

Shadow Report CEDAW
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Trafficking in persons in Poland

This shadow report will overview the situation of trafficking in persons in Poland and will focus on following areas:

- Description of current situation in Poland (new trends, new developments, situation after EU accession)
- Legal framework/problem of definition in Penal Code
- National Action Plan 2005-2006
- Program of support and protection for victims of trafficking
- Situation of victims
- Statistics
- Recommendations
- Each area is provided with critical comments and recommendation from the perspective of NGOs. At the end of the report a summary of recommendations and conclusions is provided.

In this shadow report the focus will be put on the phenomenon of trafficking in persons understood according to the Palermo Protocol definition, where trafficking in persons is defined in the broader context, not only focusing on prostitution and sex business, but also including other forms of trafficking like forced labor, slavery like practices, begging, servitude, etc.

Definition of Trafficking in Persons according to the Palermo Protocol:

(a) "Trafficking in persons" 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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

General information

Situation in Poland

Poland continues its triple function as a country of origin, transit and destination. Major countries of origin for trafficking to Poland are: Ukraine, Moldova, Belarus, Bulgaria, Romania, Lithuania, Russia. The main countries of destination are: Germany, Italy, Spain, Greece, the Netherlands, Belgium, Austria, Sweden, Denmark.

The enlargement of the EU caused more persons migrate to EU countries for a job.¹ This fact influenced prevention work; more persons ask for information on employment conditions and employers. Primarily women call the hot line and a growing number leaving for legal jobs has been observed. In general, more information on working conditions and about safe job migration appeared in the Polish media. Hopefully this will contribute to a reduction of trafficking cases from Poland.

LS received more information on migrant's trafficked persons for other purposes that prostitutions – mostly forced labour and begging. More and more signals on trafficking in children are referred to specialized NGO (Nobody's Children). Police informed us about cases of trafficking in children and that organized crime groups use these children for drug smuggling. Polish victim of trafficking were referred to La Strada Foundation – for the first time – from Australia. Additionally, the Polish police reported cases of trafficking into forced labour and slavery like practices. Cases of “forced labour camps” in southern Italy were reported (in Bari and Foggia regions), where more than 1000 victims, mainly Polish nationals, have been identified. Other cases of Polish nationals being forced to labour were reported from Spain and Great Britain. In April 2006 a case of trafficking for the purpose of stealing (pick pocketing) in supermarkets was reported in Sweden – Malmö. All mentioned cases received big media attention. A new case of six Polish persons being trafficked for forced labour in the Netherlands was revealed in June 2006. La Strada Poland cooperated in the return process of these persons with STV in the Netherlands.

The new cases of investigation and prosecution of trafficking cases are results of the fact that a special anti trafficking unit was created in Polish Police headquarters in March 2006. The new unit consists of 4 police officers who are aware of various forms of trafficking (forced labour, slavery like practices) and they have conducted a number of operations in cooperation with other European police units (the Carabinieri in Italy, Europol and Interpol). As a result several organized crime groups have been identified and more than 20 perpetrators have been arrested.

The situation concerning highway prostitution is gradually changing. Instead of women trafficked from Bulgaria, more Polish women appeared on the highways, while Ukrainian women remain the largest group of migrants trafficked into prostitution. In addition, Polish

¹ There are several statistics provided about Polish job migration – mostly in different newspapers and specialized press. It is estimated that about 80.000 Polish persons found jobs in Great Britain and about 40.000 in Ireland (both of these countries opened their job markets to the new member states). Another region for job migration from Poland is the Scandinavian region. Sweden opened their market to nurses and general medical personnel, as well for physicians. There are some new statistics in the newspapers about working migrants to Great Britain and –estimated about 400.000 – 500.000. However, Ministry of Social Policy and Labour conducted research which found much lower results (about half).

victims of trafficking were referred to La Strada from Sweden. It is too early to say how this is connected to the Swedish ban on prostitution services.

Factors conducive to trafficking

The issue of gender equality and a corresponding effective gender policy are also determining factors that influence the level of trafficking in Poland. In fact, women are at the highest risk for trafficking. This is due to the feminization of poverty, gender discrimination, and feminization of unemployment and migration, that play a crucial role in the process of recruiting and exploitation of trafficked women. A lot of steps have to be taken at national and international levels to overcome the unjust conditions of women.

