīja, ka gan identifikācijas process, gan kritēriji, saskaņā ar kuriem tiek vērtēts, vai konkrētā persona cietusi cilvēku tirdzniecībā, Eiropas Savienības valstīs ievērojami atšķiras, jo nav pieejami vienoti standarti.

Ziņots, ka 20 no 27 dalībvalstīm izveidota **valsts institūcija pret cilvēku tirdzniecību vērstas rīcības koordinēšanai**. Ziņots, ka 22 no 27 dalībvalstīm pieņemts Nacionālais rīcības plāns cīņai pret cilvēku tirdzniecību vai līdzīgs plāns (lai gan dažās valstīs šāds plāns koncentrēts vienīgi uz vēršanos pret cilvēku tirdzniecību seksuālas ekspluatācijas nolūkā). Lielākajā daļā valstu ir policijas struktūra, kas specializējusies cīņā ar cilvēku tirdzniecību. Dažās valstīs ir valsts mehānisms vai sistēma nosūtīšanai pie speciālistiem — valsts līmeņa procedūra, kas nosaka, kāda ir dažādu organizāciju loma, aizsargājot cilvēku tirdzniecībā cietušus cilvēkus, palīdzot viņiem un nosūtot viņus pie attiecīgiem dienestiem. Kopumā 17 valstīs ir šāda sistēma, kamēr 9 valstīs tādas sistēmas nav.

11 dalībvalstīs no 27 pastāv atsevišķa valsts aģentūra vai institūcija, kas atbildīga par formālu to personu identificēšanu, kas uzskatāmas par cilvēku tirdzniecībā cietušām, kamēr 16 dalībvalstīs šādas aģentūras vai institūcijas nav. Septiņās valstīs, kur nav vienota identificēšanas procesa, nav nekādas visā valstī piemērotas standartprocedūras formālai to personu identificēšanai, kas uzskatāmas par cilvēku tirdzniecības upuriem. Tomēr tas nenozīmē, ka identifikācija (un tā rezultātā pieejamā aizsardzība) ir efektīvāka valstīs ar vienotu sistēmu. Attiecībā uz identifikācijas procedūrām ziņots, ka starp valstīm pastāv ievērojamas atšķirības gan procedūras gaitā, gan apmērā, cik stingri nepieciešamās prasības jāievēro, kā arī procedūru efektivitātes ziņā.

Pētnieki spēja iegūt tikai daļēju informāciju par **to personu, kas uzskatāmas par cilvēku tirdzniecībā cietušām, skaitu, kuras identificētas 12 mēnešu laikā 2008. un 2009. gadā** — kopējais skaits 16 valstīs sasniedza 4010 personas (lai gan daži no šiem indivīdiem varbūt pieskaitīti divreiz, t.i., pirmoreiz identificēti mērķa valstī un pēc tam vēlreiz viņu izcelsmes valstī). Nedaudz vairāk kā pusē gadījumu (55), par cilvēku tirdzniecībā cietušām personām uzskatītie indivīdi pēc tam tika apstiprināti kā cilvēku tirdzniecības upuri. Līdzīga informācija par to **cilvēku skaitu, kuri uzskatīti par cilvēku tirdzniecībā cietušiem un kuri nosūtīti pie speciālistiem (dienestiem) 2009. gadā** — kopumā par 3800 cilvēkiem — bija pieejama 16 valstīs.

Ir gadījumi, ka gan pieaugušie, gan bērni, kuri tika uzskatīti par cilvēku tirdzniecībā cietušiem, 2008. vai 2009. gadā pirms identificēšanas procesa pabeigšanas **pazuda**. Ziņots, ka bērni, kuri tika uzskatīti par cilvēku tirdzniecībā cietušiem, pazuda 10 valstīs. Citas 10 valstis ziņoja, ka pazuduši pieaugušie, kuri bija provizoriski identificēti kā cilvēku tirdzniecībā cietuši.

Pētnieki savāca informāciju par vairākiem cilvēku tirdzniecības upuru **aizsardzības** aspektiem, īpaši:

- nogaidīšanas un atgūšanās periodiem;
- risku izvērtējumu un
- upuru atgriešanu (t.i., repatriāciju uz cilvēku tirdzniecībā cietušas personas izcelsmes valsti).

Pētnieki ieguva informāciju, kas dažās valstīs bija nepilnīga, par to **cilvēku skaitu, kuriem piešķirts nogaidīšanas periods**. Par **2008. gadu** informācija bija pieejama 11 valstīs un kopumā uzrādīja 207 cilvēkus, kuriem piešķirts šāds periods. Par **2009. gadu** informācija bija pieejama 18 valstīs par 1150 cilvēkiem. Zināms, ka 2008. gadā deviņās valstīs kopumā piešķirtas 1026 uzturēšanās atļaujas. Tomēr tas, ka katrā valstī izdotas vidēji vairāk nekā 100 atļaujas, nav uzskatāms par argumentu, jo Itālijā vien izdotas 664 no minētajām atļaujām (un turpmāk — 2009. gadā — izdotas 810 atļaujas), Nīderlandē — 235 atļaujas. Tādējādi 2008. gadā pārējās septiņas valstis kopā cilvēku tirdzniecībā cietušām personām izsniedza vien 127 uzturēšanās atļaujas (t.i., katra valsts izsniedza vidēji mazāk nekā 20 atļaujas). Tas pierāda, ka ES dalībvalstu likumi vai politikas, kas nosaka, kurām cilvēku tirdzniecībā cietušajām personām piešķiramas uzturēšanās atļaujas, ievērojami atšķiras.

Ziņots, ka šajos divos gados **cilvēku tirdzniecībā cietušiem bērniem** piešķirtas atļaujas palikt[350] sešās valstīs: Francijā, Polijā un Apvienotajā Karalistē, kur viņiem piešķirtas īslaicīgas atļaujas tikai neilgi pirms viņi sasnieguši 18 gadu vecumu, un Austrijā un Dānijā, kur atļauja palikt tika uzskatīta par ilgstošu. Itālijā bērniem no citām valstīm, vai viņi būtu vai nebūtu cietuši cilvēku tirdzniecībā, atļauts palikt līdz 18 gadu sasniegšanai. Tomēr arī cilvēku tirdzniecībā cietuši bērni var iegūt uzturēšanās atļauju uz tāda paša pamata kā cilvēku tirdzniecībā cietuši pieaugušie (saskaņā ar noteikumu, kas zināms kā „18. pants"). Nīderlandē bērniem tika piešķirta atļauja palikt, bet attiecīgie dati apgrūtināja iespēju izvērtēt, vai bērni varēja palikt ilgstoši.

Par atgriešanas (jeb repatriācijas) jautājumu pētnieku uzdevums bija noskaidrot, vai atgriešana bija brīvprātīga vai piespiedu, cik daudzas par cilvēku tirdzniecībā cietušām uzskatītas personas atgrieztas un kādā stāvoklī.

350. „Atļauja palikt" ir vispārējs apzīmējums, kas raksturo nepilsoņiem dotas juridiskas tiesības palikt valstī vai nu īslaicīgi, vai ilgstoši.

Pētnieki apstiprināja, ka sešām ES dalībvalstīm ir oficiālas vienošanās ar citām valstīm par cilvēku atgriešanu (tā kā piecas no minētajām sešām valstīm ir mērķa valstis, vienošanās lielākoties ir ar valstīm, kas uztvertas kā izcelsmes valstis).

Par 2008. gadu 15 valstīs bija pieejama informācija par **pieaugušo atgriešanu**: 194 personas atgrieztas savās izcelsmes valstīs no 12 valstīm (Austrijas, Kipras, Čehijas Republikas, Dānijas, Francijas, Grieķijas, Itālijas, Latvijas, Nīderlandes, Polijas un Slovēnijas). Šajā (2008) gadā, saskaņā ar ziņojumiem, visvairāk cilvēku (37) atgriezās no Nīderlandes, kam sekoja Itālija (31), Kipra (24), Vācija (23) un Dānija (21). Informācija **par 2009. gadu par personu atgriešanu** bija pieejama mazākā skaitā valstu — tikai 10 valstīs. Tika ziņots par 171 indivīdu, kas atgriezts izcelsmes valstī no 10 valstīm. Saskaņā ar ziņojumiem, uz Grieķiju attiecās krietni vairāk par pusi personu, kuras atgrieztas izcelsmes valstī. Vēl bija informācija, ka no Austrijas atgriezti 22 cilvēki un no Polijas — 23, bet no pārējām septiņām valstīm kopumā atgrieztas tikai 19 personas. Kā redzams, no kopējā cilvēku skaita, kas nosūtīti pie dienestiem vai uzskatīti par cilvēku tirdzniecībā cietušām personām, dažādās valstīs atgriezās atšķirīgs personu skaits. Tomēr arī šoreiz dati rāda, ka katrā valstī tiek piemēroti atšķirīgi kritēriji, izlemjot, vai atgriezto personu uzskatīt par cilvēku tirdzniecībā cietušu personu, un atgriezto indivīdu skaits nav proporcionāls to par cilvēku tirdzniecībā cietušu personu skaitam, kuras, saskaņā ar ziņojumiem, identificētas un kurām piešķirts nogaidīšanas periods.

2008. vai 2009. gadā **ES dalībvalstu pilsoņi, kuri identificēti valstī kā par cilvēku tirdzniecībā uzskatāmas personas**, tika nodrošināti ar aizsardzību un palīdzību 19 dalībvalstīs uz tāda paša pamata kā pilsoņi no tā sauktajām ārpus ES esošajām „trešajām valstīm". Tomēr ziņots, ka sešās dalībvalstīs (Vācijā, Ungārijā, Latvijā, Lietuvā, Rumānijā un Spānijā) pilsoņi no citām ES dalībvalstīm, kuri identificēti kā cilvēku tirdzniecībā cietušas personas, netika nodrošināti ar tikpat laba līmeņa aizsardzību un palīdzību kā pilsoņi no „trešajām valstīm". Ziņots, ka daži ES dalībvalstu pilsoņi pieredzējuši grūtības tajā, lai tiktu identificēti kā cilvēku tirdzniecībā cietušas personas vai gūtu palīdzību. Tas tomēr nozīmē, ka lielākajā daļā Rietumeiropas valstu, uz kurām pilsoņi no ES Centrāleiropas valstīm tikuši pārdoti, viņi saņēmuši palīdzību. 2008. un 2009. gadā 14 no 25 ES dalībvalstīm ES valstu pilsoņi tikuši identificēti kā cilvēku tirdzniecībā cietušas personas un saņēmuši palīdzību uz tiem pašiem pamatiem kā cilvēku tirdzniecībā cietušas personas, kas bijušas no ES ārpus esošām valstīm.

Uz jautājumu, kādi **aizsardzības veidi tiesas procesā pieejami cilvēku tirdzniecībā cietušiem pieaugušajiem** vai bērniem, kuri ir cietušie liecinieku statusā, ziņots, ka aptuveni pusē ES dalībvalstu nav pieejami pasākumi liecinieku statusā esošiem cietušajiem. Aizsardzības pasākumi tiesas procesā, par kuriem apvaicājās pētnieki, ietvēra iespēju cietušajiem lieciniekiem liecināt iepriekš noturētā tiesas sēdē (piem., izmeklēšanas tiesneša klātbūtnē) un neierasties publiski notiekošā tiesas sēdē, un iespēju liecinieku statusā esošiem cietušajiem liecināt, izmantojot videosakarus vai paliekot neredzamiem apsūdzēto personu skatam. Tomēr ziņots, ka 2008. un 2009. gadā piecās valstīs (Čehijas Republikā, Dānijā, Francijā, Portugālē un Apvienotajā Karalistē) bijuši gadījumi, kad cilvēku tirdzniecībā cietis pieaugušais vai bērns, kura identitātei vajadzēja saglabāties konfidenciālai, bija atklājuši savu identitāti sabiedrībai krimināllietu izskatīšanas gaitā.

Jaunākie pētījumi, ko veikušas tādas organizācijas kā *Anti-Slavery International*[351] un EDSO[352], pierādījuši, ka, lai gan cilvēku tirdzniecībā cietušām personām ir tiesības saņemt kompensāciju un pastāv vairāki kompensēšanas mehānismi, praksē cilvēku tirdzniecībā cietušas personas ārkārtīgi reti saņem reālu kompensācijas maksājumu. Tomēr tika ziņots, ka, vai nu tiesas procesa rezultātā, vai no cita avota, 12 valstīs (no 22 valstīm, par kurām bija pieejama informācija) cilvēku tirdzniecībā cietušas personas saņēma maksājumus par zaudējumiem vai kā kompensāciju 2008. gadā un 12 valstīs (no 20) – 2009. gadā. Deviņas valstis, par kurām ziņots, ka tajās cilvēki saņēmuši kompensācijas maksājumus abos minētajos gados, bija Austrija, Dānija, Francija, Vācija, Itālija, Nīderlande, Spānija, Zviedrija un Apvienotā Karaliste.

Pētījuma ietvaros netika sīki izpētītas vairākas **preventīvās metodes**, bet gan koncentrēta uzmanība uz to, lai noskaidrotu, kāda informācija pieejama par migrantiem pirms un pēc viņu ierašanās valstī, par kuru ziņots, ka tur ekspluatētas cilvēku tirdzniecībā cietušas personas.

Eiropas Padomes Konvencija paredz, ka dalībvalstīm „jāapsver iespēju iecelt **valsts ziņotājus** vai izveidot citus mehānismus, lai uzraudzītu valsts institūciju pasākumus pret cilvēku tirdzniecību un valsts nacionālo

351. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
352. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

normatīvo aktu noteikumu īstenošanu". Lai gan noteikums paredz dalībvalstīm vienīgi „apsvērt" šādu iecelšanu, ir pamats domāt, ka sagaidāmā ES direktīva paudīs ievērojami stingrāku nostāju šajā jautājumā, izvirzot prasību ES dalībvalstīm izveidot neatkarīgu valsts ziņotāju vai ekvivalentu mehānismu. 2009. gada martā notikusī konference par valsts ziņotājiem parādīja, ka 12 ES dalībvalstīs jau iecelti valsts ziņotāji (vai izveidots ekvivalents mehānisms), kura uzdevums ir uzraudzīt valsts institūciju rīcību cilvēku tirdzniecības novēršanā. Pētnieki apstiprināja, ka deviņās (Kiprā, Čehijas Republikā, Somijā, Latvijā, Lietuvā, Nīderlandē, Portugālē, Rumānijā un Zviedrijā) no 27 ES dalībvalstīm ir valsts ziņotājs cilvēku tirdzniecības novēršanas jautājumos, kamēr 16 dalībvalstīs šāda valsts ziņotāja nav. Ziņots, ka vairākas valstis (piemēram, Zviedrija) galvenokārt pievērš uzmanību vienīgi gadījumiem, kas saistīti ar cilvēku tirdzniecību seksuālas ekspluatācija nolūkā. Vairākās valstīs (piemēram, Beļģijā un Spānijā) atsevišķa valsts institūcija uzrauga cīņu pret cilvēku tirdzniecību. Trijās no deviņām valstīm, kurās ir valsts ziņotājs (Latvijā, Lietuvā un Zviedrijā), valsts ziņotājs nav pilnībā neatkarīgs no tiem, kas iesaistīti cīņā pret cilvēku tirdzniecību — tādējādi viņa neatkarība ir ierobežota un, iespējams, ir samazināta viņa spēja novērot notiekošo pilnīgi neatkarīgi.

4. Secinājumi un ieteikumi

E-notes projekts parādīja, ka starp ES dalībvalstīm pastāv būtiskas atšķirības tādos pamataspektos kā cilvēku tirdzniecības novēršanas politika un prakse, piemēram, nacionālā likumdošana, kas aizliedz cilvēku tirdzniecību un definē (vai interpretē attiecīgo valsts aģentūru skatījumā) to, kas ir cilvēku tirdzniecība, koordinējošo institūciju eksistence un process cilvēku tirdzniecībā cietušo personu identificēšanai. Projekts arī parādīja, ka vairāki starptautiskās un nacionālo likumdošanu punkti, kam vajadzētu nodrošināt cilvēku tirdzniecībā cietušo personu tiesību aizsardzību, vēl aizvien pastāv tikai „uz papīra" un to īstenošana tikko sākusies lielākajā daļā ES dalībvalstu. Organizācijas, kas piedalījās *E-notes* projektā, uzskata, ka Eiropas Savienībai, pašām ES dalībvalstīm un pilsoniskajai sabiedrībai jāpieliek vairāk pūļu, lai stiprinātu politikas pamatus nacionālajos un ES līmeņos, kam vajadzētu apturēt cilvēku tirdzniecību.

Lai gan ES nepieciešams būtiski pilnveidot daudzus pret cilvēku tirdzniecību vērstas politikas īstenošanas aspektus, turpmāk izklāstītie ieteikumi, kas

sagatavoti *E-notes* projekta ietvaros, koncentrējas uz cilvēku tirdzniecībā cietušo personu tiesību aizsardzību, jo esam pārliecināti, ka tieši minēto tiesību aizsardzībai jākļūst par jebkuras dalībvalsts centienu pamatmērķi, cīnoties pret cilvēku tirdzniecību. Tomēr, attiecībā uz cilvēku tirdzniecības novēršanu un cilvēku tirdzniecībā cietušo personu aizsardzību, šādi pasākumi tiek īstenoti vismazāk.

Tirdzniecībā cietušo personu identificēšana un nosūtīšana pie attiecīgiem speciālistiem

- Cilvēku tirdzniecībā cietušu personu tiesību aizsardzību var nodrošināt vienīgi identificējot visas par cilvēku tirdzniecības upuriem uzskatītās personas (neraugoties uz viņu sadarbību ar varas institūcijām). *E-notes* projekta ietvaros iegūtie dati rāda, ka identificēšana vēl aizvien ir vājais ķēdes posms. Lai pilnveidotu identificēšanas procesu dalībvalstīs, mēs uzskatām, ka ir svarīgi:
- Dalībvalstīm, sadarbojoties tiesībsargājošajām iestādēm, prokuratūrām un pakalpojumu sniedzējiem, izveidot pārbaudes punktu un/vai indikatoru veidlapu, kas palīdzētu identificēt par cilvēku tirdzniecības upuriem uzskatītās personas, kas sastapušās ar jebkura veida ekspluatāciju. Papildu indikatori jādefinē attiecībā uz katru ekspluatācijas veidu, piemēram, darba ekspluatācija, mājas verdzība, seksuālā ekspluatācija, piespiedu ubagošana, piespiedu iesaistīšanās nelikumīgās darbībās, utt. Jāizveido īpaši indikatori bērnu kā cilvēku tirdzniecības upuru identificēšanai.
- Identificēšana nav vienas valsts aģentūras pienākums, bet tas jāveic daudzdisciplīnu komandām, kas ietver organizācijas, kuras sniedz pakalpojumus cilvēku tirdzniecībā cietušām personām.
- Nacionālās struktūras, kas darbojas kā nosūtītājas pie speciālistiem — vai tas būtu nacionālais nosūtīšanas pie speciālistiem mehānisms, vai kāda institūcija, kas iesaistīta operatīvās darbības standartprocedūru īstenošanā, pamatā jābūt ciešai un regulārai sadarbībai starp tiesībsargājošo, imigrācijas institūciju pārstāvjiem, darba inspektoriem, attiecīgajām arodbiedrībām, bērnu aizsardzības institūcijām, prokuratūru un NVO vai citiem pakalpojumu sniedzējiem.
- Uzlabojusies iespēja cilvēku tirdzniecībā cietušām personām vērsties tiesā, ieskaitot iespēju pieprasīt kompensāciju. Tas panākts, garantējot bezmaksas juridisko palīdzību visām personām, kas identificētas kā cietušas cilvēku tirdzniecībā.
- Visas dalībvalstis nodrošina, ka visām cilvēku tirdzniecībā cietušām personām tiek veikts individuāls riska izvērtējums, kad tiek ierosināta šo personu atgriešana viņu izcelsmes valstī.

Uzraudzība

Būtiski turpināt uzraudzību gan ES, gan nacionālajā līmenī, lai attiecīgajām ieinteresētajām pusēm būtu labāka izpratne ne tikai par teorētiski noteiktajiem pasākumiem, lai apturētu cilvēku tirdzniecību, bet arī par realitātē notiekošo. Lai labi izprastu īstenojamos pasākumus, pret cilvēku tirdzniecību vērstas politikas rezultātus un ietekmi Eiropas Savienībā, steidzami nepieciešams īstenot šādus pasākumus:

- Valsts ziņotājiem vai tiem ekvivalentiem mehānismiem jābūt neatkarīgām institūcijām (kā noteikts 1997. gada Hāgas Deklarācijā), lai garantētu pret cilvēku tirdzniecību vērstas rīcības rezultātu neatkarīgu un salīdzināmu uzraudzību. Svarīgi arī identificēt un ziņot par pret cilvēku tirdzniecību vērstu pasākumu ietekmi un neparedzamām vai pat negatīvām sekām.
- Izveidot attiecīgus terminoloģijas, statistikas un mērījumu standartus (piem., to indivīdu skaits, pret kuriem ierosinātas lietas par cilvēku tirdzniecību).

Lai izvairītos no nevajadzīgas uzraudzības darbības daļējas sakritības, īstenot ciešu sadarbību starp ES un tās dalībvalstīm, un Eiropas Padomes *Konvencijas par cīņu pret cilvēku tirdzniecību* neatkarīgas uzraudzības institūcijas GRETA locekļiem.

Likumdošana

- Nepieciešama turpmāka uzraudzība, lai nodrošinātu, ka visās nacionālajās likumdošanās iekļauta cilvēku tirdzniecības definīcija, kā tā formulēta 2002. gada Pamatlēmumā un 2005. gada Eiropas Padomes Konvencijā.
- Šķiet, daudzās ES dalībvalstīs īpaši nepieciešama labāka izpratne, ko nozīmē jēdziens „ekspluatācija" un kādi noziegumi saistīti ar nelegālu ekspluatāciju, gan, kad notikusi cilvēku tirdzniecība ar mērķi šīs personas ekspluatēt, gan arī, kad cilvēki pakļauti ekspluatācijai bez cilvēku tirdzniecības.

Pret cilvēku tirdzniecību vērstas politikas koordinēšana nacionālā līmenī

- Visām dalībvalstīm, kas vēl to nav izdarījušas, vajadzētu izveidot koordinējošo struktūru un sagatavot nacionālo rīcības plānu, lai to cilvēku tirdzniecības novēršanas politika būtu labāk saskaņota. Atbilstīga cilvēku un ekonomisko resursu iedalīšana ir izšķiroša abu augstāk minēto faktoru efektīvai funkcionēšanai. Tātad, būtu atbilstīgi attiecībā uz jebkuru uzraudzības pasākumu nākotnē pārliecināties, kādi finansiālie resursi katrā ES dalībvalstī piešķirti tam, lai finansētu nacionālo koordinējošo struktūru un atbalstītu koordinēšanas aktivitātes.

8.13 Santrauka

2009 m. keturios nevyriausybinės organizacijos (NVO) iš Europos Sąjungos (ES) šalių sutarė įgyvendinti bendrą projektą pavadintą „Europos Nevyriausybinių organizacijų prekybos žmonėmis, išnaudojimo ir vergijos stebėjimo mechanizmas“ (org. ‘European NGOs Observatory on Trafficking, Exploitation and Slavery’, toliau E-notes), siekiant įvertinti valstybinių institucijų ES šalyse narėse įgyvendinamus veiksmus vergijai, prekybai žmonėmis ir įvairių rūšių išnaudojimui, susijusiu su šiuo reiškiniu, sustabdyti. Projektą koordinavo Italijos NVO „On the Road“ (org. Associazione On the Road[353]) kartu su regioniniu kovos prieš prekybą žmonėmis tinklu „La Strada International, taip pat NVO iš Ispanijos ACCEM[354] ir Prancūzijos ALC[355].

Užuot įkūrę nuolatinę, vyriausybės veiksmus vertinančią, instituciją, E-notes projektas nusprendė surinkti informaciją, kas vyksta kiekvienoje iš 27 ES valstybių narių. Šiam tikslui buvo sukurtas tyrimo metodas, surastos NVO bei atrinkti tyrėjai, atstovaujantys kiekvieną ES šalį narę. Projektas prasidėjo atrenkant svarbiausius kriterijus pagal kuriuos būtų įvertinti kiekvienos ES šalies narės veiksmai kovoje su prekyba žmonėmis (pvz. įstatymai, politikoje ir praktikoje įgyvendinamos priemonės, padedančios mažinti prekybos žmonėmis aukų skaičių, taip pat garantuojančios apsaugą bei pagalbą nukentėjusiems). Tyrimo instrumentas buvo sukurtas sudarant sąrašą iš daugiau nei 200 standartinių klausimų, kurie, buvo tikimasi, padės įvertinti kiekvienos ES šalies veiksmų prieš prekybą žmonėmis progresą.

1. Pavyzdžiai dėl kurių stebėjimo buvo prašoma informacija

Tyrimo procesas prasidėjo 2010 m. pradžioje, kai tik Europos Taryba priartėjo prie naujo ES instrumento, sunorminančio ES valstybių narių atsaką kovai su prekyba žmonėmis, svarstymo pabaigos (Europos Tarybos

353. Associazione On the Road provides a wide range of services and protection to trafficked persons, asylum seekers, refugees, and migrants in general in three Italian regions (Marche, Abruzzo, Molise). It is also engaged in awareness raising, community work, research, networking and policy development initiatives at the local, national, and European level.
354. ACCEM provides social services and takes action in the social and legal domain to benefit asylum seekers, refugees, people who are displaced and migrants in Spain.
355. ALC stands for *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (Accompanying [people], Reception centres, Educational and Social centres). ALC coordinates the national network for secure housing for trafficked persons, known as “Ac.Sé”).

Pamatinio sprendimo dėl kovos su prekyba žmonėmis (org. Council Framework Decision on combating trafficking in human beings), priimto 2002 m. Liepą, pakeitimas). 2009 m. Europos Komisija pristatė naują Pamatinio sprendimo pasiūlymą. Dėl įsigalėjusios Lisabonos sutarties (org. Lisbon Treaty), nutraukusios visas tuo metu vykusias teisines procedūras, Taryboje tolimesnės derybos dėl naujo Pamatinio sprendimo negalėjo tęstis. Dėl šios priežasties Europos Komisija pateikė naują pasiūlymą Europos Parlamento ir Prevencijos ir kovos su prekyba žmonėmis bei aukų apsaugos tarybos Direktyvoms (org. *Directive of the European Parliament and of the Council on Preventing and combating trafficking in human beings, and protecting victims)*, panaikinančioms 2002 m. Europos Tarybos Pamatinį sprendimą. 2010 m. Kovą šios Direktyvos buvo pateiktos Europos Parlamentui. 2010 m. Rugsėjį du Parlamento komitetai pasiūlė keletą pakeitimų Direktyvų projektui ir sutarties tarp Tarybos, Komisijos ir Europos Parlamento parengimo procesas prasidėjo. Buvo tikimasi, kad Direktyvos bus patvirtintos prieš 2010 m. pabaigą.

Nors Direktyvų nuostatos atrodė gana aiškios, tuo metu, kada E-notes stebėjimo veiksmai buvo atliekami, t.y. 2010 m. Gegužę ir Birželį, Direktyvos vis dar nebuvo priimtos (tai nebuvo padaryta ir tuo metu, kai ši ataskaita buvo baigta, t.y. 2010 m. Spalį). Sprendžiant, kokiu teisiniu dokumentu remtis nustatant stebėsenos rodiklius kiekvienoje ES šalyje narėje (pvz.: įsipareigojimus, susijusius su valstybės atsaku prekybos žmonėmis problemai), projektas pasirinko kitą regioninį dokumentą – Europos Tarybos Konvenciją dėl kovos su prekyba žmonėmis veiksmų (org. *Convention on Action against Trafficking in Human Beings*) Ji buvo priimta 2005 m. ir įsigaliojo 2008 m. Vasarį. Šią konvenciją yra ratifikavusios nemažai valstybių ir už Europos ribų, 2010 m. Rugpjūtį visos išskyrus vieną ES narę – Čekijos Respubliką, ją buvo arba ratifikavusios (19) arba pasirašiusios (7) ir tokiu būdu parodžiusios intencijas ją vykdyti.

2. Naudoti metodai

Stebėsenos kriterijus sukūrė projekto konsultantas 2010 m. pradžioje. Dėmesys buvo atkreiptas į ankstesnes publikacijas, kuriose buvo pateikti ES šalims narėms būdingi rodikliai, siekiant įvertinti jų progresą laikantis įstatymų ir įgyvendinant veiksmus praktikoje pagal priimtus regioninius ir tarptautinius standartus (Jungtinių Tautų Protokolu dėl prekybos žmonėmis, ypač moterimis ir vaikais, prevencijos, sustabdymo bei baudimo už vertimąsi ja (org. *Protocol to Prevent, Suppress and Punish Trafficking in Persons,*

Especially Women and Children), priimtu 2000 m. ir papildančiu Jungtinių Tautų Konvenciją prieš tarptautinį organizuotą nusikalstamumą (2000) (org. *Convention against Transnational Organized Crime*)). Dėmesys taip pat buvo atkreiptas į skirtingose Europos Komisijos publikacijose[356] padarytus komentarus apie šalių silpnąsias puses, pastebėtas ES šalių narių kovos su prekybos žmonėmis ir pagalbos prekybos žmonėmis aukoms veiksmų ataskaitose. Kai kuriose publikacijose buvo pastebėta, kad iš ES šalių narių sunku surinkti informaciją (kartais atnaujintą, o kartais bent kažkokią) apie kovos su prekybą žmonėmis įgyvendinamą praktiką. Tai siejama su vieningos duomenų rinkimo sistemos trūkumų, kuris įrodo, kad ES šalyse narėse nėra nustatytos bendros reiškinio terminologijos ir/ar bendro ataskaitų rengimo mechanizmo. Šie pastebėjimai pasitvirtino įgyvendinant E-notes tyrimą.

Europos Komisijos dokumentas išleistas 2006[357] m. pažymėjo, kad šalys narės pateikė mažai informacijos apie taisykles ir praktiką susijusią su apsauga ir pagalba nukentėjusiems nuo prekybos žmonėmis. 2008 m. Veiksmų dokumente (org. Working Document[358]) taip pat nurodyta, kad iš ES šalių narių buvo sunku surinkti duomenis apie pagalbą gavusių prekybos žmonėmis aukų skaičių bei pažymėta, kad 2006 m. 23 valstybėse, pateikusiose informaciją Europos Komisijai, per metus buvo ištirta tik daugiau nei 1500 prekybos žmonėmis atvejų. Dauguma ES šalių narių įvedė "atsigavimo ir apmąstymų laikotarpį", leidžiantį numanomoms aukoms pasilikti šalyje ir atsigauti prieš prašant jas duoti parodymus. Vis dėlto tik penkios šalys pranešė, keliems žmonėms buvo suteikta ši paslauga, o suvedus pateiktus rezultatus, bendras skaičius tesiekė 26 asmenis per metus!

Europos Komisijai sukėlė nerimą Nevyriausybinių organizacijų (NVO), kurios specializuojasi dirbdamos prieš prekybą žmonėmis (tiek teikiant paslaugas ir įvairiapusę pagalbą – (manomai) nukentėjusiems nuo prekybos žmonėmis, tiek įgyvendinant prevencinę veiklą), pateikiamų duomenų trūkumas ir/ar netikslumas. Iš vienos pusės tai sako, kad niekas, net Europos Komisija nežino, kas vyksta ES. Iš kitos pusės, kad dauguma regioninių ir

356. Such as: European Commission, Communication to the European Parliament and Council on "*Fighting trafficking in human beings - an integrated approach and proposals for an action plan*" (European Commission reference COM(2005) 514 final of 18 October 2005); and European Commission Working Document (European Commission reference COM(2008) 657 final), *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, October 2008.
357. European Commission report on the implementation of the 2002 Council Framework Decision of 19 July 2002 on combating trafficking in human beings (European Commission reference COM(2006) 187 final of 2 May 2006).
358. See footnote 356 above.

tarptautinių sutarčių nuostatų, susijusių su prekyba žmonėmis ir kitomis žmogaus teisių pažeidimų problemomis, valstybių yra ignoruojamos (nepaisant fakto, kad joms buvo pritarta) ir nėra įgyvendinamos.

Keletas ES šalių narių yra paskyrę Nacionalinį koordinatorių prekybos žmonėmis klausimais, kurio paskirtis informuoti vyriausybę (ir kitus) apie šalies kovos su prekybą žmonėmis pažangą ir pateikti rekomendacijas, kas reikėtų pagerinti. Devynios iš 27 šalių narių informavo, kad 2010 m. viduryje įgyvendintos stebėsenos metu, turėjusios tokį nacionalinį koordinatorių, bet ne visi jų reguliariai paruošia ataskaitas, taip pat kai kurie sutelkia dėmesį tik į tam tikrą prekybos žmonėmis formą (pvz. prekyba moterimis priverstinei prostitucijai), neatsižvelgdami į kitas šio reiškinio formas. Žvelgiant į ateitį, jei Nacionaliniai koordinatoriai butų paskirti visose ES narėse, tai padėtų priimant bendrus prekybos žmonėmis reiškinio sąvokų bei nukentėjusių nuo prekybos žmonėmis statistikos vedimo standartus. Tad galėtų būti padarytos vertingos skirtingų ES šalių narių įgyvendinamos prekybos žmonėmis politikos lyginamosios analizės.

Dėl šios priežasties E-Notes stebėjimo mechanizmas pamėgino sužinoti, kokia informacija yra prieinama apie ES šalyse narėse priimtus įstatymus, politines priemones ir vykdomą kovos su prekyba žmonėmis praktiką, taip pat kiek žmonių buvo identifikuota kaip nukentėjusieji ir keliems jų buvo suteikta apsauga ir/ar kitokia pagalba. Stebėsenos veiksmai buvo įgyvendinami 2010 m. Gegužę ir Birželį, tad iš pradžių norėta surinkti 2009 m. duomenis. Tačiau greitai paaiškėjo, kad daugumoje šalių 2009 m. duomenų arba nėra, arba jie netikslūs, tuo tarpu apie 2008 m. situaciją, informacija buvo tikslesnė ir labiau prieinama.

NVO, kurių buvo paprašyta atrinkti tyrėją E-notes tyrimo duomenims surinkti ir aprašyti, buvo daugiausia dirbančios su nuo prekybos žmonėmis nukentėjusiais suaugusiais (dauguma moterimis). Tačiau tyrėjai taip pat turėjo surinkti informaciją ir apie nuo prekybos žmonėmis nukentėjusius vaikus. Daugumai jų surinkti tiek daug informacijos apie šią problemą buvo sunku. Didžiojoje dalyje ES šalių narių suaugusieji, nukentėję nuo prekybos žmonėmis, pagalbą gauna NVO, tuo tarpu valstybinės institucijos, atsakingos už vaikų globą, turi monopolį ir rūpinantis nukentėjusiais nuo prekybos žmonėmis vaikais.

Kiekvienas tyrėjas buvo paprašytas užpildyti 60 lapų tyrimo protokolą, pateikti papildomą tekstą su daugybe aspektų, kuriose "Taip" ar "Ne" atsakymai nebuvo galimi bei parengti trumpą šalies profilį, kuriame

atskleidžiama kaip prekybos žmonėmis problema yra sprendžiama šalyje bei vyriausybės atsakas į šios problemos sprendimą. 2010 m. liepą, 27 tyrėjų paruošta informacija buvo apdorota ir įvesta į nesudėtingą duomenų bazę. Ji buvo analizuojama to paties projekto konsultanto, parengusio tyrimo protokolą. Buvo siekiama identifikuoti galimus problemos modelius, ypač ES šalių narių trūkumus laikantis įsipareigojimų apsaugant ir suteikiant pagalbą prekybos žmonėmis aukoms, bei pateikti padarytų išvadų ataskaitą.

Tyrėjai buvo paprašyti pakomentuoti, ar jų atstovaujama šalis yra prekybos žmonėmis tikslais kilmės, tranzito ar tikslo šalis, ar šių kombinacija. Šis skirstymas nesutelkė dėmesio į prekybos žmonėmis reiškinį šalies viduje. Santykinai mažai šalių buvo įvardintos kaip priskiriamos tik vienai iš trijų kategorijų (dvi, Prancūzija ir Portugalija, buvo apibūdintos kaip tikslo šalys). Kitos 25 įvardintos, kaip esančios kombinacija: viena – kilmės ir tikslo šalis; 10 kaip tranzito ir tikslo šalys; 9 kaip kilmės, tranzito ir tikslo šalys.

3. Stebėsenos išvados

230 tyrimo protokolo klausimai buvo sudaryti iš įvairiausių temų, dėl kurių buvo sunku pateikti 'juodai baltą' profilį, kuriame atsispindėtų, ar ES šalys narės laikosi įsipareigojimų ir gerbia žmogaus teises nukentėjusių nuo prekybos žmonėmis asmenų atžvilgiu. Vis dėlto pagal penkis konkrečius kriterijus įvertinti, kokia pažanga buvo padaryta, buvo įmanoma. Tačiau net gi šiais atvejais prieinama informacija buvo arba nepilna, arba neprieinama, todėl minima statistika negalėjo būti laikoma patikima. Kriterijai pateikiami žemiau esančioje lentelėje.

Lentelė 1 ES pažanga, įgyvendinant pagrindinius kovos su prekybą žmonėmis veiksmus

Kriterijus	Situacija 2010 m. Gegužę
Kovos su prekyba žmonėmis koordinavimas nacionaliniame lygmenyje	Nacionalinė kovos su prekyba žmonėmis koordinavimo struktūra įkurta 22 iš 27 ES šalių narių. Šalys, kuriose koordinavimo struktūros nėra – Prancūzija, Vokietija, Graikija ir Malta. Vokietijoje ir Italijoje kovos prieš prekybą žmonėmis veiksmai nėra organizuojami nacionaliniame ar federaliniame lygmenyje, tačiau tai nereiškia, kad jie nepakankami. Švedija yra paskyrusi Nacionalinį koordinatorių, kurio užduotis vystyti kovos su prekyba žmonėmis koordinavimo struktūrą, bet įtraukiant tik seksualinio išnaudojimo atvejus.

Numanomų prekybos žmonėmis aukų identifikavimas	Vienuolika iš 27 šalių narių informavo, kad turi vienintelę valstybinę agentūrą ar struktūrą atsakingą už formalią numanomų prekybos žmonėmis aukų identifikavimą, tuo tarpu 16 tokios neturi. Šešios šalys, kuriose nėra nacionalinio lygmens identifikavimo proceso, neturi jokių šalyje naudojamų standartinių procedūrų formaliai identifikuojant numanomas prekybos žmonėmis aukas (Austrija, Bulgarija, Prancūzija, Vokietija, Italija, Malta).
„Atsigavimo ir apmąstymų laikotarpio" suteikimas bent 30 dienų	25 iš 27 šalių narių, pranešama, kad suaugusiems asmenims, kurie manoma yra nukentėję nuo prekybos žmonėmis, yra prieinamas "atsigavimo ir apmąstymų laikotarpis". Tai puiki proporcija, parodanti bent minimalių standartų šioje srityje užtikrinimą. Nors Italijoje "atsigavimo ir apmąstymų laikotarpis" nėra įteisintas, bet praktikoje kartais pasitaiko. Tokia pati situacija įvardinama ir Lietuvoje. 2008 m. informacija apie suteiktą tokią paslaugą buvo prieinama 11 iš visų 27 šalių, iš viso žinomi 207 jos gavėjai. 2009 m. informacija buvo prieinama 18 šalių, kur "atsigavimo ir apmąstymų laikotarpio" paslaugos gavėjų buvo dar daugiau, t.y. 1, 150 nukentėjusių asmenų.
Procedūros, susijusios su saugiu, jei įmanoma savanorišku, grįžimu	Šešių šalių tyrėjai įvardino, kad jų atstovaujamos šalys turi formalius susitarimus su kitomis ES šalimis narėmis ar 'trečiojo pasaulio šalimis', kontroliuojančius ir padedančius valdyti prekybos žmonėmis aukų grįžimo į jų gimtąją šalį procesą (Prancūzija, Latvija, Portugalija, Ispanija ir Jungtinė Karalystė; Graikija turi dvišalią sutartį tik nuo prekybos žmonėmis nukentėjusiems vaikams). Tačiau sutarčių egzistavimas neužtikrina, kad būtų išvengta piktnaudžiavimų. Tyrėjai atskleidė, kad tik trijose iš 17 ES šalių narių, kuriose informacija buvo prieinama, valdžia planuodama galimos prekybos žmonėmis aukos sugrįžimą į kilmės šalį, įvertina ir galimą riziką asmeniui ar jos/ jo šeimos nariams (Italija, Portugalija, Rumunija).
Žalos atlyginimo ir kompensavimo prieinamumas	12 šalių (iš 22 kuriose informacija buvo prieinama) nukentėjęs nuo prekybos žmonėmis asmuo gavo išmoką arba kompensaciją už žalą per 2008 m., ir 12 šalių (iš 20) per 2009 m., arba kaip teisinio proceso rezultatas arba iš kitų šaltinių. Devynios šalys, kuriose kompensacijos buvo įvardintos per abejus metus, buvo Austrija, Danija, Prancūzija, Vokietija, Italija, Nyderlandai, Ispanija, Švedija ir Jungtinė Karalystė.

Atsižvelgiant tik į šiuos penkis kriterijus, būtų netinkama vertinti kiekvienos valstybės vaidmenį, kovojant su prekyba žmonėmis (kaip tai daro Jungtinių Valstijų Valstybės departamentas ruošdamas metines ataskaitas). Pagal pirmuosius kriterijus dauguma šalių identifikuojamos kaip turinčios silpnųjų pusių, tuo tarpu likusius – atitinka. Pavyzdžiui, Italija yra viena iš šalių, kuri priskiriama visoms penkioms kategorijoms, taip pat kaip ir turinti silpnųjų pusių, tačiau daugumą problemų sprendžia tinkamai, tik jos kovos su prekyba žmonėmis sistema skiriasi nuo daugumos ES šalių.

Šalia minėtų penkių raktinių kriterijų, tyrimu taip pat siekiama įvertinti ir kitus šalių vystymosi aspektus. Mėginta patikrinti, ar **šalyse galiojantys įstatymai** atliepia visas "išnaudojimo", susijusio su prekyba žmonėmis, kategorijas, (pvz. priverstinės prostitucijos ar kito seksualinio išnaudojimo, priverstinio darbo ar priverstinių paslaugų teikimo, prekybos žmogaus organais ir kt. tikslais). Bendros išvados rodo teigiamus rezultatus. Dvi šalys – Estija ir Lenkija – informavo, kad pradeda peržiūrėti šalies įstatymus, bet dar nebaigę to padaryti, tuo tarpu Ispanijos Baudžiamajame kodekse prekybos žmonėmis sąvoka, atitinkanti ES ir Europos Tarybos standartus, įsigalios tik 2010 m. Gruodį.

Tyrimas taip pat buvo skirtas sužinoti, ar šalyse naudojamos **prekybos žmonėmis sąvokos**, apibūdinančios "prekybos žmonėmis aukas" ir "prekiautojus žmonėmis", yra pakankamai panašios, kad būtų galima jas palyginti. Pavyzdžiui, Prancūzijoje prekybos žmonėmis nusikaltimas apibrėžiamas taip plačiai, kad taikomas praktiškai visiems įtartiniems verbavimo atvejams. Kaip to rezultatas, per vienerius metus (2008) Prancūzijoje už prekybą žmonėmis nuteista daugiau nei 900 asmenų. Žvelgiant iš arčiau, vis dėlto paaiškėjo, kad kiek daugiau nei pusę atvejų (521) susiję su sąvadavimu sunkinančiomis aplinkybėmis (nusikaltimas, kuris artimas prekybos žmonėmis sąvokai daugumoje ES šalių narių) ir tik 18 atvejų buvo artimi nusikaltimams, pripažįstamiems kaip prekyba žmonėmis pagal regioniniuose dokumentuose (ES Pamatiniame sprendime 2002 ir Europos Tarybos Konvencijoje) pripažintas sąvokas. Suomijoje situacija prieštaringa, atvejai, kurie pagal regioninius standartus turėtų būti traktuojami kaip prekyba žmonėmis yra laikomi tik tokie kaip žmogaus įgijimas ir/ar sąvadavimas.

Tyrimas taip pat klausė, kokios prekybos žmonėmis aukų identifikavimo procedūros buvo vykdomos ir, ar nukentėjusiems buvo prieinamos "atsigavimo ir apmastymų laikotarpio" ar kitos apsaugos ir pagalbos formos. Rezultatai rodo, kad tiek identifikavimo procesas, tiek kriterijai padedantys nustatyti, ar asmuo nukentėjo nuo prekybos žmonėmis tarp ES šalių narių buvo tokie skirtingi, tarsi bendri standartai būtų neprieinami ar neegzistuotų.

Nacionalinė struktūra, koordinuojanti kovos su prekyba žmonėmis veiksmus šalyje, įkurta 20 iš 27 šalių narių. Šalies veiksmų planas kovai su prekyba žmonėmis ar analogiškas dokumentas buvo priimtas 22 iš 27 šalių (nors kai kurie jų koncentruojasi tik prekybai žmonėmis seksualinio išnaudojimo tikslais). Dauguma šalių turi policijos skyrių, kuris specializuojasi darbe prieš prekybą žmonėmis. Kai kuriose šalyse yra įsteigta procedūra atpažįstanti ir

paskirstanti vaidmenis skirtingoms institucijoms ir organizacijoms, kurios teikia apsaugą ir pagalbą nukentėjusiems asmenims bei nukreipianti juos į atitinkamas institucijas (org. National Referral Mechanism). Iš viso 17 šalių tokią sistemą turi, tuo tarpu 9 – ne.

11 iš 27 šalių narių už formalią galimai nuo prekybos žmonėmis nukentėjusių identifikavimo procedūrą yra atsakinga valstybinė agentūra ar struktūra, tuo tarpu 16 valstybių tokios institucijos nėra. Septynios šalys, kuriose toks procesas neįgyvendinamas, neturi jokios standartinės procedūros pagal kurią formaliai galėtų būti identifikuojama prekybos žmonėmis auka. Tačiau tai nereiškia, kad šalyse, kuriose tokia struktūra egzistuoja, efektyviau įgyvendina aukų identifikavimą procesą (ir taip suteikia apsaugos prieinamumą). Pastebėta, kad skiriasi šalių duomenys, susiję su aukų identifikavimo procedūra, jos detalėmis, trukme ir kitus kriterijus pagal kuriuos galima spręsti procedūros efektyvumą.

Tyrėjai galėjo tik iš dalies pateikti informaciją apie **numanomai nuo prekybos žmonėmis nukentėjusių asmenų skaičių per 12 mėnesių 2008 ir 2009** – viso 4,010 šešiolikoje šalių (nors kai kurie asmenys galėjo būti suskaičiuoti du kartus, pvz. identifikuoti tikslo šalyje ir vėliau kilmės šalyje). Kiek daugiau nei pusė (55 procentai) numanomai nukentėjusių asmenų buvo vėliau valstybės institucijų įvardinti kaip nukentėję nuo prekybos žmonėmis. Tokia pat situacija ir kalbant apie galimai **nuo prekybos žmonėmis nukentėjusių asmenų, kurie buvo nukreipti į atitinkamas institucijas 2009 m.** statistiką. Ši buvo prieinama 16 valstybių, o bendras skaičius siekė 3,800 asmenis.

Pastebėta, kad prieš pasibaigiant galimai nukentėjusių vaikų bei suaugusių identifikavimo procedūrai, 2008 m. ir 2009 m. kai kurie šių asmenų **dingo**. Numanomai nukentėjusių ir dingusių vaikų atvejai buvo minimi 10 šalių ataskaitose. Kita 10 šalių grupė informavo apie tokius dingusius suaugusius.

Tyrėjai surinko informaciją apie įvairius aspektus, susijusius su aukų **apsauga**

- Apmąstymų ir atsigavimo laikotarpis
- Rizikos įvertinimas; ir
- Grįžimai (pvz. nukentėjusių sugrąžinimas į kilmės šalį).

Tyrėjai surinko informaciją apie asmenis, kuriems buvo suteiktas "apmąstymų ir atsigavimo laikotarpis". Kai kurios šalys tokios informacijos pateikti negalėjo. 2008 m. ši informacija buvo prieinama 11 šalių ir iš viso šią paslaugą gavo 207 žmonių. 2009 m. informacija buvo prieinama 18 šalių –

1,150 žmonių. 2008 m., mūsų žiniomis, 9 šalyse buvo išduoti 1,026 leidimai gyventi šalyje. Vidutiniškai daugiau nei 100 leidimų šalyje gali sudaryti netikslų įspūdį, vis dėlto 664 iš jų buvo išduoti Italijoje, 235 – Nyderlanduose, o turint minty, kad 2008 m. kitos 7 šalys informavo apie 127 prekybos žmonėmis aukoms išduotus leidimus gyventi šalyje (vidutiniškai mažiau nei 20 kiekvienoje valstybėje), tai perša išvadą, kad įstatymai ir politika, reguliuojanti prekybos žmonėmis aukoms leidimų gyventi šalyje išdavimą, tarp ES šalių skiriasi.

Per pastaruosius dvejus metus **nuo prekybos žmonėmis nukentėjusiems vaikams** buvo suteikta galimybė pasilikti šešiose šalyse: Prancūzijoje, Lenkijoje ir Jungtinėje Karalystėje suteikta galimybė pasilikti šalyje, kol jiems sukaks 18, o Austrijoje ir Danijoje – pastoviai. Italijoje, vaikai iš užsienio, nesvarbu, ar nukentėję, ar ne, turi teisę pasilikti šalyje iki kol jiems sukaks 18 metų. Nuo prekybos žmonėmis nukentėję vaikai gali gauti leidimą gyventi tokiu pačiu pagrindu kaip nukentėję suaugusieji (pagal „18 str." nuostatas). Nors tokia teisė taip pat galima ir Nyderlanduose, tačiau šioje šalyje sunku gauti informaciją, ar vaikams suteiktas leidimas pasilikti šalyje yra laikinas, ar pastovus.

Kalbant apie grįžimus (ir grąžinimus), tyrėjams buvo sunku įvertinti, ar tokie grįžimai buvo savanoriški ar priverstiniai, taip pat kiek asmenų sugrįžo ir kokiomis sąlygomis. Jie patvirtino, kad šešiose ES šalyse yra formalios sutartys su kitomis valstybėmis (penkios iš šešių yra tikslo šalys, sutartys daugiausiai sudarytos su valstybėmis dažniausiai įvardinamomis kaip kilmės šalys).

Informacija apie suaugusiųjų grįžimą 2008 m. buvo prieinama 15 šalių: 194 asmenys grąžinti į jų kilmės šalį iš 12 valstybių (Austrija, Kipras, Čekijos Respublika, Danija, Prancūzija, Graikija, Italija, Latvija, Nyderlandai, Lenkija ir Slovėnija). Šiais metais (2008) didžiausias sugrįžimų skaičius buvo praneštas iš Nyderlandų (37), Italijos (31), juos seka Kipras (24), Vokietija (23) ir Danija (21). Informacija apie grįžimus 2009 m. buvo prieinama iš mažiau šalių, tik 10. Šiuo atveju buvo informuota, kad iš 10 šalių į kilmės šalį grįžo 171 asmuo. Daugiau nei pusę šių atvejų skaičiuojama Graikijoje, 22 grįžimo atvejai iš Austrijos, 23 iš Lenkijos, iš kitų 7 šalių suskaičiuota tik 19 grįžimo atvejų. Neabejotinai, grįžtančiųjų skaičiai atspindi pakankamai skirtingas proporcijas galutinio besikreipiančių ar galimai nuo prekybos žmonėms nukentėjusių skaičių kiekvienoje šalyje. Vis dėlto duomenys rodo, kad kiekvienoje šalyje egzistuoja pakankamai skirtingi kriterijai sprendžiant, ar numanomai nukentėjusį asmenį grąžinti į kilmės šalį, o ir grįžimų skaičius nėra proporcingas numanomai nukentėjusių, identifikuotų ir gavusių "apmąstymų ir atsigavimo laikotarpio" galimybę skaičiui.

2008 m. ir 2009 m. kitų **ES šalių narių piliečiai, kurie buvo identifikuoti šalyje kaip numanomai nuo prekybos žmonėmis nukentėję asmenys**, apsaugą ir pagalbą gavo tokiu pačiu pagrindu kaip vadinami 'trečiųjų šalių' piliečiai už ES ribų. devyniolikoje šalių narių Vis dėlto šešiose valstybėse (Vokietijoje, Vengrijoje, Lietuvoje, Rumunijoje ir Ispanijoje), kitų ES šalių piliečiai, kurie buvo identifikuoti kaip nukentėjusieji, negavo tokio lygio pagalbos ir apsaugos kaip 'trečiųjų šalių' piliečiai. Kai kurie ES šalių piliečiai, pranešama, susidūrė su sunkumais būti identifikuojamais kaip nukentėjusieji bei gaunant pagalbą. Tai vis dėlto reiškia, kad Centrinės Europos piliečiai daugumoje Vakarų Europos šalių, kuriose jie parduodami, turi galimybę gauti pagalbą. 2008 m. ir 2009 m. ES piliečiai buvo identifikuoti ir gavo pagalbą. tokiu pačiu pagrindu kaip ir nuo prekybos žmonėmis nukentėję asmenys už ES ribų14 iš 25 šalių.

Į klausimą, kokios **apsaugos formos teismo metu buvo prieinamos** nuo prekybos žmonėmis **nukentėjusiems suaugusiems** ir/ar vaikams, kurie sutiko liudyti, buvo pranešta, kad maždaug pusėje ES šalių narių tokie duomenys yra prieinami. Tarp apsaugos teismo metu, ko tyrėjai teiravosi aukų liudytojų, įtraukta įrodymų pateikimas išankstinio posėdžio metu (pvz. prieš tiriant tardytojui) ir nepasirodant viešame teismo posėdyje, aukos liudytojo parodymų davimas vaizdo įrašo pagalba ar būti apsaugotam nuo kaltinamojo nuomonės. Kad ir kaip būtų penkiose šalyse (Čekijos Respublikoje, Danijoje, Prancūzijoje, Portugalijoje ir Jungtinėje Karalystėje) 2008 m. ir 2009 m. nukentėjusių nuo prekybos žmonėmis suaugusiųjų ir vaikų asmenybės, kurios turėjo būti išsaugotos konfidencialios, buvo paviešintos teismo proceso metu.

Paskutiniai tyrimai, atlikti Anti Slavery International[359] ir OSCE[360], pateikia išvadas, kad nors prekybos žmonėmis aukos turi teisę į kompensaciją ir nepaisant praktikoje egzistuojančių kompensacijų mechanizmų, šios prekybos žmonėmis aukoms išmokamos labai retai. Kad ir kaip būtų, 12 šalių (iš 22, kuriose informacija buvo prieinama) prekybos žmonėmis aukos, gavo atlygį už patirtą žalą ar kompensaciją 2008 m. ir 12 šalių (iš 20) per 2009 m. Devynios šalys, kurios informavo apie išmokėtas kompensacijas, per pastaruosius dvejus metus buvo: Austrija, Danija, Prancūzija, Vokietija, Italija, Nyderlandai, Ispanija, Švedija ir Jungtinė Karalystė.

359. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
360. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

Tyrimas detaliai netyrė įvairių **prevencinių metodų**, bet koncentravosi į žinias, kokia informacija buvo prieinama migrantams prieš atvykstant ir po atvykimo į šalį, kurioje asmenys buvo atvežti ir išnaudojami.

Europos Tarybos Konvencija reikalauja, kad šalys paskirtų **Nacionalinius koordinatorius** ar kitus mechanizmus, kurių funkcija – vertinti kovos prieš prekybą žmonėmis veiksmus šalyje ir įgyvendinti nacionalinių teisės aktų reikalavimus. Nors pagal Konvencijos nuostatų reikalavimus šalys tik turėtų apsvarstyti tokį paskyrimą, yra daug priežasčių dėl kurių ateities Direktyvose reikalavimai įsteigti nepriklausomą Nacionalinį koordinatorių ar jam ekvivalentų mechanizmą taps itin svarbiu aspektu. 2009 m. Kovą Nacionalinio koordinatoriaus klausimu organizuota konferencija parodė, kad 12 ES šalių jau paskyrusios Nacionalinį koordinatorių (ar jam, ekvivalentų mechanizmą) vertinti nacionalinius kovos prieš prekybą žmonėmis veiksmus. Tyrėjai patvirtino, kad devynios iš 27 ES šalių turėjo Nacionalinį koordinatorių prekybos žmonėmis klausimais (Kipras, Čekijos Respublika, Suomija, Latvija, Lietuva, Nyderlandai, Portugalija, Rumunija, ir Švedija), tuo tarpu 16 – ne. Keletas jų (kaip Švedija) informavo pirmiausia dėmesį kreipiančios į atvejus, susijusios su prekyba žmonėmis seksualinio išnaudojimo tikslais. Kelėtoje šalių (Belgija ir Ispanija) į kovos su prekyba žmonėmis veiksmų vertinimą yra įsitraukusios skirtingos valstybinės institucijos. Trijose iš devynių šalių (Latvijoje, Lietuvoje ir Švedijoje) Koordinatoriaus vaidmuo nėra pilnai nepriklausomas dėl Koordinatoriaus įsitraukimo ir į kovos prieš prekybą žmonėmis operacijas. Taip apribojama jų nepriklausomybė ir mažinamos perspektyvos įvertinti situaciją objektyviai.

4. Išvados ir rekomendacijos

E-notes projektas parodė, kad tarp ES šalių narių įgyvendinamų kovos su prekyba žmonėmis politikos ir praktikos priemonių yra reikšmingų neatitikimų, tokių kaip šalyse egzistuojantys įstatymai ir prekybos žmonėmis sąvokos (ar svarbių institucijų interpretacijos), kas yra prekyba žmonėmis, taip pat pastebimas koordinuojančių organizacijų ir procesų, identifikuojančių nukentėjusiuosius, trūkumas. Tyrimas taip pat parodė, kad keletas tarptautinių ir nacionalinių įstatymų nuostatų, skirtų apsaugoti prekybos žmonėmis aukų teisių saugumą, egzistuoja tik teorijoje, o jų įgyvendinimas sunkiai prasidėjęs daugumoje ES šalių narių. Organizacijos, dalyvavusios E-notes tyrime tiki, kad, siekiant sėkmingai įgyvendinti kovos su prekybą žmonėmis politiką

nacionaliniame ir ES lygmenyje, daugiau pastangų turėtų dėti tiek ES, tiek pačios ES šalys narės ir visuomenė.

Kol reikšmingi pokyčiai yra reikalingi, atsižvelgiant į kovos su prekyba žmonėmis politikos ES įgyvendinimą, toliau pateikiamos rekomendacijos, paruoštos E-notes projekto, koncentruojantis į nukentėjusių nuo prekybos žmonėmis asmenų teisių apsaugą. Kaip įsitikinome, tai turėtų būti pagrindinis bet kurios šalies siekis, kovojant su prekyba žmonėmis.

Prekybos žmonėmis aukų identifikavimas ir nukreipimas

Prekybos žmonėmis aukų teisių apsauga gali būti užtikrinta tik, kada visos numanomai nukentėjusieji asmenys (nepriklausomai nuo jų bendradarbiavimo su valdžios institucijomis) yra identifikuojamos kaip tokios. E-notes rezultatai rodo, kad identifikavimas yra silpnoji grandis. Tam, kad identifikavimo procesas šalyse narėse būtų patobulintas, manome, svarbu, kad:

- Šalys narės turėtų sudaryti klausimynus ir/ ar numatyti indikatorius ir bendradarbiauti su teisėsaugos institucijomis, prokuratūromis ir paslaugų teikėjais, padėsiančiais identifikuoti nukentėjusius nuo prekybos žmonėmis asmenis. Papildomi indikatoriai turėtų būti skirti kiekvienai išnaudojimo formai, tokiai kaip priverstinis darbas, buitinės vergovės, seksualinio išnaudojimo, priverstinio elgetavimo, įtraukimo į nusikalstamą veiką, t.t. Taip pat turėtų būti patobulinti specialūs indikatoriai identifikuojant nuo prekybos žmonėmis nukentėjusiu vaikus;
- Identifikavimo procesas neturėtų būti priskirtas vienai valstybinei agentūrai, bet turėtų būti įgyvendinamas daugiadisciplininės komandos įtraukiant ir organizacijas, kurios teikia pagalbą nukentėjusiems asmenims;
- Šalies struktūros, kurios atlieka aukų nukreipimo funkciją arba Nacionalinis nukreipimo mechanizmas (org. National Referral Mechanisms (NRM)) arba kitos įtrauktos ir standartines operacines procedūras (org. Standard Operational Procedures (SOPS)) įgyvendinančios institucijos, turėtų remtis artimu ir reguliaru bendradarbiavimu su teisėsaugos institucijų ir imigracijos pareigūnais, darbo inspektoriais, profesinėmis sąjungomis, vaikų teisių apsaugos agentūromis, prokuratūros pareigūnais, NVO ir kitais paslaugų teikėjais;
- Prekybos žmonėmis aukų prieinamumas prie teisėsaugos institucijų, kompensacijų reikalavimai, turėtų būti patobulinti garantuojant nemokamą teisinę pagalbą visiems identifikuojamiems asmenims;
- Visos šalys narės turėtų užtikrinti, kad visiems nukentėjusiems nuo prekybos žmonėmis, grįžtantiems į jų kilmės šalį turėtų būti įvertinta individuali rizika.

Stebėjimas

Tolimesni stebėjimai yra svarbus tiek ES, tiek nacionaliniame lygmenyje, kad suinteresuotos šalys turėtų geresnį supratimą ne tik, kas egzistuoja dokumentuose apie tai, kokie veiksmai turėtų būti padaryti šalyje, kad prekyba žmonėmis būtų sustabdyta, bet ir, kas yra atliekama tikrovėje. Suvokimui apie tai, kas yra įgyvendinama, efektus ir kovos su prekyba žmonėmis politinių priemonių įtaką ES, yra svarbu, kad:

- Nacionaliniai koordinatoriai ar jiems ekvivalentūs mechanizmai turėtų būti nepriklausomi (kaip tai yra pritarta Hagos deklaracijoje, 1997), tam, kad būtų prieinami nepriklausomi ir palyginimui skirti kovos su prekybos žmonėmis veiksmų stebėjimo rezultatai. Taip pat svarbu, kad nenumatytą ar net neigiamą kovai su prekyba žmonėmis poveikį darančios priemonės būtų identifikuotos ir apie tai būtų informuota;
- Svarbi terminologija, statistika ir aukų skaičiavimas (pvz. galimai nukentėjusių nuo prekybos žmonėmis skaičius) turėtų būti labiau standartizuoti;
- Kad būtų išvengta nesutapimų stebėjimo veiklose, turi būti užtikrintas glaudus bendradarbiavimas tarp ES ir jos šalių narių bei GRETA, nepriklausomo Europos Tarybos Konvencijos dėl kovos su prekyba žmonėmis veiksmų stebėjimo organo, narių.

Įstatymai

- Tolimesnis stebėjimas yra svarbus, kad būtų užtikrinta, kad šalyje nacionaliniuose teisės aktuose pateikiamos prekybos žmonėmis sąvokos atitinka apibrėžimus priimtus 2002 m. Pamatiniame sprendime ir 2005 m. Europos Tarybos Konvencijoje.
- Svarbu paminėti, kad geresnis sąvokos "išnaudojimas" suvokimas yra reikalingas daugumoje ES šalių narių, taip pat kaip ir supratimas dėl kitų nusikaltimų susijusių su nelegaliu išnaudojimu, tiek, kai žmonės yra išvežami su tikslu išnaudoti, tiek, kada žmonės yra išnaudojami be išvežimo.

Kovos su prekyba žmonėmis politikos koordinavimas nacionaliniame lygmenyje

- Visos šalys narės, kurios iki šiol neturi sukūrę koordinavimo struktūros ir nacionalinio veiksmų plano, turėtų tai padaryti, kad įneštų daugiau darnos į jų šalyje įgyvendinamą kovos su prekyba žmonėmis politiką. Tinkamai paskirstomi žmogiškieji ir ekonominiai šaltiniai yra svarbūs dėl jų sėkmingo funkcionavimo. Ateityje atliekamiems stebėjimo veiksmam svarbu būtų stebėti, kaip ES šalyse narėse šie šaltiniai yra paskirstomi, finansuojant nacionalinę koordinavimo struktūrą ir remiant koordinavimo veiklas.

8.14 Streszczenie

W 2009 r. cztery organizacje pozarządowe uzgodniły udział we wspólnym projekcie zatytułowanym „Europejskie Obserwatorium Organizacji Pozarządowych w sprawie Handlu Ludźmi, Eksploatacji i Niewolnictwa" (w skrócie E-notes). Głównym celem projektu było monitorowanie tego, co rządy w całej Unii Europejskiej (UE) zrobiły, aby powstrzymać niewolnictwo, handel ludźmi i różne formy eksploatacji z tym związane. Projekt koordynowała włoska organizacja pozarządowa Assosiacione on the Road[361] wspólnie z międzynarodową siecią La Strada International i dwiema krajowymi organizacjami pozarządowymi: ACCEM[362], z siedzibą w Hiszpanii i ALC[363], z siedzibą we Francji.

Zamiast ustanawiania stałej instytucji do monitorowania działań rządów, projekt E-notes postanowił gromadzić informacje o tym co dzieje się w każdym z 27 państw członkowskich UE. Oznaczało to opracowanie metody badawczej i znalezienie w każdym kraju UE organizacji pozarządowych oraz badaczy chętnych do wzięcia udziału w tym projekcie. Rozpoczął się on od podkreślenia roli i znaczenia **wskaźników** do mierzenia postępu każdego państwa członkowskiego UE w zakresie zwalczania handlu ludźmi (tj. różnych regulacji prawnych, polityki, środków i praktyk które mają zmniejszyć poziom tego procederu oraz udzielania ochrony i pomocy każdej osobie która padła jego ofiarą). Podejście to zostało przekształcone w narzędzie badawcze poprzez sporządzenie listy zawierającej ponad 200 standardowych pytań, które miały w każdym kraju UE pomóc ocenić postępy w zakresie zwalczania handlu ludźmi, a takie właśnie były w stosunku do nich oczekiwania.

1. Standardy według których monitoring szukał informacji

Proces badawczy rozpoczęto na początku 2010 roku, w momencie gdy Rada Europejska kończyła właśnie rozpatrywanie nowego narzędzia UE służącego

361. Associazione on the Road oferuje szeroki zakres usług i ochrony ofiar handlu ludźmi, osób ubiegających się o azyl, uchodźców i ogólnie migrantów w trzech regionach Włoch (Marche, Abruzji i Molise). Jest też zaangażowana w podnoszenie świadomości społecznej, pracę społeczną, przeprowadzanie badań, tworzenie sieci i inicjatyw na rzecz polityki na szczeblu lokalnym, krajowym i europejskim.
362. ACCEM zapewnia usługi socjalne i podejmuje działania w sferze społecznej i prawnej na rzecz osób ubiegających się o azyl, uchodźców, przesiedleńców i imigrantów mieszkających w Hiszpanii.
363. ALC to skrót od Accompagnement, Lieux d'accueil, Carrefour educatif et social (Towarzyszenie [ludziom] Ośrodki przyjmujące, Centra wychowawcze i opieki społecznej). ALC koordynuje krajową sieć bezpiecznych mieszkań dla ofiar handlu ludźmi, znanych jako „Ac.Se".

standardizacji działań przeciwko handlowi ludźmi w państwach członkowskich UE (który miałby zastąpić Ramową Decyzję Rady w sprawie zwalczania handlu ludźmi, przyjętą w lipcu 2002 roku). W 2009 r. Komisja Europejska przedstawiła wniosek dotyczący nowej decyzji ramowej w sprawie handlu ludźmi; w związku z wejściem w życie Traktatu Lizbońskiego, który przerwał wszystkie trwające procedury legislacyjne, negocjacje w Radzie na temat nowej decyzji ramowej nie mogą być kontynuowane. Komisja Europejska przedstawiła zatem nowy wniosek dotyczący dyrektywy Parlamentu Europejskiego i Rady Europy w sprawie zapobiegania i zwalczania handlu ludźmi i ochrony pokrzywdzonych, uchylający decyzję ramową z 2002 roku. W marcu 2010 roku został on przekazany do rozpatrzenia przez Parlament Europejski. We wrześniu 2010 roku dwie z komisji parlamentarnych zaproponowały szereg poprawek do projektu Dyrektywy, jak również rozpoczął się proces tworzenia porozumienia między Radą Europy, Komisją Europejską i Parlamentem Europejskim. Dyrektywa najprawdopodobniej zostanie przyjęta jeszcze przed końcem 2010 roku.

Podczas gdy szeroki zakres przepisów tej nowej dyrektywy wydaje się dość jasny, w momencie przeprowadzania monitoringu E-notes w maju i czerwcu 2010 roku wciąż nie została ona wydana (ani nawet w październiku 2010 roku, gdy niniejsze sprawozdanie zostało zakończone). Przy podejmowaniu decyzji co do zobowiązań prawnych w odniesieniu do określenia standardów monitoringu w każdym państwie członkowskim UE (tj. zobowiązań dotyczących reakcji państwa na zjawisko handlu ludźmi) projekt zakłada użycie innego regionalnego instrumentu – Konwencji Rady Europy w sprawie Działań Przeciwko Handlowi Ludźmi, która została przyjęta w maju 2005 roku, a weszła w życie w lutym 2008 roku. Do sierpnia 2010 roku wszystkie państwa członkowskie UE poza jednym (Czechami) ratyfikowały Konwencję Rady Europy (19 krajów) lub ją podpisały (siedem) wyrażając tym samym chęć stosowania się do niej; ponadto została ratyfikowana przez wiele państw spoza UE.

2. Stosowane metody

Monitoring został zaprojektowany przez konsultanta na początku 2010 roku. Zwrócono uwagę na wcześniejsze publikacje, które sugerowały państwom członkowskim UE zastosowanie odpowiednich „wskaźników" w ocenie postępów i dostosowaniu swoich przepisów i praktyk do standardów regionalnych i międzynarodowych (z których wszystkie są oparte na *Protokole Narodów Zjednoczonych o Zapobieganiu, Zwalczaniu i Karaniu za*

Handel Ludźmi, w szczególności Kobietami i Dziećmi, przyjętym w 2000 r. w celu uzupełnienia Konwencji ONZ przeciwko Międzynarodowej Przestępczości Zorganizowanej (2000 r.). Zwrócono również uwagę na komentarze w różnych publikacjach Komisji Europejskiej[364] na temat niedostatecznego zgłaszania przez państwa członkowskie UE działań zmierzających do powstrzymania handlu ludźmi oraz udzieleniu ochrony i wsparcia domniemanym[365] ofiarom. Niektóre publikacje odnotowują, że trudno było uzyskać od państw członkowskich informacje na temat praktyk, jakie poszczególne państwa stosują w zwalczaniu tego procederu - niektórym brakowało aktualizacji, inne w ogóle nie były dostępne. Niektóre raporty odnotowują brak „zharmonizowanego zbierania danych" co może sugerować, że państwa członkowskie nie stosowały konsekwentnie fachowej terminologii lub wspólnych mechanizmów przekazywania; wszystkie te problemy zostały potwierdzone w E-notes.

Dokument Komisji Europejskiej wydany w 2006 roku[366] zwraca uwagę, że państwa członkowskie dostarczyły niewiele informacji na temat zasad i praktyk jakie się u nich stosuje w zakresie ochrony i pomocy ofiarom handlu ludźmi. W 2008 r. Dokument Roboczy[367] potwierdził. że trudno było uzyskać od państw członkowskich informacje na temat liczby ofiar handlu ludźmi otrzymujących fachową pomoc, ale zaznaczył, że państwa które przedstawiły Komisji informacje, wykazały ponad 1500 przypadków tego procederu wykrytych w ciągu roku. Poinformował, że większość państw wprowadziła tzw. czas do namysłu, który pozwala domniemanym ofiarom handlu na pozostanie w kraju gdzie spotkała je krzywda i dojście do siebie, zanim złożą zeznania odpowiednim władzom. Jednak tylko pięć krajów zgłosiło liczbę osób które skorzystały z tej możliwości i wynik wyniósł jedynie 26 osób w ciągu całego roku!

Dla organizacji pozarządowych specjalizujących się w zapobieganiu handlowi ludźmi (albo świadczeniem usług/pomocy domniemanym ofiarom

364. Takich jak Komunikat Komisji Europejskiej do Parlamentu Europejskiego i Rady Europy w sprawie „Zwalczanie handlu ludźmi – zintegrowane podejście oraz wnioski dotyczące planu działania" (odniesienia Komisji Europejskiej COM (2005) 514 ostateczna wersja z dn. 18 października 2005 r.) oraz dokument roboczy Komisji Europejskiej (odniesienia Komisji Europejskiej COM (2008) 657 ostateczna wersja). Ocena i monitoring realizacji planu UE dotyczącego najlepszych praktyk, standardów i procedur zwalczania i zapobiegania handlowi ludźmi, z października 2008 roku.
365. Termin „domniemany" odnosi się do osób, co do których istnieje podejrzenie że padły ofiarą handlu ludźmi, jednak pełne informacje na temat ich doświadczeń nie są dostępne.
366. Sprawozdanie Komisji Europejskiej w sprawie realizacji decyzji ramowej Rady Europy z 19 lipca 2002 r. w sprawie zwalczania handlu ludźmi (odniesienia Komisji Europejskiej COM (2006) 187 ostateczna wersja z dnia 2 maja 2006 r.)
367. Patrz przypis 364 powyżej.

albo osobom zaangażowanym w inicjatywy mające na celu zapobieganie temu procederowi) niepokojący był brak dokładności i precyzji danych dostarczonych przez państwa członkowskie UE do Komisji Europejskiej. Z jednej strony pozwala to przypuszczać że nikt, nawet w Komisji Europejskiej, nie zorientował się co się dzieje w całej Unii. Z drugiej strony sugeruje, że niektóre klauzule umów regionalnych i międzynarodowych dotyczących handlu ludźmi lub innych praw człowieka były przez poszczególne kraje ignorowane i nie zostały wdrożone (mimo że zostały przez te kraje zaakceptowane).

Niektóre państwa członkowskie wyznaczyły Krajowego Sprawozdawcę ds. handlu ludźmi, aby informowali rząd (i inne podmioty) o postępach czynionych w danym kraju w sprawie zapobiegania handlowi ludźmi i zalecali, co można poprawić. W połowie roku 2010 monitoring wykazał że spośród 27 państw UE, dziewięć ma takich sprawozdawców, jednak nie wszyscy publikują raporty regularnie, a niektórzy skupiają się wyłącznie na handlu ludźmi w konkretnych celach (np. kobietach zmuszanych do prostytucji) bez informowaniu o działaniach podjętych przeciwko handlowi ludźmi w innych celach. W dłuższej perspektywie, gdyby Krajowi Sprawozdawcy zostali powołani we wszystkich krajach UE, mieliby możliwość wprowadzić standardowe definicje terminów i sposobów pomiaru statystyk związanych z handlem ludźmi, można było by więc zrobić sensowne porównania rezultatów walki z tym procederem w różnych krajach Unii.

W tym kontekście monitoring w ramach projektu E-notes pokazał, jakie informacje w poszczególnych państwach członkowskich UE na temat prawa, polityki i praktyk dotyczących handlu ludźmi są dostępne, ile osób zostało zidentyfikowanych jako ofiary tego procederu, ile objętych zostało stosowną ochroną, ile otrzymało fachowa pomoc, itd. Ponieważ monitoring został przeprowadzony w maju i czerwcu 2010 r., początkowym jego celem było zebranie informacji na temat sytuacji w poszczególnych krajach w 2009 r. Jednak wkrótce okazało się, że w wielu krajach informacje na ten temat z 2009 r. nie były w ogóle dostępne, albo były ale niepełne, a te w pełni udokumentowane dotyczyły raczej 2008 roku.

Organizacje pozarządowe, które zostały poproszone o wyznaczenie badacza zbierającego informacje dla monitoringu E-notes, mają w większości doświadczenia w pracy z dorosłymi ofiarami handlu ludźmi (zwłaszcza kobietami). Opracowały również informacje na temat handlu nieletnimi, mimo że wielu badaczy miało trudności z ich zdobyciem. W wielu krajach

UE pełnoletnie ofiary handlu ludźmi korzystają z usług organizacji pozarządowych, podczas gdy monopol w opiece nad nieletnimi ofiarami handlu mają państwowe agencje odpowiedzialne za ich ochronę.

Każdy z badaczy został poproszony o wypełnienie 60-stronicowego protokołu, dodatkowo o napisanie tekstu, w którym można było uzupełnić i przedstawić dodatkowe odpowiedzi na liczne punkty, gdzie nie można było odpowiedzieć tylko „Tak" lub „Nie". Oprócz tego został sporządzony krótki profil danego kraju, opisujący według jakiego wzoru przebiega tam mechanizm handlu ludźmi, i jaka jest odpowiedź rządu danego kraju na zaistniałą sytuację. Przygotowane przez badaczy informacje zostały przetworzone i wciągnięte do bazy danych w lipcu 2010 roku; zostały zbadane przez tego samego konsultanta, który przygotował protokół badań w celu wykrycia możliwych wzorców postępowań - (w szczególności uchybień popełnianych przez państwa członkowskie w zakresie ochrony i pomocy ofiarom handlu ludźmi) - i przygotowania sprawozdania dotyczącego wyników.

Badacze zostali poproszeni o komentarz na temat tego, czy ich kraj był w głównej mierze krajem pochodzenia, tranzytu czy przeznaczenia ofiar, czy wszystkich trzech kategorii jednocześnie (kategoryzacja nie skupiała się na przypadkach wewnętrznego handlu ludźmi ramach granic danego kraju). Okazało się, że stosunkowo niewiele krajów zostało sklasyfikowanych jako podpadające pod tylko jedną z tych trzech kategorii: dwa z nich – Francja i Portugalia – zostały opisane jako głównie kraje przeznaczenia, a pozostałych 25 sklasyfikowano jako kombinacje: jeden – zarówno jako kraj pochodzenia i przeznaczenia, dziesięć jako kraje zarówno tranzytu jak i przeznaczenia, a dziewięć – wszystkich trzech kategorii.

3. Ustalenia w zakresie monitoringu

230 pytań w protokole badań poszukiwało informacji na wiele różnych tematów, co utrudniało sporządzenie „biało-czarnego" obrazu profilu poszczególnych państw członkowskich w zakresie przestrzegania praw człowieka i zobowiązań w stosunku do ofiar handlu ludźmi. Mimo, że w przypadku pięciu kluczowych obszarów zagadnień można było zauważyć pewien postęp, wiele informacji było niedostępnych. Natomiast te dostępne okazały się być na tyle niekompletne, że żadną z przytaczanych statystyk nie można uznać za wiarygodną. Pięć kluczowych obszarów, gdzie zaobserwowano postęp, przedstawiamy w tabeli poniżej:

Tabela 1: Postęp UE w kluczowych punktach zwalczania handlu ludźmi – odpowiedzi

Problem	Sytuacja odnotowana w maju 2010 r.
Koordynacja działań przeciwko handlowi ludźmi – odpowiedzi na poziomie krajowym	Stwierdzono, że krajowe struktury do zwalczania handlu ludźmi zostały ustanowione w 22 spośród 27 krajów UE. Kraje nie posiadające wewnętrznych struktur koordynujących, to: Francja, Grecja, Malta i Niemcy. W Niemczech i we Włoszech walka z handlem ludźmi nie jest zorganizowana na krajowym czy federalnym szczeblu, nie znaczy to jednak że jest niewystarczająca. Szwecja powołała Krajowego Koordynatora mającego za zadanie opracowanie struktur koordynujących walkę z handlem ludźmi, ale tylko w sprawach związanych z handlem w celach eksploatacji seksualnej.
Identyfikacja domniemanych ofiar	W 11 z 27 krajów UE istnieje agencja rządowa lub instytucja odpowiedzialna za dokonywanie oficjalnej identyfikacji domniemanych ofiar handlu ludźmi, a pozostałych 16 krajów takiego organu/agencji nie ma. Sześć spośród krajów, w których nie ma procesu identyfikacji na poziomie wewnętrznym, nie ma żadnych standardowych procedur, które byłyby stosowane w całym kraju do formalnej identyfikacji osoby, która jest potencjalną ofiarą handlu ludźmi (są to: Austria, Bułgaria, Francja, Malta, Niemcy i Włochy).
Dostępność czasu do namysłu, trwającego co najmniej 30 dni	W 25 spośród 27 krajów UE stwierdzono istnienie przepis dotyczący czasu do namysłu („*reflection period*") i dojścia do siebie dla domniemanych dorosłych ofiar handlu ludźmi – znaczna część państw zdaje się przestrzegać minimalnych norm w tym zakresie. We Włoszech nie ma świadczenia czasu do namysłu się, ale w praktyce ono czasami jest dostępne, podobną sytuację odnotowano na Litwie. W 2008 r. dostępnych było 11 informacji o łącznie 207 osobach, którym przyznano czas do namysłu. W roku 2009 były dostępne informacje z 18 krajów i z tej możliwości skorzystało dużo więcej, bo 1150 osób; wydaje się to odzwierciedlać znaczący wzrost ilości korzystających osób z czasu do namysłu.
Procedury dotyczące powrotów ofiar handlu ludźmi do krajów ich pochodzenia, mające na celu uczynienie ich bezpiecznymi, a także – jeśli to możliwe – dobrowolnymi	Sześć krajów zostało wymienionych przez badaczy jako mających formalne porozumienia z innymi krajami UE lub krajami trzecimi, dotyczące powrotu ofiar handlu ludźmi do ich ojczystych krajów (Francja, Hiszpania, Łotwa, Portugalia i Wielka Brytania; Grecja ma dwustronne porozumienie ograniczające się do handlu osobami nieletnimi); aczkolwiek istnienie tych umów nie daje zbyt wielkiej gwarancji na to, że nie będą miały miejsca jakieś nadużycia. Badacze zaobserwowali, że kiedy władze planują powrót ofiary do kraju jej pochodzenia, to spośród 17 krajów o których informacje były dostępne, jedynie w trzech (w Portugalii, w Rumunii i we Włoszech) jest rutynowo przeprowadzana ocena ryzyka związanego z powrotem; tzn. ocena ewentualnych zagrożeń dla samej ofiary bądź dla jej rodziny.
Dostęp do zadośćuczynienia i odszkodowania	W 12 krajach (spośród 22 o których informacje były dostępne) odnotowano, że ofiary handlu otrzymały odszkodowanie w 2008 r. i tyle samo w 2009 r. (spośród 20 o których informacje były dostępne) – w drodze postępowania sądowego albo z innego źródła. Dziewięć krajów, w których w obu tych latach odnotowano wypłatę rekompensat, to: Austria, Dania, Francja, Hiszpania, Holandia, Niemcy, Szwecja, Wielka Brytania i Włochy.

Byłoby niewłaściwe ocenianie ich realizacji przez poszczególne państwa i szeregowanie państw w rankingu od najlepszych po najgorsze (tak jak ma to miejsce w corocznym sprawozdaniu Departamentu Stanu USA odnośnie poszczególnych krajów), opierając się tylko na tych pięciu obszarach, tym bardziej, że w pierwszych trzech obszarach w wielu krajach wykryto słabe punkty, a w ostatnich dwóch odzwierciedlone jest zróżnicowanie krajów, które prowadzą właściwe działania. Np. Włochy są jedynym wymienionym krajem, w odniesieniu do wszystkich pięciu kategorii, który w wielu kwestiach osiąga dobre wyniki, jednak włoski system walki z handlem ludźmi jest znacząco różny od tego w innych krajach UE.

Monitoring wychwycił postęp w wielu innych dziedzinach, oprócz tych pięciu głównych obszarów – jego celem było sprawdzenie, czy **prawo każdego kraju** obejmuje zróżnicowane kategorie eksploatacji związane z handlem ludźmi (np. w celu „czerpania korzyści z prostytucji i innych form wykorzystywania seksualnego", w celu eksploatacji pracy, usług i/lub pracy przymusowej, ograniczania wolności osobistej, niewolnictwa, praktyk zbliżonych do niewolnictwa, lub wykorzystanie w celu usunięcia narządów). Ostatecznie stwierdzono, że na ogół tak się stało. Zgłoszono, że dwa kraje (Estonia i Polska) rozpoczęły proces zmiany swego ustawodawstwa dotyczącego handlu ludźmi, ale jeszcze go nie zakończyły, a Hiszpania wprowadziła do swego kodeksu karnego definicję handlu ludźmi zgodną ze standardami UE i Rady Europy; wejdzie ona w życie w grudniu 2010 r.

Badania miały też za zadanie sprawdzić czy **definicja handlu ludźmi** jest wystarczająco spójna w każdym z krajów, czy można określić osoby definiowane w prawie jako „handlarze" oraz jako „ofiary handlu" w sposób porównywalny, w tej kwestii również znaleziono sporo rozbieżności. Np. we Francji przestępstwo handlu ludźmi jest zdefiniowane tak szeroko, że praktycznie każdego podejrzanego można oskarżyć o stręczycielstwo. W rezultacie w jednym tylko roku (2008) ponad 900 osób zostało tam oskarżonych o uprawianie tego procederu. Po bliższym zbadaniu okazało się jednak że ponad połowa wyroków (521) to były wyroki wydane na podstawie „okoliczności obciążających" pozwalających przypuszczać, że dana osoba jest zamieszana w stręczycielstwo (a inne kraje UE definiują takie przestępstwa już jako handel ludźmi), a jedynie 18 wyroków zapadło za przestępstwa zdefiniowane jako „handel ludźmi" według regionalnej decyzji przyjętej w ramowej decyzji UE w 2002 r. jak i w Konwencji Rady Europy. W Finlandii sytuacja jest odwrotna: sprawy które, według standardów regionalnych, powinny być traktowane jako handel ludźmi, zostały uznane tylko jako werbowanie ludzi bądź stręczycielstwo.

W ankiecie pada pytanie, jak odbywał się proces **identyfikacji osób uznanych za ofiary handlu ludźmi** i czy otrzymywały one regularnie czas do namysłu oraz inne formy ochrony i pomocy. Wyniki wykazały że oba procesy – identyfikacji i kwalifikacji danej osoby jako ofiary handlu – w poszczególnych krajach Unii Europejskiej ogromnie się różnią, tak jakby wspólne standardy nie obowiązywały.

W 20 spośród 27 krajów UE stworzono **krajowe struktury do zwalczania handlu ludźmi**. Krajowy Plan Działań Zwalczania Handlu Ludźmi (lub podobny tego typu) został, według zgłoszeń, przyjęty w 22 krajach UE (chociaż niektóre z nich skupiają się wyłącznie na handlu ludźmi w celu wykorzystywania seksualnego). Większość krajów posiada jednostki policyjne, które się specjalizują właśnie w zwalczaniu tego procederu. W niektórych państwach istnieje na szczeblu krajowym proces określający rolę poszczególnych organizacji w zapewnieniu ochrony i profesjonalnej pomocy ofiarom handlu ludźmi, a potem przekazywaniu ich odpowiednim służbom – nazywa się to Krajowym Mechanizmem/Systemem Zgłaszania.(*National Referral Mechanizm*) 17 krajów taki system posiada, dziewięć nie.

W 11 spośród 27 państw członkowskich za formalną identyfikację każdej domniemanej ofiary handlu jest odpowiedzialny jeden wyznaczony organ państwowy, a w pozostałych 16 państwach tak nie jest. Siedem krajów, w których nie ma ujednoliconego sposobu identyfikacji, nie ma też standardowych procedur na zidentyfikowanie kogoś jako ofiary handlu. Nie oznacza to jednak, że identyfikacja (i wynikająca z niej dostępność ochrony) jest bardziej skuteczna w krajach z ujednoliconym systemem. Jeśli chodzi o procedury identyfikacyjne, zgłoszono, że zarówno ich szczegóły (i stopień ich przestrzegania) jak i ich skuteczność różnią się w zależności od kraju.

Badacze byli w stanie uzyskać tylko częściowe informacje na temat **liczby domniemanych ofiar handlu ludźmi zidentyfikowanych w ciągu 12 miesięcy w latach 2008 i 2009 roku:** w sumie 4010 osób w 16 krajach (chociaż niektóre z tych osób mogły zostać policzone dwukrotnie, tzn. zidentyfikowane najpierw w kraju przeznaczenia, a potem w kraju pochodzenia). W nieco ponad połowie przypadków (55%) osoby co do których były podejrzenia, że padły ofiarą tego procederu, zostały ostatecznie określone przez władze jako będące nimi w istocie. Podobnie, **informacje o liczbie domniemanych ofiar handlu z 2009 roku**, dostępne z 16 krajów, **które zgłoszono odpowiednim służbom**, dotyczyły łącznie 3800 osób.

W przypadku domniemanych ofiar, zarówno pełnoletnich jak i niepełnoletnich, niektóre **zaginęły** w 2008 i 2009 roku, zanim proces identyfikacji został

zakończony. W 10 krajach zgłoszono zaginięcie osób niepełnoletnich, które mogły paść ofiarą handlu, a w innych 10 krajach zgłoszono zaginięcie pełnoletnich osób, określonych tymczasowo jako ofiary handlu. Badacze zebrali informacje na temat różnych aspektów **ochrony**, w szczególności:

- czasu do namysłu i na dojście do siebie.
- oceny ryzyka i
- powrotów (tzn. repatriacji ofiar handlu ludźmi do kraju ich pochodzenia).

Uzyskane przez badaczy informacje na temat **liczby osób którym przyznano czas do namysłu** były w niektórych krajach niekompletne. W 2008 roku dostępne były informacje z 11 krajów o łącznie 207 osobach, które skorzystały z tej formy ochrony, w 2009 – z 18 krajów o 1150 osobach. Wiadomo o 1026 pozwoleniach na pobyt przyznanych w sumie w dziewięciu krajach. Średnio sto pozwoleń na kraj przedstawia jednak niedokładny obraz sytuacji, jako że 664 pozwolenia wydano we Włoszech (a w 2009 roku kolejne 810), a 335 w Holandii – co oznacza, że siedem pozostałych krajów wydało łącznie tylko 127 pozwoleń, między innymi dla ofiar handlu ludźmi (tj. średnio mniej niż 20 w każdym kraju). Sugeruje to, że przepisy lub zasady ustalania kiedy ofiara handlu dostanie zezwolenie na pobyt w danym kraju, są w poszczególnych krajach UE zróżnicowane.

Zgłoszono, że w ciągu tych dwóch lat **niepełnoletnim ofiarom handlu** przyznano pozwolenie na pobyt[368] w sześciu krajach: Francji, Polsce i Wielkiej Brytanii, gdzie ich pobyt miał być tymczasowy (miały opuścić te kraje niedługo przed ukończeniem 18 roku życia) oraz w Austrii i Danii gdzie zezwolono na ich stały pobyt. Na terenie Włoch dzieci imigrantów mogą przebywać tylko do 18 roku życia, niezależnie czy padły ofiarą handlu ludźmi, czy nie. Jednak niepełnoletnie ofiary handlu mogą otrzymać pozwolenie na pobyt na takich samych zasadach jak pełnoletnie (na mocy rozporządzenia znanego jako „Artykuł 18") W Holandii niepełnoletnim ofiarom handlu przyznano prawo pobytu, ale na podstawie dostępnych danych trudno było stwierdzić czy na stałe.

W kwestii powrotów (lub repatriacji) badacze postanowili sprawdzić czy powroty były dobrowolne czy przymusowe, ile domniemanych ofiar handlu ludźmi wróciło do swych krajów pochodzenia i na jakich warunkach. Potwierdzili, że sześć państw członkowskich UE ma formalne umowy repatriacyjne z innymi państwami (jako że z tych sześciu krajów pięć jest kraja-

368. Termin „pozwolenie na pobyt" oznacza przyznane obcokrajowcom uprawnienie do pozostania w kraju, bądź na stałe, bądź tymczasowo.

mi przeznaczenia, większość umów zostało zawartych z krajami postrzeganymi jako kraje pochodzenia).

Informacje o **powrocie dorosłych ofiar w 2008 roku** były dostępne z 15 krajów: 194 osoby zostały odesłane do krajów pochodzenia z 12 krajów: Austrii, Cypru, Czech, Danii, Francji, Grecji, Holandii, Łotwy, Polski i Słowenii. Największą w tym roku (tj. 2008) liczbę odesłań odnotowano w Holandii (37), następnie we Włoszech (31), na Cyprze (24), w Niemczech (23) i w Danii (21). Informacje na temat **powrotów w 2009 roku**, były dostępne już z mniejszej liczby krajów, bo tylko z 10. W tym wypadku do krajów swego pochodzenia wróciło z tych 10 krajów najprawdopodobniej 171 osób, z czego ponad połowa z Grecji. Poza tym, 23 powroty odnotowano z Austrii a 22 z Polski; siedem pozostałych krajów zgłosiło w sumie tylko 19 powrotów; oczywiście liczba repatriantów przedstawia w każdym z tych krajów całkiem odmienne proporcje całkowitej liczby zgłoszonych osób lub domniemanych ofiar handlu. Jednak dane te ponownie sugerują, że w każdym kraju są inne kryteria decydowania w sprawie powrotu domniemanej ofiary handlu ludźmi, a liczba powrotów nie była proporcjonalna do liczby osób zidentyfikowanych jako ofiary, i którym przyznano czas do namysłu.

W 2008 lub 2009 roku, **obywatele państw UE, którzy zostali zidentyfikowani jako ofiary handlu ludźmi w innych krajach UE** dostali ochronę i pomoc na takich samych zasadach jak obywatele tzw. „państw trzecich" (tzn. spoza UE) Jednakże w sześciu państwach członkowskich (w Hiszpanii, na Litwie, na Łotwie, w Niemczech, w Rumunii i na Węgrzech) obywatele innych państw UE zidentyfikowani tam jako ofiary handlu, nie dostali przypuszczalnie ochrony i wsparcia w takim samym stopniu jak obywatele „państw trzecich"; zgłoszono że niektóre z tych osób napotkały trudności w byciu zidentyfikowanym jako ofiara przestępstwa lub w uzyskaniu fachowej pomocy. Niemniej oznacza to, że w większości krajów zachodnioeuropejskich, mogli tę pomoc uzyskać obywatele krajów środkowoeuropejskich należących do UE, którzy zostali do tych krajów sprzedani. W latach 2008 i 2009 w 14 z 25 krajów UE zidentyfikowano i udzielono fachowej pomocy obywatelom innych krajów UE na takich samych zasadach jak ofiarom handlu spoza UE.

Na pytanie jakie **formy ochrony sądowej przyznano pełnoletnim i niepełnoletnim ofiarom handlu** będących świadkami, stwierdzono, że środki ochrony świadków były dostępne w ponad połowie państw członkowskich UE. Odnośnie ochrony sądowej badacze sprawdzali czy ofiara ma możliwość przedstawić dowody na przesłuchaniu wstępnym (np. przed sędzią śledczym) i nie musi się stawiać na publicznej rozprawie, czy świadek ma możliwość

przedstawić dowody za pomocą nagrania wideo, albo w taki sposób żeby oskarżony go nie widział. Niemniej w pięciu krajach (w Czechach, Danii, Francji, Portugalii i Wielkiej Brytanii) w latach 2008 i 2009 zgłoszono przypadki, kiedy tożsamość ofiary handlu – obojętnie czy była ona pełnoletnia czy nie – została w trakcie postępowania karnego podana do wiadomości publicznej, chociaż miała pozostać poufna.

Ostatnie badania Anti Slavery International[369] i OBWE[370] stwierdziły że chociaż ofiary mają prawo do otrzymania odszkodowania oraz że istnieje wiele mechanizmów, które maja to ułatwić, w praktyce ofiara handlu bardzo rzadko je otrzymuje. Jednak w 12 krajach (spośród 22 o których informacje były dostępne) ofiary handlu otrzymały odszkodowanie w 2008 roku: w takiej samej liczbie krajów odnotowano otrzymanie odszkodowań w roku następnym (na 20 krajów z których otrzymano informacje)) – w wyniku postępowania sądowego albo z innego źródła. Dziewięć krajów w których odnotowano wypłatę odszkodowań przez dwa lata z rzędu to: Austria, Dania, Francja, Hiszpania, Holandia, Niemcy, Szwecja, Wielka Brytania i Włochy.

Badania nie sprawdzały **metod prewencyjnych** szczegółowo, tylko skoncentrowały się na ustaleniu jakie informacje były dla migrantów dostępne, zarówno przed jak i po ich przybyciu do danego kraju, w którym potem padli ofiarą wyzysku.

Konwencja Rady Europy wzywa państwa członkowskie do „zastanowienia się nad wyznaczeniem **Krajowych Sprawozdawców** lub innych mechanizmów monitorowania działań przeciwko handlowi ludźmi przez instytucje państwowe i wdrożenia krajowych wymogów prawnych." Mimo że Rada wzywa tylko do „rozważenia" takiej nominacji, istnieją wszelkie powody aby przypuszczać, że mająca wejść wkrótce w życie nowa dyrektywa UE będzie znacznie mocniejsza w tej kwestii – czyniąc ustanowienie przez państwa członkowskie UE Krajowych Sprawozdawców lub innych równoważnych mechanizmów koniecznością. W marcu 2009 roku zorganizowana w tej sprawie konferencja zasugerowała, że 12 państw członkowskich wyznaczyło już takiego Sprawozdawcę (lub równoważny mechanizm) w celu monitorowania krajowych reakcji na handel ludźmi; badacze potwierdzili, że dziewięć z 27 krajów UE posiada Krajowych Sprawozdawców ds. handlu

369. J. Lam, K. Skrivankova, Możliwości i przeszkody. Zapewnienie dostępu do odszkodowań ofiarom handlu ludźmi w Wielkiej Brytanii, Anti-Slavery International, Londyn, 2008.
370. OBWE/ODIHR, Odszkodowania dla ofiar handlu ludźmi i innych wykorzystywanych osób w regionie OBWE, Warszawa, 2008.

ludźmi (Cypr, Czechy, Finlandia, Holandia, Litwa, Łotwa, Portugalia, Rumunia i Szwecja) a 16 nie.

W niektórych (np. Szwecja) odnotowano zwracanie uwagi wyłącznie na sprawy związane z handlem ludźmi w celach eksploatacji seksualnej, z kolei w innych (np. w Belgii i Hiszpanii) za monitorowanie mechanizmów zwalczania handlu ludźmi odpowiedzialna jest inna instytucja państwowa. Spośród dziewięciu krajów posiadających Sprawozdawcę, w trzech (na Litwie, na Łotwie i w Szwecji) jego rola nie jest w pełni niezależna od podmiotów zaangażowanych w działania wymierzone w ten proceder, co ogranicza ich niezależność i potencjalnie zmniejsza zdolność do monitorowania w absolutnie niezależny sposób.

4. Wnioski i rekomendacje

Monitoring E-notes napotkał sporo trudności w uzyskaniu porównywalnych informacji na temat wszystkich istotnych kwestii, na które odpowiedzi szukał w każdym z 27 krajów UE. Pomimo tych trudności, znaczne ilości informacji zostały udostępnione i ustalono podstawy, które można stosować do pomiaru dalszych zmian w nadchodzących latach.

Badanie sugeruje, że na poziomie operacyjnym nadal istnieją ogromne różnice w sposobie ścigania przypadków handlu ludźmi i w pomocy władz domniemanym ofiarom, zarówno pełno-, jak i niepełnoletnim. Zarówno instytucje Unii Europejskiej jak i Rada Europy powinny zająć się tą sprawą w najbliższych latach.

Projekt E-notes wskazał na istotne różnice pomiędzy krajami członkowskimi UE, zarówno w kwestii fundamentalnych aspektów przeciwdziałania handlowi ludźmi, takich jak prawodawstwo i definicje handlu ludźmi (lub różnorodna ich interpretacja przez odpowiednie agencje rządowe), jak również w kwestii rozwiązań politycznych i praktyki dotyczącej zwalczania tego procederu, istnienia instytucji monitorujących oraz procesu identyfikacji ofiar handlu ludźmi. Okazało się również, że niektóre rozwiązania międzynarodowego i krajowego prawa, mające na celu zapewnić ochronę praw ofiar handlu ludźmi wciąż istnieją tylko na papierze, a ich zastosowanie w praktyce w większości krajów członkowskich UE dopiero się rozpoczyna. Organizacje biorące udział w projekcie badawczym E-notes są przekonane, że zarówno Unia Europejska, jak i społeczeństwa obywatelskie krajów członkowskich powinni nie ustawać w wysiłkach, by wzmocnić podstawy i ramy polityki przeciwko handlowi ludźmi na szczeblu krajowym oraz międzynarodowym.

Choć wiele obszarów praktycznego zastosowania polityki przeciwko handlowi ludźmi w Unii Europejskiej wymaga istotnych zmian i poprawy. to w obszarze prewencji oraz ochrony praw ofiar możemy stwierdzić, że istotne rozwiązania i zasady są w praktyce stosowane. Przedstawione poniżej wnioski i rekomendacje projektu E-notes skupiają się na ochronie praw ofiar handlu ludźmi. Jesteśmy przekonani, że wysiłki w tym obszarze powinny stanowić podstawę i główny cel działań przeciwko handlowi ludźmi.

Identifikacja i system zgłaszania ofiar handlu ludźmi

Ochrona praw ofiar handlu ludźmi może być zapewniona tylko wtedy, gdy wszystkie domniemane ofiary zostaną zidentyfikowane jako ofiary handlu ludźmi, niezależnie od ich współpracy z organami ścigania. Wyniki badań E-notes pokazały, że identyfikacja stanowi w dalszym ciągu bardzo słabe ogniwo działań przeciwko handlowi ludźmi. W celu usprawnienia i udoskonalenia procesu identyfikacji w krajach członkowskich UE, uważamy za istotne następujące działania:

- Kraje członkowskie powinny stworzyć we współpracy z przedstawicielami organów ścigania, prokuratury i służb socjalnych listę zadań i/oraz wskaźników, wspomagającą proces identyfikacji domniemanych ofiar handlu ludźmi w jego różnorodnych formach eksploatacji. Powinny również powstać dodatkowe wskaźniki odpowiednio do każdej formy eksploatacji, takich jak eksploatacji seksualna, ekspolatacja pracy, żebractwo przymusowe, praca przymusowa, zmuszanie do nielegalnych działań/przestępstw, itd. Dodatkowo powinny powstać specyficzne wskaźniki do identyfikacji dzieci, ofair handlu dziećmi;
- Identyfikacja powinna być prowadzona przez multidiscyplinarne zespoły, łącznie z przedstawicielami orgniazacji pomocowych. Za identyfikację nie powinna odpowiadać tylko jedna agencja rządowa;
- Struktury krajowe odpowiedzialne za system zgłaszania, w ramach Krajowego systemu zgłaszania (NRM) lub te, włączone w realizację standardowych procedur działania (SOPS) powinny działać na zasadach ścisłej i regularnej współpracy pomiędzy przedstawicielami organów ścigania, służb immigracyjnych, inspektorów pracy, odpowiednich związków zawodowych, instytucji działających na rzecz ochrony praw dziecka, prokuraturami,oraz organizacjami pozarządowymi lub innymi organizacjami pomocowymi;
- Ułatwienie dostępu do sprawiedliwości dla ofiar handlu ludźmi, łącznie z prawem do odszkodowania i kompensacji poprzez darmowa pomoc prawną dla wszystkich zidentyfikowanych ofiar handlu ludźmi;
- Wszystkie kraje członkowskie powinny zapewnić ocenę ryzyka powrotu do kraju pochodzenia dla wszystkich powracających ofiar handlu ludźmi.

Monitoring

Istotny jest dalszy monitoring zarówno na poziomie europejskim, jak i krajowym. Ważne, by wszystcy decydenci lepiej poznali i zrozumieli nie tylko teoretycznych aspektów przeciwdziałania handlowi ludźmi, ale także potrzebę konkretnych, praktycznych działań. By dobrze rozumieć implementację, resultaty i efekty oraz wpływ polityki przeciwko handlowi ludźmi w Unii Europejskiej, potrzebne jest:

- Stworzenie niezależnej instytucji Krajowego Sprawozdawcy lub podobnego mechanizmu monitorującego (na podstawie Deklaracji Haskiej z 1997 roku), by zapewnić niezależny i porównywalny monitoring efektów czy rezultatów działań przeciwko handlowi ludźmi. Tak samo ważne jest identyfikowanie i sprawozdawanie niezamierzonych, nieprzewidzianych czy nawet negatywnych skutków działań na polu zwalczania handlu ludźmi;
- Standardizacja odpowiedniej terminologii, danych statystycznych i sposobów mierzenia wyników (naprzykład liczba osób skazanych za handel ludźmi);
- Ścisła współpraca pomiędzy Unia Europejska i jej krajami członkowskimi i członkami GRETA, niezależnego ciała stworzonego specjalnie w celu monitorowania wdrażania Konwencji Rady Europy w sprawie działań przeciwko handlowi ludźmi, by uniknąć niepotrzebnych powtórzeń i pokrywania się działań monitorujacych.

Prawo

- Potrzebny jest dalszy monitoring by zapewnić, że wszystkie krajowe ramy prawne będą zawierać definicję handlu ludźmi, znajdującą sie w Decyzji Ramowej z 2002 roku oraz Konwencji Rady Europy z 2005 roku;
- Pojawia się istotna kwestia i istnieje potrzeba lepszego zrozumienia przez wiele krajów członkowskich Unii Europejskiej znaczenia pojęcia "eksploatacja", czy to w sytuacji, kiedy ludźie sa sprzedawani w celu eksploatacji, czy też do warunków eksploatacji, lub sytuacji kiedy są eksploatowani, lecz nie zostali sprzedani.

Koordynacja działań przeciwko handlowi ludźmi na poziomie krajowym

- Wszystkie kraje członkowskie, które nie uczyniły tak do tej pory, powinny stworzyć strukturę krajową oraz krajowy program działania, w celu osiągniecia większej spójności działań i polityki przeciwko handlowi ludźmi na poziomie krajowym. Niezmiernie istotną dla skutecznych działań przeciwko handlowi ludźmi jest odpowiednia alokacja zasobów ludzkich i ekonomicznych. Dla przyszłych działań monitorujących ważne będzie sprawdzenie, jakie środki zostały przeznaczone na rzecz krajowych struktur koordynacyjnych oraz wsparcia skoordynowanych działań.

8.15 Resumo

Quatro organizações não-governamentais (ONGs) concordaram em 2009 em participar num projecto conjunto intitulado "Observatório Europeu das ONG sobre tráfico, exploração e escravidão" (abreviado para E-notes), com o objectivo alargado de monitorizar o que os governos em toda a União Europeia (UE) estavam a fazer para acabar com a escravidão, o tráfico humano e as diversas formas de exploração associadas ao tráfico. Uma ONG italiana, a Associazione On the Road[371], coordenou o projecto, juntamente com uma rede anti-tráfico regional, La Strada International, e duas organizações não governamentais nacionais, ACCEM[372], com sede em Espanha, e ALC[373], com sede em França.

Ao invés de criar uma instituição permanente para monitorizar a acção do governo, o projecto E-notes avançou no sentido de recolher informação sobre o que estava a acontecer em cada um dos 27 Estados-Membros da UE. Tal implicou o desenvolvimento de um método de investigação e encontrar ONG´s e investigadores em cada um dos 27 países a participar. O projecto começou por colocar uma ênfase sobre o papel dos **indicadores** para medir o progresso das respostas anti-tráfico de cada Estado membro da UE (ou seja, as diversas leis, políticas, medidas e práticas que deverão reduzir os níveis de tráfico e proteger e assistir qualquer pessoa que tenha sido traficada). Isto foi traduzido através de uma ferramenta de pesquisa, identificando uma lista de mais de 200 questões padrão sobre estas respostas, que, esperava-se, iria ajudar a avaliar o progresso nas respostas anti-tráfico iniciadas em cada país da UE.

1. Os *standards* sobre os quais o exercício de monitorização solicitou informação

O processo de pesquisa começou no início de 2010, numa altura em que o Conselho Europeu parecia perto de terminar a análise de um novo instru-

371. Associazione On the Road oferece uma ampla gama de serviços e protecção às pessoas traficadas, requerentes de asilo, refugiados e migrantes em geral, em três regiões italianas (Marche, Abruzzo, Molise). Também está envolvida em acções de sensibilização, trabalho comunitário, de investigação, redes e iniciativas de desenvolvimento de políticas ao nível local, nacional e europeu.
372. ACCEM fornece serviços sociais e toma medidas no domínio social e jurídico a favor dos requerentes de asilo, refugiados, pessoas deslocadas e migrantes em Espanha.
373. ALC significa *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (acompanhamento [das pessoas], os centros de Acolhimento, Educação e centros sociais). ALC coordena a rede nacional de casas seguras para pessoas traficadas, conhecida como "Ac.Sé").

mento da UE para padronizar as respostas anti-tráfico dos Estados Membro da UE (em substituição de uma *decisão-quadro relativa à luta contra o tráfico de seres humanos*, adoptada em Julho de 2002). Em 2009, a Comissão Europeia apresentou uma proposta de nova decisão-quadro relativa ao tráfico humano. Devido à entrada em vigor do Tratado de Lisboa, que interrompeu todos os procedimentos legislativos em curso, negociações no Conselho sobre a adopção da nova decisão-quadro não poderiam ir adiante. Consequentemente a Comissão Europeia apresentou *uma nova proposta de directiva do Parlamento Europeu e do Conselho sobre a prevenção e o combate ao tráfico de seres humanos e protecção das vítimas*, que revoga a Decisão-Quadro de 2002. Em Março de 2010, esta foi submetido à apreciação do Parlamento Europeu. Em Setembro de 2010, dois comités parlamentares propuseram uma série de alterações ao projecto de directiva e o processo de estabelecimento de acordos entre o Conselho, a Comissão e o Parlamento Europeu começou. Esperava-se que a directiva fosse aprovada antes do final de 2010.

Embora as linhas gerais das disposições desta nova directiva pareçam bastante claras, no momento em que o exercício de monitorização do E-notes foi realizado, em Maio e Junho de 2010, a directiva ainda não tinha sido aprovada (nem o foi até ao momento que o relatório foi finalizado, em Outubro de 2010). Ao decidir que obrigações legais referir relativamente aos padrões de identificação a monitorizar em cada Estado Membro da UE (ou seja, obrigações em matéria de resposta do Estado ao tráfico de seres humanos), o projecto optou por utilizar um instrumento diferente regional, a *Convenção do Conselho da Europa relativa à Luta contra o Tráfico de Seres Humanos*. Este foi adoptado em Maio de 2005 e entrou em vigor em Fevereiro de 2008. Embora ratificada por numerosos Estados fora da UE, em Agosto de 2010, todos menos um Estado Membro da UE (República Checa) ou ratificaram a Convenção do Conselho da Europa (19) ou assinaram (sete) e, assim, manifestaram a intenção de aplicá-la.

2. Métodos utilizados

O exercício de monitorização foi desenvolvido por um consultor no início de 2010. Foi dada atenção às publicações anteriores, que tinham sugerido "indicadores" adequados para os Estados-Membros da UE a utilizar na avaliação dos seus progressos na consecução das suas leis e práticas em conformidade com as normas regionais e internacionais (todas as quais se baseiam no *Protocolo das Nações Unidas para Prevenir, Reprimir e Punir o*

Tráfico de Pessoas, Especialmente Mulheres e Crianças, adoptado em 2000 para completar a *Convenção das Nações Unidas contra o Crime Organizado Transnacional* (2000). Também foi dada atenção aos comentários feitos em várias publicações[374] da Comissão Europeia sobre as fraquezas apresentadas na forma como os Estados-Membros reportavam sobre suas acções para impedir o tráfico de seres humanos ou para proteger e ajudar as pessoas que se presumem[375] ter sido traficadas. Algumas publicações observaram que era difícil obter informações dos Estados-Membros (por vezes informação actualizada, por vezes qualquer tipo de informação) sobre as suas práticas de combate ao tráfico. Alguns referem-se à falta de "harmonização na recolha de dados", sugerindo que não há uso consistente de terminologia ou mecanismos de comunicação comuns por parte dos Estados-Membros. Todos esses problemas se confirmaram durante o exercício do E-notes.

Um documento da Comissão Europeia publicado em 2006[376] observou que os Estados-Membros forneceram poucas informações sobre suas regras e práticas relativas à protecção e assistência às pessoas traficadas.

Em 2008, um Documento de Trabalho[377] sublinhou como era difícil obter informações dos Estados-Membros sobre o número de pessoas traficadas a receber assistência, mas observou que até 2006 os Estados que forneceram informações à Comissão revelaram que pouco mais de 1.500 casos de tráfico foram investigados em 23 Estados-Membros no âmbito do ano. Este relatou que a maioria dos Estados Membros da UE tinham introduzido um período de reflexão que permitia às pessoas presumidamente traficadas permanecer no seu país e recuperar, antes de serem solicitadas a depor pelas autoridades. No entanto, apenas cinco países informaram quantas pessoas beneficiaram do mesmo e o total chegou apenas 26 indivíduos num ano inteiro!

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374. Tais como: Comissão Europeia, Comunicação do Parlamento Europeu e do Conselho sobre "Combate ao tráfico de seres humanos - uma abordagem integrada e propostas para um plano de acção" (referência da Comissão Europeia COM (2005) 514 final, de 18 de Outubro de 2005); e Documento de Trabalho da Comissão Europeia (referência da Comissão Europeia COM (2008) 657 final), avaliação e acompanhamento da execução do plano da UE sobre as melhores práticas, normas e procedimentos para prevenir e combater o tráfico de seres humanos, Outubro de 2008.
375. O termo pessoa "presumidamente" traficada refere-se a alguém que é suspeito de ter sido traficado, enquanto a informação definitiva sobre a sua experiência não está disponível.
376. Relatório da Comissão Europeia sobre a aplicação da Decisão-Quadro 2002 de 19 de Julho de 2002 sobre o combate ao tráfico de seres humanos (referência da Comissão Europeia COM (2006) 187 final, de 2 de Maio de 2006).
377. Ver nota de rodapé 374 acima.

Para as ONGs que se especializaram no trabalho de combate ao tráfico (ou prestação de serviços - assistência - a pessoas presumidamente traficadas, ou ainda envolvidos em iniciativas de prevenção do tráfico), a falta de rigor ou precisão nos dados fornecidos pelos Estados-Membros à Comissão Europeia foi preocupante. Por um lado, sugerem, que ninguém, mesmo na Comissão Europeia, estava em posição de descobrir o que estava a acontecer em toda a UE. Por outro lado, também sugerem que muitas das disposições dos tratados regionais ou internacionais em matéria de tráfico de seres humanos ou outras questões de direitos humanos foram sendo ignoradas pelos Estados (apesar do fato de terem sido acordados) e não sendo implementados.

Alguns Estados-Membros da EU designaram um relator nacional para o tráfico de seres humanos para informar os seus governos (e outros) sobre o progresso que é feito na resposta do país contra o tráfico e para recomendar o que pode ser melhorado. Nove entre os 27 Estados-Membros afirmaram, no exercício de monitorização realizado em meados de 2010, existir um Relator Nacional, mas nem todos publicam regularmente relatórios e alguns focam-se sobre o tráfico para fins específicos (como o tráfico de mulheres para a prostituição), sem informação sobre as acções tomadas contra o tráfico para outros fins.

A longo prazo, se forem nomeados Relatores Nacionais em todos os Estados da UE, estes estarão em boa posição para introduzir definições padrão de termos e formas de medir as estatísticas relacionadas com o tráfico de seres humanos, de modo a que comparações significativas possam ser feitas entre as respostas anti-tráfico dos diferentes Estados-Membros.

Neste contexto, o exercício de monitorização E-Notes decidiu-se a perceber quais as informações disponíveis existentes no âmbito do tráfico de pessoas, em todos os Estados Membros da EU, sobre as suas leis, políticas e práticas, sobre quantas pessoas estavam a ser identificada como "traficadas" e a beneficiar de alguma forma de protecção, que tipo de assistência estava a ser recebida, etc. Como o exercício foi realizado em Maio e Junho de 2010, a intenção inicial era recolher informações sobre a situação em cada país durante 2009. No entanto, logo ficou claro que em muitos países, a informação ou não estava disponível ou estava incompleta, enquanto que informação um pouco mais definitiva estava disponível para 2008.

As ONGs que foram convidadas a identificar um pesquisador para recolher e registar informações para o exercício de monitorização E-notes foram prin-

cipalmente aquelas cujos conhecimentos e experiência se prendiam com adultos traficados (particularmente mulheres). Os mesmos também compilaram informações sobre o tráfico de crianças, apesar de muitos acharem difícil o acesso a muitas informações sobre crianças traficadas. Em muitos Estados da UE, os adultos que foram traficados recebem assistência através dos serviços das ONGs, enquanto o estado, através das agências responsáveis pela protecção da criança, tem um monopólio do cuidado de crianças que foram traficadas.

Cada pesquisador foi convidado a preencher um protocolo de pesquisa de 60 páginas, e fornecer texto livre adicional sobre numerosos pontos em que "Sim" e "Não" não eram adequadas, e elaborar um breve "perfil" sobre o país, informando sobre o padrão de casos de tráfico no mesmo e sobre as respostas dos seus governos. A informação preparada por 27 pesquisadores foi processada e registada numa base de dados simples em Julho de 2010. Foi analisada pelo mesmo consultor que elaborou o protocolo de pesquisa, para identificar possíveis padrões - nomeadamente falhas dos Estados-Membros em respeitar as suas obrigações de proteger e assistir as pessoas traficadas - e preparar um relatório sobre as conclusões.

Os pesquisadores foram convidados a comentar se o seu país era principalmente país de origem, trânsito ou destino, ou uma combinação de várias destas. Esta classificação não se centrou em casos de tráfico interno. Relativamente poucos foram categorizados como apenas uma das três categorias (dois, França e Portugal, foram descritos principalmente como países de destino). Os outros 25 foram considerados como uma combinação: um como origem e de destino; dez tanto como de trânsito como de destino; e nove, como todos os três.

3. Resultados do exercício de monitorização

As 230 questões no protocolo de pesquisa procuraram informação num número de tópicos distintos, fazendo com que seja difícil produzir um perfil 'preto no branco' no que diz respeito ao facto dos Estados Membros da UE estarem a cumprir os seus compromissos em relação aos direitos humanos das pessoas traficadas. No entanto, em cinco questões específicas, foi possível avaliar o grau de progressão que estava a ser feito. Mesmo nesses casos, no entanto, a informação disponível era ou incompleta ou indisponível, tanto que nenhumas das estatísticas citadas podem ser consideradas como fiáveis. Estes cinco pontos são resumidos na tabela abaixo.

Tabela 1 Progresso na UE em relação a pontos-chave para respostas anti-tráfico

Questão	Situação em Maio de 2010
Coordenação das respostas anti-tráfico a nível nacional	A estrutura nacional para coordenar as respostas anti-tráfico é relatada como tendo sido criada em 22 dos 27 Estados-Membros. Os países sem estruturas nacionais de coordenação são apontadas como sendo França, Alemanha, Grécia e Malta. Na Alemanha e na Itália as respostas anti-tráfico não estão organizados a nível nacional ou federal, mas isso não significa que elas são insuficientes. A Suécia tem nomeado um Coordenador Nacional, com a tarefa de desenvolver uma estrutura de coordenação no combate ao tráfico, mas apenas para os casos de tráfico para fins sexuais.
Identificação de possíveis pessoas traficadas	11 dos 27 Estados-Membros alegadamente têm uma única agência governamental ou uma estrutura responsável por fazer uma identificação formal de alguém que se presume ter sido vítima de tráfico, enquanto que 16 não. Em 6 dos países onde não há nenhum processo a nível nacional para a identificação, não se regista nenhum procedimento-padrão em uso no país para identificar formalmente alguém que se presume ter sido traficado (Áustria, Bulgária, França, Alemanha, Itália, Malta)
Disponibilidade de um período de reflexão de pelo menos 30 dias	Em 25 dos 27 Estados-Membros é relatada a disposição para providenciar um período de reflexão e de recuperação para os adultos que se presume que tenham sido traficados - uma boa parte dos Estados parece aderir a normas mínimas sobre este ponto. Em Itália, não existe uma disposição para um período de reflexão, mas, na prática, às vezes, ele existe. Na Lituânia, uma situação semelhante foi relatada. Para 2008, foi possível obter informações de 11 países sobre um total de 207 pessoas a quem foram concedidos os períodos de reflexão. Para 2009, foi possível obter informações de 18 países e muitos mais foram apontados para ser beneficiados: 1.150 pessoas traficadas. Tal parece reflectir um aumento significativo.
Procedimentos para tornar os regressos seguros e, se possível, voluntários	Seis países foram mencionados pelos investigadores como tendo acordos formais com outros Estados da UE ou países terceiros, que regem o processo de regresso de uma pessoa traficada para o seu próprio país (França, Letónia, Portugal, Espanha e Reino Unido ; a Grécia tem um acordo bilateral que é restrito a crianças traficadas), embora a existência de acordos pareça ser pouca garantia de que os abusos não se realizem. Quando as autoridades planeiam fazer voltar um adulto traficado para o seu país de origem, os pesquisadores observam que, em apenas 3 dos 17 Estados-Membros para os quais havia informações disponíveis, eram avaliações de risco realizadas por uma questão de rotina (Itália, Portugal e Roménia) antes do regresso, ou seja, a avaliação dos possíveis riscos para o indivíduo ou membros da sua família.
Acesso a reparação e indeminização	Em 12 países (de 22 nos quais a informação estava disponível) foi reportado que uma pessoa traficada recebeu um pagamento de indemnização ou de compensação, em 2008 ; e em 12 países (de um total de 20) durante 2009, seja como resultado de um processo judicial ou de uma fonte diferente. Os 9 países nos quais compensações foram feitos nesses dois anos são a Áustria, Dinamarca, França, Alemanha, Itália, Holanda, Espanha, Suécia e Reino Unido.

Tendo em conta estes cinco pontos, seria inadequado tentar classificar o desempenho de cada Estado (como o relatório anual feito pelo Departamento de Estado dos Estados Unidos), porque nas primeiras três categorias são países diferentes, na sua maior parte, os que são identificados como tendo pontos fracos, sendo que nos últimos dois anos há uma variedade de Estados que estão a fazer a coisa certa. Por exemplo, a Itália é o único país mencionado em relação a todos os cinco pontos, como tendo um bom desempenho em muitas questões, embora possua um sistema anti-tráfico que é bastante diferente da a maioria dos outros países da União Europeia.

Paralelamente a estes cinco pontos-chave, o exercício foi previsto para monitorizar muitos outros desenvolvimentos. Propôs-se verificar se a lei em cada país abordou todas as diferentes categorias de exploração associadas ao tráfico (ou seja, com o objectivo de "exploração da prostituição e outras formas de exploração sexual", com a finalidade de exploração do trabalho de uma pessoa ou serviços forçados, servidão, escravatura ou práticas similares à escravatura, ou com a finalidade de remoção de órgãos humanos). A conclusão foi que, em geral, isso foi verificado. Dois países - Estónia e Polónia - são apontados como tendo iniciado uma revisão da sua legislação, mas ainda não a terminaram; noutro, a Espanha, a legislação que acarreta a definição do código penal do tráfico, de acordo com UE e do Conselho da Europa, só entra em vigor em Dezembro de 2010.

O exercício pretendeu também descobrir se as definições de tráfico de seres humanos em cada país são suficientemente semelhantes para obter informações comparáveis em relação a pessoas descritas como "traficantes" ou "vítimas de tráfico". Sobre este ponto muitas mais variações foram encontradas. Por exemplo, em França, o crime de tráfico é definido amplamente para que este se aplique a praticamente qualquer pessoa suspeita de lenocínio. Como resultado, verificou-se inicialmente que mais de 900 pessoas tinham sido condenados em França por tráfico num único ano (2008). Numa análise mais rigorosa, no entanto, era evidente que pouco mais de metade (521) foi condenada por "lenocínio agravado" (uma ofensa mais próxima da que foi definida como tráfico em outros Estados da UE) e apenas 18 condenações relacionadas com crimes que são reconhecidos como "tráfico" segundo as definições regionais adoptadas na UE em 2002 e da Decisão do Conselho da Convenção Europeia. Na Finlândia, a situação é oposta - casos que, segundo os padrões regionais deveriam ter sido tratado como tráfico, têm sido considerados como sendo de lenocínio.

O exercício questionou qual era o processo para **identificação de pessoas como "traficadas"** e se era habitualmente concedido um prazo de reflexão ou

outras formas de protecção ou assistência. Os resultados sugerem que os processos de identificação e os critérios para avaliar se um indivíduo em particular foi traficado variam enormemente entre os países da União Europeia, como se nenhum padrão comum existisse.

Uma **estrutura nacional para coordenar as respostas anti-tráfico** foi criada em 20 dos 27 Estados-Membros. Um Plano de Acção Nacional de Combate ao Tráfico de Seres Humanos ou um plano semelhante foi apontado como tendo sido aprovado em 22 dos 27 Estados-Membros (embora alguns se concentram exclusivamente no tráfico para fins de exploração sexual). A maioria dos países tem uma unidade de polícia que é especializada no trabalho de combate ao tráfico. Em alguns países, existe um procedimento reconhecido a nível nacional, que especifica as funções a desempenhar pelas diferentes organizações que fornecem protecção e assistência às pessoas vítimas de tráfico e para o seu encaminhamento para serviços apropriados - um Mecanismo ou Sistema de Referência Nacional. Um total de 17 países tem esse sistema, enquanto que 9 não o têm.

Em 11 dos 27 Estados-Membros uma única agência governamental ou estrutura é responsável por fazer uma identificação formal de alguém que se presume ter sido traficado, enquanto em 16 não é esse o caso. Sete dos países onde não existe um processo único de identificação não têm nenhum procedimento padrão utilizado em todo o país para identificar formalmente alguém que se presume ter sido traficado. Isto não implica, porém, que a identificação (e disponibilidade para protecção daí resultante) seja mais eficaz em países com um único sistema. Quando se trata de procedimentos de identificação, tanto a pormenorização dos procedimentos a serem seguidos, a medida em que são respeitados como a eficácia dos processos, foram apresentados como variando amplamente entre diferentes países.

Os pesquisadores foram capazes de obter informação parcial sobre **o número de pessoas presumidamente traficadas e identificados ao longo de um período de 12 meses em 2008 e 2009 - um total de 4.010 em 16 países** (embora alguns desses indivíduos podem ter sido contados duas vezes, ou seja, identificados primeiro num país de destino e, novamente, posteriormente, no seu país de origem). Em pouco mais de metade (55 por cento) dos casos, presumíveis pessoas traficadas foram posteriormente confirmadas definitivamente pelas autoridades como tendo sido traficadas. Da mesma forma, as informações sobre **o número de pessoas presumivelmente traficadas que foram objecto de sinalização (junto aos serviços) em 2009, disponível em 16 países, resultam num total de 3.800 pessoas**.

No caso de adultos e crianças que foram presumidas vítimas, alguns desapareceram em 2008 ou 2009, antes de o processo de identificação ter sido concluído. Crianças presumivelmente traficadas foram relatadas como tendo desaparecido em 10 países. Um conjunto diferente de 10 países relatou que adultos que foram provisoriamente identificados como 'traficados' tinham desaparecido.

Os pesquisadores recolheram informações sobre vários aspectos de protecção, nomeadamente:

- Reflexão e períodos de recuperação;
- As avaliações de risco e
- Retorno (ou seja, o repatriamento de uma pessoa traficada para o país de origem).

Os investigadores obtiveram informação de que estava incompleta em alguns países sobre o número de pessoas a quem foi concedido um período de reflexão. Para 2008, foi possível obter informações de 11 países sobre um total de 207 pessoas beneficiadas. Para 2009, a informação estava disponível a partir de 18 países, cerca de 1.150 pessoas. Em 2008, 1.026 autorizações de residência foram conhecidas por terem sido concedidas num total de nove países. A média de mais de 100 autorizações por país deu uma impressão errada, no entanto, 664 destas foram emitidas somente na Itália (e mais 810 em 2009), juntamente com 235 na Holanda, o que significa que em 2008 em sete outros países alegadamente apenas se emitiu um total de 127 autorizações de residência entre elas por tráfico de pessoas (ou seja, uma média de menos de 20 cada). Isto sugere que as leis ou políticas que determinam a quais as pessoas traficadas são concedidas autorizações de residência variam consideravelmente entre os países da UE.

Foi relatado que foi concedido a **crianças traficadas** autorização para permanecer[378] em seis países nestes dois anos: França, Polónia e Reino Unido, onde foram admitidas apenas por permanência temporária, até pouco antes de atingirem a idade de 18, e Áustria e Dinamarca, onde a permanência foi considerada permanente. Na Itália, as crianças estrangeiras, traficadas ou não, são autorizados a permanecer até atingir 18 anos de idade. No entanto, também as crianças traficadas podem obter uma autorização de residência na mesma base dos adultos traficados (ao abrigo de um regulamento conhecido como "artigo 18"). Na Holanda as crianças foram autorizadas a permanecer,

378. "Permanecer" é um termo genérico para descrever o direito legal dado aos não-nacionais para permanecer num país seja ele de forma temporária ou permanente.

mas os dados relevantes tornaram difícil avaliar se poderiam permanecer numa base permanente.

Sobre a questão do retorno (ou repatriamento), os investigadores propuseram-se a descobrir se os retornos foram voluntárias ou forçados, quantas pessoas presumivelmente traficadas tinham sido repatriadas e em que condições. Estes confirmaram que seis Estados Membros da UE têm acordos de retorno formal com outros Estados (como cinco dos seis são países de destino, os acordos são na sua maioria com outros Estados que são percebidos como os países de origem).

A informação **sobre retorno de adultos em 2008** estava disponível em 15 países: 194 foram restituídos aos seus países de origem de 12 países (Áustria, Chipre, República Checa, Dinamarca, França, Grécia, Itália, Letónia, Países Baixos, Polónia e Eslovénia). Neste ano (2008) o maior número de retornos foi relatado da Holanda (37), com a Itália ao lado (31), seguido por Chipre (24), Alemanha (23) e Dinamarca (21). Informações sobre **retorno em 2009** estavam disponíveis em menos países, apenas 10. Neste caso, 171 pessoas teriam sido devolvidos aos seus países de origem, provenientes de 10 países, com um país, a Grécia, respondendo por mais da metade de todos os retornos. Nos restantes sítios, 22 retornos foram relatados a partir de Áustria e 23 da Polónia, com os sete outros países a fazer um total de apenas 19 devoluções. Evidentemente, o número de repatriados representa proporções muito diferentes do número total de sinalizações ou identificações de pessoas traficadas em cada um desses países. No entanto, novamente, os dados sugerem que há critérios muito diferentes em cada país para decidir sobre a possibilidade de repatriar uma pessoa que se presuma traficada assim como o número de retornos não é proporcional ao número de pessoas presumivelmente traficadas que tenham sido identificado ou quem tenham sido concedidos períodos de reflexão.

Em 2008 ou 2009, a **cidadãos de outros Estados-Membros da EU que foram identificadas num país como presumíveis vítimas de tráfico** foi dada protecção e assistência em 19 Estados-Membros nas mesmas condições que os nacionais dos chamados "países terceiros" fora da UE.

No entanto, em seis Estados-Membros (Alemanha, Hungria, Letónia, Lituânia, Roménia e Espanha), aos cidadãos dos outros Estados da UE que foram identificadas como vítimas de tráfico não foram alegadamente fornecidos tão bons níveis de protecção e assistência aos nacionais de países "terceiros".

Alguns cidadãos de outros Estados da UE são relatados como tendo dificuldades em ser identificados como 'traficados' ou em obter assistência. Tal, no entanto, sig-

nifica que, na maioria dos países da Europa Ocidental para os quais os cidadãos dos países da UE na Europa Central foram traficados, estes foram capazes de obter ajuda. Em 14 de 25 países da UE, os cidadãos da UE, foram identificados e assistidos em 2008 e 2009 na mesma base de pessoas traficadas do exterior da UE.

Sobre a questão das **formas de protecção no tribunal disponíveis para adultos** e crianças traficadas, que foram vítimas testemunhas, relatou-se que em cerca de metade dos Estados-Membros da UE as medidas para proteger as vítimas testemunhas estavam disponíveis.

A protecção em tribunal que os investigadores questionaram, incluiu a possibilidade da vítima que testemunha em prestar depoimento numa audiência preliminar (por exemplo, diante de um juiz de instrução) e não ter de comparecer a uma audiência pública; ainda depor por videoconferência ou ser preservada da vista dos acusados.

No entanto, em cinco países (República Checa, Dinamarca, França, Portugal e Reino Unido) casos foram notificados em 2008 ou 2009 em que um adulto ou criança traficada cuja identidade deveria permanecer confidencial teve a sua identidade divulgada no âmbito do processo penal.

Uma pesquisa recente da Anti-Slavery International[379] e da OSCE[380] concluiu que embora exista um direito de compensação para as pessoas traficadas e, apesar da existência de vários mecanismos de compensação, o efectivo recebimento de um pagamento compensatório por uma pessoa traficada é, na prática, extremamente raro. No entanto, em 12 países (de 22 para que os quais a informação estava disponível) uma pessoa traficada foi relatada tendo recebido um pagamento de indemnização ou de compensação, em 2008, e em 12 países (de um total de 20) durante 2009, quer como resultado de processos judiciais ou de uma fonte diferente. Os nove países nos quais compensações foram relatadas em dois anos consecutivos foram a Áustria, Dinamarca, França, Alemanha, Itália, Holanda, Espanha, Suécia e Reino Unido.

A pesquisa não explorou os numerosos **métodos de prevenção** de forma detalhada, focando-se em descobrir quais as informações disponíveis para os migrantes antes e depois da sua chegada a um país onde as pessoas traficadas são referidas como tendo sido exploradas.

379. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
380. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

A convenção do Conselho da Europa exige que os Estados "considerem a nomeação de **Relatores Nacionais** ou de outros mecanismos para monitorizar as actividades anti-tráfico de instituições do Estado e a implementação dos requisitos da legislação nacional". Embora a disposição apenas exige que os Estados "considerem" fazer tal nomeação, não há qualquer razão para suspeitar que a futura directiva da UE será significativamente mais forte neste ponto, tornando-se uma exigência que os Estados-Membros criem um organismo independente de Relator Nacional ou outro mecanismo equivalente.

Em Março de 2009 uma conferência organizada sobre a questão dos Relatores Nacionais sugeriu que 12 Estados-Membros já tinham nomeado um relator nacional (ou mecanismo equivalente) para monitorizar as respostas nacionais ao tráfico de seres humanos. Os investigadores confirmaram que nove dos 27 países da UE tinham um relator nacional sobre o tráfico (Chipre, República Checa, Finlândia, Letónia, Lituânia, Países Baixos, Portugal, Roménia e Suécia), enquanto 16 não. Diversos (como a Suécia) foram notificados a prestar principalmente atenção aos casos envolvendo o tráfico para fins sexuais. Em vários Estados (como a Bélgica e Espanha), uma instituição de outro estado está envolvida na monitorização das respostas anti-tráfico. Em três dos nove com relator (Letónia, Lituânia e Suécia), o papel do relator não era totalmente independente das pessoas envolvidas em operações anti-tráfico, o que limita sua independência e, potencialmente reduzindo sua capacidade de monitorizar de maneira rigorosamente independente.

4. Conclusões e Recomendações

O projecto E-notes mostrou que existem diferenças substanciais entre os Estados-Membros da UE no que se refere a aspectos fundamentais das políticas e práticas de luta contra o tráfico, como a legislação nacional que proíbe o tráfico humano e definições (ou interpretações por agências governamentais relevantes) do que constitui o tráfico, da existência de organismos de coordenação, do processo de identificação de pessoas traficadas.

Também demonstrou que várias disposições da legislação internacional e nacional que visam garantir a protecção dos direitos das pessoas traficadas ainda só existem no papel e a sua aplicação é ainda muito incipiente na maioria dos Estados-Membros. As organizações que participam no E-notes acreditam que mais esforços devem ser feitos pela União Europeia, pelos próprios Estados-Membros e pela sociedade civil de forma a fortalecer a base do qua-

dro político, a nível nacional e da UE, que pretende parar o tráfico humano. Sendo que são necessárias melhorias substanciais no que diz respeito à implementação de muitos aspectos da luta contra o tráfico nas políticas na UE, as seguintes recomendações elaboradas pelo projeto E-notes focam-se sobre a protecção dos direitos das pessoas traficadas, pois estamos convencidos de que este deve ser o cerne dos esforços de todos os Estados para combater o tráfico de seres humanos. No entanto, é com relação à prevenção do tráfico e da protecção das pessoas traficadas que as disposições pertinentes são menos aplicadas.

Identificação e sinalização de pessoas traficadas

A protecção dos direitos das pessoas traficadas só pode ser garantida quando todas as supostas vítimas (independentemente da sua cooperação com as autoridades) são identificados como tal. Os resultados do E-notes mostram que a identificação é ainda um aspecto muito fraco. A fim de melhorar o processo de identificação nos Estados-Membros, consideramos que é necessário:

- A elaboração de listas e/ou indicadores por parte dos Estados-Membros, em cooperação com as forças policiais, procuradores e magistrados e prestadores de serviços, para auxiliar na identificação de supostas vítimas de tráfico para qualquer forma de exploração. Outros indicadores devem ser identificados para cada forma de exploração, como a exploração do trabalho, servidão doméstica, exploração sexual, mendicidade forçada, envolvimento forçado em actividades ilícitas, etc. ; devem ser desenvolvidos indicadores específicos para a identificação de crianças vítimas
- A identificação não deve ser da responsabilidade de uma única agência governamental, mas deve ser realizada por equipas multidisciplinares incluindo as organizações que prestam apoio a pessoas traficadas
- As estruturas nacionais determinadas para a sinalização, quer os Mecanismos de Referência Nacional (MRN) quer outros envolvidos na execução dos Procedimentos Operacionais Padrão (POPs) devem ser baseadas na cooperação estreita e regular entre forças policiais, agentes da imigração, os inspectores do trabalho, sindicatos relevantes, entidades de protecção de menores, promotorias jurídicas e organizações não governamentais ou outros prestadores de serviços;
- Acesso à justiça para as pessoas traficadas, inclusive para pedir compensação, é melhorado se for garantida a assistência jurídica gratuita a todas as pessoas identificadas;
- Que todos os Estados-Membros assegurem que uma avaliação de risco individual é realizada para todas as pessoas traficadas, quando é proposto que regressem ao país de origem.

Monitorização

Mais monitorização é essencial, tanto a nível comunitário como nacional, de forma a que todos os interessados tenham uma melhor compreensão, não só do que está estipulado no papel em termos daquilo que é suposto ser feito em cada país para acabar com o tráfico, mas o que está realmente a acontecer na realidade. Para uma boa compreensão da execução, dos efeitos e do impacto das políticas anti-tráfico na União Europeia, é urgente que:

- Relatores Nacionais ou outros mecanismos equivalentes devem ser órgãos independentes (como acordado na Declaração de Haia, 1997), de modo a garantir um controlo independente e comparáveis dos resultados das acções de combate ao tráfico. Também é importante que o impacto e os efeitos imprevistos ou até mesmo negativos das medidas anti-tráfico, sejam identificados e relatados;
- Deve haver uma maior padronização de terminologia pertinente, estatísticas e formas de medição (por exemplo, o número de pessoas processadas por tráfico);
- Deve haver uma estreita cooperação entre a UE e seus Estados-Membros e os membros do GRETA, o organismo de controlo independente do Conselho da Europa relativamente à Luta contra o Tráfico de Seres Humanos, a fim de evitar sobreposições desnecessárias nas actividades de controlo.

Legislação

- Acompanhamento adicional é necessário para garantir que todos os quadros jurídicos nacionais incorporem a definição de tráfico acordado em 2002 e a Decisão-Quadro da Convenção do Conselho da Europa 2005.
- Parece haver uma necessidade significativa para uma melhor compreensão em muitos Estados-Membros da noção de "exploração" e dos vários delitos ligados à exploração ilegal, tanto quando as pessoas são traficadas para exploração ou para efeitos de exploração e quando as pessoas estão sujeitas à exploração ilegal sem ter sido traficadas.

Coordenação das políticas anti-tráfico a nível nacional

- Todos os Estados-Membros que não tenham feito isso ainda devem criar uma estrutura de coordenação e um plano de acção nacional para dar maior coerência às políticas de combate ao tráfico. Adequada alocação de recursos humanos e económicos é fundamental para o bom funcionamento desses dois. Seria, portanto, apropriado para qualquer exercício de acompanhamento futuro verificar que recursos são alocados em cada Estado Membro da UE para financiar uma estrutura de coordenação nacional e de apoio às actividades de coordenação.

8.16 Rezumat

In anul 2009, patru organizatii non-guvernamentale au pus bazele unui parteneriat intr-un proiect denumit " Observatorul European al ONG-urilor pe tema traficului de persoane, exploatarii si sclaviei (in acronim E-notes, cu obiectivul general de monitorziare a masurilor intreprinse la nivel guvernamental de statele membre UE in directia combaterii sclaviei, traficului de persoane precum si a altor forme de exploatare asociate. Asociatia italiana „On the Road[381]", s-a constituit Coordonator de Proiect, cooptand o retea regionala anti-trafic – La Strada International si doua organizatii non-guvernamentale operationale la nivel national: ACCEM[382] (Spania) si ALC[383] (Franta).

Proiectul E-notes si-a propus colectarea informatiilor asupra politicilor anti-trafic din cele 27 de state membre ale Uniunii Europene, ca alternativa la crearea unei structuri permanente cu atributii de monitorizare a actiunilor guvernamentale. Aceast lucru s-a materializat prin crearea unei metodologii de cercetare si selectia organizatiilor non-guvernamentale si a cercetatorilor din cele 27 de state partenere. Proiectul a inceput prin focalizarea pe rolul **indicatorilor** de masurare a progreselor realizate de fiecare stat membru UE in implementarea actiunilor anti-trafic (e.g. instrumente legislative, politici, masuri si practici implementate pentru reducerea fenomenului de trafic de persoane si imbunatatirea protectiei si asistentei pentru persoanele traficate). Astfel a fost creat un instrument de cercetare, prin identificarea a peste 200 de intrebari (itemi) standard asupra actiunilor intreprinse, pentru facilitarea evaluarii progreselor in implementarea masurilor anti-trafic realizate de fiecare stat membru UE.

1. Standardele de cautare a informatiilor in exercitiul de monitorizare

Procesul de cercetare a debutat la inceputul anului 2010, in perioada in care Consiliul Europei finaliza elaborarea unui nou instrument standardizat

381. Asociatia On the Road furnizeaza o gama larga de servicii pentru protectia victimelor traficului de persoane, azilanti, refugiati si migranti, fiind operational la nivelul a trei Regiuni(Marche, Abruzzo, Molise). Este de asemenea implicat in activitati de constientizare, cercetare, lucru in retea, exercitiu comunitar, dezvoltarea de politici si initiative la nivel local, national si European.

382. ACCEM este furnizor de servicii sociale si dezvolta initiative sociale si legale in beneficiul azilantilor, refugiatilor, stramutatilor si migrantilor in Spania.

383. ALC se traduce prin "Acompaniament, Centre de primire, Asistenta educationala si sociala" ALC coordoneaza reteaua nationala de locuinte protejate pentru victime ale traficului de persoane, denumita "Ac.Sé".

asupra initiativelor anti-trafic in statele membre UE (cu scopul inlocuirii Deciziei Cadru a Consiliului Europei pentru Combaterea Traficului de Persoane, adpotata in Iulie 2002). In anul 2009, Comisia Europeana a prezentat o propunere pentru noua *Decizie Cadru pentru Combaterea Traficului de Persoane*. Data fiind intrarea in vigoare a Tratatului de la Lisabona, care a intrerupt toate procedurile legaislative in derulare la acel moment, negocierile la nivel de Consiliu pentru adoptarea noii Decizii Cadru nu au putut continua. Prin urmare, Comisia Europeana a depus o noua propunere de *Directiva a Parlamentului European si a Cosiliului Europei asupra Prevenirii si Combaterii Traficului de Persoane si Protectiei Victimelor*, abrogand Decizia Cadru din 2002. In Martie 2010, propunerea a fost inaintata spre aprobare de catre Parlamentul European. In septembrie 2010, doua dintre comitetele Parlamentului European au propus o serie de amendamente la proiectul de Directiva, marcand initierea acordurilor dintre Consiliul Europei, Comisia Europeana si Parlamentul European. Se preconiza adoptarea Directivei inainte de finalul anului 2010.

Desi cadrul general al prevederilor Directivei era considerat clar, la momentul desfasurarii exerctiului de monitorizare al E-notes, in perioada Mai-Iunie 2010, noua Directiva nu fusese inca adoptata (mai mult, nici la momentul finalizarii prezentului raport, in Octombrie 2010). In procesul decizional asupra obligatiilor legale de referinta in identificarea standardelor de monitorizare a fiecarui stat membru UE (e.g.. obligatiile privitoare la reactiile guvernamentale impotriva traficului de persoane), proiectul a optat pentru folosirea unui instrument legislativ regional distinct: *Conventia Consiliului Europei asupra Actiunii impotriva Traficului de Fiinte Umane*. Aceasta a fost adoptata in Mai 2005, intrand in vigoare in Februarie 2008. Cu toate ca instrumentul a fost ratificat de majoritatea statelor nemembre UE pana in August 2010, toate statele membre UE (cu exceptia Republicii Cehe) fie ratificasera Conventia Consiliului Europei (19) ori fusesera semnatari (7), astfel exprimandu-si intentia de imbunatatire a instrumentului.

2. Metodologia folosita

Exercitiul de monitorizare a fost elaborat de un consultant la inceputul anului 2010. S-a acordat atentie sporita publicatiilor anterioare care propuneau „indicatori" adecvati pentru ca statele membre UE sa alinieze legislatia si practicile nationale la standardele regionale si internationale (toate avand la baza *Protocolul Natiunilor Unite pentru Prevenirea, Suprimarea si Pedepsirea*

Traficului de Persoane, Particularizat la Femei si Copii, adoptat in 2000 pentru suplimentarea *Conventiei ONU impotriva Criminalitatii Organizate Transnationale* (2000). Au fost luate de asemenea in considerare comentariile prezente in majoritatea publicatiilor[384] Comisiei Europene asupra deficitelor observate in implementatarea masurilor de combatere a traficului de persoane, de protectie si asistenta a victimelor prezumate[385] in cazul majoritatii statelor membre UE. Unele surse au indicat dificultatea de obtinere a informatiilor privind politicile anti-trafic de la statele membre (uneori dificultatea are in vedere obtinerea informatiilor actualizate, alteori vizeaza obtinerea oricarei informatii). Alte publicatii au facut referire la lipsa unei „armonizari in colectarea datelor", sugerand ca terminologia nu este uzata in mod consistent si nu exista mecanisme comune de raportare in statele membre UE. Toate aceste probleme au fost confirmate in timpul exercitiului E-notes.

Un document emis de Comisia Europeana in 2006[386] observa ca statele membre ofera putine date despre regulile si practicile legate de asigurarea protectiei si asistentei pentru victimele traficului de persoane. In 2008 un Document de Lucru[387] a repetat ca informatiile asupra numarului de victime identificate care sunt incluse in asistenta se obtin foarte dificil din partea statelor membre. A punctat insa ca pana in anul 2006, statele care raportasera catre Comisia Europeana, au furnizat informatii conform carora in 23 de state membre UE fusesera investigate peste 1500 de cazuri de trafic de persoane in decursul unui an. Se mai raporta de asemenea introducerea unei perioade de recuperare si reflectie care permitea victimelor prezumate sa ramana in tara de origine pentru recuperare, inainte de a colabora cu autoritatile. Cu toate acestea, numai 5 dintre state au raportat numarul de persoane care au beneficiat de perioada de recuperare si reflectie, in total 26 de victime prezumate pe durata unui an!

Aceasta lipsa de precizie si acuratete a datelor furnizate de statele membre catre Comisia Europeana a fost perceputa ca ingrijoratoare de catre

384. Ca de exemplu: Comunicarea Comisiei Europene catre Parlamentul European si Consiliu asupra "Combaterea traficului de persoane – O abordare integrativa si propuneri pentru planul de actiune (referinta Comisiei Europene COM(2005) 514 final din18 October 2005); si Documentul de Lucru al Comisiei Europene (referinta Comisiei Europene COM(2008) 657 final), Evaluarea si monitorizarea implementarii planului UE de standarde, bune practici si proceduri pentru prevenirea si combaterea traficului de persoane, Octombrie 2008.
385. Termenul "victima prezumata" a traficului de persoane se refera la suspiciunea unei persoane de a fi fost traficata, fara a exista probe definitive in acest sens.
386. Raportul Comisiei Europene asupra implementarii Deciziei Cadru a Consiliului din 19 Iulie 2002 asupra combaterii traficului de persoane (referinta Comisiei Europene COM(2006) 187 final din 2 May 2006).
387. Vezi nota de subsol 384.

organizatiile non-guvernamentale (specializate in servicii de asistenta directa pentru victimele prezumate ale traficului de persoane sau in elaborarea initiativelor de prevenire a fenomenului). Pe de o parte, acest fapt sugera ca nu exista posibilitatea, nici macar la nivel de Comisie Europeana, de a elucida ce se petrecea la nivel european. Pe de alta parte, arata ca majoritatea prevederilor stipulate in tratatele regionale sau interntionale pe tema traficului de persoane sau a Drepturilor Omului, erau ignorate, ramanand neimplementate (in ciuda faptului ca majoritatea statelor erau le adoptasera).

O parte din statele membre UE au desemnat un Raportor National al fenomenului de trafic de persoane cu scopul de a informa actorii guvernamentali (si nu numai) asupra progreselor intreprinse in strategiile anti-trafic si a recomandarilor propuse pentru imbunatatirea masurilor. Noua din cele 27 de state membre UE au raportat existenta unui Raportor National in exercitiul de monitorizare din primul semestru al anului 2010. Cu toate acestea, nu toti Raportorii Nationali publica rapoarte in mod regulat, unele structuri focalizandu-se pe anumite forme de exploatare (e.g. traficul de persoane prin exploatarea sexuala a femeii), fara a furniza date asupra masurilor particularizate la celelalte tipuri de exploatare. Pe termen lung, in cazul in care Raportorii Nationali ar fi desemnati la nivelul fiecarui stat membru, ar putea fi introduse definitii standard pentru termenii ce descriu traficul de persoane si ar putea fi adoptate metodologii de masurare statistica a fenomenului pentru a permite comparatii cu sens intre masurile adoptate in plan guvernamental intre diferitele state.

In acest context, exercitiul de monitorizare E-notes s-a focalizat pe aflarea naturii informatiilor disponibile la nivelul celor 27 de state membre UE privitoare la: legislatie, politici, practici anti-trafic, numarul persoanelor identificate ca fiind „traficate", numarul persoanelor traficate care beneficiaza de protectie, numarul victimelor incluse in programe de asistenta, etc. In timpul desfasurarii exercitiului, in Mai si iunie 2010, intentia initiala a fost de a colecta date despre situatia din fiecare stat in anul 2009. Cu toate acestea, curand a devenit clar ca in unele state nu existau informatii valabile pentru anul 2009 sau datele raportate erau incomplete, in timp ce pentru anul 2008 informatiile aveau mai multa consistenta.

Organizatiile non-guvernamentale cu sarcina de a selecta un cercetator pentru colectarea datelor si redactarea informatiilor necesare exercitiului de monitorizare E-notes au fost selectate in baza experientei de lucru cu victime adulte ale traficului de persoane (majoritar femei). De asemenea, au avut

sarcina de a compila date despre traficul de minori, multe dintre organizatii intampinand dificultati in obtinerea unui material consistent in acest sens. In multe dintre state, victimele adulte sunt incluse in programe de asistenta derulate de organizatii non-guvernamentale, in timp ce institutiile guvernamentale responsabile de protectia copilului au monopolul pe serviciile de asistenta destinate minorilor traficati.

Fiecare cercetator desemnat a avut sarcina de a completa un protocol de cercetare de 60 de pagini, si de a furniza informatii aditionale prin texte scrise privitor la intrebarile unde un raspuns dihotonic „da" sau „nu" era inadecvat. In plus, fiecare cercetator a avut de realizat un profil succint de tara, cu referire la trendurile nationale de desfasurare a traficului de persoane si la masurile intreprinse la nivel guvernamental in combaterea fenomenului. Informatiile elaborate de cei 27 de cercetatori au fost ulterior procesate si introduse intr-o baza de date simpla, in iulie 2010. Baza de date a fost analizata de acelasi consultant care a elaborat protocolul de cercetare pentru identificarea potentialelor patternuri – in particular nerespectarea obligatiilor asumate de oferire a protectiei si asistentei pentru victimele traficului de persoane – si pregatirea raportului asupra informatiilor colectate.

Cercetatorii au fost solicitati sa comenteze particularizat la statul de provenienta, daca acesta este recunoscut ca tara de origine, tranzit, destinatie sau o combinatie dintre formele mentionate. Categorizarea rezultata nu s-a concentrat pe cazurile de trafic de persoane intern. De altfel relativ putine state au fost categorizate ca apartinand exclusiv unei categorii (doua, Franta si Protugalia au fost descrise in principal ca tari de destinatie). Celelalte 25 de state au fost considerate combinatii: 1 ca tara de origine si destinatie; 10 ca tari de tranzit si destinatie; 9 ca mixtura intre cele trei categorii.

3. Rezultatele exercitiului de monitorizare

Cele 230 de intrebari cuprinse in protocolul de cercetare vizau informatii pe diferite teme, facand dificila obtinerea unui profil „alb-negru" al statelor privind respectarea drepturilor persoanelor traficate si angajamentelor luate la nivel international. Pe de alta parte, au putut fi evaluate gradele de progres ale statelor partenere particularizat la 5 domenii de interes. Si in aceste cazuri, informatia solicitata poate fi caracterizata ca incompleta sau indisponibila, nici una din statisticile mentionate nefiind fiabila. Cele 5 domenii apar sumarizate in tabelul de mai jos.

Tabelul 1 Progresul inregistrat la nivel UE asupra componentelor cheie in initiativele anti-trafic

Domeniul/Tema	Situatia observata in Mai 2010
Coordonarea reactiilor anti-trafic in plan national	In 22 din cele 27 de state membre UE a fost raportata existenta unei structuri nationale de coordonare a initiativelor anti-trafic. Statele in care nu a fost constituita o astfel de structura sunt: Franta, Germania, Grecia si Malta. In cazul Germaniei si Italiei, masurile anti-trafic nu sunt elaborate la nivel national sau federal, nefiind insa considerate inadecvate. Suedia a numit un Coordonator National cu atributii de dezvoltare a unei structuri de coordonare a combaterii traficlui de persoane, dar numai prin exploatare in scopuri sexuale.
Identificarea victimelor prezumate ale traficului de persoane	11 din 27 de state membre UE au structura/agentie guvernamentala unica responsabila pentru realizarea identificarii formale a victimelor prezumate ale traficului de persoane, in timp ce 16 state au mai mult de o institutie cu astfel de atributii. Referitor la 6 din statele fara mecanism national ce reglementeaza identificarea, acestea nu dispun de proceduri nationale standard in uz pentru identificarea formala a victimelor prezumate (Austria, Bulgaria, Franta, Germania, Italia, Malta).
Acordarea unei perioade de reflectie cu durata de cel putin 30 de zile	In 25 din 27 de state membre a fost raportata procedura de acordare a perioadei de recuperare si reflectie pentru adulti, victime prezumate ale traficului de persoane - majoritatea statelor adera la standardele minime privitoare la aceasta tema. In Italia nu exista o astfel de prevedere la nivel oficial dar in practica s-a raportat respectarea perioadei de reflectie in unele cazuri. Lituania a raportat o situatie similara. Pentru 2008, informatia disponibila asupra acordarii perioadei de reflectie a fost furnizata de 11 state, fiind implementata masura pentru 207 victime prezumate ale traficului de persoane. Referitor la anul 2009, 18 state au furnizat date conform carora un total de 1150 persoane traficate au beneficiat de perioada de reflectie. S-a putut observa o crestere semnificativa in acest sens.
Procedurile de repatriere, pentru intoarcerea in conditii de siguranta si, pe cat posibil voluntara	In 6 tari au fost raportate acorduri formale cu alte state membre UE sau state terte pentru reglementarea procedurii de repatriere a victimelor prezumate (Franta, Portugalia, Letonia, Spania, Marea Britanie; Grecia a semnat un acord bilateral ce vizeaza exclusiv minorii traficati). Cu toate acestea existenta acordurilor formale nu ofera garantii pentru evitarea abuzurilor. In momentul in care autoritatile planifica repatrierea unui adult traficat in tara de origine, cercetatorii au aratat ca doar in 3 din cele 17 state membre UE, se implementeaza regulat proceduri de evaluare a riscului anterioare repatrierii (Italia, Portugalia si Romania), de exemplu masurarea riscurilor potentiale pentru victima sau familie.
Accesul la despagubiri si compensatii	In 12 tari (din 22 care au furnizat informatii) a fost raportata situatia in care victimele traficului de persoane au primit despagubiri sau compensatii financiare in 2008; in 12 state (din 20) s-au raportat date similare pentru anul 2009, ca urmare a deciziei curtii sau din surse diferite. Cele noua tari in care au fost acordate compensatii financiare atat in 2008 cat si in 2009 sunt: Austria, Danemarca, Franta, Germania, Italia, Olanda, Spania, Suedia si Marea Britanie.

Judecand din prisma celor 5 domenii, incercarea de a ierarhiza performanta fiecarui stat devine inadecvata (in maniera similara raportului realizat de Departamentul de Stat al SUA), intrucat primele trei categorii includ state diferite, care sunt de asemenea raportate cu dificultati, in acelasi mod, in ultimele doua domenii sunt mentionate state distincte care implementeaza masuri eficient. De exemplu, Italia este un stat mentionat in raport cu toate cele 5 categorii, avand performante crescute in multe domenii, dar avand un sistem de politici anti-trafic diferit de cel al majoritatii statelor UE.

Aditional celor 5 domenii cheie, monitorizarea a avut in vedere alte realizari. S-a focalizat pe verificarea daca **legislatia nationala a fiecarui stat** se adreseaza in egala masura tuturor formelor de exploatare asociate traficului de persoane (e.g. „pentru scopul exploatarii in prostitutie sau alte forme de exploatare sexuala", „in scopul exploatarii unei persoane pentru servicii sau munca fortata, servitute, sclavie sau practici similare acestora" sau in scopul prelevarii ilicite de organe umane). Ca o concluzie, in general statele includ in definirea traficului de persoane toate formele de exploatare. In doua cazuri –Estonia si Polonia – se raporteaza initiative de revizuire a legislatiei, in derulare; pentru Spania, alinierea definitiei traficului de persoane prevazuta in Codul Penal la standardele UE si ale Consiliului Europei urmeaza sa intre in vigoare in Decembrie 2010.

Prin monitorizare s-a intentionat de asemenea evidentierea nivelului de similaritate al **definitiilor traficului de persoane** cu referire la „traficanti" si „victime ale traficului de persoane" in vederea demersurilor de comparatie. S-a constatat un nivel crescut de variabilitate asupra acestui punct. De exemplu in Franta, infractiunea de trafic de persoane are o definitie atat de generala incat poate fi aplicata oricarui caz de suspiciune de proxenetism. Ca urmare, mai mult de 900 de persoane au fost condamnate in Franta pentru trafic de persoane pe durata unui singur an (2008). La o privire mai atenta, a devenit evident faptul ca mai bine de jumatate din condamnari (521) au fost emise pentru infractiunea de „proxenetism agravant" (o infractiune ce se suprapune partial peste definitia traficului de persoane in acceptiunea majoritatii statelor UE) si doar 18 condamnari au avut la baza infractiuni asimilate „traficului de persoane" conform definitiilor reunite in Decizia Cadru si Conventia Consiliului Europei din 2002. In Finlanda situatia situatia se regaseste in opozitie – cazuri care in acord cu prevederile regionale trebuiau sa fie definite ca trafic de persoane au fost incadrate la proxenetism si facilitare a serviciilor sexuale comerciale.

Exercitiul viza procesul de **identificare a persoanelor ca fiind „traficate",** existenta unei constante in acordarea perioadei de recuperare si reflectie sau

a altor forme de protectie si asistenta pentru victimele prezumate. Informatiile rezultate au evidentiat faptul ca atat procesul de identificare cat si criteriile de evaluare in vederea probarii situatiei de trafic variaza semnificativ la nivelul statelor membre UE, ca si cum un standard comun ar fi inexistent.

Existenta unei **structuri nationale de coordonare a politicilor anti-trafic** a fost confirmata in 20 din cele 27 de state respondente. 22 din 27 de state au raportat instituirea unui Plan National de Actiune privind Combaterea Traficului de Persoane sau a unei strategii similare (desi unele state se focalizeaza exclusiv pe infractiunea de trafic de persoane prin exploatarea sexuala). In majoritatea statelor exista o structura politieneasca specializata in combaterea traficului de persoane. In unele cazuri se confirma constituirea unei proceduri operationale la nivel national care specifica atributiile diferitelor institutii/organizatii in domeniul protectiei si asistentei pentru victimele traficului de persoane cat si privind referirea acestora catre furnizorii de servicii specializati – un Mecanism ori Sistem National de Referire. Un total de 17 state au raportat functionarea unui astfel de sistem, in timp ce 9 nu au prevazut.

In 11 din 27 de state membre apare o singura structura sau agentie guvernamentala cu atributii in domeniul identificarii formale a victimelor prezumate, in timp ce 16 tari au structuri diferite. 7 din statele fara structura unica de identificare formala nu au elaborat proceduri standard de identificare cu acoperire nationala. Acest fapt nu releva ca identificarea victimelor (si accesul lor la protectie) este mai eficienta in statele cu un sistem unic de identificare formala. In legatura cu procedurile de identificare, s-au constatat variatii semnificative aplicat la detalierea strategiilor de urmat, nivelul de respectare si eficacitatea lor.

Cercetatorii au putut obtine informatii partiale asupra **numarului de victime prezumate ale traficului de persoane identificate pe durata unui an, in 2008-2009** – un total de 4010 persoane au fost identificate in 16 tari (unele dintre persoane au fost dublu identificate: in tara de destinatie si apoi in cea de origine). In peste jumatate din cazuri (55%), victimele prezumate au fost confirmate ca statut legal de catre autoritati. Datele similare, aplicabile la anul 2009, disponibile de la 16 state au centralizat 3800 de **victime prezumate referite catre furnizorii de asistenta**.

Referitor la cazurile de adulti si minori victime prezumate ale traficului de persoane, s-au inregistrat disparitii in 2008 si 2009 inainte de finalizarea

procesului de identificare. Victime minore prezumate au fost date disparute in 10 din state. Alte 10 tari au raportat disparitii ale adultilor identificati provizoriu ca victime ale traficului de persoane.

Cercetatorii au strans informatii asupra principalelor aspecte de tin de **protectie**, particularizat la:

- Perioadele de recuperarea si reflectie;
- Evaluarea riscului;
- Intoarcerile voluntare (e.g. repatrieri ale persoanelor traficate in tarile de origine).

Informatiile centralizate din unele state privind **numarul persoanelor carora li s-a acordat o perioada de reflectie** s-au dovedit incomplete. Pentru anul 2008 datele disponibile din 11 state au confirmat 207 persoane. Pentru anul 2009, au existat date disponibile din 18 state, totalizand 1150 de persoane. Raportat la anul 2008 au fost emise 1026 de permise de sedere in 9 tari. Media estimata la peste 100 de permise de sedere per tara poate oferi perceptii eronate intrucat 664 de permise de sedere au fost acordate numai in Italia (la care se adauga 810 in 2009), 235 in Olanda, ceea ce releva faptul ca in celelalte 7 state au fost emise 127 de permise de sedere in total (cu o medie estimata la mai putin de 20 de documente per stat). Astfel se sugereaza variabilitatea crescuta a politicilor si legislatiei ce reglementeaza acordarea permiselor de sedere intre statele membre UE.

Minorilor traficati le a fost aprobat dreptul de sedere in 6 state in ultimii doi ani[388]: in Franta, Polonia si Marea Britanie minorii au primit sedere temporara pana la implinirea varstei de 18 ani si Austria si Danemarca, tari in care minorii au primit drept de sedere permanenta. In Italia, copiii de nationalitate straina pot obtine dreptul de sedere pe aceeasi baza legala ca victimele adulte (conform art.18). In Olanda minorilor li s-a garantat dreptul de sedere dar datele nu au indicat daca acesta este unul temporar sau permanent.

Asupra intoarcerii voluntare (repatrierii), cercetatorii au avut sarcina de a verifica daca procedura a fost implementata voluntar sau fortat, numarul victimelor repatriate si conditiile intoarcerii. S-a confirmat existenta acordurilor formale de repatriere cu alte state in 6 cazuri (intrucat 5 din 6 sunt tari de destinatie, acordurile au fost incheiate in principal cu state de origine).

388. "Dreptul de sedere" este un termen generic, folosit in descrierea dreptului garantat legal al unei persoane cetatean strain de a ramane intr-o tara pe baza temporara sau permanenta.

Datele disponibile de la 15 state asupra repatrierilor victimelor adulte in 2008 releva: 194 de persoane au fost repatriate in tara de origine sin 12 tari de destinatie (Austria, Cipru, Republica Ceha, Danemarca, Grecia, Franta, Italia, Letonia, Olanda, Polonia si Slovenia). In anul 2008 cel mai mare numar de repatrieri a fost raportat de Olanda (37), fiind urmata de Italia (31), Cipru (24), Germania (23) si Danemarca (21). Pentru anul 2009, un numar mai redus de state au oferit informatii, 10. In aceasta situatie 171 de persoane au fost repatriate din cele 10 tari de destinatie, Grecia fiind statul cu cele mai multe intoarceri voluntare, mai bine din jumatate din totalul victimelor. Austria a raportat 22 de repatrieri, Polinia 23, in timp ce 7 alte state au coordonat 19 repatrieri. Evident, numarul persoanelor repatriate reprezinta in proportii diferite numarul total de referiri ale victimelor prezumate in fiecare din aceste state.

Inca o data, datele arata existenta criteriilor diferite la nivelul fiecarei tari asupra deciziei de repatriere a victimelor prezumate, iar numarul intoarcerilor voluntare nu este proportional cu numarul de victime prezumate identificate ori cu perioadele de reflectie acordate.

In 2008 si 2009, **cetateni ai altor state membre UE identificati ca victime prezumate ale traficului de persoane au primit protectie si asistenta** in 19 tari la acelasi nivel cu nationalii „tarilor terte", in afara comunitatii europene. In 6 din state (Germania, Ungaria, Letonia, Lituania, Romania si Spania) victimele prezumate originare din state membre UE nu au beneficiat de nivele adecvate de protectie si asistenta pe aceeasi baza ca nationalii „tarilor terte". Au fost intampinate dificultati in identificarea unora dintre cetatenii statelor membre UE ca victime prezumate ale traficului de persoane si consecutiv in garantarea accesului la servicii de asistenta. Fara discutii, acest fapt sugereaza ca in majoritatea statelor vest europene in care sunt traficate persoane din zona central europeana, acestia au acces la servicii de asistenta. In 14 din 25 de state in 2008 si 2009, cetatenii UE au fost identificati ca victime prezumate ale traficului de persoane, garantandu-li-se accesul la servicii de asistenta pe aceeasi baza cu nationalii „statelor terte".

Rezultatele asupra acordarii **masurilor de protectie in sala de judecata pentru adultii si minorii** traficati, constituindu-se parte vatamata sau martori in procesul penal de trafic, se confirma in jumatate din statele respondente. Masurile de protectie in sala de judecata au inclus posibilitatea ca martorii sa dea declaratie la audieri preliminare (e.g. in fata judecatorului sau a procurorului) fara a fi nevoie sa fie prezenti intr-o sedinta de judecata

publica, precum si declaratiile luate prin videolink sau separat de acuzati. Cu toate acestea, in 5 tari (Republica Ceha, Danemarca, Franta, Portugalia si Marea Britanie)au fost raportate cazuri in decursul anilor 2008 si 2009 in care confidentialitatea asupra identitatii victimelor adulte sau minore a fost incalcata in cursul investigatiilor penale.

Studii recente furnizate de Anti Slavery International[389] si OSCE[390] au concluzionat ca in ciuda dreptului la compensatie financiara pentru victime si a existentei catorva mecanisme de acordare a daunelor, garantarea acestor plati victimelor in practica este extrem de rara. Pe de alta parte, in 12 state (din 22 de surse de informare), s-au raportat acordari de compensatii ori daune financiare victimelor traficului de persoane in timpul anilor 2008 si 2009si in 12 tari (din 20), ca rezultat al unei hotarari judecatoresti sau din alte surse. Cele 9 tari in care s-au inregistrat acordarea compensatiilor si daunelor in ambii ani sunt: Austria, Danemarca, Franta, Italia, Olanda, Spania, Suedia si Marea Britanie.

Cercetarea nu s-a centrat pe explorarea detaliata a **metodelor de prevenire** a traficului de persoane dar a avut in vedere natura informatiilor furnizate migrantilor inainte si dupa intrarea intr-o tara in care au fost semnalate cazuri de persoane exploatate.

Conventia Consiliului Europei prevede ca Statele sa „considere numirea Raportorilor Nationali sau sa creeze alte mecanisme de monitorizare a masurilor anti-trafic intreprinse de institutiile de stat cat si implementarea obligatiilor stipulate in legislatia nationala". Cu toate ca prevederea solicita Statelor sa „considere" crearea unei astfel de structuri, exista motive intemeiate pentru care noua Directiva UE sa fie mult mai stricta la acest nivel, transformand prevederea in obligatie pentru statele membre sa desemneze un Raportor National independent sau un mecanism echivalent. In Martie 2009 in cadrul unei conferinte centrate pe tematica Raportorilor Nationali s-a aratat ca 12 dintre statele membre numisera deja un Raportor National (sau mecanism echivalent) pentru monitorizarea masurilor anti-trafic la nivel guvernamental. Cercetatorii au confirmat ca noua din 27 de state membre UE au desemnat un Raportor National asupra traficului de persoane (Cipru, Republica Ceha, Finlanda, Letonia, Lituania, Olanda,

389. J. Lam, K. Skrivankova, *Oportunitati si obstacole: Agigurarea accesului la compensatii pentru persoanele traficate in Marea Britanie,* Anti-Slavery International, Londra, 2008.
390. OSCE/ODIHR, *Compensatiile pentru Persoane Traficate si Exploatate in Regiunea OSCE*, Varsovia, 2008

Portugalia, Romania si Suedia), in timp ce 16 nu numisera. In unele cazuri (e.g. Suedia) raportorul are in vedere mai specific traficul de persoane prin exploatare sexuala. Pe de alta parte, in Belgia si Spania exista o institutie a statului distincta implicata in monitorizarea actiunilor anti-trafic implementate. La nivelul a trei state din cele noua cu Raportor National prevazut (Letonia, Lituania si Suedia), rolul acestuia nu e total independent de insititutiile implicate in operatiuni anti-trafic, limitandu-le astfel autonomia si putandu-le reduce abilitatea de monitorizare indpendenta.

4. Concluzii si recomandari

Proiectul E-notes a aratat existenta discrepantelor substantiale intre statele membre UE asupra aspectelor fundamentale ale politicilor si practicilor privind: legislatia nationala care defineste si interzice infractiunea de trafic de persoane (cu referire la interpretarile diferitelor structuri guvernamentale), existenta institutiilor de coordonare, mecanismul de identificare a victimelor traficului. S-a relevat de asemenea existenta prevederilor legislatiei nationale si internationale asupra asigurarii protectiei drepturilor victimelor, ce sunt atestate doar pe hartie si a caror implementare abia a fost inceputa in majoritatea statelor membre UE.

Organizatiile partenere in E-notes considera ca ar trebui facute eforturi suplimentare la nivelul Uniunii Europene din partea statelor membre, dar si prin implicarea societatii civile pentru ranforsarea cadrului de masuri in combaterea traficului de persoane.

Imbunatatirile substantiale privind implementarea majoritatii politicilor anti-trafic sunt o cerinta la nivel UE, in acest sens, recomandarile formulate de echipa E-notes se focalizeaza pe protectia drepturilor victimelor traficului de persoane, fiind considerate aspectele de baza ale eforturilor de combatere a infractiunii. Prevederile relevante care sunt implementate eficient se refera la prevenirea traficului de persoane si la protectia victimelor.

Identificarea si referirea persoanelor traficate
Respectarea drepturilor victimelor traficului de persoane poate fi asigurata doar daca toate persoanele prezumate a fi traficate sunt identificate ca atare (indiferent daca aleg sa colaboreze cu autoritatile). Rezultatele E-notes arata ca identificarea ramane un punct nevralgic. Pentru imbunatatirea procedurii de identificare la nivelul statelor membre UE, se considera esentiale urmatoarele masuri:

- Prin intermediul cooperarii cu autoritatile, procurorii si furnizorii de asistenta, statele membre, trebuie sa dezvolte liste si/sau indicatori pentru a imbunatati identificarea victimelor prezumate ale traficului de persoane, avand in vedere toate formele de exploatare: prin munca fortata, servitute domestica, servicii sexuale, cersetorie fortata, constrangere la comiterea de infractiuni, etc. De asemenea, ar trebui dezvoltati indicatori specifici de identificare a victimelor minore.
- Procesul de identificare nu se afla in atributiile unei agentii guvernamentale singulare, ci ar trebui sa fie realizat de echipe multidisciplinare care includ reprezentanti ai organizatiilor furnizori de servicii de asistenta pentru victimele traficului de persoane.
- Structurile/instrumentele nationale cu atributii in procesul de referire, sub forma Mecanismelor Nationale de Referire (NRM), fie institutiile implicate in implementarea Procedurilor Operationale Standard (POS) ar trebui sa se bazeze pe cooperare constanta si stransa intre unitatile de combatere a criminalitatii organizate, oficiile de imigrare, reprezentantii inspectiei muncii, patronate si sindicate, directiile de protectie a copilului, procurori, organizatii non-guvernamentale active in domeniul asistentei pentru victimele traficului de persoane.
- Cresterea accesului la justitie pentru victimele traficului de persoane, in special la aplicarea pentru compensatii financiare, se va materializa prin garantarea asistentei juridice gratuite, pentru toate persoanele identifcate ca victime ale infractiunii.
- Toate statele membre se vor asigura de implementarea procedurii de evaluare a riscului pentru victimele traficului de persoane, inainte de demararea procedurii de repatriere.

Monitorizarea

Desfasurarea activitatilor de monitorizare este esentiala, atat la nivel national cat si la nivel UE, astfel incat toti actorii implicati vor avea un nivel crescut de intelegere asupra masurilor si politicilor anti-trafic, nu doar la nivel de cunoastere a masurilor, ci asupra actiunilor directe de stopare a traficului de persoane, in contextul realitatii nationale. Pentru a asigura buna intelegere asupra implemenatrii acestor politici, a efectelor si impactului acestora, se recomada, cu urgenta, urmatoarele:

- Raportorii Nationali sau mecanismele exhivalente ar trebui sa se constituie ca structuri independente (dupa cum se prevede in Declaratia de la Haga, 1997), pentru a asigura monitorizare independenta si comparativa asupra rezultatelor masurilor anti-trafic. Este de asemenea necesar ca impactul si efectele negative neprevazute ale implementarii masurilor anti-trafic sa fie identificate si raportate.

- Realizarea unui nivel crescut de standardizare a terminologiei relevante, a statisticilor existente si a metodologiei de masurare a rezultatelor (e.g. numarul indivizilor anchetati pentru infractiunea de trafic de persoane).
- Intarirea cooperarii dintre Uniunea Europeana, statele membre si expertii GRETA, structura independenta de monitorizare a Conventiei Consiliului Europei asupra Actiunilor impotriva Traficului de Persoane, pentru evitarea suprapunerilor nerelevante in monitorizarea activitatilor intreprinse.

Legislatie

- Implementarea monitorizarii se impune la nivelul cadrului legal national, in directia adoptarii definitiei traficului de persoane prevazuta de Decizia Cadru din 2002 si de Conventia Consiliului Europei, din 2005.
- Rezida o nevoie crescuta de intelegere, la nivelul majoritatii statelor membre UE, a notiunii de „exploatare" si a infractiunilor conexe exploatarii in scopuri ilicite, atat in ceea ce priveste persoanele traficate in scopul exploatarii sau exploatate, cat si cu referire la persoanele supuse exploatarii ilegale, fara a fi fost traficate inainte.

Coordonarea politicilor anti-trafic la nivel national

- Toate statele membre care nu au stabilit pana in prezent o structura de coordonare si un plan national de actiune, ar trebui sa implementeze un astfel de dispozitiv, pentru a da mai multa coerenta politicilor anti-trafic. Alocarea eficienta a resurselor umane si economice se dovedeste cruciala in imbunatatirea functionarii structurii. In consecinta, va fi adecvat ca intr-un exercitiu ulterior de monitorizare, sa fie verificate resursele alocate la nivelul fiecarui stat membru UE in finantarea si sustinerea actiunilor unei structuri de coordonare anti-trafic.

8.17 Zhrnutie

Štyri mimovládne organizácie (MVO) sa v roku 2009 dohodli zapojiť sa do spoločného projektu s názvom "Observatóriom európskych mimovládnych organizácií o obchodovaní s ľuďmi, vykorisťovaní a otroctve" (skrátene E- záznamy), s rozsiahlym cieľom monitorovať, čo urobili vlády členských štátov Európskej únie (EÚ) pre zastavenie praktík podobných otroctvu, obchodovania s ľuďmi a rôznych iným foriem vykorisťovania spojeného s obchodovaním s ľuďmi. Talianska MVO, Associazione On the Road (Na ceste),[391] koordinovala projekt spolu regionálnou sieťou La Strada International, a dvomi národnými MVO, ACCEM,[392] so sídlom v Španielsku, a ALC,[393] so sídlom vo Francúzsku.

Radšej než vytvárať stálu inštitúciu na monitorovanie vládnych politík a opatrení, si projekt E-záznamy vytýčil za cieľ vyzbierať informácie o tom, čo sa dialo v každom z dvadsiatich siedmych štátov EÚ. To znamenalo vytvorenie výskumnej metodológie, ako aj nájdenie MVO a výskumníkov v každej z dvadsiatich siedmych zúčastnených krajín. Projekt zdôrazňuje dôležitú úlohu **indikátorov** na zmeranie pokroku v každom členskom štáte EÚ v konkrétnych postupoch proti obchodovaniu s ľuďmi (napr. rôzne zákony, politiky, postupy a praktiky, od ktorých sa očakáva, že znížia frekvenciu obchodovania s ľuďmi a ochránia a pomôžu každému, kto bol obchodovaný). Toto bolo premietnuté do výskumného nástroja cez identifikovanie zoznamu viac ako 200 štandardných otázok o predmetných postupoch, uvedených do praxe v každej krajine EÚ, ktoré by pomohli ohodnotiť pokrok proti obchodovaniu s ľuďmi.

1. Štandardy, na základe ktorých sa hľadali informácie v rámci monitorovania

Proces výskumu sa začal na začiatku roku 2010, v čase, keď sa zdalo, že Európska rada je blízko k dokončeniu svojich plánov týkajúcich sa nového

391. Associazione On the Road (Asociácia Na ceste) poskytuje širokú škálu služieb a ochranu obchodovaným osobám, žiadateľom o azyl, utečencom a migrantom vo všeobecnosti v troch talianskych regiónoch (Marche, Abruzzo, Molise). Taktiež sa zapája do zvyšovania povedomia, komunitnej práce, výskumu, budovania sietí a iniciatív na tvorenie politík na lokálnej, národnej a európskej úrovni.
392. ACCEM poskytuje sociálne služby a zapája sa do sociálnej a právnej oblasti na podporu žiadateľov o azyl, utečencov, vysídlených ľudí a migrantov v Španielsku.
393. ALC znamená *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (Sprevádzanie [ľudí], prijímacie centrá, Vzdelávacie a sociálne centrá). ALC koordinuje národnú sieť bezpečného bývania pre obchodované osoby, známu ako "Ac.Sé").

EÚ nástroja na štandardizovanie postupov proti obchodovaniu s ľuďmi v členských štátoch EÚ (malo by nahradiť *Rámcové rozhodnutie Rady o potláčaní obchodovania s ľuďmi* prijaté v júli 2002). V roku 2009 Európska komisia prezentovala návrh na nové Rámcové rozhodnutie o obchodovaní s ľuďmi. Kvôli nadobudnutia účinnosti Lisabonskej zmluvy, ktoré prerušilo všetky prebiehajúce legislatívne procesy, nemohli sa rozhovory v Rade o prijatí nového Rámcového rozhodnutia posunúť dopredu. Európska komisia následne predložila *nový návrh na Smernicu Európskeho parlamentu a Rady o predchádzaní a potláčaní obchodovania s ľuďmi, a ochrane obetí,* ktoré by anulovalo Rámcové rozhodnutie z roku 2002. V marci 2010 bol tento návrh postúpený do Európskeho parlamentu na zváženie. V septembri 2010, dva z parlamentných výborov navrhli sériu zmien k návrhu smernice a začal sa proces vytvorenia dohody medzi Radou, Komisiou a Európskym parlamentom. Očakávalo sa, že nariadenie bude prijaté pred koncom roku 2010.

Pokým široký návrh ustanovení v novej smernici vyzerá byť jasný, v čase, keď prebiehalo monitorovanie projektu E-záznamy v máji a júni 2010, smernica stále nebola prijatá (ani v čase, keď sa táto správa dokončovala v októbri 2010). Keď sa rozhodovalo, ktoré právne záväzky sa vzťahujú na identifikáciu štandardov monitorovania v každom členskom štáte EÚ (napr., povinnosti súvisiace s reakciami štátu na obchodovanie s ľuďmi), projekt si vybral iný regionálny nástroj, a síce *Dohovor Rady Európy o boji proti obchodovaniu s ľuďmi.* Dohovor bol prijatý v roku 2005 a nadobudol účinnosť vo februári 2008. Napriek tomu, že bol ratifikovaný aj viacerými štátmi mimo EÚ, k augustu 2010 všetky členské štáty EÚ, okrem jedného (Česká republika), buď ratifikovali Dohovor Rady Európy (19), alebo ho podpísali (7), a tak vyjadrili svoj zámer uplatňovať ho.

2. Použité metódy

Pri vypracovaní projektu E-záznamy začiatkom roku 2010, konzultant kládol dôraz na predchádzajúce publikácie, ktoré navrhovali vhodné "indikátory" pre členské štáty EÚ, ktoré by mali byť použité pri hodnotení ich pokroku v zosúladení zákonov a praktík s regionálnymi a medzinárodnými štandardmi (všetky, ktoré sú založené na *Protokole OSN o predchádzaní, potláčaní a postihovaní obchodovania s ľuďmi, predovšetkým ženami a deťmi,* prijatom v roku 2002, ktorý dopĺňa *Dohovoru OSN proti nadnárodnému organizovanému zločinu* (2002). Dôraz bol taktiež kladený na komentáre obsiahnuté vo viacerých publikáciách Európskej komi-

sie[394] o zistených nedostatkoch v spôsoboch, akým členské štáty EÚ podávajú správy o vlastných krokoch na zastavenie obchodovania s ľuďmi, alebo ochrane a pomoci osobám, o ktorých sa predpokladá[395], že boli obchodované. Niektoré publikácie poznamenali, že bolo ťažké získať informácie z členských štátov (niekedy aktuálne informácie, niekedy akékoľvek informácie) o ich praktikách proti obchodovaniu s ľuďmi. Niektoré odkazovali na nedostatok "harmonizovaných súborov dát", pričom upozorňovali na nesúlad v používaní terminológie alebo spoločných mechanizmov podávania správ o vlastných krokoch zo strany členských štátov EÚ. Všetky tieto problémy boli potvrdené počas vypracovania projektu.

Dokument Európskej komisie vytvorený v roku 2006[396] zaznamenal, že členské štáty poskytli málo informácií o ich pravidlách a praktikách vzťahujúcich sa na ochranu alebo pomoc obchodovaným osobám. V roku 2008 Pracovný dokument[397] zopakoval, že bolo ťažké získať informácie od členských štátov o počtoch obchodovaných osôb, ktorým bola poskytnutá pomoc, ale zaznamenal, že do roku 2006 štáty, ktoré poskytli Komisii informácie, odhalili, že len niečo viac ako 1500 prípadov obchodovania s ľuďmi bolo vyšetrených v 23 členských štátoch v priebehu jedného roka. Dokument tiež udával, že väčšina členských štátov EÚ zaviedla obdobie na rozmyslenie, aby umožnila predpokladaným obchodovaným osobám zostať v krajine a zotaviť sa, predtým, než budú požiadané o podanie svedectva pred úradmi. Avšak, len päť krajín ohlásilo, koľko ľudí bolo podporených a celkový výsledok došiel k počtu 26 jednotlivcov za celý rok! Pre MVO, ktoré sa špecializujú na prácu proti obchodovaniu s ľuďmi (či už poskytovaním služieb – pomoci – predpokladaným obchodovaným osobám, alebo zapojením sa do iniciatív na predchádzanie obchodovaniu s ľuďmi), bol nedostatok presnosti v údajoch poskytnutých členskými štátmi EÚ Európskej komisii problémom. Na jednej strane navrhli, že nikto, ani Európska komisia, nebola v pozícii zistiť, čo sa dialo po celej EÚ. Na strane druhej, taktiež navrhli, že mnoho ustanovení

394. Ako sú: Európska Komisia, Oznámenie Európskemu Parlamentu a Rade o "Boji obchodovania s ľuďmi – integrovaný prístup a návrhy pre akčný plán" (Európska Komisia referencia COM(2005) 514 ukončené 18. október 2005); a Pracovný dokument Európskej Komisie (Európska Komisia referencia COM(2008) 657 konečné), *Ohodnotenie a monitorovanie implementácie Plánu EÚ o najlepších krokoch, štandardoch a postupoch na potieranie a predchádzanie obchodovania s ľuďmi,* október 2008.
395. Pojem "predpokladaná" obchodovaná osoba sa vzťahuje na niekoho, kto je podozrivý z toho, že bol obchodovaný, pokým definitívne informácie o jej skúsenosti nie sú k dispozícii.
396. Európska Komisia robí správu o implementácii Rámcového Rozhodnutia Rady z 19. júla 2002 o potieraní obchodovania s ľuďmi (Európska Komisia referencia COM(2006) 187 dokončené 2. mája 2006).
397. Viď poznámku 394 vyššie.

regionálnych alebo medzinárodných dohovorov o obchodovaní s ľuďmi alebo inými ľudsko-právnymi problémami boli štátmi ignorované (napriek tomu, že k takýmto zmluvám pristúpili) a neimplementované.

Niektoré členské štáty EÚ vymenovali národného spravodajcu pre obchodovanie s ľuďmi, aby informoval o pokroku, ktorý sa dosiahol v postupoch krajiny proti obchodovaniu a odporučil, čo sa môže zlepšiť. Bolo známe, že deväť z 27 členských štátov EÚ malo v polovici monitorovacieho procesu v roku 2010 takéhoto národného spravodajcu, ale nie všetky vydávajú pravidelné správy a niektoré sa zameriavajú na obchodovanie s ľuďmi za špecifickým účelom (ako je obchodovanie so ženami za účelom sexuálneho vykorisťovania) bez oznamovania, aké kroky prijali proti obchodovaniu za takýmto účelom. Z dlhodobého hľadiska, ak by národní spravodajcovia boli vymenovaní vo všetkých štátoch EÚ, boli by v dobrej pozícii na zavedenie štandardných definícií a spôsobov na meranie štatistík o obchodovaní s ľuďmi tak, aby bolo možné urobiť zmysluplné porovnania medzi krokmi proti obchodovaniu s ľuďmi rôznych štátov EÚ.

Cieľom E-záznamov bolo zistiť, aké informácie boli dostupné vo všetkých členských štátoch EÚ o ich zákonoch, politikách a postupoch v problematike obchodovania s ľuďmi, koľko ľudí bolo identifikovaných ako "obchodovaných" a využili nejakú formy ochrany, koľkým bola poskytnutá pomoc, a pod. Keďže táto práca prebiehala v máji a júni 2010, prvotný zámer bol zozbierať informácie o situácii v každej krajine počas roku 2009. Avšak čoskoro bolo jasné, že v mnohých krajinách informácie o roku 2009 buď neboli k dispozícii, alebo boli neúplné, a konečné informácie boli skôr dostupné o roku 2008.

MVO, ktoré boli požiadané, aby určili výskumníka na zozbieranie a spísanie informácií pre monitorovanie E-záznamov, boli skôr také, ktorých expertíza sa vzťahovala na dospelých, ktorí boli obchodovaní (predovšetkým ženy). Taktiež zostavili informácie o obchodovaní s deťmi, hoci veľa z nich malo ťažkosti zachytiť množstvo informácií o obchodovaných deťoch. V mnohých štátoch EÚ bola dospelým, ktorí boli obchodovaní, poskytnutá starostlivosť a služby od MVO. Čo sa týka detí, štátne agentúry zodpovedné za ochranu detí majú monopol na starostlivosť o deti, ktoré boli obchodované.

Každý výskumník bol požiadaný, aby vyplnil 60 – stranový výskumný protokol, ktorým sa postaral o dodatočný text v početných bodoch, kde "áno" a "nie" odpovede boli nevhodné, a napísal krátky "profil" o vlastnej krajine, opísaním vzoru prípadov obchodovania v jeho krajine a postupoch vlády. Infor-

mácie pripravené 27 výskumníkmi boli spracované a spísané do jednoduchej databázy v júli 2010. Boli analyzované tým istým konzultantom, ktorý pripravil výskumný protokol, aby sa identifikovali možné vzory – predovšetkým zlyhania členských štátov EÚ v rešpektovaní ich záväzkov chrániť a pomáhať obchodovaným osobám – a pripravila sa správa o zisteniach.

Výskumníci boli požiadaní, aby komentovali, či ich krajina bola krajinou pôvodu, tranzitu alebo miesta určenia, alebo kombináciou niektorých z týchto. Táto kategorizácia sa nezamerala na prípady vnútorného obchodovania s ľuďmi. Relatívne málo krajín bolo rozčlenených do jednej z týchto troch kategórií (dve, Francúzsko a Portugalsko, boli opísané hlavne ako krajiny miesta určenia). Ostatných 25 bolo považovaných za kombináciu: jedna aj ako krajina pôvodu a miesta určenia; desať ako krajiny tranzitu a miesta určenia; a deväť ako všetky tri typy.

3. Zistenia z monitorovania

230 otázok vo výskumnom protokole hľadalo informácie o viacerých rôznych témach, čím sa sťažilo vytvorenie "čierno - bieleho" profilu, či členské štáty EÚ dodržiavali svoje záväzky a rešpektovali ľudské práva obchodovaných osôb. Avšak, v prípade piatich prípadov bolo možné ohodnotiť stupeň pokroku, ktorý sa dosiahol. Aj v týchto prípadoch však, dostupné informácie boli buď nekompletné alebo nedostupné, takže žiadna zo zmienených štatistík nemôže byť považovaná za hodnovernú. Týchto päť prípadov je zhrnutých v tabuľke dolu.

Tabuľka 1 Pokrok v EÚ v kľúčových bodoch pri postupoch proti obchodovaniu

Prípad	Situácia zaznamenaná v máji 2010
Koordinácia postupov proti obchodovaniu na národnej úrovni	Udáva sa, že v 22 z 27 členských štátov bola vytvorená národná štruktúra- národný referenčný rámec na postupy proti obchodovaniu. Udávané krajiny bez národných koordinačných štruktúr sú Francúzsko, Nemecko, Grécko a Malta. V Nemecku a Taliansku postupy proti obchodovaniu nie sú organizované na národnej alebo federálnej úrovni, ale to neznamenalo, že boli neadekvátne. Švédsko nominovalo národného koordinátora, ktorého úlohou bolo vyvinúť koordinačnú štruktúru na potieranie obchodovania, ale len pre prípady obchodovania zo sexuálnych dôvodov.
Identifikácia predpokladaných obchodovaných osôb	Jedenásť z 27 členských štátov údajne má samostatnú vládnu agentúru alebo štruktúru zodpovednú za formálnu identifikáciu kohokoľvek, kto sa predpokladá, že bol obchodovaný, zatiaľ čo 16 nemá. Šesť krajín, kde nie je proces identifikácie na národnej úrovni nemá štan-

dardný postup po celej krajine na formálnu identifikáciu niekoho, kto sa predpokladá, že bol obchodovaný (Rakúsko, Bulharsko, Francúzsko, Nemecko, Taliansko, Malta).

Dostupnosť obdobia reflexie najmenej 30 dní

V 25 z 27 členských štátov je údajne ustanovenie o reflexnom období a zotavení sa dospelých, u ktorých sa predpokladá, že boli obchodovaní – značná časť štátov sa zdá, že dodržiava minimálne štandardy v tomto bode. V Taliansku nie je žiadne ustanovenie o reflexnom období, ale v praxi je niekedy dostupné. V Litve je udávané, že ide o podobnú situáciu. Pre rok 2008 boli informácie dostupné z 11 krajín okolo celkového počtu 207 ľudí, ktorým bolo poskytnuté reflexné obdobie. Za rok 2009 boli dostupné informácie z 18 krajín a bolo zistené, že o dosť viac ľudí dostalo podporu: 1150 obchodovaných osôb. Zdalo sa, že tento údaj vyjadril značný nárast.

Postupy okolo návratov do bezpečia a, ak možné, dobrovoľne

Šesť krajín bolo spomenutých výskumníkmi ako tie, ktoré majú formálne dohody s inými členskými štátmi EÚ alebo tretími krajinami na riadenie procesu návratu obchodovanej osoby do jej alebo jeho vlastnej krajiny (Francúzsko, Lotyšsko, Portugalsko, Španielsko a Veľká Británia; Grécko má bilaterálnu dohodu, ktorá sa vzťahuje len na obchodované deti). Avšak existencia dohôd sa zdá byť malou garanciou, že zneužívanie sa nebude ďalej diať. Keď úrady plánujú vrátiť predpokladanú obchodovanú dospelú osobu do jej alebo jeho krajiny pôvodu, výskumníci zistili, že len v troch zo 17 členských štátov EÚ, o ktorých boli dostupné informácie, sa vykonávalo hodnotenie rizík ako rutina (Taliansko, Portugalsko a Rumunsko) pred návratom; napr. Hodnotenie o možných rizikách pre jednotlivca alebo členov jeho rodiny.

Prístup k odškodneniu a kompenzácii

V 12 krajinách (Z 22, pre ktoré boli dostupné informácie) obchodovaná osoba údajne dostala kompenyáciu za náhradu škody alebo ako kompenzáciu počas roku 2008, a v 12 krajinách (z 20) počas roku 2009, buď ako výsledok súdneho konania alebo z iného zdroja. Deväť krajín, v ktorých údajne boli kompenzačné platby za obidva roky, boli Rakúsko, Dánsko, Francúzsko, Nemecko, Taliansko, Holandsko, Španielsko, Švédsko a Veľká Británia.

Na základe týchto piatich bodov by bolo nevhodné pokúsiť sa zoradiť konanie v každom štáte (ako to robí ročná správa o obchodovaní s ľuďmi (TIP report) vydávaná Spojenými štátmi), keďže v prvých troch kategóriách sú to rozdielne krajiny, zatiaľ čo v posledných dvoch množstvo štátov, ktoré robia veci správne. Napríklad Taliansko je jednou zo spomínaných krajín, ktorá koná dobre vo veľa veciach, ale má systém proti obchodovaniu s ľuďmi, ktorý je značne rozdielny v porovnaní s väčšinou ostatných krajín EÚ.

Popri týchto piatich kľúčových bodoch, výskum monitoroval mnohé iné vývoje, a síce, či **legislatíva v každej krajine** odpovedá na všetky rôzne kate-

górie vykorisťovania spojeného s obchodovaním (napr. z dôvodu "vykorisťovania prostitúciou alebo iných foriem sexuálneho vykorisťovania", z dôvodu vykorisťovania ľudskej práce alebo služieb nútenej práce, nevoľníctva, otroctva alebo praktík podobných otroctvu, alebo z dôvodu odoberania ľudských orgánov). Záver bol, že vo všeobecnosti áno. Dve krajiny – Estónsko a Poľsko – boli v správe udávané ako tie, ktoré začali s legislatívnymi zmenami. V inej krajine, Španielsku, v decembri 2010 vstupuje do účinnosti legislatíva, ktorá prináša definíciu obchodovania s ľuďmi v Trestnom zákonníku v súlade so štandardmi EÚ a Rady Európy.

Výskum bol taktiež zameraný na zistenie, či sú **definície obchodovania s ľuďmi** v každej krajine dostatočne podobné pre informácie o ľuďoch opísaných ako "priekupníci" alebo "obete obchodovania" na porovnanie. V tomto bode bolo zistených viacero odchýlok. Napríklad vo Francúzsku je trestný čin obchodovania s ľuďmi obšírne definovaný tak, že sa vzťahuje prakticky na každého, kto je podozrivý z kupliarstva. Výsledkom je, že to vyzeralo, že viac ako 900 jednotlivcov bolo v jednom roku (2008) odsúdených za obchodovanie s ľuďmi vo Francúzsku. Pri dôkladnom preskúmaní však bolo očividné, že niečo nad polovicu (521) bolo odsúdených za "závažné kupliarstvo" (trestný čin bližší k definícii obchodovania v ostatných štátoch EÚ) a len 18 odsúdení sa vzťahovalo na trestné činy, ktoré sú uznané ako "obchodovanie s ľuďmi" podľa definícií prijatých Rámcovým rozhodnutím EÚ v roku 2002 a Dohovorom Rady Európy. Vo Fínsku je opačná situácia – prípady, ktoré by mali byť prejednávané ako obchodovanie s ľuďmi podľa regionálnych štandardov boli posúdené ako tie, ktoré len zahŕňajú zadovažovanie alebo kupliarstvo.

Výskum sa pýtal, aký bol proces **identifikovania ľudí ako "obchodovaných"**, a či im bolo rutinne udelené reflexné obdobie alebo iné formy ochrany alebo pomoci. Zistenia ukázali, že oboje, identifikačné postupy a kritéria na ohodnotenie, či daný jednotlivec bol obchodovaný, sa výrazne líšili medzi krajinami Európskej únie, ako keby nebol k dispozícii žiaden spoločný identifikačný nástroj.

Udáva sa, že národná štruktúra na koordinovanie postupov proti obchodovaniu s ľuďmi – národný referenčný rámec, bol vytvorený v 20 z 27 členských štátov. Národný akčný plán na potláčanie obchodovania s ľuďmi alebo podobný plán bol, podľa správy, prijatý v 22 z 27 členských štátov (pričom niektoré sa zameriavajú výlučne na obchodovanie za účelom sexuálneho vykorisťovania). Väčšina krajín má policajnú jednotku, ktorá sa špecializuje na boj proti obchodovaniu s ľuďmi. V niektorých krajinách je postup uznaný na národnej úrovni a špecifikuje úlohy rôznych organizácií v poskytovaní

ochrany alebo pomoci obchodovaným osobám a ich odkázanie na príslušné služby – Národný referenčný mechanizmus alebo systém. Spolu 17 krajín má takýto systém, zatiaľ čo 9 ho nemá.

V 11 z 27 členských štátov je samostatná vládna agentúra alebo štruktúra zodpovedná za vytváranie formálnej identifikácie kohokoľvek, o kom sa predpokladá, že bol obchodovaný, pričom v 16 krajinách to tak nie je. Sedem krajín, kde nie je jednotný proces identifikácie, nemá žiaden štandardný postup používaný v celej krajine na formálne identifikovanie niekoho, kto je predpokladaný, že bol obchodovaný. Avšak toto nenaznačuje, že identifikácia (a následná dostupnosť ochrany) je viac efektívna v krajinách s jednotným systémom. Keď ide o identifikačné postupy, oboje, aj detail postupov, ktorými sa treba riadiť, rozsah v akom sú rešpektované, a efektivita postupov sa veľmi rozlišovali medzi rôznymi krajinami.

Výskumníci boli schopní získať len čiastočné informácie **o počtoch predpokladaných obchodovaných ľudí počas 12-mesačného obdobia v roku 2008 a 2009** – celkom 4010 v 16 krajinách (pričom niektorí z týchto ľudí mohli byť započítaní dvakrát, napr. najprv identifikovaní v krajine miesta určenia a opäť, následne, v ich krajine pôvodu). Niečo nad polovicu (55%) prípadov predpokladaných obchodovaných osôb boli následne úradmi definitívne potvrdené ako obchodované. Podobne informácie o počte predpokladaných **obchodovaných osôb, ktorí boli postúpení (službám) v roku 2009,** dostupné zo 16 krajín, sa vzťahovali na celkovo 3800 ľudí. V obidvoch prípadoch dospelých a detí, ktorí boli predpokladanými obeťami, sa niektorí v roku 2008 alebo 2009 stratili, predtým než bol dokončený identifikačný proces. Zaznamenalo sa, že predpokladané obchodované deti sa stratili v 10 krajinách. Iná skupina 10 štátov hlásila, že dospelí, ktorí boli predbežne určení ako "obchodovaní" sa stratili.

Výskumníci zozbierali informácie o rôznych aspektoch ochrany, hlavne:

- Doba na reflexiu a zotavenie
- Hodnotenia rizika; a
- Návraty (napr. repatriáciu do krajiny pôvodu obchodovanej osoby).

Výskumníci získali informácie, ktoré boli neúplné v niektorých krajinách **o počtoch osôb, ktorým bolo udelené reflexné obdobie.** Pre rok **2008** boli informácie dostupné z 11 krajín o celkovom počte 207 ľudí, ktorí ho využili. Pre rok 2009 boli informácie dostupné z 18 krajín o 1150 osobách. V roku 2008 bolo udelených 1026 povolení na pobyt spolu v deviatich krajinách. Priemer o viac než 100 povolení na pobyt na krajinu vytvoril nepresný obraz, keďže 664 bolo

udelených len v Taliansku (a ďalších 810 v roku 2009), popri 235 v Holandsku, čo znamená, že zvyšných sedem krajín vydalo spolu len 127 povolení na pobyt obchodovaným osobám (napr. priemer menej ako 20). Toto znamená, že zákony alebo politiky určujúce, ktorým obchodovaným osobám sú udelené povolenia na pobyt sa podstatne líšia medzi rôznymi krajinami EÚ.

Bolo hlásené, že obchodovaným deťom bolo udelené povolenie na pobyt[398] v šiestich krajinách v týchto dvoch rokoch: Francúzsko, Poľsko a Veľká Británia, kde im bolo udelené dočasné povolenie len krátko predtým ako dosiahli 18 rokov, a Rakúsko a Dánsko, kde sa povolenie na pobyt považovalo za trvalé. V Taliansku majú deti zo zahraničia, obchodované alebo nie, dovolené zostať až dokým nedovŕšia 18 rokov. Avšak aj obchodované deti môžu získať povolenie na pobyt na takom istom základe ako obchodovaní dospelí (podľa nariadenia známeho ako "článok 18"). V Holandsku bolo deťom udelené povolenie na pobyt, ale relevantné údaje sťažili ohodnotenie, či by mohli zostať aj natrvalo.

V prípade návratov (alebo repatriácie), výskum zisťoval, či boli návraty dobrovoľné alebo nútené, koľko predpokladaných obchodovaných ľudí bolo navrátených a za akých podmienok. Potvrdili, že šesť členských štátov EÚ má formálne dohody o návrate so štátmi, ktoré sú považované za krajiny pôvodu.

O **návratoch dospelých v roku 2008 boli** k dispozícii informácie z 15 krajín: 194 bolo navrátených do ich krajiny pôvodu z 12 krajín (Rakúsko, Cyprus, Česká republika, Dánsko, francúzsko, Grécko, Taliansko, Lotyšsko, Holandsko, Poľsko a Slovinsko). V tomto roku (2008) bol hlásený najväčší počet návratov z Holandska (37), s druhým Talianskom (31), nasledoval Cyprus (24), Nemecko (23) a Dánsko (21). Informácie o návratoch boli **v roku 2009** dostupné z menej krajín, len 10. V tomto prípade bolo navrátených 171 jednotlivcov do krajiny ich pôvodu z 10 krajín, s jednou krajinou, Gréckom, ktorá sa postaralo o viac ako polovicu všetkých návratov.

Inde bolo 22 návratov z Rakúska a 23 z Poľska, spolu s ostatnými siedmimi inými krajinami, ktoré mali 19 návratov spolu. Evidentne, počty navrátencov reprezentujú rozdielne podiely na celkovom čísle postúpených alebo predpokladaných obchodovaných osobách v každej z týchto krajín. Avšak, opäť, údaje naznačujú, že tu sú rozdielne kritériá v každej krajine na rozhodnutie,

398. "Povolenie na pobyt" je druhový termín na opísanie právneho nároku, ktorý je daný cudzincom na to, aby zostali v krajine buď dočasne, alebo natrvalo.

či navrátiť predpokladanú obchodovanú osobu a počty návratov neboli proporcionálne k počtu predpokladaných obchodovaných osôb, ktoré boli identifikované alebo im boli udelené obdobia na rozmyslenie.

V roku 2008 alebo 2009 bola **občanom iných členských štátov EÚ, ktorí boli identifikovaní v krajine ako predpokladané obchodované osoby,** poskytnutá ochrana a pomoc v 19 členských štátoch na takom istom základe ako občanom z tzv. „tretích krajín" mimo EÚ. Avšak v šiestich členských štátoch bolo zaznamenané (Nemecko, Maďarsko, Lotyšsko, Litva, Rumunsko a Španielsko), že občanom z iných štátov EÚ, ktorí boli identifikovaní ako obchodovaní, nebola poskytnutá kvalitná ochrana a pomoc, tak ako občanom z „tretích krajín". Niektorí občania iných štátov EÚ zažili ťažkosti pri ich identifikovaní ako „obchodovaní", alebo pri získavaní pomoci. Viac menej toto znamená, že vo väčšine krajín západnej Európy, do ktorých boli občania krajín EÚ zo strednej Európy obchodovaní, boli schopní dostať pomoc. V 14 z 25 krajín EÚ boli občania EÚ identifikovaní a dostali pomoc v roku 2008 a 2009 na takom istom základe ako obchodované osoby z krajín mimo EÚ.

V otázke aké formy **súdnej ochrany boli dostupné pre obchodovaných dospelých** alebo deti, ktoré boli obete - svedkovia, bolo zaznamenané, že v takmer polovici členských štátov EÚ nástroje na ochranu obetí -svedkov boli k dispozícii. Súdna ochrana, na ktorú sa výskumníci pýtali, zahŕňala obete - svedkov schopných poskytnúť dôkaz v predbežnom vypočúvaní (napr. pred vyšetrovacím sudcom) a takých, čo sa neukážu na verejnom pojednávaní, a obete – svedkov, ktorí poskytujú dôkaz cez video link alebo sú zakrytí pred dohľadom obvineného. Viac menej v piatich krajinách (Česká republika, Dánsko, Francúzsko, Portugalsko a Veľká Británia) boli zaznamenané prípady v roku 2008 alebo 2009, v ktorých obchodovaný dospelý alebo dieťa, ktorých identita mala zostať tajná, bola verejne odhalená v priebehu trestného konania.

Nedávny výskum organizácií Anti Slavery International[399] a OBSE[400] uzavrel, že napriek tomu, že existuje právo na kompenzáciu pre obchodovanú osobu a napriek existencii niekoľkých kompenzačných mechanizmov, skutočný príjem kompenzačnej platby obchodovanou osobou je, v praxi, zriedkavý. Viac menej v 12 krajinách (z 22, o ktorých sú dostupné informácie) obchodovaná osoba dostala platbu za náhradu škody alebo ako kompenzáciu počas roku 2008, a v 12 krajinách (z 20) počas roku 2009, buď ako dôsledok súdneho

399. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
400. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

konania alebo z iného zdroja. Deväť krajín, v ktorých boli zaznamenané kompenzačné platby počas dvoch rokov, boli Rakúsko, Dánsko, Francúzsko, Nemecko, Taliansko, Holandsko, Španielsko, Švédsko a Veľká Británia.

Výskum detailne neskúmal početné **metódy predchádzania,** ale zameral sa na zistenia, aké informácie boli dostupné pre migrantov pred a po ich príchode do krajiny, kde je zaznamenané, že obchodované osoby boli vykorisťované.

Dohovor Rady Európy vyžaduje, aby štáty "uvažovali nad vymenovaním **Národných spravodajcov** alebo iných mechanizmov na monitorovanie aktivít proti obchodovaniu štátnych inštitúcií a implementácie požiadaviek národnej legislatívy". Aj keď ustanovenie vyžaduje len, aby štáty "uvažovali" nad takým vymenovaním, je tu dôvod domnieva sa, že blížiaca sa smernica EÚ bude výrazne silnejšia v tomto bode, čím sa stane požiadavkou, aby členské štáty EÚ vytvorili nezávislého národného spravodajcu alebo iný ekvivalentný mechanizmus. V marci 2009 konferencia na tému národných spravodajcov upozornila, že 12 štátov EÚ už má vymenovaného národného spravodajcu (alebo ekvivalentný mechanizmus) na monitorovanie národných reakcií na obchodovanie s ľuďmi. Výskumníci potvrdili, že deväť z 27 krajín EÚ má národného spravodajcu pre obchodovanie (Cyprus, Česká republika, Fínsko, Lotyšsko, Litva, Holandsko, Portugalsko, Rumunsko a Švédsko), pokým 16 nie. Bolo zaznamenané, že niektoré (Švédsko) sa sústredili výlučne na prípady zahŕňajúce obchodovanie na sexuálne účely. V niektorých štátoch (ako Belgicko a Španielsko) rozdielna štátna inštitúcia je zapojená do monitorovania postupov proti obchodovaniu. V troch z deviatich so spravodajcom (Lotyšsko, Litva a Švédsko), nebola úloha spravodajcu úplne nezávislá od tých, ktorí boli zapojení do operácií proti obchodovaniu, čím sa limitovala ich nezávislosť a potenciálne znížila ich schopnosť monitorovať striktne nezávislým spôsobom.

4. Závery a odporúčania

Projekt E-záznamy ukázal, že medzi členskými štátmi EÚ existujú podstatné rozdiely v základných aspektoch politiky proti obchodovaniu s ľuďmi a jej udávaním do praxe, a to najmä v oblastiach, akými sú národná legislatíva proti obchodovaniu s ľuďmi a definície (alebo interpretácie relevantnými vládnymi agentúrami), čo spadá pod obchodovanie, existencia koordinačných orgánov a proces identifikácie obchodovaných osôb. Výskum taktiež ukázal, že niekoľko ustanovení medzinárodnej a národnej legislatívy, ktoré sú určené na zabezpečenie ochrany práv obchodovaných osôb stále existujú len na papieri a ich implementácia sa vo väčšine členských štátov EÚ sot-

va začala. Organizácie, ktoré sa zapojili do projektu E-záznamy sú presvedčené, že EÚ, členské štáty a občianska spoločnosť by mali vynaložiť viac úsilia na posilnenie základu politického rámca, na národných a európskej úrovni, ktorý je určený na zastavenie obchodovania s ľuďmi.

Zatiaľ čo sú potrebné podstatné zlepšenia v súvislosti s implementáciou mnohých aspektov politík proti obchodovaniu v EÚ, nasledovné odporúčania, pripravené projektom E-záznamy, sa zameriavajú na ochranu práv obchodovaných osôb, keďže sme presvedčení, že toto by malo byť základom akýchkoľvek snáh štátu čeliť obchodovaniu s ľuďmi. So zreteľom na prevenciu obchodovania a ochranu obchodovaných osôb, by mali byť relevantné ustanovenia implementované.

Identifikácia a referovanie obchodovaných osôb

Ochrana práv obchodovaných osôb môže byť zabezpečená len vtedy, ak všetky predpokladané obete (bez ohľadu na ich spoluprácu s úradmi) sú ako také aj identifikované. Zistenia E-záznamov ukazujú, že identifikácia je stále veľmi slabým článkom boja proti obchodovaniu s ľuďmi v členských štátoch EÚ. V úmysle zlepšiť identifikačný proces v členských štátoch považujeme za podstatné, aby:

- Členské štáty vytvorili zoznam a/alebo indikátory, v spolupráci s orgánmi činnými v trestnom konaní, úradmi prokurátora a poskytovateľmi služieb, na pomoc pri identifikácii predpokladaných obetí obchodovania s ľuďmi pre akúkoľvek formu vykorisťovania. Dodatočné indikátory by mali byť identifikované pre každú formu vykorisťovania, ako je, pracovné vykorisťovanie, domáce nevoľníctvo, sexuálne vykorisťovanie, nútené žobranie, nútená účasť na nezákonných aktivitách, atď. Špecifické indikátory by mali byť vytvorené na identifikáciu detských obetí;
- Identifikácia nie je zodpovednosťou samostatnej vládnej agentúry, ale by mala byť vykonávaná multidisciplinárnymi tímami, vrátane organizácií, ktoré poskytujú služby obchodovaným osobám ;
- Národné štruktúry, ktoré riešia referovanie obchodovaných osôb, či už Národné referenčné mechanizmy (NRM), alebo iné rámce, zapojené do implementácie Štandardných operačných postupov (ŠOPP), by mali byť založené na úzkej a pravidelnej spolupráci medzi orgánmi činnými v trestnom konaní, imigračnými úradníkmi, pracovnými inšpektormi, relevantnými odbormi, úradmi na ochranu detí, úradmi prokurátora a MVO alebo inými poskytovateľmi služieb;
- Prístup k spravodlivosti pre obchodované osoby, vrátane žiadania o náhradu škody by sa zlepšil zaistením bezplatnej právnej pomoci všetkým identifikovaným obchodovaným osobám;

- Všetky členské štáty by mali zaručiť rutinné vykonávanie individuálnych vyhodnotení rizík pre všetky obchodované osoby, keď sa navrhne, aby sa navrátili do ich krajiny pôvodu;

Monitoring

Na EÚ a národnej úrovni je potrebný ďalší monitoring za účelom, aby všetky relevantné zainteresované strany lepšie porozumeli, nielen to, čo je na papieri o to, čo má byť spravené v každej krajine na zastavenie obchodovania, ale aj čo sa deje v skutočnosti. Pre lepšie pochopenie implementácie, efektov a dopadu politík proti obchodovaniu v EÚ, je nutné aby:

- Národní spravodajcovia alebo iné rovnocenné mechanizmy boli nezávislými orgánmi (ako bolo dohodnuté v Haagskej deklarácii, 1997), tak, aby sa garantovalo nezávislé a porovnateľné monitorovanie výsledkov podniknutých krokov proti obchodovaniu s ľuďmi. Taktiež je dôležité, aby dopad a nepredvídané alebo aj negatívne efekty postupov proti obchodovaniu boli identifikované a zaznamenané;
- Malo by existovať viac štandardizácie relevantnej terminológie, štatistík a spôsobov merania (napr., počty jednotlivcov stíhaných za obchodovanie);
- Mala by existovať blízka spolupráca medzi EÚ a jej členskými štátmi a členmi GRETA, nezávislého monitorovacieho orgánu Dohovoru Rady Európy o boji proti obchodovaniu s ľuďmi, aby sa predišlo zbytočnej duplicite monitorovania.

Legislatíva

- Ďalšie monitorovanie je potrebné na zaistenie, či všetky národné právne rámce zahŕňajú definíciu obchodovaniu s ľuďmi dohodnutú v Rámcovom rozhodnutí z roku 2002 a Dohovore Rady Európy z roku 2005.
- Zdá sa, že existuje dôležitá potreba pre lepšie pochopenie pojmu "vykorisťovanie" v mnohých členských štátoch EÚ a rôzne trestné činy vzťahujúce sa na ilegálne vykorisťovanie, keď sú ľudia obchodovaní do vykorisťovania alebo za účelom vykorisťovania, a keď sú ľudia predmetom ilegálneho vykorisťovania bez toho, aby boli obchodovaní.

Koordinácia politík proti obchodovaniu s ľuďmi na národnej úrovni

- Všetky členské štáty, ktoré tak ešte neurobili, by mali vytvoriť koordinačnú štruktúru a národný akčný plán, aby viac scelili svoje politiky proti obchodovaniu s ľuďmi. Vhodné pridelenie ľudských a ekonomických zdrojov je nevyhnutné pre efektívne fungovanie obidvoch aspektov. Následne by to bolo vhodné pre akékoľvek budúce monitorovacie mať prehľad o tom, aké zdroje sú pridelené v každom členskom štáte EÚ na financovanie národnej koordinačnej štruktúry a podpory koordinačných aktivít.

8.18 Povzetek

Leta 2009 so se štiri nevladne organizacije dogovorile, da bodo sodelovale v skupnem projektu z naslovom "Evropska nevladna opazovalnica trgovine z ljudmi, izkoriščanja in suženjstva" (skrajšano ime: E-notes – E-opažanja), katerega široko zastavljeni cilj je bil spremljati, kaj počno vlade v Evropski uniji (EU), da bi prekinile suženjstvo, trgovino z ljudmi in različne oblike izkoriščanja, vezanega na trgovino z ljudmi. Projekt je usklajevala italijanska nevladna organizacija, društvo *On the Road*[401], v sodelovanju z regionalno mrežo za boj proti trgovini z ljudmi *La Strada International* ter dvema nacionalnima nevladnima organizacijama – španskim ACCEM[402] in francoskim ALC[403].

Namen projekta ni bil vzpostavitev stalne institucije, ki bi spremljala delovanje vlad na tem področju, temveč zbrati podatke o tem, kar se dogaja v vsaki izmed 27 držav članic EU. Zato je bilo treba razviti raziskovalno metodologijo in poiskati nevladne organizacije ter raziskovalce v vseh državah članicah v želji, da bi sodelovali pri projektu. Na začetku projekta smo se osredotočili na vlogo **kazalnikov**, s katerimi bi lahko izmerili napredek posamezne države članice pri odzivanju na trgovino z ljudmi (na primer na področju zakonodaje, politik, ukrepov in primerov praks, za katere se pričakujejo, da bodo zmanjšali obseg trgovine z ljudmi in da bodo zaščitili in podprli žrtve trgovine z ljudmi). Na podlagi kazalnikov in priprave seznama z več kot 200 tipičnimi vprašanji v zvezi z različnimi oblikami odziva je nastalo raziskovalno orodje, za katerega upamo, da bo pripomoglo k oceni napredka na področju odzivanja na trgovino z ljudmi v posameznih državah članicah EU.

1. Standardi, na podlagi katerih smo znotraj spremljanja iskali podatke

Raziskovalno delo se je začelo na začetku 2010, ko je kazalo, da bo Evropski svet v kratkem zaključil obravnavo novega instrumenta EU, s katerim bi

401. Društvo *On the Road* ponuja širok spekter storitev in zaščito žrtvam trgovine z ljudmi, prosilcev za azil, beguncem ter priseljencem v treh italijanskih pokrajinah (Marche, Abruzzo in Molise). Deluje tudi na področju ozaveščanja, izvaja dejavnosti znotraj skupnosti, raziskuje, mreži in daja pobude za razvoj politik na lokalni, državni in evropski ravni.
402. ACCEM ponuja socialne storitve in ukrepa na socialnem in pravnem področju v želji po pomoči prosilcem za azil, beguncem, razseljenim osebam in priseljencem v Španiji.
403. Kratica ALC pomeni *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (spremljanje [ljudi], sprejemni centri, izobraževalni in socialni centri). ALC je koordinator francoske nacionalne mreže varnih prostorov za žrtve trgovine z ljudmi, znane pod imenom *Ac.Sé*.

se standardizirali odzivi na trgovino z ljudmi v državah članicah (instrument naj bi nadomestil *Okvirni sklep Sveta o boju proti trgovanju z ljudmi*, sprejet julija 2002).

Evropska komisija je leta 2009 predstavila predlog novega okvirnega sklepa o trgovini z ljudmi. Pogajanja v Evropskem svetu o sprejetju novega okvirnega sklepa pa so bila prekinjena, ko je stopila v veljavo Lizbonska pogodba, zaradi česar so bili ustavljeni vsi zakonodajni postopki. Zato je Evropska komisija pripravila *nov predlog Direktive Evropskega parlamenta in Evropskega sveta o preprečevanju trgovanja z ljudmi, boju proti trgovanju z ljudmi in zaščiti žrtev,* ki razveljavlja Okvirni sklep, sprejet leta 2002. Marca 2010 se je začela obravnava v Evropskem parlamentu, kjer sta septembra 2010 dva parlamentarna odbora predložila niz predlogov sprememb in dopolnil, in začel se je postopek dogovarjanja med Evropskim svetom, Evropsko komisijo in Evropskim parlamentom v želji, da bi bil dogovor sklenjen pred koncem leta 2010.

Čeprav kaže, da so določbe nove direktive precej jasne, nova direktiva ni bila sprejeta niti med opazovalnim delom projekta E-notes, ki je potekal maja in junija 2010, niti do priprave končnega poročila oktobra 2010. Ko smo se torej odločali, na podlagi katerih zakonskih obveznosti bi opredelili standarde spremljanja stanja v državah članicah EU (obveznosti na področju odzivanja na trgovino z ljudmi), smo se znotraj projekta odločili, da bomo uporabili *Konvencijo Sveta Evrope o ukrepanju proti trgovini z ljudmi,* ki je bila sprejeta maja 2005 in je začela veljati februarja 2008. Konvencijo so ratificirale številne države zunaj EU, znotraj EU pa jo je, z eno samo izjemo – z izjemo Češke republike – do avgusta 2010 ratificiralo 19 držav članic, podpisalo pa še 6 držav članic, ki so s tem dejanjem izrazile, da imajo namen konvencijo tudi izvajati.

2. Uporabljena metodologija

Potek spremljanja je na začetku 2010 pripravil zunanji svetovalec, ki je pri svojem delu upošteval že objavljene publikacije in v njih predlagane primerne kazalnike, ki naj bi jih države članice EU uporabljale pri oceni napredka na področju približevanja zakonodaje in zakonodajnih praks regionalnim in mednarodnim standardom, ki temeljijo na *Protokolu za preprečevanje, zatiranje in kaznovanje trgovine z ljudmi, zlasti ženskami in otroki,* iz leta 2000, ki dopolnuje *Konvencijo Združenih narodov proti mednarodnemu organiziranemu kriminalu* (2000). Upoštevali smo tudi pripombe, objavl-

jene v različnih publikacijah[404] Evropske komisije o slabostih, zaznanih v poročilih držav članic EU o ukrepih, s katerimi so države članice poskušale zajeziti trgovino z ljudmi ali zaščititi osebe ter ponuditi podporo osebam, za katere domneva[405], da so žrtve trgovine z ljudmi. V določenih objavah je bilo omenjeno, kako težko je od držav članic pridobiti podatke (včasih ažurirane podatke, včasih pa kakršnekoli podatke) o njihovih praksah na področju boja proti trgovini z ljudmi. Nekatere publikacije pišejo o pomanjkanju "usklajenih zbirk podatkov", kar kaže, da države članice EU strokovne terminologije oziroma skupnih mehanizmov poročanja ne uporabljajo dosledno. Trditve so se v sklopu izvajanja projekta E-notes izkazale za pravilne.

Dokument, ki ga je Evropska komisija izdala leta 2006[406], razkriva, da so države članice podale le majhen obseg informacij o zakonodaji, pravilnikih in praksah na področju zaščite žrtev trgovine z ljudmi in pomoči zanje. V delovnem dokumentu iz leta 2008[407] je bilo ponovno poudarjeno, da je od držav članic težko pridobiti podatke o številu žrtev trgovine z ljudmi, ki jim je bila ponujena pomoč, čeprav so leta 2006 države članice Komisiji predale podatke, ki so razkrili, da so v 23 državah v omenjenem letu preiskovali več kot 1.500 primerov trgovine z ljudmi. Dokument tudi navaja, da je večina držav članic EU uvedla obdobje razmisleka, ki domnevni žrtvi omogoča, da ostane v državi in okreva, preden se od nje zahteva, da priča pred oblastmi, vendar pa je le pet držav podalo poročilo o številu oseb, ki so lahko izkoristile to možnost. Takšnih je bilo zgolj 26 v celem letu!

Nevladnim organizacijam, ki delujejo na področju boja proti trgovini z ljudmi (ki bodisi nudijo storitve – pomoč – domnevnim žrtvam ali sodelujejo pri pobudah za preprečevanje trgovine z ljudmi), se zdi nenatančnost podatkov, ki so jih države članice EU poslale Evropski komisiji, zaskrbljujoča, saj to po eni strani nakazuje, da nihče, niti Evropska komisija, ni zmogel ugotoviti, kaj se v Evropski uniji resnično dogaja. Obenem je to pokazalo, da države članice, navzlic dejstvu, da so se z regionalnimi in mednarodnimi sporazumi

404. Med njimi velja omeniti sporočilo Evropske komisije Evropskemu parlamentu in svetu z naslovom *"Boj proti trgovini z ljudmi – celosten pristop in predlogi za akcijski načrt"* (sklicna številka Evropske komisije COM(2005) 514 – končno besedilo z dne 18. oktobra 2005) in delovni dokument Evropske komisije (sklicna številka Evropske komisije COM(2008) 657 – končno besedilo) z naslovom *"Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings"*, pripravljen oktobra 2008.

405. Izraz 'domnevna' žrtev trgovine z ljudmi se nanaša na osebo, za katero se sumi, da je bila žrtev trgovine z ljudmi, ko še nimamo dokončnih podatkov o njenih izkušnjah.

406.Poročilo Evropske komisije o izvajanju Okvirnega sklepa Evropskega sveta z dne 19. julija o boju proti trgovini z ljudmi (sklicna številka Evropske Komisije COM(2006) 187 – končno besedilo z dne 2. maja 2006).

407. Glej sprotno opombo številka 404.

strinjale, številnih določb regionalnih in mednarodnih sporazumov o trgovini z ljudmi ali drugimi človekovimi pravicami ne upoštevajo in jih tudi ne izvajajo.

Nekatere države članice EU so imenovale nacionalnega poročevalca za trgovino z ljudmi, katerega naloga je obveščati vlado (in druge) o napredku, ki ga država dosega pri odzivanju na trgovino z ljudmi, ter priporočati možne izboljšave. Devet od 27 držav članic EU je med spremljanjem, ki je potekalo sredi 2010, poročalo, da v njih deluje nacionalni poročevalec, čeprav nimajo vsi izmed njih naloge objavljati redna poročila in čeprav se nekateri osredotočajo zgolj na trgovino za specifične namene (na primer na trgovino z ženskami za namene prostitucije), zaradi česar ne poročajo o ukrepih zoper trgovino za druge namene. Če bodo vse države članice EU imenovale svojega nacionalnega poročevalca, bi to dolgoročno omogočilo vpeljati standardne opredelitve pojmov in način merjenja statističnih podatkov, ki se nanašajo na trgovino ljudmi, kar bi omogočilo pomensko primerjavo med odzivi posameznih držav članic.

Zato je bil namen spremljanja znotraj projekta E-Notes odkriti, katere informacije so na voljo v vseh državah članicah EU o zakonodaji, politikah in praksah, vezanih na trgovino z ljudmi, koliko oseb je bilo prepoznanih kot 'žrtve trgovine z ljudmi" in so prejele nekakšno obliko zaščite, koliko jih je prejelo pomoč itn. Ker je spremljanje potekalo maja in junija 2010, je bil naš osnovni namen zbrati podatke o stanju v posamezni državi v letu 2009. Kmalu pa se je izkazalo, da v številnih državah za leto 2009 niso imeli razpoložljivih podatkov ali pa so bili ti podatki nepopolni, medtem ko so obstajale bolj dokončne informacije za leto 2008.

Večina nevladnih organizacij, ki so bile naprošene, da poiščejo raziskovalca, ki bo zbral in zapisal podatke, potrebne za namene spremljanja znotraj projekta E-Notes, ima izkušnje z odraslimi žrtvami trgovine z ljudmi (še posebej z ženskami). Čeprav so podale tudi podatke o trgovini z otroki, so imele večinoma težave pridobiti več informacij o mladih žrtvah trgovine z ljudmi. V številnih državah članicah nevladne organizacije nudijo storitve odraslim žrtvam, medtem ko imajo državne agencije, odgovorne za zaščito otrok, monopol nad oskrbo mladih žrtev trgovine z ljudmi.

Naloga raziskovalca je bila izpolniti 60 strani dolg raziskovalni protokol, pri številnih točkah podati dodatno prosto besedilo, in sicer na mestih, ko odgovori z da ali z ne niso bili primerni, ter orisati kratek 'profil' svoje države in poročati o vzorcu primerov trgovine z ljudmi, obravnavanih v njihovi

državi, in o odzivih države. Podatki, ki jih je priskrbelo 27 raziskovalcev, so bili julija 2010 obdelani in vstavljeni v preprosto podatkovno bazo. Preučil jih je zunanji svetovalec, ki je pripravil raziskovalni protokol, z namenom opredelitve možnih vzorcev – neuspehov držav članic EU na področju spoštovanja obveznosti zaščite žrtev in zagotavljanja pomoči ter z namenom priprave poročila o ugotovitvah.

Raziskovalci so bili naprošeni, da podajo pripombe o tem, ali neka država večinoma deluje kot država izvora, tranzitna ali namembna država ali kot kombinacija več od omenjenih možnosti. Pri razporeditvi se niso osredotočali na primere notranje trgovine z ljudmi. Le malo držav je bilo opredeljenih kot države, ki sodijo le v eno izmed treh kategorij (dve državi, Francija in Portugalska, sta opisani predvsem kot namembni državi). Preostalih 25 držav članic so nekakšna kombinacija: ena država članica deluje kot kombinacija države izvora in namembne države, deset jih je kombinacija tranzitne in namembne države, devet držav pa je bilo opisanih kot kombinacija vseh treh.

3. Ugotovitve

Namen 230 vprašanj raziskovalnega protokola je bil pridobiti informacije o številnih temah in pripraviti celostno ugotovitev, ali države članice EU spoštujejo svoje obveze na področju boja proti trgovini z ljudmi in človekove pravice žrtev. Protokol je omogočal natančno oceno napredka na petih področjih, a se je izkazalo, da so bile tudi za ta področja razpoložljive informacije nepopolne ali pa niso bile na voljo, zato nobenih predstavljenih statističnih podatkov ne moremo obravnavati kot zanesljive. V razpredelnici sledi povzetek omenjenih petih področij.

Razpredelnica 1 Napredek, ki ga je dosegla EU pri ključnih točkah odzivov na trgovino z ljudmi

tema	stanje maja 2010
koordinacija odzivov na trgovino z ljudmi na državni ravni	Nacionalna struktura za koordinacijo odzivov na trgovino z ljudmi je bila vzpostavljena v 22 od 27 držav članic. Države brez nacionalne koordinacijske strukture so Francija, Nemčija, Grčija in Malta. Čeprav v Nemčiji in Italiji odzivi na trgovino z ljudmi niso organizirani na zvezni ali državni ravni, to ne pomeni, da niso primerni. Švedska je imenovala nacionalnega koordinatorja, katerega naloga je razviti koordinacijsko strukturo za boj proti trgovini, a zgolj za primere trgovanja za spolne namene.

določitev domnevnih žrtev trgovine z ljudmi

11 od 27 držav članic poroča, da imajo eno samo vladno agencijo ali strukturo, ki je odgovorna za uradno identifikacijo domnevnih žrtev, ki so ali še niso dopolnile 16 let. Med državami, ki ne poznajo identifikacijskega postopka na državni ravni, je šest takšnih, kjer na nacionalnem ozemlju ne uporabljajo standardnega postopka za uradno identifikacijo domnevnih žrtev (Avstrija, Belgija, Francija, Italija, Nemčija, Malta).

možnost vsaj 30-dnevnega obdobja razmisleka

25 od 27 držav članic pozna obdobje razmisleka in okrevanja za domnevne odrasle žrtve. Kaže, da kar nekaj držav tudi upošteva minimalne standarde na tem področju. V Italiji sicer nimajo pravno zagotovljenega obdobja razmisleka, čeprav se ga v praksi včasih poslužijo. Podobno velja za Litvo. 11 držav je postreglo s podatki, da je bila leta 2008 možnost obdobja razmisleka dana 207 osebam. Leta 2009 je 18 držav članic poročalo, da je to možnost prejelo 1.150 žrtev trgovine z ljudmi, kar je precejšnji porast.

postopki, s katerimi se zagotovi, da je vrnitev varna in, če le možno, prostovoljna

Raziskovalci omenjajo šest držav, ki imajo z drugimi državami članicami ali s tretjimi državami sklenjene formalne sporazume o načinu vračanja žrtve trgovine z ljudmi v svojo domovino (gre za Francijo, Latvijo, Portugalsko, Španijo in Združeno kraljestvo. Grčija je sklenila dvostranski sporazum, ki pa je izključno omejen na mlade žrtve – otroke). Navzlic sporazumom pa ni pravega jamstva, da do zlorab ne bo prišlo. Raziskovalci so namreč opazili, da le v 3 od 17 držav članic z razpoložljivimi podatki oblasti, ko načrtujejo vrnitev domnevne odrasle žrtev v državo izvora, rutinsko pripravijo oceno tveganja pred vrnitvijo (Italija, Portugalska in Romunija), s katero poskušajo ugotoviti, kakšna so morebitna tveganja vrnitve za posameznika ali za njegovo družino.

dostop do poprave krivice in odškodnine

Leta 2008 je 12 držav (od 22 držav, ki razpolagajo s podatki) žrtvam trgovine z ljudmi izplačalo odškodnino ali škodo na podlagi sodne odločbe ali drugega postopka. Leta 2009 je to storilo 12 od 20 držav članic. Med devetimi državami, ki so odškodnino plačale v obeh letih, so Avstrija, Danska, Francija, Italija, Nemčija, Nizozemska, Španija, Švedska in Združeno kraljestvo.

Poskus ocene delovanja posameznih držav na podlagi opisanih petih področij, primerljiv z letnim poročilom Ministrstva za zunanje zadeve ZDA, bi bil neprimeren, saj s pomočjo prvih treh kategorij ugotavljamo, da obstajajo različne države z zaznavnimi šibkostmi, medtem ko pri zadnjih dveh kategorijah spoznavamo, da obstajajo države, ki počnejo prave stvari. Tako je na primer Italija navedena pri vseh petih postavkah, saj se dobro odraža pri številnih vprašanjih, čeprav ima sistem boja proti trgovini z ljudmi, ki je precej drugačen od večine preostalih držav članic EU.

Med projektom smo – poleg opisanih petih področij – spremljali številne druge napredke. Na začetku smo preverili, ali **nacionalne zakonodaje** obravnavajo različne kategorije izkoriščanja, vezanega na trgovino z ljudmi (tj.

"izkoriščanja z namenom prostitucije in drugih oblik spolnega izkoriščanja", izkoriščanja dela in storitev v obliki prisilnega dela, služabništva, suženjstva ali suženjstvu podobnih praks, izkoriščanja z namenom pridobivanja človeških organov). Ugotovili smo, da na splošno pokrivajo različne kategorije. Dve državi, Estonija in Poljska, sta sporočili, da sta začeli spreminjati zakonodajo, da pa postopek spreminjanja še poteka, medtem ko bo v Španiji stopila v veljavo nova opredelitev trgovine z ljudmi, usklajena s standardi Evropske unije in Sveta Evrope in predstavljena v kazenskem zakoniku, decembra 2010.

Med projektom smo tudi poskušali ugotoviti, ali so si **opredelitve trgovine z ljudmi**, ki veljajo v posameznih državah, dovolj podobne, da so informacije o 'trgovcih' in 'žrtvah trgovine z ljudmi' primerljive. Izkazalo se je, da so razlike precejšnje. V Franciji je opredelitev trgovanja z ljudmi precej široko zastavljena in se nanaša na praktično kakršnekoli osebe, ki jih sumijo zvodništva. Prav zaradi tega je uvodoma kazalo, da je bilo v Franciji v enem samem letu (2008) zaradi trgovine z ljudmi obsojenih več kot 900 oseb. Ob temeljitejšem pregledu pa se je izkazalo, da je bila malce več kot polovica teh oseb (521) obsojena zaradi "hujše oblike zvodništva" (gre za kaznivo dejanje, ki se približuje opredelitvi trgovine z ljudmi v drugih državah članicah EU), le 18 obsodb pa se je nanašalo na kazniva dejanja, prepoznana kot 'trgovina z ljudmi' v skladu z regionalnimi opredelitvami, sprejetimi z Okvirnim sklepom EU iz leta 2002 in s konvencijo Sveta Evrope. Na Finskem velja ravno nasprotno. Primeri, ki bi morali biti v skladu z regionalnimi standardi obravnavani kot primeri trgovine z ljudmi, so veljali le za oskrbovanje ali zvodništvo.

Zanimalo nas je, kakšen je postopek **določanja žrtev trgovine z ljudmi** in ali so domnevne žrtve rutinsko dobile možnost obdobja razmisleka ali druge oblike zaščite oziroma pomoči. Ugotovitve nakazujejo, da so se postopki določanja in ocenjevalna merila, na podlagi katerih se je odločalo, ali je oseba žrtev trgovine z ljudmi, tako močno razlikovali med posameznimi državami, da ne moremo prepoznati nikakršnega skupnega standarda.

20 od 27 članic Evropske unije poroča o vzpostavitvi **nacionalne strukture za koordinacijo odzivov na trgovino z ljudmi in boja proti njej**. 22 od 27 držav članic poroča, da so sprejele nacionalni načrt za boj proti trgovini z ljudmi (čeprav se nekatere pri tem osredotočajo izključno na trgovino z ljudmi za namene spolnega izkoriščanja). Večina držav ima policijsko enoto, ki se je specializirala za boj proti trgovini z ljudmi. Nekatere države poznajo postopek, s katerim na nacionalni ravni opredelijo, kakšno vlogo bo igrala posamezna organizacija na področju ponujanja zaščite ali pomoči žrtvam trgovine z ljudmi ter za potrebe napotitve na primerne službe. Gre za

nacionalni napotitveni mehanizem oziroma sistem, ki ga pozna 17 držav članic, v devetih pa ga še ni.

V 11 od 27 držav članic deluje enotna vladna agencija ali organizacija, katere naloga je uradno določiti domnevne žrtve trgovine z ljudmi. 16 držav članic nima takšne organizacije. Med njimi je 7 takšnih, kjer ne poznajo enotnega identifikacijskega postopka in kjer v državi ne uporabljajo standardnih postopkov za uradno določitev domnevnih žrtev trgovine z ljudmi. To pa seveda ne pomeni, da je določanje (in posledična razpoložljivost zaščite) učinkovitejša v državah z enotnim sistemom. Velja namreč, da so si podrobnosti postopka določanja, spoštovanje posameznih elementov postopka in učinkovitost postopkov med posameznimi državami nadvse različne.

Raziskovalci so lahko pridobili zgolj delne podatke o **številu domnevnih žrtev trgovine z ljudmi, identificiranih v 12-mesečnem obdobju leta 2008 in 2009**. V 16 državah so našteli skupaj 4.010 oseb (pri čemer ostaja možnost, da so bile nekatere domnevne žrtve upoštevane dvakrat – v namembni državi in pozneje še v državi izvora). V nekaj več kot polovici primerov (v 55 odstotkih) so oblasti tudi dokončno potrdile, da gre za žrtve trgovine z ljudmi. Podatki iz 16 držav o številu domnevnih **žrtev trgovine z ljudmi, ki so bile napotene (na različne službe in možnosti pomoči) v letu 2009** so podobni – gre za skupaj 3.800 oseb.

Preden je bil zaključen identifikacijski postopek, tako leta 2008 kot 2009, so bile nekatere odrasle in mladoletne domnevne žrtve **pogrešane**. O pogrešanih mladoletnih žrtvah je poročalo 10 držav, o pogrešanih odraslih osebah, ki so bile začasno prepoznane kot žrtve, pa drugih 10 držav.

Raziskovalci so zbrali podatke o različnih vidikih zaščite, in sicer:
- o obdobju razmisleka in okrevanja,
- o ocenah tveganja in
- o vrnitvah (v državo izvora žrtve trgovine z ljudmi).

Pridobili so tudi (v primeru nekaterih držav nepopolne) podatke o **število ljudi, ki jim je bila dana možnost obdobja razmisleka**. Podatki za leto **2008** so bili na voljo v 11 državah in govorijo o skupaj 207 osebah, ki so izkoristile to možnost. Podatki za leto **2009** so bili na voljo v 18 državah in pričajo o približno 1.150 osebah. Leta 2008 je skupaj devet držav podelilo 1.026 dovoljenj za bivanje. Povprečje več kot 100 dovoljenj na državo članico nam lahko daje napačen vtis, saj je bilo kar 664 dovoljenj izdanih v Italiji (leta 2009 je bilo 810 takšnih primerov), 235 pa na Nizozemskem, kar pomeni, da je preostalih sedem držav,

ki so izdale dovoljenja za bivanje, skupaj izdalo žrtvam trgovine z ljudmi 127 dovoljenj (torej v povprečju 20 dovoljenj na državo). To nakazuje, da se zakoni in politike, na podlagi katerih žrtev trgovine z ljudmi prejme dovoljenje za bivanje, med posameznimi državami članicami bistveno razlikujejo.

Šest držav članic je poročalo, da so v obravnavanih dveh letih podelile dovoljenja za prebivanje[408] **mladoletnim žrtvam trgovine z ljudmi**. V Franciji, na Poljskem in v Združenem kraljestvu so jim podelili začasno dovoljenje za bivanje, ki je poteklo, tik preden so žrtve dopolnile starost 18 let, v Avstriji in na Danskem pa so jim podelili stalno dovoljenje za bivanje. V Italiji velja pravilo, da lahko mladoletni nedržavljani, najsi bodo žrtve trgovine z ljudmi ali ne, ostanejo, dokler ne dopolnijo 18 let. Mladoletne žrtve trgovine z ljudmi lahko pridobijo dovoljenje za bivanje pod enakimi pogoji kot odrasle žrtve, in sicer v skladu s tako imenovanim "18. členom". Tudi na Nizozemskem je bilo mladoletnim osebam podeljeno dovoljenje za bivanje, vendar na podlagi razpoložljivih podatkov nismo mogli ugotoviti, ali je šlo za začasno ali stalno dovoljenje.

Raziskovalci so tudi želeli ugotoviti, ali so bile vrnitve v domovino prostovoljne ali prisiljene, koliko domnevnih žrtev je bilo vrnjenih in v kakšnih pogojih. Izkazalo se je, da ima šest držav članic EU sklenjene sporazume o vračanju z drugimi državami (ker je pet od šestih držav namembnih, gre večinoma za sporazume z državami, ki veljajo za države izvora).

Kar 15 držav članic je imelo na razpolago podatke o **vračanju odraslih v letu 2008**: 12 držav članic (Avstrija, Ciper, Češka republika, Danska, Francija, Grčija, Italija, Latvija, Nizozemska, Poljska in Slovenija) je vrnilo v državo izvora skupaj 194 oseb. Največ jih je vrnila Nizozemska (37), sledili so Italija (31), Ciper (24), Nemčija (23) in Danska (21). Le 10 držav članic je imelo na voljo podatke o **vračanju v letu 2009**. V državo izvora je bilo tako vrnjenih 171 oseb, več kot polovico oseb je vrnila Grčija, sledita Poljska s 23 in Avstrija z 22 vrnitvami, medtem ko preostalih 7 držav članic poroča o skupaj 19 vrnitvah. Očitno je, da število vrnjenih oseb predstavlja različne odstotke skupnega števila napotitev oziroma domnevnih žrtev trgovine z ljudmi v posameznih državah. Pa vendar podatki kažejo, da ima vsaka država precej drugačna merila, na podlagi katerih se odloča, ali bo domnevno žrtev vrnila v državo izvora ali ne. Velja tudi, da število vrnitev ni sorazmerno s številom

408. 'Dovoljenje za prebivanje' je izraz, s katerim se opisuje zakonsko upravičenost nedržavljanov, da začasno ali za stalno ostanejo v neki državi.

domnevnih žrtev, za katere se poroča, da so bile identificirane ali da jim je bila dana možnost obdobja razmisleka.

Leta 2008 in 2009 so **državljani drugih držav članic EU, prepoznani v neki državi kot domnevne žrtve trgovine z ljudmi**, prejeli zaščito in pomoč s strani 19 držav članic na enaki pravni osnovi kot državljani 'tretjih držav' zunaj EU. V šestih državah članicah (v Latviji, Litvi, na Madžarskem, v Nemčiji, Romuniji in v Španiji) državljani drugih držav članic EU, ki so bili prepoznani kot žrtve trgovine z ljudmi, niso prejeli enako dobre zaščite in pomoči kot državljani 'tretjih držav'. Nekateri državljani drugih držav poročajo, da so imeli težave pri prepoznavanju statusa 'žrtve' in pri pridobivanju pomoči. Obenem pa to vseeno pomeni, da so državljani vzhodnoevropskih članic EU v zahodnoevropskih državah članicah, kjer so pristali kot žrtve trgovine z ljudmi, lahko dobili pomoč. Državljani EU so bili določeni kot žrtve in so v letih 2008 in 2009 prejeli pomoč na isti podlagi kot žrtve trgovine z ljudmi iz držav zunaj EU v 14 od 25 državah članicah.

Pri preučevanju **razpoložljivih oblik sodnega varstva za žrtve trgovine z ljudmi** ali mladoletnih žrtev, ki so pričale na sodišču, se je izkazalo, da približno polovica držav članic EU pozna ukrepe, s katerimi zaščititi priče. Raziskovalci so odkrili, da se žrtvam omogoča pričanje na predhodni obravnavi (pred preiskovalnim sodnikom), tako da jim ni treba nastopiti na javni sodni obravnavi, da lahko pričajo prek video povezave ali pa da so med pričanjem zunaj vidnega dosega obtoženca. Navzlic tem možnostim se je leta 2008 in 2009 izkazalo, da je bila identiteta odrasle ali mladoletne žrtve trgovine z ljudmi, ki je bila zaupne narave, razgaljena med kazenskim postopkom.

Raziskovalni študiji, ki sta ju pred kratkim izvedla Anti Slavery International[409] in OVSE[410], sta pokazali, da, čeprav imajo žrtve trgovine z ljudmi pravico do odškodnine in čeprav obstaja več odškodninskih mehanizmov, se le redko zgodi, da bi žrtev dejansko prejela izplačilo odškodnine. Kljub temu je 12 držav (od 22 držav, kjer so bile informacije na voljo) poročalo o tem, da so leta 2008 nekatere žrtve na podlagi sodne odločbe ali iz nekega drugega vira prejele izplačilo nastale škode ali odškodnino. Podobni primeri so bili leta 2009 zabeleženi v 12 od 20 držav članic. Med devetimi državami, ki so odškodnine izplačale v obeh letih, najdemo Avstrijo, Dansko, Francijo, Italijo, Nemčijo, Nizozemsko, Španijo, Švedsko in Združeno kraljestvo.

409. J. Lam, K. Skrivankova: *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
410. OVSE/ODIHR: *Compensation for trafficked and exploited persons in the OSCE region*, Varšava, 2008.

Raziskava se ni poglabljala v podrobnosti številnih **metod preprečevanja**. Osredotočili smo se raje na podatke, ki so bili na voljo priseljencem pred prihodom v neko državo, za katero se poroča, da so bile v njej izkoriščene žrtve trgovine z ljudmi, in po njem.

Konvencija Sveta Evrope zahteva, da države "razmislijo o imenovanju **nacionalnega poročevalca** ali drugega mehanizma, ki bo spremljal delovanje državnih institucij na področju boja proti trgovini z ljudmi in izvajanje nacionalnih zakonodajnih določb". Čeprav gre za določbo, ki od držav članic pričakuje, da bodo "razmislile" o takšnem imenovanju, obstaja verjetnost, da bo kmalu sprejeta direktiva EU precej odločnejša in bo zahtevala, da imajo države članice EU neodvisnega nacionalnega poročevalca ali njemu enakovreden mehanizem. Ko je marca 2009 potekala konferenca na temo nacionalnih poročevalcev, se je sklepalo, da je 12 držav članic že imenovalo nacionalnega poročevalca (ali njemu enakovreden mehanizem), katerega naloga je spremljati nacionalne odzive na trgovino z ljudmi. Raziskovalci so potrdili, da deluje nacionalni poročevalec za trgovino z ljudmi v devetih od 27 državah članicah (na Cipru, v Češki republiki, na Finskem, v Latviji, Litvi, na Nizozemskem in Portugalskem ter v Romuniji in na Švedskem), v šestnajstih državah članicah pa tega mehanizma ne poznajo. Več je takšnih članic (na primer Švedska), kjer se prvenstveno osredotočajo na primere trgovanja za spolne namene. V nekaterih državah (kot na primer v Belgiji in Španiji) sodeluje pri spremljanju odzivov na trgovino z ljudmi neka druga državna ustanova. V treh od devetih držav, ki poznajo poročevalca (v Latviji, Litvi in na Švedskem), vloga poročevalca ni povsem neodvisna od boja proti trgovini z ljudmi, kar načenja poročevalčevo neodvisnost in lahko potencialno zmanjša njegovo zmožnost povsem neodvisnega spremljanja.

4. Sklepi in priporočila

Projekt E-notes je pokazal, da obstajajo vsebinske razlike med osnovnimi vidiki politike boja proti trgovini z ljudmi in med praksami znotraj Evropske unije. Te se začnejo pri nacionalni zakonodaji in njeni prepovedi trgovine z ljudmi in opredelitvami (ali tolmačenji s strani dotičnih vladnih agencij) tega, kar predstavlja trgovina z ljudmi, in se nadaljujejo pri koordinacijskih telesih in postopku identificiranja žrtve trgovine z ljudmi. Obenem se je izkazalo, da mednarodna in nacionalna zakonodaja poznata več določb, katerih namen je varovati pravice žrtev trgovine z ljudmi, a te ostajajo le črka na papirju in se v večini držav članic EU še ne izvajajo. Organizacije, ki so sodelovale pri projektu E-notes, menijo, da bi morale Evropska unija, države

članice in civilna družba tako na nacionalni ravni kot na ravni EU vložiti več truda v okrepitev temeljev političnega okvira, katerega namen je zajeziti trgovino z ljudmi.

Potrebne so vsebinske izboljšave na področju izvajanja številnih vidikov politik boja proti trgovini z ljudmi. Priporočila, ki so bila pripravljena znotraj projekta E-notes in ki sledijo v nadaljevanju, se osredotočajo na varstvo pravic žrtve trgovine z ljudmi, saj smo prepričani, da bi te morale predstavljati jedro dela vsake države na področju boja proti trgovini z ljudmi, čeprav se je izkazalo, da se najmanj izvajajo določbe o preprečevanju trgovine z ljudmi in zaščiti žrtev trgovine z ljudmi.

Identifikacija in napotitev žrtev trgovine z ljudmi
Varstvo pravic žrtev trgovine z ljudmi lahko zagotovimo le, ko bomo prepoznali vse domnevne žrtve trgovine z ljudmi (ne glede na to, ali sodelujejo z oblastmi ali ne). Ugotovitve projekta E-notes kažejo, da identifikacija ostaja šibki člen. Da bi države članice izboljšale identifikacijski postopek, menimo, da je bistvenega pomena:

- da države članice v sodelovanju z organi kazenskega pregona, tožilstvom in ponudniki storitev razvijejo sezname za preverjanje oziroma kazalnike, s katerimi se bo laže določalo domnevne žrtve trgovine z ljudmi za vse oblike izkoriščanja. Poleg tega bi bilo treba opredeliti dodatne kazalnike za namene kakršnegakoli izkoriščanja, kot so izkoriščanje delovne sile, služabništvo, spolno izkoriščanje, prisilno beračenje, siljenje v nezakonita dejanja itn. Obenem bi morali razviti še posebne kazalnike za določitev mladih žrtev trgovine z ljudmi;
- da identifikacija ni odgovornost ene same vladne agencije, z njo bi se morale ukvarjati multidisciplinarne ekipe, v katere bi morale biti vključene tudi organizacije, ki nudijo storitve žrtvam trgovine z ljudmi;
- da nacionalne strukture, katerih namen je napotitev – bodisi v obliki nacionalnega napotitvenega mehanizma bodisi v obliki organizacij, ki izvajajo standardne operativne postopke – temeljijo na tesnem in rednem sodelovanju organov kazenskega pregona, uradnikov za priseljevanje, inšpektorjev za delo, pomembnih sindikatov, agencij za zaščito otrok, tožilstev, nevladnih organizacij in drugih ponudnikov storitev;
- da se zavemo, da se dostop žrtev trgovine z ljudmi do pravnega varstva, vključno z zahtevo po izplačilu odškodnine, izboljša, ko vsem prepoznanim žrtvam trgovine z ljudmi zagotovimo brezplačno pravno pomoč;
- da vse države članice poskrbijo, da se bo pripravila individualna ocena tveganja za vsako žrtev trgovine z ljudmi, ko je podan predlog za njihovo vrnitev v domovino.

Spremljanje

Potrebno je nadaljnje spremljanje tako na nacionalni ravni kot na ravni EU, da bodo vsi pomembni deležniki bolje razumeli ne le, kaj piše na papirju, da je treba storiti v vsaki državi, da bi ustavili trgovino z ljudmi, temveč kaj se v resnici dogaja. Da bi bolje razumeli izvajanje, učinke in vpliv politik Evropske unije na področju boja proti trgovini z ljudmi je nujnega pomena:

- da nacionalni poročevalci ali drugi enakovredni mehanizmi delujejo kot neodvisna telesa (kot dogovorjeno v Haaški deklaraciji iz leta 1997). To zagotavlja neodvisno in primerljivo spremljanje rezultatov ukrepov na področju boja proti trgovini z ljudmi. Pomembno je tudi, da se prepozna vpliv in nepredvidene ali celo negativne učinke ukrepov boja proti trgovini z ljudmi in da se o njih poroča;
- da se zagotovi bolj standardizirani pristop k zadevni terminologiji, statističnim podatkom in načinom merjenja (na primer pri določanju števila oseb, obtoženih trgovine z ljudmi);
- da se zagotovi tesno sodelovanje med EU, njenimi državami članicami in članicami neodvisnega telesa GRETA, ki spremlja izvajanje Konvencije Sveta Evrope o ukrepanju proti trgovini z ljudmi, da ne bi prišlo do nepotrebnega podvajanja spremljevalnih dejavnosti.

Zakonodaja

- Potrebno je nadaljnje spremljanje, katerega namen naj bo zagotoviti, da se v vse nacionalne zakonodajne okvire vključi opredelitev trgovine z ljudmi iz Okvirnega sklepa iz leta 2002 ter iz Konvencije Sveta Evrope iz leta 2005.
- Kaže, da je v številnih državah članicah EU precejšnja potreba po boljšem razumevanju "izkoriščanja" in različnih kazenskih dejanj, ki so povezana z nezakonitim izkoriščanjem, in sicer tako v primeru ljudi, ki so predani izkoriščanju ali s katerimi se trguje z namenom izkoriščanja, kot tudi v primeru ljudi, ki so podvrženi nezakonitemu izkoriščanju, čeprav niso žrtve trgovine z ljudmi.

Koordinacija politik na področju boja proti trgovini z ljudmi na nacionalni ravni

- Vse države članice, ki še niso vzpostavile koordinacijske strukture ali niso sprejele nacionalnega akcijskega načrta, bi morale to storiti v želji po večji skladnosti in povezanosti politik na področju boja proti trgovini z ljudmi. Za učinkovito delovanje je primerna dodelitev človeških in gospodarskih virov ključnega pomena. Zato bi bilo primerno, da bi pri spremljanju v prihodnje preverili, kakšni viri so namenjeni financiranju nacionalne koordinacijske strukture in podpori koordinacijskih dejavnosti v vseh državah članicah EU.

8.19 Resumen

Cuatro organizaciones no gubernamentales (ONG) acordaron en 2009 participar en un proyecto conjunto llamado "Observatorio de ONG europeas sobre Trata, Explotación y Esclavitud" (abreviado E-notes, en sus siglas en inglés), con el amplio objetivo de monitorear lo que los gobiernos en toda la Unión Europea (UE) estaban haciendo para acabar con la esclavitud, la trata de personas y las distintas formas de explotación asociadas a la trata. Una ONG italiana, *Associazione On the Road*,[411] coordinó el proyecto, junto con una red regional anti-trata, *La Strada International*, y dos ONG nacionales, ACCEM,[412] con sede en España, y ALC,[413] con sede en Francia.

En vez de priorizar el establecimiento de una institución permanente para el monitoreo de la acción de gobierno, el proyecto E-notes se centró en recoger información sobre lo que sucede en cada uno de los 27 Estados miembros de la UE. Esto significó desarrollar un método de investigación y encontrar ONG e investigadores en cada uno de los 27 Estados participantes. El proyecto se inició poniendo énfasis en la importancia de los **indicadores** para medir el avance de las respuestas contra la trata en cada Estado miembro (por ejemplo, las distintas leyes, políticas, medidas y prácticas que se espera que reduzcan los niveles de trata y que protejan y asistan a quien haya sido víctima de trata). Esto se tradujo en una herramienta de investigación a través de la elaboración de una lista de más de 200 preguntas estándar sobre las respuestas contra la trata, las cuales, se esperaba que pudiesen ayudar a determinar el avance en dichas respuestas iniciadas por cada Estado de la UE.

1. Los estándares sobre los cuales el ejercicio de monitoreo buscaba la información

El proceso de investigación empezó a principios de 2010, precisamente cuando el Consejo de Europa parecía estar a punto de concluir su conside-

411. *Associazione On the Road* provee un amplia variedad de servicios y protección a personas víctimas de trata, solicitantes de asilo, refugiados e inmigrantes en general, en tres regiones italianas (Marche, Abruzzo y Molise). Trabaja también en sensibilización, trabajo comunitario, investigación, networking y en iniciativas para el desarrollo de políticas a nivel local, nacional y europeo.
412. ACCEM provee servicios sociales y emprende acciones en el ámbito social y legal en beneficio de los solicitantes de asilo, refugiados, personas desplazadas e inmigrantes en España.
413. ALC, de las siglas de *Accompagnement, Lieux d'accueil, Carrefour éducatif et social* (Acompañamiento [de gente] Centros de Acogida, Centros Sociales y Educativos). ALC coordina la red nacional de albergues de seguridad para personas víctimas de trata, conocida como "Ac.Sé".

ración sobre un nuevo instrumento comunitario para estandarizar las respuestas contra la trata en los Estados miembros (para sustituir la Decisión Marco del Consejo sobre la lucha contra la trata de seres humanos, adoptada en julio de 2002). En 2009 la Comisión Europea presentó una propuesta para una nueva Decisión Marco sobre la trata de seres humanos. Debido a la entrada en vigor del Tratado de Lisboa, que interrumpió todos los procedimientos legislativos en curso, las negociaciones en el Consejo sobre la adopción de una nueva Decisión Marco quedaron estancadas. Consecuentemente, la Comisión Europea presentó una *nueva propuesta de Directiva del Parlamento Europeo y del Consejo sobre la prevención y la lucha contra la trata de seres humanos, y la protección de las víctimas,* que abroga la Decisión Marco de 2002. En marzo de 2010 ésta fue referida para su consideración por el Parlamento Europeo. En septiembre de 2010, dos de los comités parlamentarios propusieron una serie de enmiendas al borrador de Directiva y se inició el proceso para alcanzar un acuerdo entre el Consejo, la Comisión y el Parlamento. Se esperaba que la Directiva fuese adoptada antes de finales de 2010.

Aunque las disposiciones de esta nueva directiva parecen bastante claras en general, en el momento en que se estaba llevando a cabo el ejercicio de monitoreo de E-notes, en mayo y junio de 2010, la Directiva todavía no había sido adoptada (ni siquiera cuando terminó el presente informe, en octubre de 2010). En el momento de decidir qué obligaciones legales debían tomarse en consideración con el fin de identificar los estándares para monitorear en cada uno de los Estados miembros de la UE (por ejemplo, obligaciones de los Estados sobre las respuestas a la trata de personas), el proyecto optó por utilizar un instrumento regional diferente: la Convención sobre la lucha contra la trata de seres humanos. Ésta fue adoptada en 2005 y entró en vigor en febrero de 2008. A pesar de haber sido ratificada por numerosos Estados fuera de la UE, en agosto de 2010, todos excepto uno de los Estados miembros de la UE (la República Checa) habían, o bien ratificado (19), o bien firmado (7), la Convención del Consejo de Europa, expresando así su intención de respetarla.

2. Métodos utilizados

El ejercicio de monitoreo fue diseñado por un consultor a principios de 2010. Se prestó atención a las publicaciones previas que habían sugerido **indicadores** apropiados aplicables por los Estados miembros de la UE para la evaluación de sus avances en el acercamiento de sus leyes y prácticas a los estánda-

res regionales e internacionales (los cuales se basan en el *Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños* de las Naciones Unidas, adoptado en 2000 para complementar la *Convención contra el crimen organizado transnacional* (2000). También se prestó atención a las observaciones realizadas en diversas publicaciones de la Comisión Europea[414] sobre la debilidad que se había observado en la forma en que los Estados miembros de la UE informaban sobre sus acciones para acabar con la trata de personas o para proteger y asistir a presuntas víctimas de trata[415]. Algunas publicaciones destacaron que era difícil obtener información de los Estados miembros (ya fuese información actualizada o incluso cualquier tipo de información) sobre sus prácticas contra la trata. Algunas hacían referencia a la falta de "harmonización en la recopilación de datos", sugiriendo que no había un uso compatible de la terminología o mecanismos comunes de información por parte de los Estados miembros. Todos estos problemas fueron confirmados durante el ejercicio del E-notes.

Un documento de la Comisión Europea publicado en 2006[416] destacaba que los Estados miembros proporcionaban poca información sobre sus normas y prácticas referentes a la protección o asistencia a personas víctimas de trata. En 2008 un documento de trabajo[417] repitió que era difícil obtener información por parte de los Estados miembros sobre los números de personas víctimas de trata que recibían asistencia, destacando que en 2006, los Estados que habían proporcionado información a la Comisión habían manifestado que sólo 1.500 casos habían sido investigados en 23 Estados miembros a lo largo del año. Informaba que la mayoría de los Estados miembros habían introducido un período de reflexión para permitir que las presuntas víctimas de trata permaneciesen en su país y se recuperasen, antes de que las autoridades les requiriesen pruebas. Sin embargo, sólo cinco países informaron de cuanta gente se había beneficiado y el total resultó ser de ¡26 personas en todo el año!

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414. Tales como: la Comunicación de la Comisión Europea al Parlamento Europeo y al Consejo "*Luchando contra la trata de seres humanos – un enfoque integrado y propuestas para un plan de acción*" (referencia de la Comisión Europea COM (2005) 514 final de 18 de octubre de 2005); y el documento de trabajo de la Comisión Europea (referencia de la Comisión Europea COM (2008) 657 final), *Evaluación y monitoreo de la implementación del Plan de la UE sobre buenas prácticas, estándares y procedimientos para combatir y prevenir la trata de seres humanos*, octubre de 2008.

415. La expresión "*presunta víctima de trata*" se refiere a aquella persona de la cual se sospecha que haya sido víctima de trata, pero de la cual no se posee información definitiva sobre su experiencia.

416. Informe de la Comisión Europea sobre la implementación de la Decisión Marco del Consejo de 2002, sobre la lucha contra la trata de seres humanos, de 19 de julio de 2002 (referencia de la Comisión Europea COM(2006) 187 final de 2 de mayo de 2006).

417. Veáse nota al pie nº 414.

Para las ONG especializadas en el trabajo contra la trata (sea proveyendo servicios – asistencia – a presuntas víctimas de trata, o que trabajan en iniciativas para su prevención), la falta de exactitud y precisión en los datos proporcionados por los Estados miembros de la UE a la Comisión resultó un ser problema. Por un lado, esto sugería que nadie, incluso en la Comisión Europea, estaba en condiciones de conocer en detalle qué estaba sucediendo en toda la UE. Por otro lado, también indicaba que muchas de las disposiciones de los tratados regionales e internacionales sobre trata de personas y otros temas de derechos humanos estaban siendo ignoradas por los Estados (a pesar de que ellos mismos habían acordado dichas disposiciones) y no se implementaban.

Algunos de los Estados miembros de la UE han nombrado a un Relator Nacional sobre trata de seres humanos para que informe a sus gobiernos (y a otros) sobre los avances realizados en la respuesta del país en la lucha contra la trata, y para que haga recomendaciones sobre lo que se puede mejorar. En el ejercicio de monitoreo de los primeros seis meses de 2010 se informó que nueve de los 27 Estados miembros tenían un Relator Nacional, pero no todos publican informes periódicos y algunos se centran en la trata con finalidades específicas (tales como la trata de mujeres con fines de prostitución) sin informar de las acciones llevadas a cabo contra la trata para otros fines. A largo plazo, si se nombrasen Relatores Nacionales en todos los Estados de la UE, éstos estarían en condiciones de introducir definiciones terminológicas estándar y maneras de medir las estadísticas relacionadas con la trata de personas, por lo que se podrían realizar comparaciones coherentes entre las respuestas contra la trata en los diferentes Estados de la UE.

Con estos antecedentes, el ejercicio de monitoreo del E-notes se centró en conocer que información estaba disponible en todos los Estados miembros de la UE sobre sus leyes, políticas y prácticas relacionadas con el tema de la trata, cuántas personas estaban siendo identificadas como "víctimas de trata" y beneficiándose de algún tipo de protección, cuántas recibían asistencia, etc. Puesto que el ejercicio se llevó a cabo entre mayo y junio del 2010, el objetivo principal era el de recoger información sobre la situación en cada país durante el 2009. Sin embargo, pronto se vio que muchos países, o bien no disponían de información, o sólo tenían información incompleta, mientras que de 2008 se disponía de más información definitiva.

Las ONG a las que se les pidió encontrar un investigador que recogiera y actualizara información para el ejercicio de monitoreo del E-notes tenían

principalmente experiencia con adultos víctimas de trata (sobre todo mujeres). También se recopiló información sobre la trata de menores, aunque muchos encontraron gran dificultad en conseguir dicha información. En muchos Estados de la UE, los adultos víctimas de trata reciben servicios por parte de ONG, mientras que las agencias estatales tienen el monopolio del cuidado de los menores víctimas de trata.

A cada investigador se le pidió rellenar un protocolo de investigación de 60 páginas, proporcionar contenido adicional en varios puntos en los que las respuestas "Sí" y "No" no se adaptaban a las preguntas, y redactar un breve "perfil" sobre su país, informando del patrón de los casos de trata en el país y de las respuestas de su gobierno. La información preparada por los 27 investigadores fue procesada e introducida en una base de datos sencilla en julio de 2010. Fue analizada por el mismo consultor que había preparado el protocolo de investigación, para identificar posibles modelos –incumplimientos concretos por parte de los Estados de la UE en respetar sus obligaciones para la protección y la asistencia a las personas víctimas de trata – y preparar así un informe sobre los resultados de la investigación.

También se les pidió a los investigadores que comentasen si su propio país era un país principalmente de origen, tránsito o destino, o una combinación de varios tipos. Esta categorización no se ocupó de casos de trata interna. Relativamente pocos fueron categorizados como pertenecientes sólo a una de las tres categorías (dos, Francia y Portugal, fueron descritos principalmente como países de destino). Los otros 25 fueron considerados como una combinación: uno como país de origen y destino a la vez; diez como de tránsito y destino; y nueve como países de las tres categorías.

3. Resultados del ejercicio de monitoreo

Las 230 preguntas del protocolo de investigación buscaban información sobre varios temas diferentes, dificultando elaborar un perfil "blanco o negro" de si los Estados miembros de la UE estaban cumpliendo los compromisos y respectando los derechos humanos de las personas víctimas de trata. Sin embargo, en cinco temas concretos fue posible evaluar el grado de avance realizado. Pero incluso en estos casos, la información era incompleta o no estaba disponible, por lo que ninguna de las estadísticas mencionadas se podía considerar fiable. Estos cinco temas están resumidos en la tabla siguiente.

Tablea 1. Evolución en la UE de los puntos clave en las respuestas contra la trata

Temas	Situación observada en mayo de 2010
Coordinación de las respuestas contra la trata a nivel nacional	Se informó del establecimiento en 22 de los 27 Estados miembros de una estructura nacional para coordinar las respuestas contra la trata. Los países sin estructuras de coordinación nacional son Francia, Alemania, Grecia y Malta. En Alemania e Italia las respuestas no se organizan a nivel nacional o federal, pero esto no significa que sean inadecuadas. Suecia designó un Coordinador Nacional con la tarea de desarrollar una estructura de coordinación para la lucha contra la trata, pero sólo para casos de trata con fines sexuales.
Identificación de presuntas víctimas de trata	Consta que once de los 27 Estados miembros tienen una agencia gubernamental o una estructura encargada de hacer una identificación formal de toda persona que se sospeche que haya sido víctima de trata, mientras que en los 16 restantes no sucede así. Seis de los países en los que no existe un proceso a nivel nacional para la identificación no disponen de ningún procedimiento estándar en uso en todo el país para identificar formalmente a quien se sospeche que haya sido víctima de trata (Austria, Bulgaria, Francia, Alemania, Italia, Malta).
Existencia de un período de reflexión de al menos 30 días	En 25 de los 27 Estados miembros se prevé un período de reflexión y recuperación para adultos que se sospeche hayan sido víctimas de trata – una buena parte de los Estados parece adherirse a los estándares mínimos en este aspecto. En Italia no se prevé dicho período, pero en la práctica a veces existe. Se informó de una situación similar en Lituania. Para el 2008, se disponía de información por parte de 11 países distintos sobre un total de 207 personas, a las cuales se les había garantizado un período de reflexión. Para el 2009, había información de 18 países, en los cuales muchas más personas se habían beneficiado de dicho período: 1.150 víctimas de trata. Esto parecía reflejar un aumento considerable.
Procedimientos sobre repatriaciones por seguridad y, si es posible, voluntarios	Los investigadores encontraron que seis países tenían acuerdos formales con otros Estados miembros de la UE o terceros países para gestionar el proceso de retorno de víctimas de trata hacia sus países de origen (Francia, Letonia, Portugal, España y Reino Unido; Grecia tiene un acuerdo bilateral limitado a menores víctimas de trata). A pesar de la existencia de acuerdos parece haber pocas garantías de que no se produzcan abusos. Respecto a los planes de las autoridades para repatriar a las personas víctimas de trata a sus respectivos países de origen, los investigadores observaron que en solo tres de los 17 Estados miembros de los cuales se poseía información, se llevaban a cabo valoraciones del riesgo de forma rutinaria antes de realizar el retorno (Italia, Portugal y Rumanía); por ejemplo, valoraciones sobre el riesgo que corrían las víctimas o los miembros de sus familias.
Acceso a reparación y compensación	En 12 países (de los 22 de los cuales había información disponible) se informó de que una víctima de trata había recibido un pago en concepto de daños o como compensación durante el 2008, y en 12 países (de 20) en 2009, ya sea como fruto de un proceso judicial o por otras fuentes. Los nueve países en los que hubo pagos de compensación en ambos años fueron Austria, Dinamarca, Francia, Alemania, Italia, Holanda, España, Suecia y Reino Unido.

Valorando estos cinco temas, sería inapropiado hacer una clasificación de la actuación de cada Estado (como hace un informe anual publicado por el Departamento de Estado de los Estados Unidos). Efectivamente, para las tres primeras categorías, en su mayoría, se trata de países diferentes, que se caracterizan por mostrar carencias; mientras que en los últimos dos se observa una diversidad en los Estados que están haciendo las cosas correctamente. Por ejemplo, Italia es uno de los países mencionados en relación a los cinco temas y que actúa correctamente en bastantes aspectos, pero con un sistema anti-trata bastante diferente de la mayoría de los otros Estados de la UE.

A través de estos cinco puntos, el ejercicio se centró en el monitoreo de muchos otros avances. Se centró en comprobar si **la ley en cada país** se ocupaba de todas las distintas categorías de explotación asociadas a la trata (tales como, la trata con fines de "explotación para la prostitución y otras formas de explotación sexual"; con fines de explotación laboral o servicios de trabajo forzoso, servidumbre, esclavitud o prácticas similares a la esclavitud; o con fines de extracción de órganos). La conclusión fue que en general era así. Dos países – Estonia y Polonia – han empezado a revisar sus legislaciones, pero todavía no han concluido dichas revisiones, y en otro, España, la incorporación en el código penal de la definición de trata de acuerdo a los estándares de la UE y el Consejo de Europa entrará en vigor en diciembre de 2010.

El ejercicio también pretendía conocer en detalle si las **definiciones de trata de personas** en cada país son suficientemente parecidas para la información sobre las personas descritas como "traficantes" o "víctimas de trata" para que puedan ser comparadas. En este punto se encontró más disparidad. Por ejemplo, en Francia, el delito de trata contiene una definición amplia, por lo que se aplica prácticamente a cualquier persona sospechosa de proxenetismo. Como consecuencia, supuso que inicialmente más de 900 personas fueron condenadas en Francia por trata en solo un año (2008). Analizando de cerca, sin embargo, resultó que poco más de la mitad (521) era condenas por "proxenetismo agravado" (un delito más parecido a lo que se define como trata en otros Estados de la UE) y sólo 18 condenas relacionadas con delitos reconocidos como "trata" según las definiciones regionales adoptadas en la Decisión Marco de la UE de 2002 y en la Convención del Consejo de Europa. En Finlandia, la situación es la opuesta – casos que, de acuerdo con los estándares regionales deberían ser considerados como trata, han sido considerados únicamente como delitos de inducción a la prostitución o proxenetismo.

El ejercicio pedía cual era el proceso de **identificación de personas víctimas de trata** y si se garantizaba un período de reflexión u otras formas de protec-

ción o asistencia. Los resultados sugerían que, tanto los procesos de identificación como los criterios de valoración sobre si una persona ha sido víctima de trata, varían enormemente entre los países de la UE, puesto que no se disponía de un patrón común.

Se informó del establecimiento de una **estructura nacional de coordinación de respuestas contra la trata** en 20 de los 27 Estados miembros. Y en 22 de los 27 Estados miembros se ha adoptado un Plan Nacional de Lucha contra la Trata de Seres Humanos o un plan parecido (aunque algunos se centran exclusivamente en la trata con fines de explotación sexual). La mayoría de países dispone de una unidad de policía especializada en la lucha contra la trata. En algunos países hay un procedimiento reconocido a nivel nacional que especifica los roles que tienen que asumir las distintas organizaciones en brindar protección o asistencia a las víctimas de trata y para derivarlas a los servicios adecuados – un Mecanismo o Sistema Nacional de Derivación. Un total de 17 países disponen de este sistema, mientras que nueve no disponen de él.

En 11 de los 27 Estados miembros una única agencia o estructura gubernamental tiene la competencia de realizar una identificación formal de cualquiera que se sospeche que haya sido víctima de trata, mientras que en 16 no es así. Siete de los países donde no hay únicamente un proceso de identificación no disponen de un procedimiento estándar utilizado en todo el país para la identificación formal de presuntas víctimas de trata. Esto no implica, sin embargo, que la identificación (y la consecuente disponibilidad de protección) sea más efectiva en países con un único sistema. En lo que se refiere a los procedimientos de identificación, tanto el detalle de los procedimientos seguidos, como la medida en que éstos son respetados, como la eficacia de los procedimientos, variaban mucho entre los países.

Los investigadores sólo fueron capaces de obtener información parcial sobre **el número de presuntas víctimas de trata identificadas en un período de 12 meses entre 2008 y 2009** – un total de 4.010 en 16 países (aunque posiblemente algunas se hayan contabilizado dos veces, como por ejemplo, si han sido identificadas primero en un país de destino y posteriormente en sus países de origen). En poco más de la mitad de los casos (55%), las presuntas víctimas de trata fueron reconocidas finalmente por las autoridades como víctimas. Igualmente, la información sobre el número de presuntas **víctimas que fueron derivadas (a los servicios) en 2009**, disponible de 16 países, se refería a 3.800 personas.

En el caso de adultos y menores considerados presuntas víctimas, algunos **desaparecieron** en 2008 o 2009 antes de completarse el proceso de

identificación. Se informó que los presuntos menores desaparecieron en 10 países. Un diferente grupo de 10 países informaron que adultos que habían sido provisionalmente identificados como "víctimas de trata" habían desaparecido.

Los investigadores recopilaron información sobre varios aspectos de la **protección**, concretamente:

- Períodos de reflexión y recuperación;
- Valoraciones del riesgo; y
- Retornos (tales como la repatriación de una víctima a su país de origen)

Los investigadores obtuvieron información incompleta en algunos países sobre el **número de personas a las que se les concedió un período de reflexión**. Para **2008**, había información disponible de 11 países, en los que un total de 207 personas se beneficiaron de dicho período. Para **2009**, había información de 18 países relativa a 1.150 personas. En 2008, se supo de la concesión de 1.026 permisos de residencia en un total de nueve países. Sin embargo, el promedio de más de 100 permisos por país dio una imagen imprecisa por los 664 que fueron concedidos sólo en Italia (y otros 810 en 2009), junto a los 235 de Holanda; ello implica que en 2008 los otros siete países de los que se obtuvieron datos, sólo concedieron en total 127 permisos de residencia a víctimas (con un promedio de 20 cada uno). Esto sugiere que las leyes y las políticas que determinan a qué víctimas se les conceden permisos de residencia varían sustancialmente entre los países de la UE.

A **menores víctimas de trata** se les concedió un permiso de residencia[418] en seis países en estos dos años: en Francia, Polonia y Reino Unido, se les concedía un permiso temporal sólo hasta poco antes de cumplir los 18 años; en Austria y Dinamarca, el permiso de residencia se consideraba permanente. En Italia, a los menores extranjeros, que sean o no víctimas de trata, se les permite quedarse hasta el cumplimiento de los 18 años. Sin embargo, también los menores víctimas de trata pueden obtener un permiso de residencia de la misma forma que las víctimas adultas (según la regulación conocida como "artículo 18"). En Holanda, a los menores de les concede un permiso de residencia, pero los datos relevantes hicieron difícil valorar si finalmente podían quedarse de forma permanente.

418. "Permiso de residencia" se refiere a un término genérico para describir el estatuto legal concedido a los no-nacionales para permanecer en un país, sea de forma temporal o permanente.

En el asunto del retorno (o repatriación), los investigadores se propusieron conocer si los retornos eran voluntarios o forzosos, cuantas presuntas víctimas fueron devueltas y en qué condiciones. Confirmaron que seis Estados miembros de la UE tienen convenios formales con otros Estados (como cinco de los seis son países de destino, los convenios son mayoritariamente con otros Estados considerados países de origen).

Se obtuvo información de 15 países sobre las **repatriaciones de adultos en 2008**: 194 fueron repatriados a sus países de origen desde 12 países (Austria, Chipre, República Checa, Dinamarca, Francia, Grecia, Italia, Letonia, Holanda, Polonia y Eslovenia). En ese año (2008) el mayor número de repatriaciones fue desde Holanda (37), seguido por Italia (31), Chipre (24), Alemania (23) y Dinamarca (23). En **2009**, se dispuso de información sobre **repatriaciones** de un número menor de países, sólo 10. En este caso, según se informó, 171 personas fueron repatriadas a sus respectivos países de origen desde 10 países, contando que un solo país, Grecia, repatrió a más de la mitad del total. Por otra parte, se informó de 22 repatriaciones desde Austria y 23 desde Polonia, mientras que el resto de países repatriaron sólo a 19 personas en total. Evidentemente, el número de repatriados representa una proporción bastante diferente del número total de presuntas víctimas detectadas en cada uno de los países. No obstante, los datos sugieren de nuevo que hay diferentes criterios para decidir sobre la repatriación de presuntas víctimas en cada unos de los países; y el número de repatriaciones no fue proporcional en comparación con las presuntas víctimas identificadas o los períodos de reflexión concedidos.

En 2008 y 2009, **a los ciudadanos de otros Estados miembros de la UE que fueron identificados en un país como presuntas víctimas de trata** se les ofreció protección y asistencia en 19 Estados miembros de la misma forma que a los nacionales de los llamados "terceros países" de fuera de la UE. Sin embargo, en seis Estados miembros (Alemania, Hungría, Letonia, Lituania, Rumanía y España), los ciudadanos de otros países de la UE que fueron reconocidos como víctimas de trata no recibieron un nivel de protección y asistencia tan alto como los nacionales de "terceros países". Se informó que algunos ciudadanos de otros Estados de la UE tuvieron dificultades en ser reconocidos como "víctimas de trata" o en obtener asistencia. Sin embargo, esto significa que en la mayoría de los países de Europa Occidental a los cuales los ciudadanos de la Europa Central fueron tratados, estas víctimas de trata fueron capaces de obtener asistencia. En 2008 y 2009, en 14 de 25 países de la UE, los ciudadanos comunitarios fueron reconocidos y asistidos de la misma forma que las víctimas de estados de afuera de la UE.

Respecto a la cuestión relativa a las formas de **protección dentro de los tribunales de justicia disponibles para los adultos** o menores víctimas de trata para que testifiquen, se informó que aproximadamente la mitad de los Estados miembros de la UE disponen de medidas de protección para testigos víctimas de trata. La protección dentro de los tribunales sobre la cual se investigó incluía la capacidad de los testigos víctimas de trata de proporcionar pruebas en una audiencia preliminar (por ejemplo, ante un juez de instrucción) sin tener que comparecer en una audiencia pública, así como la posibilidad para los testigos víctimas de proporcionar pruebas a través de videoconferencia o protegidos para no tener que ver al acusado. Sin embargo, en cinco países (República Checa, Dinamarca, Francia, Portugal y Reino Unido) se reportaron casos en 2008 y 2009 en que adultos y menores, la identidad de los cuales se suponía que era confidencial, fue descubierta en el transcurso del proceso penal.

Una investigación reciente de *Anti Slavery International*[419] y de la OSCE[420] concluyó que a pesar de existir varios mecanismos de indemnización, el mismo cobro de la indemnización por parte de una víctima de trata, es, en la práctica, muy poco común. No obstante, constaba que en 12 países (de los 22 de los que se disponía información) una víctima de trata había recibido el pago por daños o como indemnización durante el 2008, y durante el 2009, en 12 países (de 20), ya fuera como consecuencia de procedimientos judiciales o por otras fuentes. Los nueve países en los que consta que se realizaron pagos de indemnización durante los dos años fueron Austria, Dinamarca, Francia, Italia, Holanda, España, Suecia y Reino Unido.

La investigación no exploró en detalle los muchos **métodos de prevención**, pero se centró en conocer qué información había disponible para los inmigrantes antes y después de su llegada a un país donde se conoce que hayan sido explotados.

La Convención del Consejo de Europa establece que los Estados "deberán prever el nombramiento de **Relatores Nacionales** o de otros mecanismos encargados del seguimiento de las actividades de lucha contra la trata realizadas por las instituciones del Estado y el cumplimiento de las obligacio-

419. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK* (Oportunidades y obstáculos: asegurando el acceso a la indemnización para personas víctimas de trata en el Reino Unido), Anti-Slavery International, Londres, 2008.
420. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE región* (Indemnización para personas explotadas y víctimas de trata en los países de la OSCE), Varsovia, 2008.

nes previstas por la legislación nacional." Aunque la disposición sólo establece que los Estados "deberán prever" tal nombramiento, hay razones para pensar que la próxima Directiva de la UE será significativamente más exigente en este punto, haciendo que sea una obligación que los Estados miembros de la UE nombren un Relator Nacional independiente o una institución similar. En marzo de 2009 en una conferencia sobre Relatores Nacionales se indicó que 12 Estados de la UE ya habían nombrado a un Relator Nacional (o un mecanismo similar) para monitorear las respuestas nacionales ante la trata de personas. Los investigadores confirmaron que nueve de los 27 Estados de la UE tenían un Relator Nacional en asuntos de trata (Chipre, República Checa, Finlandia, Letonia, Lituania, Holanda, Portugal, Rumanía y Suecia), mientras que 16 no lo tenían. Constaba que varios (como Suecia) prestaban atención exclusivamente a casos relacionados con trata con fines de explotación sexual. En varios Estados (como Bélgica y España) es otra institución la que se encarga de monitorear las respuestas contra la trata. En tres de los nueve (Letonia, Lituania y Suecia) el papel del Relator no era completamente independiente de los organismos involucrados en las operaciones contra la trata, por lo que se limitaba su independencia y potencialmente se reducía su capacidad para monitorear de forma estrictamente independiente.

4. Conclusiones y recomendaciones

El Proyecto E-notes ha demostrado que existen diferencias enormes entre los Estados miembros de la UE en aspectos fundamentales de la política y la práctica contra la trata en la UE, tales como la legislación sobre la prohibición de la trata de personas y definiciones (o interpretaciones de las agencias gubernamentales) de lo que constituye trata, la existencia de organismos de coordinación y el proceso para identificar víctimas de trata. También mostró que varias disposiciones de la legislación nacional e internacional que pretenden garantizar la protección de los derechos de las víctimas de trata sólo existen sobre el papel y su implementación apenas se ha iniciado en la mayoría de los Estados miembros de la UE. Las organizaciones participantes en el proyecto E-notes opinan que la Unión Europea, los mismos Estados miembros y la sociedad civil tendrían que realizar un esfuerzo para fortalecer la base del marco político a nivel nacional y de la Unión Europea, con la finalidad de acabar con la trata de seres humanos.

Aunque son necesarias mejoras sustanciales con respecto a la implementación de muchos aspectos de las políticas contra la trata en la UE, las

siguientes recomendaciones elaboradas en el contexto del proyecto E-notes se centran en la protección de los derechos de las víctimas de trata, ya que estamos convencidos que esto tendría que ser el núcleo de cualquier esfuerzo estatal contra la trata de seres humanos. Sin embargo, las disposiciones importantes con menor grado de implementación son las que se refieren a la prevención de la trata y a la protección de las víctimas de trata.

Identificación y derivación de víctimas de trata

La protección de los derechos de las víctimas de trata sólo puede garantizarse cuando todas las presuntas víctimas (independientemente de su cooperación con las autoridades) sean identificadas como tales. Los resultados del proyecto E-notes muestran que la identificación es todavía muy débil. Para mejorar el proceso de identificación en los Estados miembros consideramos esencial que:

- Los Estados miembros desarrollen listas de control y/o indicadores, en colaboración con agentes del orden público y proveedores de servicios, que puedan ayudar en la identificación de las presuntas victimas de trata de cualquier forma de explotación. Se deberían identificar indicadores adicionales específicos por cada forma de explotación, como la explotación laboral, servidumbre doméstica, explotación sexual, mendicidad forzosa, la implicación obligada en actividades ilícitas, etc. También tendrían que desarrollarse indicadores específicos para la identificación de víctimas menores de edad.
- La identificación de las victimas no es responsabilidad de una sola agencia gubernamental, sino que tendría que ser llevada a cabo por equipos multidisciplinarios que incluyesen a organizaciones que proveen servicios a las víctimas de trata;
- Las estructuras nacionales que se ocupan de las derivaciones, sean los Mecanismos Nacionales de Derivación u otros implicados en implementar los Procedimientos Operativos Estándar, tendrían que basarse en una estrecha y constante cooperación entre, agentes del orden público, oficiales de inmigración, inspectores de trabajo, sindicatos representativos, agencias de protección de menores, fiscalía y ONG u otros proveedores de servicios;
- El acceso a la justicia de las víctimas de trata, incluyendo la reclamación de indemnizaciones, mejora cuando se garantiza la asistencia legal gratuita para todas las víctimas de trata identificadas.

Todos los Estados miembros aseguran que se realiza una evaluación del riesgo para todos los casos de víctimas de trata cuando se propone su repatriación a los respectivos países de origen.

El monitoreo

Es imprescindible más monitoreo, tanto a nivel europeo como nacional, para que los principales actores interesados tengan una mejor comprensión, no sólo de lo que existe sobre el papel en términos de lo que se debe hacer en cada país para detener la trata, sino de lo que se está haciendo en la realidad. Para una buena comprensión de la implementación, de los efectos y del impacto de las políticas contra la trata en la UE, es urgente que:

- Los Relatores Nacionales o otras figuras equivalentes sean organismos independientes (como se establece en la Declaración de la Haya, 1997), con la finalidad de garantizar un monitoreo independiente y comparable de los resultados de las acciones contra la trata. También es importante que el impacto y los efectos imprevistos o incluso negativos de las medidas contra la trata sean identificados y relatados;
- Haya una mayor estandarización de la terminología pertinente, estadísticas y maneras de medir (por ejemplo, número de personas procesados por el delito de trata);
- Exista una cooperación más estrecha entre la UE y los Estados miembros y los miembros del GRETA, el organismo independiente de monitoreo de la Convención del Consejo de Europa contra la Trata de Seres Humanos, para evitar un solapamiento innecesario de las actividades de monitoreo.

Legislación

- Se precisa mayor monitoreo para asegurar que todos los marcos legales nacionales incorporen la definición común de trata contenida en la Decisión Marco de 2002 y en la Convención del Consejo de Europa de 2005.
- En muchos Estados de la UE, parece haber la necesidad de una mejor comprensión del concepto de "explotación" y de los distintos delitos relacionados a la explotación ilegal, ya sea cuando las personas son tratadas en el circuito de la explotación o con el propósito de ser explotarlas, y cuando las personas son sometidas a explotación ilegal sin haber sido tratadas.

Coordinación de las políticas contra la trata a nivel nacional

- Todos los Estados miembros que todavía no lo han hecho, tendrían que crear una estructura de coordinación y un plan nacional de acción para proporcionar una mayor coherencia a sus políticas contra la trata. La asignación adecuada de los recursos humanos y económicos es decisiva para un uso eficiente de dichos recursos. Por consiguiente, sería apropiado para cualquier ejercicio futuro de monitoreo controlar qué recursos se destinan en cada Estado miembro de la UE para financiar una estructura de coordinación a nivel nacional que apoye las actividades de coordinación.

8.20 Executive summary

Fyra NGO:s kom 2009 överens om att delta i ett gemensamt projekt med titeln ”European NGOs Observatory on Trafficking, Exploitation and Slavery” (förkortat E-notes), med målsättningen att kartlägga de insatser och åtgärder EU-ländernas regeringar sätter in för att stoppa människohandel samt de olika former av exploatering som förknippas med människohandel.Den italienska NGO:n ”On the Road[421]” koordinerade projektet till sammans med en regional organisation mot människohandel, ”La Strada International” och två nationella NGO:s; ”ACCEM[422]”, baserad i Spanien samt ”ALC[423]”, baserad i Frankrike.

Istället för att skapa en permanent institution för att övervaka staternas agerande, samlade E-notes in information om hur situationen ser ut i vart och ett av de 27 medlemsländerna. Det innebar att utveckla en forskningsmetod och finna NGO:s och forskare i vart och ett av de 27 medlemsländerna. Projektet inleddes med att ta fram mätbara och jämförbara indikatorer för att kartlägga varje EU-lands insatser för att bekämpa människohandel (dvs lagstiftning, beslut, åtgärder och praxis som åsyftar att minska omfattningen av människohandel och skydda och ge stöd till utsatta). Dessa indikatorer blev grunden för ett forskningsunderlag med över 200 frågor som, enligt vad man hoppades, skulle ge insikt i utvecklingen av arbetet med att bekämpa människohandel i EU:länderna.

Det regelverk som forskningsunderlaget undersöker införandet av

Forskningsprocessen inleddes i början av år 2010, precis samtidigt som Europarådet syntes nära att anta ett nytt EU-instrument för att standardisera insatser mot människohandel i medlemsstaterna (som skulle ersätta ”Council Framework Decision on combating trafficking in human beings” antaget Juli 2002). År 2009 presenterade Europakommissionen förslaget till rambeslut om människohandel. På grund av det i slutet av år 2009 antagna Lissabonfördraget, som omedelbart avbröt alla pågående förhandlingar, kunde förhan-

421. Associazione On the Road erbjuder en mängd stödinsatser och skyddsåtgärder för personer utsatta för människohandel, asylsökande, flyktingar och migranter överlag i tre italienska regioner (Marche, Abruzzo, Molise). Arbetar också med att väcka opinion, samhällsarbete (COMMUNITY WORK), forskning, nätverksarbete och att utveckla policyfrågor lokalt, nationellt och på europeisk nivå.
422. ACCEN erbjuder stödinsatser och agerar på det sociala och juridiska området för att förbättra situationen för asylsökande, flyktingar, personer som förflyttats och migranter I Spanien.
423. ALC står för Accompagnement, Lieux d a'ccueil, Carrefour éducatif et social. ALC samordnar ett nationellt nätverk med skyddade boenden för personer utsatta för människohandel, kallade “Ac Se”.

dlingarna i Europarådet om att anta rambeslutet inte fortskrida. Europakommissionen lade följaktligen fram ett nytt förslag, ”Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims”, repealing Framework Decision 2002/629/JHA. Mars 2010 sändes det ut på remiss till Europaparlamentet. September 2010 föreslog två av EU-parlamentets kommittéer en rad tillägg till direktivutkastet, och därmed inleddes en process för att nå enighet mellan råd och parlament. Det förväntas att direktivet ska antas före utgången av 2010.

Även om det inte verkar råda osäkerhet kring de stora dragen i de krav som ställs på staterna i det nya direktivet var situationen, när E-notes forskningsunderlag avslutades i maj och juni 2010, den att direktivet fortfarande inte antagits (inte heller hade det antagits när hela slutrapporten färdigställdes i oktober 2010). Valet av vilket regelverk man skulle referera till när man bedömde ländernas insatser (alltså vilket regelverk man skulle mäta om staterna följde) föll därför på ett annat regionalt EU-dokument, nämligen Europarådets konvention ”Convention on Action against Trafficking in Human Beings” (Konventionen mot människohandel). Den antogs i maj 2005 och trädde i kraft i februari 2008. Det ratificerades av flera stater utanför EU, men hur som helst, i augusti 2010 hade samtliga EU:s medlemsstater, utom en (Tjeckien) antingen ratificerat det (19) eller skrivit under (sju) och därmed åtagit sig att följa konventionen.

2. Använda metoder

Forskningsunderlaget togs fram av en konsult i början av 2010. Hänsyn togs till tidigare publikationer som tagit fram indikatorer för att jämföra och mäta medlemsstaternas arbete med att anpassa nationella lagar och praxis och rutiner för att de ska överensstämma med regionalt och internationellt regelverk (vilka allihop härrör från FN:s Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, som antogs år 2000 som ett tillägg till FN:s Convention against Transnational Organized Crime). Hänsyn togs också till synpunkter framförda i skrifter av EU-kommissionen[424] samt de brister som noterats av hur staterna agerar för att stop-

424. Sådana som, European Commission, Communication to the European Parliament and Council on “*Fighting trafficking in human beings - an integrated approach and proposals for an action plan*” (European Commission reference COM(2005) 514 final of 18 October 2005); and European Commission Working Document (European Commission reference COM(2008) 657 final), *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, October 2008.

pa människohandel och göra insatser för att skydda och ge stöd till personer som förmodas ha utsatts för människohandel[425]. Några skrifter uppger svårigheter att få fram information från vissa länder om deras insatser mot människohandel (ibland saknas uppdaterad information, ibland information över huvud taget). Några av skrifterna tar upp problemet med att insamlandet av faktauppgifter sker enligt olika metoder och urval, och att det saknas ett konsekvent sätt att använda begrepp och termer, samt att rutinerna för att samla in information och rapportera skiljer sig åt mellan länderna. Alla dessa problem bekräftades i E-notes arbete med att samla in information och kartlägga utvecklingen.

I ett dokument 2006 från EU-kommissionen[426] noterades att medlemsstaterna tillhandahöll magert med information om regler och rutiner för skydd och stöd till utsatta. År 2008 tog ett arbetsdokument[427] åter upp svårigheterna med att få information från medlemsländerna om antalet personer utsatta för människohandel som har fått stöd, men det noterades att år 2006 hade 23 medlemsstater uppgivit till EU att man totalt undersökt över 1500 fall av människohandel under året. De flesta medlemsstater hade infört en ”reflektionsperiod” för att personer som förmodas ha varit utsatta för människohandel ska kunna stanna i landet och återhämta sig, före dem tillfrågas om de vill medverka i en rättegång. Trots detta hade endast fem länder uppgett antal personer som åtnjutit en ”reflektionsperiod” och totalt handlade det om 26 personer på ett år.

NGO:s, som arbetar med att bekämpa människohandel (antingen genom att ge stöd och hjälp till förmodat utsatta personer, eller genom att söka förebygga människohandel) anser att bristen på information och fakta från medlemsstaterna till EU-kommssionen är oroande. Å ena sidan visar detta på att ingen, inte ens centralt i EU, har en klar bild av vad som pågår inom EU-länderna. Å andra sidan pekar detta också på att många av de dokument som ratificerats och överenskommelser som slutits på regional och internationell nivå gällande kampen mot människohandel helt enkelt ignoreras av staterna (trots att de deltagit i utformandet av dessa) och inte implementeras.

425. Uttrycket ”förmodat utsatta” används om personer som man misstänker har varit utsatta för människohandel, men inte kan klargöra fullt ut om det de utsatts för kan benämnas människohandel.
426. European Commission report on the implementation of the 2002 Council Framework Decision of 19 July 2002 on combating trafficking in human beings (European Commission reference COM(2006) 187 final of 2 May 2006).
427. European Commission Working Document (European Commission reference COM(2008) 657 final), *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, October 2008.

Några medlemsstater har utsett en Nationell Rapporteur av människohandel för att hålla regeringar (och andra) informerade om utvecklingen av insatserna mot människohandel och rekommendera förbättringar. Nio av EU:s 27 medlemsstater uppgav i vår kartläggning vid mitten av år 2010 att de hade en Nationell Rapporteur, men alla publicerade inte rapporter och några fokuserade på människohandel för vissa ändamål (såsom kvinnor traffickerade för sexuella ändamål) och rapporterade inte om människohandel för andra ändamål. På lång sikt, om Nationell Rapporteurs utses i alla medlemsstater, skulle det finnas goda förutsättningar att introducera standardiserade definitioner av termer och begrepp och sätt att mäta statistik på, så att meningsfulla jämförelser av insatser och metoder och utvärderingar i de olika länderna skulle kunna genomföras regelbundet i de olika EU-länderna.

Det är dock utifrån rådande situation E-notes har tagit fram ett forskningsunderlag för att kartlägga vilka tillgängliga uppgifter som finns i länderna: om lagstiftning, beslut och rutiner på området människohandel, hur många människor som identifierats som utsatta för människohandel och hur många som har fått någon form av skydd, stöd eller hjälp etc. Eftersom informationen samlades in i maj och juni 2010 var den ursprungliga avsikten att ta fram uppgifter för år 2009. Men det visade sig snart att det i många länder saknades uppgifter för år 2009, antingen helt eller delvis, medan det för år 2008 fanns mer tillgängliga uppgifter.

De NGO:s som ombads utse en forskare att samla in och sammanställa informationen enligt E-notes forskningsunderlag hade i de flesta fall särskild kunskap om vuxna utsatta för människohandel (särskilt kvinnor). Hur som helst ombads de samla in uppgifter om barn utsatta för människohandel också, även om många erfor svårigheter med att få fram information om barn utsatta för människohandel. I många EU-länder får vuxna utsatta för människohandel framför allt stöd och hjälp från NGO:s, medan statliga verksamheter som ger stöd och skydd till utsatta barn har en sorts ensamrätt på att hjälpa barn utsatta för människohandel.

Varje forskare ombads fylla i ett 60-sidigt frågeformulär, samt dessutom skriva förklarande texter i de fall då ett ”ja” eller ”nej” svar inte var tillräckligt eller missvisande, samt att skriva en profil över landets insatser mot människohandel och rapportera om uppkomna mönster och trender inom människohandeln, och statliga insatser utifrån detta. Informationen som togs fram av 27 forskare via det ovan beskrivna forskningsunderlaget bearbetades och lades in i en enkel databas i juli 2010. Resultatet analyserades av samma konsult som hade utformat själva forskningsunderlaget, för att om möjligt finna

mönster – och inte minst tillkortakommande att uppfylla staternas skyldigheter att skydda och ge stöd till personer utsatta för människohandel – samt att sammanställa en rapport om slutresultatet.

Forskarna ombads uppge om deras land var ett ursprungsland för människohandel eller transit- eller destinationsland, eller en kombination av dessa. Denna kategorisering tog inte sikte på människohandel inom det egna landet. Relativt få ansågs vara enbart en av dessa tre kategorier (Frankrike och Portugal ansågs vara i princip enbart destinationsland). Övriga 25 länder ansågs vara en kombination av kategorierna: ett som både ursprungs- och destinationsland; tio som både transit- och destinationsland; och nio som en kombination av alla tre.

3. Forskningsunderlagets resultat

De 230 frågorna i frågeformuläret berörde en mängd områden, vilket sammantaget ger en mångfacetterad bild av hur länderna fullföljer de åtaganden de antagit och visar den respekt de enligt de mänskliga rättigheterna bör gentemot personer utsatta för människohandel. Trots att ingen entydig bild gavs var det, när det gällde fem frågeställningar, möjligt att fastställa en gradering av utvecklingen. Även för dessa frågeställningar finns det information som inte är tillgänglig eller ofullständiga faktauppgifter, vilket gör att statistiken inte är helt tillförlitlig. De fem frågeställningarna sammanfattas nedan:

Tabell 1 Utvecklingen av insatser för att bekämpa människohandel inom EU gällande några nyckelpunkter

Fråga	Situationen enligt maj 2010
Koordinering av nationella insatser mot människohandel	En nationell struktur för att koordinera insatser mot människohandel har etablerats i 22 av de 27 länderna. Länder utan en struktur för koordinering är Frankrike, Tyskland, Grekland och Malta. I Tyskland och Italien är inte insatserna mot människohandel organiserade nationellt eller federalt, men detta innebär inte att de är icke-fungerande. I Sverige finns en nationell koordinator utsedd för att skapa en samordnande struktur för att bekämpa människohandel, men enbart för människohandel för sexuella ändamål.
Identifiering av personer som antas ha utsatts för människohandel	Elva utav 27 medlemsländer uppger att de har en myndighet eller en struktur för att formellt identifiera personer som antas ha varit utsatta för människohandel, och 16 saknar detta. Sex av de länder där en sådan institution för identifiering saknas på nationell nivå har inte heller rutiner för detta ute i landet (Österrike, Bulgarien, Frankrike, Tyskland, Italien, Malta).

Förekomst av en reflektionsperiod på minst 30 dagar

In I 25 av de 27 länderna finns det möjlighet att ansöka om en återhämtningsperiod på 30 dagar för personer som förmodas ha utsatts för människohandel – ett stort antal stater tycks leva upp till minimikraven på denna fråga. I Italien finns inte rätten till reflektionsperiod reglerad, men i praktiken kan en sådan ändå erbjudas. I Litauen rapporteras en liknande situation. För 2008 fanns det uppgifter från elva länder på att totalt 207 personer hade erhållit en återhämtningsperiod. För 2009 fanns tillgängliga uppgifter från 18 länder och betydligt fler uppgavs ha erhållit en återhämtningsperiod: 1150 personer utsatta för människohandel. Detta tyder på en betydande ökning.

Rutiner kring hemsändande för att de ska vara säkra och ske, om möjligt, frivilligt.

Sex länder noterades ha formella överenskommelse med andra EU-länder eller tredje land för att reglera hemsändandeprocessen för personer utsatta för människohandel (Frankrike, Lettland, Portugal, Spanien och UK: Grekland har ett bilateralt avtal uteslutande för barn utsatta för människohandel), nämnas bör att förekomsten av överenskommelse inte tycks garantera att övergrepp ändå inte sker. När myndigheter planerar att skicka hem en person som förmodas ha utsatts för människohandel noterar våra forskare att i endast tre av 17 EU-stater finns information om att adekvata hot- och riskbedömningar görs eller är en del av rutinerna (Italien, Portugal och Rumänien gör hot-och-riskbedömningar), dvs. att man kartlägger riskerna för individen och familjemedlemmar vid hemkomst.

Tillgång till ersättning och kompensation.

I tolv länder (utav 22 där det fanns tillgänglig information) uppgavs en person som utsatts för människohandel ha fått ekonomisk kompensation under år 2008, och i 12 länder (utav 20) under år 2009, antingen som resultat av rättegångsförhandlingar eller från annan källa. De nio länder som uppgav att kompensation betalats ut båda år var Österrike, Danmark, Frankrike, Tyskland, Italien, Nederländerna, Spanien, Sverige och UK.

Utifrån dessa fem punkter, skulle det vara felaktigt att försöka bedöma och ranka de enskilda staternas insatser (såsom en årlig rapport från US Departement of States gör), för i de tre första frågorna är det överlag olika stater som visar upp brister, medan det är en uppsjö av olika stater som i de två sista frågorna agerar korrekt. Italien är till exempel det enda land som nämns i alla fem frågor, och gör bra ifrån sig på många områden, men utifrån ett arbetssätt som skiljer sig från de flesta andra EU-länders sätt att arbeta för att bekämpa människohandel.

Förutom ovanstående fem punkter tog forskningsunderlaget fram utvecklingen på en mängd andra områden. Forskarna undersökte om **lagstiftningen i varje land** verkligen gällde alla former av exploatering som går under benämning människohandel (det vill säga för sexuella ändamål i olika former, för exploatering av arbetskraft och tvångsarbete, träldom, slaveri eller

andra liknande former av livegendom, eller för att avlägsna organ). Det framkom att, överlag, täcker lagstiftningen alla olika former. Två länder, Estland och Polen rapporteras fortfarande se över lagstiftningen, och i Spanien kommer lagstiftningen i december 2010 att följa de regler som EU och Europarådet satt upp.

Forskarna skulle också ta reda på om **parterna i människohandelmål**, dvs. traffickerare och offer för människohandel, definierades och titulerades på jämförbart sätt i de olika länderna. Här fann forskarna en större variation. I Frankrike till exempel används begreppet traffickerare för alla misstänkta för att agera som kopplare/hallick, vilket ledde till att det i förstone föreföll som 900 individer hade fällts för människohandel i Frankrike under ett enda år (2008). Vid närmare granskning, visade det sig att drygt hälften (521) handlade om grovt koppleri (ett brott som ligger närmare vad som i andra EU-länder kallas människohandel), och endast 18 dömda fall handlade om brott som rubricerades som människohandel enligt definitionen fastställd av EU:s Rambeslut 2002 och Europarådskonventionen. I Finland var situationen den motsatta – fall som enligt gällande regelverk skulle benämnas som människohandel, har istället behandlats som grovt koppleri eller koppleri.

Kartläggningen undersökte hur processen för att **identifiera människor som offer för människohandel** gick till och hur beslut om de skulle beviljas en 30-dagars reflektionsperiod eller andra former av skydd eller stöd gjordes. Resultatet visade återigen på en stor spridning av arbetssätt och en rad olika brister, såsom om det inte en fanns ett gemensamt europeiskt regelverk överhuvudtaget.

En **nationell struktur för att koordinera bekämpningen av människohandel** rapporterades ha etablerats i 20 av 27 medlemsstater. En nationell handlingsplan för att bekämpa människohandel eller liknande planer hade antagits i 22 av de 27 medlemsstaterna (även om en del endast riktar in sig på människohandel för sexuella ändamål). De flesta länder har en polisenhet som specialiserat sig på att bekämpa människohandel. I några länder finns en nationellt förankrad rollfördelning som klargör vem som gör vad när det gäller att ge stöd, skydd och hjälp och se till att utsatta personer hamnar rätt – ett National Referral Mechanism/System. Totalt har 17 länder ett sådan strukturerad arbetssätt medan nio inte har det.

I elva utav 27 medlemsländer finns en enhet eller myndighetsutövare som är ensam ansvarig för att formellt identifiera om någon är ett förmodat offer för människohandel, medan detta inte är fallet i 16 länder. Sju utav de länder där

det inte finns en ansvarig för att identifiera utsatta har inte heller en vedertagen hantering som är lika i hela landet för att identifiera offer för människohandel. Detta innebär dock inte att identifieringsprocessen (och det därigenom tillgängliga skyddet och stödet) är mer effektivt i länder med ett enda system. Vad gäller identifieringsprocessen, såväl detaljerna i det som följer efter identifikation, och graden av efterlevnad, samt effektivitet, visade sig detta variera mellan länderna stort.

Forskarna kunde endast få fram osäkra siffror på **antal personer som förmodas ha utsatts för människohandel under en tolv månaders period 2008 och 2009** – totalt 4 010 personer i 16 länder (men några av dessa individer kan ha räknats två gånger, dels identifierats i destinationslandet och dels igen i hemlandet vid återvändande). I drygt hälften av fallen (55 procent) visade det sig att de personer som förmodats ha utsatts för människohandel också bekräftades ha utsatts för människohandel av myndigheter. Följdriktligt uppgick antal personer som förmodats ha utsatts för människohandel och blivit föremål för remittering (för insatser) år 2009, till 3800 personer i de 16 länder där information var tillgänglig.

Både barn och vuxna som förmodas ha varit utsatta för människohandel försvann under identifieringsprocessen 2008 och 2009. Barn som förmodas ha utsatts för människohandel försvann i 10 länder. En annan sammansättning av 10 länder rapporterade att vuxna som man förmodat vara utsatta för människohandel försvunnit under identifieringsprocessen.
Vi samlade information om tre former av stödinsatser:

- Reflektions- och återhämtningsperiod
- Hot- och riskanalyser
- Hemsändande (återvändande till den utsattas hemland).

I några länder var det svårt att få fram uppgifter på **antal personer som erhållit en reflektionsperiod**. År **2008** erhöll 207 personer en reflektionsperiod i 11 länder. Året därpå, **2009**, fanns det information om antal beviljade reflektionsperioder för 18 länder och totalt erhöll 1150 personer en reflektionsperiod. År 2008 beviljades 1026 **uppehållstillstånd** i nio länder. Det innebär ett snitt på 100 personer per land, vilket är missvisande för 664 av dessa tillstånd utfärdades enbart i Italien (där man utfärdade 810 ytterligare år 2009), och 235 i Nederländerna, vilket innebär att de övriga 7 länderna endast utfärdades 127 uppehållstillstånd år 2008 till personer utsatta för människohandel (det vill säga mindre än 20 var). Detta ger vid handen att rutinerna och reglerna för att bevilja uppehållstillstånd till personer utsatta för människohandel varierar stort inom EU.

Barn utsatta för människohandel har beviljats uppehållstillstånd[428] i sex länder under dessa två år; Frankrik, Italien, Polen och UK har utfärdat tillstånd fram till att barnen fyllde 18 år, medan Österrike och Danmark utfärdat permanent uppehållstillstånd till barn. I Italien har utländska barn, utsatta för människohandel eller ej, rätt att stanna tills de fyller 18 år. Men även barn utsatta för människohandel kan ha rätt att erhålla ett permanent uppehållstillstånd på samma grund som vuxna utsatta för människohandel (denna reglering kallas ”Artikel 18”). I Nederländerna beviljades barn uppehållstillstånd, men det var svårt att få uppgifter på om det handlade om permanenta eller tillfälliga uppehållstillstånd.

Vad gäller hemsändandet (eller repatrieringen) skulle forskarna ta reda på; om hemsändandet skedde på frivillig grund eller genom tvång, hur många personer förmodat utsatta för människohandel som sänts hem och under vilka omständigheter det skett. De kunde fastställa att sex av medlemsstaterna hade formella avtal med andra stater vad gällde hemsändandet (fem av de sex länderna är destinationsländer, varför avtalen framför allt är med ursprungsländer).

Uppgifter om **antal vuxna personer som sänts hem** var tillgänglig i 15 länder år 2008; 194 personer sändes hem från 12 destinationsländer (Österrike, Cypern, Tjeckien, Danmark, Tyskland, Frankrike, Grekland, Italien, Lettland, Nederländerna, Polen och Slovenien). Detta år, 2008, var de flesta som sändes hem från Nederländerna (37), följt av Italien (31), Cypern (24), Tyskland (23) och Danmark (21). Information om antal **återsända år 2009** var endast tillgänglig för 10 länder. 171 personer utsatta för människohandel rapporterades ha sänts hem detta år, varav över hälften från Grekland. Annars rapporterades 22 sänts hem från Österrike och 23 från Polen, medan övriga sju länder endast sänt hem sammanlagt 19 personer. Återigen visar detta på att man utgår från olika kriterier när man beslutar om en person utsatta för människohandel ska sändas hem, och dessutom står inte antalet hemsända i proportion till antal personer som man förmodar ha utsatts och inte heller till antal personer som erbjudits en reflektionsperiod.

I 19 medlemsstater fick, under åren 2008 och 2009, **medborgare i EU-länder tillgång till samma stöd och skydd som medborgare från Tredje land**, dvs. utanför EU. Men i sex medlemsstater (Tyskland, Ungern, Lett-

428. Uppehållstillstånd avser juridisk rätt att som utländsk medborgare stanna i ett land, antingen temporärt eller permanent.

land, Litauen, Rumänien och Spanien) var detta inte fallet, utan tvärtom rapporterades medborgare från EU-länderna möta större hinder för att identifieras som offer för människohandel och få tillgång till stöd och skydd än medborgare från Tredje land. Några medborgare från andra EU-stater har mött svårigheter med att identifieras som utsatta för människohandel och erhålla stöd och hjälp. Detta innebär ändå att de allra flesta personer utsatta för människohandel som förts till Västeuropeiska länder från Öst- och Centraleuropa fick tillgång till stödinsatser: med undantag av de som identifierades i Tyskland och Spanien. I 14 av 25 EU-länder behandlades personer utsatta för människohandel lika, oavsett om de var EU-medborgare eller inte.

Vad gäller frågan om vilket **skydd under rättegången** som erbjöds de vuxna och barn utsatta för människohandel som var vittnen eller målsägande, rapporterades att det fanns tillgängliga skyddsinsatser i hälften av länderna. De skyddsinsatser forskarna skulle ta reda på om de fanns var; möjligheten att lämna vittnesuppgifter under första förhör och möjligheter att inte behöva närvara fysiskt i själva rättssalen under förhandlingarna, och möjligheter för vittnen att lämna uppgifter via videolänk eller få berätta utan att den/misstänkta är närvarande. I fem länder (Tjeckien, Danmark, Frankrike, Portugal och UK) rapporterades att identiteten på vuxna och barn utsatta för människohandel röjts och offentliggjorts, trots att deras identitet av säkerhetsskäl borde varit konfidentiell under rättsprocessens gång.

Färska rön från Anti Slavery International[429] and OSCE[430] för fram att även om personer utsatta för människohandel har rätt till ersättning och ekonomisk kompensation, och trots förekomst av flertal ersättningssystem, erhåller personer utsatta för människohandel sällan ekonomisk kompensation i form av **skadestånd eller brottsskadeersättning**. Det visade sig dock att i 12 länder (utav de 22 där information fanns tillgänglig) hade personer utsatta för människohandel erhållit skadestånd eller brottsskadeersättning, antingen som resultat av domslut eller på annat sätt, år 2008, och i 11 länder (utav 19) under 2009. De åtta länder där ekonomisk kompensation betalats ut båda åren var: Österrike, Danmark, Frankrike, Tyskland, Italien, Spanien, Sverige och UK.

429. J. Lam, K. Skrivankova, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2008.
430. OSCE/ODIHR, *Compensation for trafficked and exploited persons in the OSCE region*, Warsaw, 2008.

Forskarna undersökte inte i detalj de stora antal **förebyggande insatser** som satts in utan fokuserade på vilken information som fanns tillgänglig för migranter före och efter ankomst till destinationsländer.

Europarådets konvention kräver att staterna överväger att utse en **National Rapporteur** eller annan övervakningsmekanism av myndighetsinsatser för att bekämpa människohandel och implementera lagstiftning på området. Även om skrivning är ”överväger att utse”, finns all anledning att anta nästkommande EU-direktiv kommer att uttrycka sig betydligt kraftfullare på denna punkt, och ställa det som krav att varje medlemsland har en Nationell Rapporteur eller likvärdig mekanism. I mars 2009 anordnades en konferens på ämnet Nationell Rapporteur där man menade att sådana (eller likvärdig mekanism) fanns i 12 av medlemsländerna. Forskarna i E-notes' projekt bekräftade att 9 av de 27 medlemsländerna har en Nationell Rapporteur (Cypern, Tjeckien, Finland, Lettland, Litauen, Nederländerna, Portugal, Rumänien och Sverige), medan en sådan rapporterades saknas i 16 länder. Flera rapporterades framför allt ägna sig åt människohandel för sexuella ändamål (till exempel Sverige). I flera stater (t ex Belgien och Spanien) finns en annan typ av statlig institution för att övervaka bekämpningen av människohandel. I tre av de nio länderna med Nationell Rapporteur (Lettland, Litauen och Sverige) var inte dennes roll inte endast att övervaka bekämpningen av människohandel, utan även att ha en operativ roll i arbetet med att bekämpa människohandel, vilket kan minska möjligheten att göra självständiga oberoende analyser.

4. Sammanfattning

Projektet E-notes visar att det finns betydande skillnader på både policy- och operativ nivå mellan EU:s medlemsstater, till exempel avseende; nationell lagstiftning och definitioner (eller tolkningar av densamme från myndigheter och statliga instanser) av vad som utgör människohandel, förekomst av samordnande institutioner och processen för att identifiera personer som förmodas ha utsatts för människohandel. Kartläggningen visar också att internationella och nationella bestämmelser, som syftar till att säkerställa skyddet av rättigheterna för offer för människohandel, endast existerar på pappret och att implementeringen av dessa i de flesta EU-länderna knappast ens påbörjats. De organisationer som deltar I E-notes anser att store ansträngningar bör göras av Europeiska Unionen, EU:s medlemsstater själva och av det civila samhället för att stärka grunden för regelverken på nationell och EU-nivå, som är avsedd att stoppa människohandeln.

Det behövs betydande förbättringar för att implementera EU:s regelverk avseende flertalet insatser mot människohandel. Följande rekommendationer från E-notes kartläggning sätter fokus på att skydda rättigheterna för utsatta för människohandel, då vi är övertygade om att detta är grunden för varje stats arbete med att bekämpa människohandel. För att förebygga människohandel, och ge skydd till utsatta för människohandel, krävs att åtminstone dessa bestämmelser införs.

Identifikation och hänvisning av personer utsatta för människohandel
För att säkerhetsställa att alla personer förmodat utsatta för människohandel (oavsett om de samarbetar med myndigheter eller ej) verkligen får tillgång till sina rättigheter är att de identifieras som utsatta. E-notes kartläggning visar att identifikationsprocessen fortfarande är en mycket svag punkt. För att förbättra identifikationsprocessen i medlemsstaterna anser vi att det är av vikt att:

- Medlemsstater utvecklar checklistor och/eller indikatorer i samförstånd mellan lagutövare, åklagarkammare och tillhandahållare av stödinsatser, för att underlätta identifieringen av alla personer som kan befaras ha utsatts för någon form av människohandel. Ytterligare indikatorer bör utvecklas för att identifiera var och en av de olika former för exploatering som ingår i begreppet människohandel, såsom exploatering av; arbetskraft, hushållstjänster, sexuella tjänster, tiggeri eller andra illegala aktiviteter. Särskilda indikatorer för att identifiera utsatta barn bör också tas fram.
- Identifiering är inte en enda myndighets ansvar, utan bör göras av ett multidisciplinärt team bestående av organisationer som ger stöd och skydd till personer utsatta för människohandel.
- Nationella strukturer för att hänvisa utsatta personer vidare, antingen National Referral Mechanisms (NRM) eller andra system för att implementera Standard Operational Procedures (SOPS), ska vara baserade på ett nära och regelbundet samarbete mellan lagutövare, tjänstemän verksamma med migrationsfrågor, inspektörer på arbetsmiljöområdet, relevanta fackföreningar, organisationer som verkar för att skydda barnens bästa, åklagarkammare och NGO:s eller andra stödgivande organisationer.
- Tillgång till rättegång och rättvis behandling av personer som förmodats ha utsatts för människohandel, inklusive att få ersättning och ekonomisk kompensation, underlättas om alla personer som identifieras som utsatta för människohandel garanteras fri tillgång till juridisk hjälp.
- Alla medlemsstater ser till att individuell risk- och hotbedömning utförs på alla personer som identifierats som utsatta för människohandel när hemsändande kommer på fråga.

Övervakning

Ytterligare uppföljning är avgörande, både på EU-nivå och nationell nivå, för att alla aktörer ska få en bättre förståelse, inte bara av vad som står på papper och förmodas göras i varje enskilt land, utan också av vad som faktiskt görs i praktiken. För att bättre förstå implementeringen, dess effekter och konsekvenserna av insatserna för att bekämpa människohandel i Europa, är följande åtgärder nödvändiga:

- Nationella Rapporteurer eller andra motsvarande funktioner bör vara fristående enheter (enligt överenskommelsen i Haagdeklarationen 1997) för att garantera självständiga analyser av insatserna för att bekämpa människohandel och få fram jämförbara resultat.
- Det behövs standardisering av terminologin i fråga, statistikföring och mätmetoder (t ex antal individer som åtalas för människohandel).
- Det efterfrågas ett närmare samarbete mellan EU och dess medlemsstater och medlemmarna av GRETA, den fristående övervakaren av Europarådets konvention mot människohandel, för att undvika onödiga överlappningar gällande övervakande insatser.

Lagstiftning

- Ytterligare övervakning krävs för att tillförsäkra att all nationell lagstiftning täcker in den definition av människohandel som är överenskommen enligt Rambeslutet 2002 och Europarådets konvention 2005.
- Det förefaller finnas betydande behov av att nå en djupare förståelse i flertalet av EU:s medlemsstater av begreppet ”exploatering” och den stora variation av övergrepp som inryms i illegal exploatering; det vill säga när människor dras in i människohandel och blir exploaterade, eller dras in i människohandel och riskerar att exploateras, samt om människor exploateras otillbörligt utan att vara föremål för människohandel.

Samordning av insatser på nationell nivå för att bekämpa människohandel

- Alla medlemsstater, som inte ännu gjort det, bör skapa en struktur för samordning av insatser mot människohandel och upprätta en nationell handlingsplan för att hålla samman arbetet mot människohandel. Att mänskliga och ekonomiska resurser används på rätt sätt är avgörande för att de ska fungera effektivt. Att övervaka hur de enskilda medlemsstaterna använder sina resurser och finansierar samt stödjer etablerandet av en nationell samordning och samordnande insatser, är därför lämpligen en uppgift för kommande kartläggningar av implementeringen av åtgärder och interventioner mot människohandel i europeiska unionens medlemsstater.

APPENDIX 1 - THE RESEARCH PROTOCOL QUESTIONS

1. Basic data about the country and individual/organisation filling in responses

    1. Name of the country concerned (the country you are responding about)

    2. Name of the principal organisation providing information

    3. Name or names of principal individual(s) filling in this form

    4. Contact details of principal individual providing information: telephone number + e-mail address + any suggestions about when is or is not a suitable time to contact this individual in case we need extra information.

    5. Do you perceive this country to be principally:
        (a) A country of origin of trafficked persons
        (b) A destination county to which people are trafficked and where they are exploited
        (c) A country through which trafficked persons transit
        (d) A combination of (a), (b) and (c)? (indicate which)
        (e) other

    6. If your answer to '5' is 'd' (a combination of origin and destination), can you estimate what proportion (percentage) of the total number of people you think were 'trafficked' last year (2009) were foreigners trafficked to your country and what proportion were nationals of your country who were either trafficked abroad or trafficked inside your country, without being taken abroad?

2. Adequacy of national legislation to stop human trafficking, slavery and servitude

    7. Has your country adopted or revised its legislation against human trafficking since the EU Framework Decision was adopted in July 2002?

    8. If so, does the definition of human trafficking now accord with the definition in the Council of Europe Convention, in considering cases of recruitment or movement of adults for the purpose of a form of exploitation specified in the Convention to constitute trafficking only if one of the abusive means mentioned has been used?

    9. Does your country's anti-trafficking legislation mention, as a purpose for which adults may be trafficked, 'exploitation of the prostitution of others' or 'sexual exploitation' or any other form of exploitation in the sex industry or while providing commercial sex?

    10. Does your country have other legislation criminalising activities surrounding prostitution involving adults, apart from trafficking? i.e., either activities of a prostitute/sex worker or activities of a person who pays for sex (or tries to pay for sex) or involving other people, such as owners of brothels or men who rely on the earnings of a woman sex worker.

    11. If so, please specify what activities concerning prostitution are offences?
        (a) Exploitation of the prostitution of others (i.e., pimping)

(b) Renting premises or providing other services to a prostitute in return for material gain
(c) Paying for commercial sex with an adult (women or man) in any circumstances
(d) Soliciting for commercial sex in a public place
(e) Other (please specify what)

12. Does your country's anti-trafficking legislation specify that anyone who recruits a child into prostitution is to be prosecuted for trafficking? [Our interest is to find out if legislation on trafficking is being used to prosecute people who might otherwise be charged with 'corrupting a minor' or 'exploiting the prostitution of a child']

13. Does your country's anti-trafficking legislation mention, as purposes for which adults and children may be trafficked, forced or compulsory labour or services, slavery or practices similar to slavery, or servitude (i.e., rather than focusing exclusively on trafficking for the purpose of sexual exploitation)?

14. Does your country's anti-trafficking legislation mention, as a purpose for which individuals may be trafficked, the removal of organs?

15. Does your country have other legislation or regulations making it an offence to pay an individual who provides a body organ (NB 'body organ' refers to body organs, tissues and cells, including blood, kidneys, etc.)?

16. Does your country's anti-trafficking legislation mention, as purposes for which individuals may be trafficked, any other forms of exploitation?

17. If so, what? (e.g., begging, illegal activities such as theft or picking pockets)
(a) exploitation of begging?
(b) illegal activities such as theft or picking pockets?
(c) benefit fraud? (NB, this involves bringing a child into a country for the express intention of obtain social security payments fraudulently)
(d) domestic work?
(e) Other? (please specify what)

18. Does your country have laws (whether these are part of an anti-trafficking law or not) which explicit prohibit and punish the use of slavery (or enslavement)?

19. Does your country have laws (whether these are part of an anti-trafficking law or not) which explicit prohibit and punish the use of forced labour or compulsory labour or forced services?

20. Does your country have laws (whether these are part of an anti-trafficking law or not) which explicit prohibit and punish the use of servitude?

21. Does your country's legislation make it an offence to 'exploit' the begging of others, i.e., to take the earnings of a child or adult beggar or otherwise to act as a 'beggar master'? If so, please specify what the offence is. [NB this offence is not committed simply by begging]

22. Does your country's legislation make it an offence to traffic an individual within your country (i.e., cases of internal or domestic trafficking, rather than defining trafficking cases only as transnational ones which involve crossing a national border)?

23. Does your country's legislation on trafficking in human beings state explicitly that the recruitment (or transportation, transfer, harbouring, or subsequent reception) of a child under 18 years of age for the purpose of exploitation constitutes trafficking, even if the child is not subjected to any of the coercive means which are involved in the case of an adult?

24. Is there at least one specialist police unit in your country focusing on human trafficking or related crimes?

25. If there is, does it focus on cases of trafficking for all purposes or does it focus uniquely or mainly on sex-related trafficking? Indicate which one of the categories below applies:
    (a) trafficking for all purposes (both sex-related and labour-related)
    (b) uniquely sex-related trafficking
    (c) predominantly sex-related trafficking
    (d) Don't know
    (e) Other? (please specify what)

26. If there is a specialist police unit, do you have any reason to believe that the unit is significantly under-funded or under-resourced (i.e., more so that other specialised police units)?

27. How many people were convicted in your country in 2008 (or for a period covering much of 2008) for trafficking-related offences (involving adults or children)? This question is not just about how many people were convicted of an offence that mentioned trafficking in the charge, but rather a wider group of people who may have been convicted of other offences, but are believed to have been traffickers. If you think no accurate total is available, refer to less dependable figures and indicate the source.

28. If statistics are available for some or all of 2009, how many people were convicted in your country in 2009 (or for a period covering much of 2009) for trafficking-related offences (involving adults or children)?

29. How many people were convicted in your country in 2008 (or for a period covering much of 2008) for trafficking-related offences (involving adults and children) involving sex-related trafficking? If no precise statistics are available, please estimate what proportion of all trafficking-related convictions these convictions accounted for.

30. If statistics are available for some or all of 2009, how many people were convicted in your country in 2009 for trafficking-related offences (involving adults and children) involving sex-related trafficking?

31. How many people were convicted in your country in 2008 for offences involving labour-related trafficking? If no statistics are available, please estimate what proportion of all trafficking-related convictions these convictions accounted for.

32. If statistics are available for some or all of 2009, how many people were convicted in your country in 2009 (or for a period covering much of 2009) for offences involving labour-related trafficking?

33. How many people were convicted in your country in 2008 for offences involving trafficking for another purpose? E.g., begging or organ removal.

34. If statistics are available for some or all of 2009, how many people were convicted in your country in 2009 for offences involving trafficking for another purpose? E.g., begging or organ removal.

35. How many people were convicted in your country in 2008 for trafficking-related offences concerning children as victims (or young adults who were aged under 18 at the time they were first trafficked)?

36. If statistics are available for some or all of 2009, how many people were convicted in your country in 2009 for trafficking-related offences concerning children as victims (or young adults who were aged under 18 at the time they were first trafficked)?

37. Were any cases involving serious abuse of domestic workers reported in 2008 or 2009?

38. If so, indicate if they involved any of the following categories:
    (a) Migrant domestic workers employed by diplomats
    (b) Migrant domestic workers (in general)
    (c) au pairs
    (d) Don't know
    (e) Other? (please specify what)

39. Were any cases involving offences against domestic workers tried in your courts during 2008, which allegedly involved either forced labour, trafficking or related levels of exploitation? If the number of trials is known, please say how many and indicate if exact or approximate.

40. If information is available for some or all of 2009, were any cases involving offences against domestic workers tried in your courts during 2009, which allegedly involved either forced labour, trafficking or related levels of exploitation?

41. In addition to information available about convictions, is information available about the number of traffickers whom the police (or others in the criminal justice system) investigated in 2008? If so, please report how many traffickers were investigated.

42. Similarly, if information is available for some or all of 2009, is information available about the number of traffickers whom the police (or others in the criminal justice system) investigated in 2009? If so, please report how many traffickers were investigated.

3. Existence of a structure at national level to coordinate anti-trafficking measures and existence of a referral system

43. What government ministry or department or inter-ministerial body is responsible for developing government anti-trafficking policy? (If it appears that no government department has the main responsibility or the situation is muddled, please say so).

44. Has your country adopted any form of National Action Plan to Combat Trafficking in Human Beings, either for the years 2008 or 2009 or earlier? (NB if there has been no Action Plan specifically on human trafficking, but has been on related topics, please mention this in descriptive text).

45. Has a national coordination structure been established (whether or not it is called a 'national referral mechanism') to oversee the development and coordination of plans and policies at national level on the issue of trafficking in human beings?

46. If there is a national coordination structure, please indicate the web site address where information can be obtained about it (in your national language or in English)

47. If there is a national coordination structure, which agency (or agencies) or official heads or coordinates it?

48. In your opinion, does the agency or official that heads or coordinates it have the funding and capacity to carry out the tasks expected of it?

49. If there is a national coordination structure, do its procedures allow, in theory, for the participation of representatives of civil society or NGOs (as required by article 5 of the Council of Europe Convention)?

50. Were there occasions in 2008 or 2009 when representatives of civil society or NGOs could participate in the national coordination structure (as required by article 5 of the European Convention)?

51. Does the national coordination structure meet the principles and the operational criteria identified in legislation or administrative instruments when it was established?

52. Does the national coordination structure report publicly on its activities (i.e., at least once a year)?

53. If there is a national referral system, is it called an NRM?

54. Is there procedure recognised at national level specifying the roles of different organisations in providing protection or assistance to trafficked persons and for referring them to appropriate services (whether this part of a national coordination structure or NRM or not)? NB In some countries such a procedure is called 'Standard Operating Procedures'; in others it is called 'NRM'.

55. If not, is it clear what the roles and responsibilities of different organisations are for referring presumed trafficked persons, or not?

56. Do NGOs involved in the referral system consider it to be adequate? Please respond by circling a, b, c or d. Also summarise the comments made by NGOs in your descriptive text in 3.2 above.

57. In your opinion, do the agencies involved in the referral system (whether government agencies or non-governmental or international organisations) have the funding, capacity and expertise to carry out the tasks expected of them by the referral system?

4. Identification

58. Is a single government agency or structure responsible for making a formal identification of anyone who is presumed to have been trafficked?

59. If not, is there a standard procedure in use throughout your country for making a formal identification of anyone who is presumed to have been trafficked? Specify what the procedure is called and describe it in 4.2 (and mention a website where it is described in your national language or in English, if there is one)

60. If not, have formal procedures for identifying anyone who is presumed to have been trafficked been adopted at any other levels in your country, e.g. in particular towns or provinces. Please describe any formal procedures of this sort in the descriptive text for section 4.2

61. Whether or not there are formal identification procedures at national level, have organisations at local level taken the initiative to introduce a protocol or other procedures for identification of trafficked persons, e.g. at the level of a particular city or administrative district?

62. If so, please indicate where and describe the identification process.

63. If not, do several agencies or organisations share this responsibility (specify which ones, indicating which are governmental, which are international and which are non-governmental)?

64. If not, what is the arrangement for formal identification (which allows individuals to be granted a reflection period or residence permit or access to assistance)?

65. Have Standard Operating Procedures (or a similar formal plan of the process which is supposed to be followed for identification, such as a flow diagram) been made public by a government authority to indicate the process to be followed by relevant state authorities/officials and NGOs in formally identifying an adult as a 'victim of trafficking' or 'trafficked person' entitled to protection?

66. If not, are any other details about the formal identification process of trafficked adults, such as identification guidelines and procedures, known to have been prepared by a government authority, whether published or not?

67. Similar question for trafficked children: Have Standard Operating Procedures (or a similar formal plan of what is supposed to happen during the process of identification, such as a flow diagram) been made public by a government authority to indicate the process to be followed by relevant state authorities/officials and NGOs in formally identifying a CHILD as a 'victim of trafficking' or 'trafficked child entitled to protection?

68. If not (as above for adults), are any other details about the formal identification process of trafficked children, such as identification guidelines and procedures, which are different to those agreed for adults, known to have been prepared by a government authority, whether published or not?

69. Do you consider the procedures for identification allow (in theory) for individual adults and children subjected to any form of exploitation to be identified? (i.e., are the procedures adequate for identifying a worker trafficked into forced labour in agriculture, or have they been designed primarily to identify women trafficked into the sex industry?)

70. Do the police or others responsible for identifying trafficked persons in your country use any lists of indicators? i.e., signs that an individual adult or child is under the control of traffickers or has been trafficked.

71. If so, have some of these indicators been made public? If yes, please cite a reference for any publication or website where they can be consulted (in a national language or in English).

72. Do the indicators refer to specific signs or evidence that an individual is being subjected to coercion or force while they are being exploited? (We would like to know if more detailed advice is available to police and others than the terminology used in the Council of Europe Convention definition of human trafficking).

73. In the specific case of deception (during the recruitment process), please check what forms of deception have been explicitly recognised as being associated with human trafficking in either legislation or indicators or any other formal identification procedure used in your country and list these. Please also compare these to the forms of deception listed by the ILO. In the text you draft for section 4.2 above, please note how many of the forms mentioned by the ILO have not been (or do not appear to have been) recognised explicitly in your country.

74. Is there a formal agreement which allows various organisations (possibly including NGOs) to formally identify someone as a trafficked person?

75. If so, please list the organisations involved if there are no more than 10. If there are more than 10, please cite a number without giving the name, and specify which are government agencies and which are NGOs or international organisations.

76. If there is no formal agreement allowing particular organisations to formally identify trafficked persons (or no procedure for any sort of 'formal' identification), how can NGOs or others refer a presumed trafficked person for protection and assistance? Please answer the next two questions if they are relevant to your country. Indicate if they are relevant or not in column 3 here. If they are not relevant, please explain in your descriptive text in 4.2 what actually happens in your country – how NGOs and other frontline agencies play a role in identification.

77. If there is no formal agreement allowing particular organisations to formally identify trafficked persons, are there formal agreements (such as a protocol or Memorandum of Understanding, MoU) which allow some organisations (possibly including NGOs) to refer presumed trafficked persons to a specific government agency for formal identification?

78. If there are MoUs or other agreements allowing certain organisations to identify trafficked persons, please indicate the names of the organisations involved if there are no

more than 10. If there are more than 10, please cite a number without giving the name of each organisation. In both cases, please try and specify which are government agencies [mark as 'G'] and which are NGOs [NGO] or international organisations [IGO].

79. Please indicate first if there is any such telephone line service (Yes/No). If the answer is Yes, move on to Q 80 - 83.

80. Is it a telephone line run by a government agency or run by another organisation at the request of a government agency?

81. If so, please note the name of the organisation which operates the line and any information available about the number and nature of calls received in 2008 (and, if data is available, in 2009), if possible reporting on the number of people who called the line who were subsequently identified as 'trafficked' and the number who were not, or the number identified as 'trafficked' who were subsequently provided with any form of assistance.

82. Also if so, (i.e., if there is a telephone service run by or for a government agency), do other agencies (such as NGOs) operate other telephone helplines that have been used for the referral of trafficked persons? If so, please note the names of organisation operating lines and any information available about the number of trafficked persons referred as a result of calls received in 2008 (and, if data is available, in 2009).

83. If there is no government-run telephone line, do other organisations (such as NGOs) operate telephone helplines that have been used for the referral of trafficked persons? If so, please note the names of agencies operating lines and any information available about the number of trafficked persons referred as a result of calls received in 2009.

84. Is information available about the total number of individuals who were the subject of referrals (as 'presumed', 'possible' or definite trafficked persons) during 2009 (or another specific period, whether 12 months or shorter)? NB The 'total' includes individuals who were not subsequently identified as trafficked.

85. If information is available about the total number of individuals who were the subject of referrals for identification in a specific period, how many were subsequently positively identified as trafficked (and what proportion of the total was this)?

86. In 2008 (and 2009, if data is available), did anyone involved in anti-trafficking work receive information suggesting that a presumed trafficked person was removed from your country before the identification process was started or completed?

87. In 2008 (and 2009, if data is available), did any presumed trafficked adults who had been the subject of a referral go missing subsequently? If so, please provide any estimates of the numbers if you think they are fairly reliable.

88. In 2008 (and 2009, if data is available), did any presumed trafficked children who had been the subject of a referral go missing subsequently? If so, please provide any estimates of the numbers if you think they are fairly reliable.

89. In the period 2007-2009, did the authorities in your country (either at national or local level) try to get a fuller understanding of the ways that adults have been traf-

ficked or exploited in your country, for example by commissioning a scoping study or other research concerning individuals trafficked for particular purposes (e.g., forced labour or forced begging) or lesser known forms of exploitation (such as forced labour/labour-related exploitation or forced begging?

90. In the period 2007-2009, did the authorities in your country (either at national or local level) try to get a full understanding of the ways that children have been trafficked or exploited in your country, for example by commissioning a scoping study or other research or otherwise identifying the situations in which children are vulnerable to being trafficked?

91. If the authorities (either at national or local level) have tried to get a full understanding of the ways that people in general (adults and children, without distinction) have been trafficked or exploited in your country, please indicate so here.

5. Protection

92. Is there a provision for a period for reflection and recovery? (Whether allowed for in law or by an administrative measure)

93. If so, does this offer any advantages to an applicant over and above an application for some other short-term residency permit? If the provision for a reflection period has no apparent advantages for applicants, please comment on this in 5.2.

94. If so, what the maximum time for a reflection period?

95. If so, are the authorities required to respect any conditions while a presumed trafficked person is in a reflection period? E.g. not interview them about possible crimes that they or others may have committed or not interview them about their immigration status. If there are requirements for the authorities to respect, please explain what they are.

96. If so, is the provision (for a reflection period) limited to "third country nationals" (i.e., citizens of a country outside the EU), thereby excluding citizens of other EU Member States from benefiting?

97. Is a reflection period supposed to be granted if there just a slight suspicion that a person has been trafficked (or is a higher level of certainty specified or required in practice)?

98. If a higher level of certainty is required, please indicate what it is.

99. Can negative decisions about a reflection period be challenged through a formal appeal (or review) process?

100. Are presumed trafficked persons who are granted a reflection period entitled to all the forms of assistance available to individuals who are formally identified as 'trafficked' (i.e. rather than being entitled to fewer forms of assistance?

101. If their entitlement is to less forms of assistance, or only to 'emergency' assistance, please specify what forms of assistance they are entitled to.

Questions 102 to 107 concern what happened in 2008 (and are followed by questions about 2009)

102. How many individuals are reported to have been granted a reflection delay in 2008 (or, if information is only available earlier, for 2008)? If data is available, please disaggregate according to age (adult or child), gender (male/female) and purpose of trafficking (i.e., to assess whether reflection delays were granted in sex-related trafficking cases but not in labour-related cases).

103. How many individuals are reported to have been refused a reflection delay in 2008?

104. If one or more person is known to have been refused a reflection delay in 2008, what reasons were given for the refusals?

105. In 2008, was any case reported in which a presumed trafficked person was pressured into speaking to the authorities during their reflection period?

106. In 2008 were any other abuses of the reflection delay system reported? E.g., individuals granted less time to 'reflect' than the maximum time allowed. If so, specify what they were.

107. Was any negative decision about a reflection period challenged through a formal appeal process in 2008 (or, if information available, in 2009)? If so, please provide details in 5.2 above.

108. How many individuals are reported to have been granted a reflection delay in 2009? If data is available, please disaggregate according to age (adult or child), gender (male/female) and purpose of trafficking (i.e., to assess whether reflection delays were granted in sex-related trafficking cases but not in labour-related cases).

109. How many individuals are reported to have been refused a reflection delay in 2009?

110. If one or more person is known to have been refused a reflection delay in 2009, what reasons were given for the refusals?

111. In 2009, was any case reported in which a presumed trafficked person was pressured into speaking to the authorities during their reflection period?

112. In 2009 were any other abuses of the reflection delay system reported? E.g., individuals granted less time to 'reflect' than the maximum time allowed. If so, specify what they were.

113. Was any negative decision about a reflection period challenged through a formal appeal process in 2009? If so, please provide details in 5.2 above.

114. Is there a legal provision for someone identified as a trafficked person to be issued a residence permit? (Other than a general amnesty for irregular migrants)

115. If so, how long do residence permits usually last for? If they vary or depend on the circumstances of a person, please explain this.

116. Can negative decisions about a residence permit be challenged through a formal appeal process?

117. Is there a procedure, except seeking asylum, to allow trafficked persons with temporary residence permits to seek permanent residency in your country? (Once again, exclude a general amnesty for irregular migrants)

118. How many trafficked persons are reported to have been granted temporary residence permits in 2008?

119. If information is available, how many trafficked persons are reported to have been granted temporary residence permits in 2009?

120. Is it relatively routine for foreign trafficked persons to apply for refugee status (asylum) in your country in order to seek permanent residence? NB This question is not about cases in which traffickers encourage those they are trafficking to apply for asylum in order to obtain a legal entitlement to remain in your country, but rather to find out if seeking asylum and refugee status is a common way in which trafficked persons who have already received some protection and assistance to prolong their residence in your country. A question below seeks information about alternative procedures concerning long-term or permanent residence.

121. How many trafficked persons were granted asylum or a permanent right to remain in your country in 2008?

122. How many trafficked persons were granted asylum or a permanent right to remain in your country in 2009? (Indicate if data not available)

123. How many trafficked persons are reported to have sought asylum in your country (or had applications for asylum pending) in 2008?

124. How many trafficked persons are reported to have sought asylum in your country (or had applications for asylum pending) in 2009?

125. On the basis of other information available about asylum applications by trafficked persons available since the beginning of 2008, also comment on which sorts of individuals appear to be successful or unsuccessful and any other criteria which the authority (courts or other) making asylum decisions takes into account.

126. In 2008 and 2009, were trafficked adults granted permanent residence rights except by being granted asylum?

127. If so, please indicate how many and what the procedure or status was called (e.g., 'humanitarian right to remain').

128. In 2008 and 2009, was any trafficked person resettled in another country other than their own or the country from which they had come to your country? NB We are not asking here about trafficked persons who were sent back from your country to another country for their asylum or other application to be considered in another country, but about any case in which the authorities in your country judged that the

person might not be safe in your country and should not return to her/his country of origin and therefore required resettling in another country?

129. Do individuals who are viewed by the authorities as irregular migrants (i.e., not as 'trafficked' or as refugees and who do not have any legal entitlement to stay in your country) have any opportunity to remain in your country?

130. In 2009, did you learn of individuals who claimed to have been trafficked or exploited, and who were not formally identified as 'trafficked', but who were nevertheless granted permission to remain in your country on humanitarian grounds (or for other reasons)?

131. Is a temporary legal guardian supposed to be appointed to accompany each trafficked child)?

132. Were any temporary legal guardians appointed in 2008 to accompany trafficked children?

133. Were any temporary legal guardians appointed in 2009 to accompany trafficked children?

134. Were children who were identified as 'presumed' or definite trafficked persons granted permission in 2008 or 2009 to remain in your country indefinitely?

135. Were children who were identified as 'presumed' or definite trafficked persons granted permission in 2008 or 2009 to remain in your country only up to a specific age (such as 18 or 17½)?

136. If so, what procedure was followed for reconsidering their case once they were older. Please give details in 5.2

137. Is there a standard procedure or mechanism in use in your country for determining the best interests of a child who has been (or is suspected of having been) trafficked while under 18, in the course of deciding on a durable solution for the child?

138. If so, is this procedure or mechanism respected in practice?

139. Are temporary legal guardians allowed (in theory) to attend meetings where decisions concerning a durable solution for the child are considered?

140. Was there any case in 2009 or 2008 in which a temporary legal guardian was present or formally consulted when a durable solution for a child was under consideration?

141. Was there any evidence, in 2008 or 2009, that some or all decisions on durable solution for trafficked children were preceded by a formal risk assessment (reviewing the risks associated with the different options open to the child, for example risks of being re-trafficked if they remain in your country)?

142. Is there evidence that risk assessments are routinely carried out before trafficked children are repatriated or encouraged to return to their home country (or, if already repatriated to your country from another country, before they move from temporary accommodation to their previous home)?

143. Is there evidence that risk assessments are routinely carried out before trafficked adults are repatriated or encouraged to return from your country to their home country?

144. In the case of countries of origin, is there evidence that risk assessments are routinely carried out in your country before trafficked adults who have been repatriated to your country from another country return home (e.g., in cases where they have gone into a shelter or other temporary accommodation, including a clinic, upon arrival)?

145. In 2008, how many trafficked adults are reported to have returned from your country to their home country?

146. In 2009 (if data is available), how many trafficked adults are reported to have returned from your country to their home country?

147. If you have any information about how many returnees were forcibility repatriated and how many returned voluntarily, please mention it in 5.2.

148. In 2008 or 2009, were risk assessments reportedly conducted before any trafficked adult was returned to her/his country of origin?

149. Has your country agreed any formal procedures or protocols bilaterally with other EU Member States or third countries, to govern the process of return of a trafficked person to their own country?

If so, please provide details...In particular, note if there is evidence that any such agreement (whether it focuses on children or concerned trafficked persons in general) contains guarantees concerning protection of the rights of those who are repatriated and respect for their rights. This could be confirmed by checking that they contain provisions specifying (at a minimum): (a) that trafficked persons who might be returned to their country of origin are consulted before a decision is made, and their views are taken into account; and (b) that trafficked children being repatriated will be accompanied at all times during the repatriation process.

6. Assistance

150. Have minimum standards been set in your country for provision of accommodation to trafficked persons? If so, please indicate where the standards can be found, for how long a trafficked person is provided with accommodation without paying, and how payment is organised.

151. Is any accommodation available that has been designed especially for trafficked adult women? If so, please comment on whether the space available is generally sufficient for all the trafficked women who need access to such accommodation.

152. Is any accommodation available that has been designed especially for trafficked girl children? If so, please comment on whether the space available is generally sufficient for all the trafficked girls who need such accommodation.

153. Is any accommodation available that has been designed especially for trafficked boys? If so, please comment on whether the space available is generally sufficient for all the trafficked boys who need access to such accommodation.

154. If no special accommodation is especially designed for trafficked boys, and if trafficked boys have been identified in your country, have they been provided with accommodation and, if so, where?

155. Is any accommodation available that has been designed especially for trafficked adult men? If so, please comment on whether the space available is generally sufficient for all the trafficked men who need access to such accommodation.

156. If no special accommodation is especially designed for trafficked men, and if trafficked men have been identified in your country, have they been provided with accommodation and, if so, where?

157. Are any facilities (accommodation or other services or forms of assistance) available which are specifically designed for transsexuals who have been trafficked? Is so, please indicate what. If none, please indicate whether you know of no transsexuals trafficked in your country or if there is an evident absence of facilities to meet their needs.

158. Have minimum standards been set in your country for provision of free health care for trafficked persons, including counselling and mental health care?

159. On what basis is accommodation paid for? Please describe in 6.2 the most standard arrangements, indicating if organisations providing accommodation are remunerated by a government agency per person accommodated and for how much time.

160. Have minimum standards been set in your country for provision of free advice by lawyers to trafficked persons?

161. Do organisations providing services other than accommodation to trafficked persons receive any financial support from the Government to provide assistance to trafficked persons? Please describe in 6.2 the most standard payment arrangements, indicating if organisations providing assistance or advice are remunerated by a government agency on a per person basis or with a lump grant and for how much time a trafficked person can benefit from such assistance.

162. If organisations providing services do receive financial support from the Government, is the financial support received from the Government timely and adequate, notably to meet any minimum standards agreed?

NB this is a subjective question, so most respondents will initially respond "No"; it is necessary to ask them to explain the reasons for their answer in order to confirm whether resources have been held back or kept at deliberately lower levels that other services receive.

163. If so, do the amounts (of financial support) increase each year? If so, is this in line with inflation or dependent on the number of trafficked persons who are supported?

164. Also if organisations receive any financial support from the Government, are they entitled to use any of this support to pay for assistance to individuals who have not been formally identified as 'trafficked' or who have refused to provide evidence to the police or prosecutors?

165. Are organisations providing services to trafficked persons under any legal or contractual obligation to provide the authorities with any information about their clients (e.g. about any information that trafficked persons divulge about their experience while being trafficked), apart from anonymous data?

166. Out of the adults identified as 'trafficked' in 2008, do you know how many (or what proportion, if you can estimate) were provided with special accommodation designed for trafficked persons? If possible comment separately for women and men.

167. Similarly, out of the children identified as 'trafficked' in 2008, do you know how many (or what proportion, if you can estimate) were provided with special accommodation designed for trafficked children? If possible comment separately for girls and boys.

168. Among the people identified as 'trafficked' in 2008, do you know if any were denied any particular forms of assistance? If so, how many, which forms of assistance and (if known) why?

169. Were any cases reported in 2008 of assistance being made conditional for individuals who had been identified as trafficked persons?

170. If so, what form of assistance was conditional and on what was it made conditional, e.g.
    (a) providing information to criminal justice investigation or prosecution
    (b) ending contacts with former trafficker
    (c) other (what?)

171. Out of the number of people identified as 'trafficked' in 2009, do you know if some were denied a specific form of assistance? If so, can you estimate how many identified trafficked persons were denied particular forms of assistance?

172. Was "emergency medical treatment" provided in 2009 to all trafficked persons, either free of charge or paid for by the authorities?

173. If so, were any limits imposed on the nature of the emergency medical treatment that could be provided free of charge?

174. In 2008, were all trafficked persons who were reckoned by health professionals to require mental health treatment provided, free of charge, with mental health treatment, such as psycho-therapy or other counselling?

175. In 2008 and 2009, did assistance to trafficked persons who do not speak your country's language fluently include access to translators or translation services?

176. Were the interpreters who were provided generally considered good / adequate / not adequate / problematic?

This is a very general question, intended to give you an opportunity to comment on any problems encountered with interpreters.

177. Out of the number of trafficked adults known to have returned to your country in 2008, how many were given assistance financed by the State?

178. Was it routine for trafficked adults returning to your country in 2008 to be provided with temporary accommodation (whether shelter or clinic or other) upon their arrival?

179. What forms of assistance were available free of charge to trafficked adults returning to your country in 2008:
    (a) temporary accommodation
    (b) emergency medical treatment
    (c) other health care (excluding mental health care)
    (d) mental health care (e.g., psychosocial care or counselling)
    (e) vocational training
    (f) assistance in finding a job

180. Was physical and mental health treatment available to trafficked persons who returned (or organised their own return), unconditionally and free of charge (i.e., whether or not they have paid contributions to their national insurance or social security system)? Comment, for example, if children were entitled to free treatment but adults were not. NB In EU Member States where free health care is financed by social security contributions and is not available to adults who have not made contributions (even if this was because they had been trafficked abroad), seek explicit confirmation from the authority responsible for social security or health care, or other appropriate source, to confirm that presumed trafficked adults and children do not have to pay for health services.

181. Were returning trafficked persons (adults and children) provided with free legal advice, fore example if their traffickers might be present in their country of origin?

182. When individuals who were presumed to be trafficked persons returned to your country from abroad in 2008, were social assistance programmes available to which they were given access free of charge?

183. Out of the known trafficked persons who returned to your country in 2008, do you know if any were denied any assistance? If so, how many and why?

184. Were any cases reported in 2008 of protection or assistance being made conditional for trafficked persons returning to your country?

185. If so, what form of assistance was conditional and on what was it made conditional, e.g.
    (a) providing information to criminal justice investigation or prosecution
    (b) ending contacts with former trafficker
    (c) other (what?)

186. In information is also available for 2009, please provide answers to the same questions as in Questions 175 to 183, focusing on anything which seemed different in 2009. Either add extra rows here or put information about 2009 into 6.2 above.

187. In 2008 or 2009, were citizens of other EU Member States (excluding your own country) who were identified in your country as presumed trafficked persons provided with appropriate protection and assistance, on the same basis as nationals from so-called 'third countries' outside the EU? This question is intended to find out whether citizens of other EU Member States experienced difficulties in being identified as 'trafficked' or in obtaining assistance.

188. Please indicate which of the following applied in your country in 2008 and 2009 (and comment if there were obvious differences in the two years):
    a) EU citizens were identified and assisted on the same basis as others
    b) EU citizens experienced difficulties in being identified
    c) EU citizens experienced difficulties in getting assistance
    d) EU citizens were identified, but the assistance available was different to that available to people from 'third countries' (if this is so, please comment on what the differences were)
    e) There were no such cases
    f) Don't know or no information available

7. Access to Justice

189. Are any special measures used by law enforcement or court officials to protect adults who have been trafficked and who take part in criminal proceedings as witnesses or victims of crime, i.e., measures in addition to those taken to protect victims of other categories of crime?

190. Are any special measures used by law enforcement or court officials to protect children who have been trafficked and who take part in criminal proceedings as witnesses or victims of crime, i.e., measures in addition to those taken to protect victims of other categories of crime?

191. In the case of trafficked adults, indicate which of the following categories of protection outside the context of the court room were made available in 2009 by a government agency (or supported by a government agency) to trafficked adults who were witnesses or victims of crime?
    a) safe accommodation (no access for guests or outsiders)
    b) open secure accommodation (windows and doors prevent outsiders entering
    c) closed secure accommodation (residents not entitled to leave as and when they want, without being accompanied)
    d) accommodation including an alarm to call police
    e) accommodation where all incoming phone calls are monitored or recorded
    f) mobile telephone provided for making emergency calls for help
    g) bodyguard when moving outside secure accommodation
    h) change of identity
    i) Relocation to different town or district
    j) other (please describe. If no other issue is relevant, please circle 'No')

192. What kinds of in-court protection were available in 2009 to trafficked adults who were victim witnesses (i.e., were victims of crime who gave evidence against a trafficker)?

k) Victim witnesses gave evidence at a preliminary hearing (e.g., before an investigating judge) and did not have to appear at the public court hearing;
l) Victims witnesses gave evidence by video link and did not have to appear in open court;
m) Victims witnesses giving evidence in court were shielded from the view of the accused (i.e. did not have to look at him/her and could not be seen by the accused, even if they could be seen by others;
n) Separate waiting areas in court (or in other places where witnesses testify) were available for prosecution and defence witnesses;
o) other (please describe what)

193. In the case of trafficked children, what kinds of in-court protection were available in 2009 to child victim witnesses (i.e., child victims of crime who gave evidence against a trafficker)?
p) Child victim witnesses gave evidence at a preliminary hearing (e.g., before an investigating judge) and did not have to appear at the public court hearing;
q) Child victim witnesses gave evidence by video link and did not have to appear in open court;
r) Child victim witnesses giving evidence in court were shielded from the view of the accused (i.e. did not have to look at him/her and could not be seen by the accused, even if they could be seen by others;
s) Separate waiting areas in court (or in other places where witnesses testify) were available for prosecution and defence witnesses;
t) other (please describe)

Note: there is not question about protection for children outside court, as residential accommodation arrangements vary so much.

194. Was there any case in 2008 or 2009 in which a trafficked adult or child whose identity was supposed to remain confidential having their identity made public in the course of criminal justice proceedings (investigation or trial)? If there was, please comment in 7.2 on what happened and what further action was taken by the authorities (either to protect the trafficked person or to punish whoever revealed confidential information).

195. What was the quality of information provided to victim witnesses (and potential victim witnesses), whether adults or children, in 2008 about criminal justice proceedings and the likely impact on themselves by a government agency (or by another service that was supported by a government agency)? This question requires you to summarise comments about the adequacy or inadequacy of information that was provided. Please comment on the following points:
u) Information routinely available in a language understood by victim witnesses; (So, comment if information was routinely only available in your national language(s))
v) Information made available by the police or prosecutors about the possible risks entailed in appearing at a trial as a victim or witness;
w) Victims of crime were kept informed during the police investigation of the process of that investigation (whether a suspected trafficker was in detention, was being charged, was being remained in custody, etc.); (So, comment if victims were not kept informed and their lawyer had to keep on pressing to find out what was going on)

x) Victim witnesses were provided with information by the authorities in a language they understood about what trial proceedings would consist of and in what way they would be asked to participate;
y) Victim witnesses were informed at the end of a trial of the results;
z) other (please describe)

196. If you know of any changes in the quality of information provided to victim witnesses in 2009, please mention this here, noting it under the same reference points as the previous question (i.e., point u, v w x, etc.) or mentioning it in 7.2.

197. Do you know of any trafficked person who received a payment in damages or as compensation during 2008, either as a result of court proceedings or from a different source? NB This question does not ask if a court ordered a payment to be made, but whether a trafficked person received any payment. If so, please indicate approximately how many trafficked persons received such payments.

198. Same question for 2009: Do you know of any trafficked person who received a payment in damages or as compensation during 2009, either as a result of court proceedings or from a different source? NB This question does not ask if a court ordered a payment to be made, but whether a trafficked person received any payment. If so, please indicate approximately how many trafficked persons received such payments.

199. Was the ability of citizens of other EU Member States or third countries, who have been trafficked in your country, to be paid compensation or damages in your country (either via court proceedings or otherwise) hampered in any significant way during 2008 or 2009? For example, because foreign victims of trafficking are not allowed to remain in your country while claims are considered, or because convicted traffickers who are ordered by the courts to pay compensation or damages fail to do so and their victims have no alternative channel from which to seek payments.

8. Prevention of human trafficking

200. Does your country have adequate opportunities allowing migrants from countries outside the European Union (so-called 'third countries') to enter your country and work?

201. Does your country have adequate opportunities allowing migrants from all other EU Member States to enter your country and work? i.e. including both so-called A8 and A2 countries.

202. If you reckon the opportunities were not adequate for nationals from one or more other EU Member State, were there more cases of trafficking from such countries than from other EU States? We are interested in finding out if there was evidence that citizens from other EU Member States who are not entitled to work in your country have been trafficked to your country and whether there is any connection between the lack of opportunities for certain EU citizens to work legally and human trafficking. Please comment on this in 8.2

203. If your country is principally a country of destination, was advice available in 2009 from government-funded agencies for immigrants who arrived in your country

mentioning any precautions to avoid being entrapped by traffickers or others who might subject them to forced labour, and/or what to do if subjected to exploitation or other abuse by traffickers or employers? By 'government funded agencies' we mean both central and local government and also NGOs which have been asked (and paid) to produce such information by a government agency.

204. Similarly, if your country is principally a country of destination, was advice about the situation in your country made available in 2009 to potential immigrants in any other countries (in Europe or outside) about trafficking related risks if they came to your country and/or precautions to take to avoid being trafficked or subjected to forced labour? We are not referring to information provided by a variety of other organisations in other countries, but specifically to any information which you know your government arranged to make available to potential immigrants, either directly (e.g. in a consulate) or indirectly (e.g. in an IOM information campaign financed by your government)

205. Has there been any case in the past 5 years (2005-2009) of your government criticising NGOs or others on account of advice they have prepared for potential immigrants – or even taking stronger measures (such as seeking to prevent certain information being disseminated)?

206. In 2008 did relevant government agencies in your country investigate pro-actively whether human rights and labour rights were respected or abused, and whether working conditions were acceptable in the unprotected sectors of the economy (notably sectors where it is predominantly women, rather than men, who work or provide services, such as domestic work, *au pair* or similar arrangements, and the commercial sex sector) and try to detect exploitative working practices, including cases of forced labour and trafficking?

207. Same question for 2009 as preceding question. Please comment if you detected any change in the response of government agencies between 2008 and 2009.

208. If your country is mainly a country of origin and emigration, was advice available in 2008 or 2009 from government agencies for potential emigrants, mentioning appropriate precautions to avoid being entrapped by traffickers or others who might subject them to forced labour, and what to do if subjected to exploitation or other abuse by traffickers or employers?

209. If your country is mainly a country of origin and emigration, was advice (of the same sort) available in 2008 or 2009 from non-governmental sources, such as NGOs or international organisations?

210. If your country is mainly a country of origin and emigration, were you aware that in 2008 or 2009 any information for potential emigrants from government agencies, NGOs or international organisations was inaccurate or exaggerated the problems that potential migrants might encounter? E.g., did you feel public information about human trafficking was reasonably accurate or did it either exaggerate the risk of being trafficked or imply the message that the safest option is to stay at home? This question requires you to make a subjective comment about information campaigns conducted in these two years.

9. Monitoring and Evaluation

211. Has the impact of anti-trafficking measures in your country been assessed by officials in government agencies, Parliament or another governmental body? I.e. has there been an evaluation or impact assessment of an anti-trafficking policy or measure after it has been implemented for one year or more? Such an evaluation should have investigated the actual impact of anti-trafficking policies and measures on trafficked persons and other groups or individuals who were likely to be affected.

212. Has anyone else investigated the impact of anti-trafficking measures in your country?

213. If your country has adopted any form of National Action Plan to Combat Trafficking in Human Beings (se Q 44 above), has any Action Plan been the subject of any official monitoring (of its progress) or evaluation at the end of the most recent period covered by the Action Plan?

214. If there has been some evaluation, were any of the following consulted:
    a) NGOs providing services to trafficked persons;
    b) NGOs producing public information about human trafficking;
    c) Trafficked persons.

215. Whether there has been an evaluation or not, if there has been a Plan (to combat trafficking / against trafficking), please give your view on which of the following applies (and comment on this when writing text for 9.2):
    a) The Plan was awful; (please explain why);
    b) The Plan was OK on paper, but no serious effort was made to turn it into action;
    c) The Plan was OK, but no budgets or deadlines were set;
    d) The Plan was good and its implementation was moderately successful;
    e) The Plan was food and it was implemented successfully;
    f) Other (please explain)

216. Is there an organisation in your country which describes itself as a National Rapporteur on trafficking in human beings? If so, the following 4 questions apply. If not, go to Q. 220.

217. If so, is this an organisation which only monitors the activities of other agencies (and policy implementation), and does not have an operational role in making policy or coordinating agencies or detecting cases of human trafficking? NB One of the agencies responsible for anti-trafficking work may claim to be acting as a Rapporteur. This is worth noting. However, this is not the same. Our aim is to establish if your country has an independent Rapporteur which only monitors and is not involved in anti-trafficking operations.

218. If there is an organisation that calls itself National Rapporteur, but which you feel does not meet the criteria (of only monitoring and not having an operation role), please explain this, say what the organisation is, what its Rapporteur role is and in what way it does not meet the criteria.

219. If there is an organisation which describes itself as National Rapporteur, does it publish public reports periodically (at least once a year)? If it has published a report, but not every year, please indicate this in descriptive text in 9.2.

220. If there is a National Rapporteur, does this office monitor policy and practice on all forms of trafficking and exploitation, or did it, in 2008 or 2009, focus mainly on trafficking for sexual purposes?

221. If there is no National Rapporteur in your country, does your country have a national human rights institution (a state-based body that investigates or reports on allegations of human rights abuse)?

222. If so, has this institution made any public comments on anti-trafficking policies or measures in your country? If so, please say what these were and cite a web reference or other reference where they can be found (in your own language and in English if it is available in English).

223. Please list any significant publications on the issue of human trafficking in your country or about people from your country, published since the start of January 2009. Please ensure you mention any publication (or unpublished document you are aware of) which assessed, evaluated or otherwise commented on the impact of anti-trafficking measures in your country, whether the measures concerned were taken by the Government or a government agency (such as the police) or by an NGO or other civil society organisation.

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This report describes the legislation, policies and actions that the 27 governments of the European Union organised in response to trafficking in human beings, focusing on 2008 and 2009 (the most recent years for which information was available in mid-2010). It was produced by the European NGOs Observatory on Trafficking, Exploitation and Slavery ("E-notes"), an initiative by four non-governmental organisations (Associazione On the Road, La Strada International, ACCEM and ALC) with the broad goal of monitoring what governments throughout the European Union (EU) do to stop slavery, human trafficking and the various forms of exploitation associated with trafficking. A further 23 non-governmental organisations were involved in the project, along with researchers in each country. The project was financed by the European Commission, which, however, has no responsibility for the contents of the report. The report reveals that governments within the EU have different interpretations of what actions should be given priority to stop trafficking and to protect people who have been trafficked and indicates that the protection provided to many trafficked persons is inadequate. The report contains recommendations for both governments and the European Union as a whole. A summary of the report is included in each of the EU's national languages.