Situation in countries of destination

In countries of destination the restrictive immigration policies of the EU affect the situation of trafficked persons -one effect is that governments tend to treat trafficked persons primarily as unwanted economic migrants who are to be deported right away. Another factor is the increasing call for repressive measures against prostitution, such as criminalizing clients. This adds to the marginalization and stigmatization of sex workers and increases their dependency on the services of third parties, thus making them more vulnerable to abuse.

With regard to trafficking and forced labor in the sex industry, it is noted by La Strada that trafficking victims tend to be increasingly exploited in more private environments, such as private houses or flats in suburban areas aside from brothels and nightclubs. Moreover, the number of minors exploited in the sex industry seems to be increasing.

In May 2004, Poland acceded to the EU. This might influence migratory and trafficking patterns considerably. It is expected that Poland will become more and more a country of transit and destination rather than origin. Access to reliable information about job opportunities within the EU, along with the gradual opening of the EU labor market will create more legal migration channels and thus decrease the risk of trafficking and related abuses. However, the need to find work abroad will not disappear since accession to the EU will not mean an immediate solution to problems such as poverty, unemployment, gender inequality and discrimination.

One factor that may actually facilitate trafficking is the fact that it is easy to cross borders and travel within the EU. This development makes it imperative to also focus on the situation of migrants trafficked into EU countries and to develop support systems for these groups, in addition to providing assistance to victims of internal trafficking and domestic trafficking victims returning home from other countries. It is also expected that the number of migrants trafficked into other labor sectors, such as agricultural or factory work, will increase.

Moreover, accession to the EU leads the newly acceded States to adopt more restrictive immigration policies and a stronger focus on combating illegal migration. As a result, the human rights of migrants become increasingly under pressure. This development makes it even more important for independent NGOs like La Strada to advocate the human rights of migrants and to lobby for adequate protection and assistance of trafficked persons. Most of the developments described above are tentative, given the short period since Poland's EU accession. It is clear that more research is needed in this area, including research on trafficking for other purposes than the sex industry.

Current situation of the Anti-trafficking Field in Poland

The government's anti trafficking policy is influenced by the two main instruments of pressure: international–EU anti trafficking framework–and local and international NGOs. This leads to competition among anti-trafficking actors, specialized projects implementing general policy framework, and a lack of sufficient information exchange among and between organisations and institutions. Other obstacles we can identify are: lack of reliable and comparable data, fragmentary data, lack of efficient research studies and fully qualified staff, especially in law enforcement, lack of political will in some governmental institutions, even though there are existing anti trafficking provisions. The level of public awareness was increased during the last two to three years but trafficking continues to be mixed with prostitution or limited only to the area of sex business. There is a big need to raise awareness on trafficking for forced labour and other forms of exploitation of migrant labour, whether it is a case of Polish migrants working abroad or migrants coming to Poland as a country of destination.

Legal Framework and the Problem of Definition in Penal Code

In Poland trafficking in persons is criminalised under two articles of the Criminal Code. Article 204 punishes the enticement or abduction of a person into prostitution abroad by a maximum of ten years of imprisonment. Article 253 §1 punishes “*whoever traffics in persons, even with their consent,*” by at least three years of imprisonment,(up to 15 years) that increases up to five years if an “*adoption of children contrary to the provisions of the Act*” is organized. Furthermore, Article 204 § 4 punishes whoever forces another person to practice prostitution by means of deception, threats, violence or abuse of authority by one to ten years imprisonment. Other provisions, connected with the deprivation of liberty (Article 189), coercion through violence or threat of force (Article 191), aggravated rape (Article 197), sexual harassment or rape in conditions of dependency in power relationships (Article 199). Involvement in organized crime activities (Article 258) are also used to prosecute traffickers and exploiters.²

Article 253 has been criticized for its general wording which does not clearly indicate the specific behaviors that fall within the offence of trafficking. The main obstacle to prosecution, and the most criticized aspect, is that a definition of trafficking is not included in the Penal Code.

The lack of a clear definition of trafficking is very problematic because the key-state actors appointed to prevent and fight trafficking and protect the victims are not sufficiently well-informed and trained to identify the offence and act accordingly. One consequence, for instance, is that potential victims of trafficking are deported because their status is not correctly identified.

NGOs and several institutions gathered in a working group implementing the National Action Program to Prevent and Combat Trafficking in Persons in Poland lobby requesting incorporation of the Palermo Protocol trafficking definition into special vocabulary that is a supplement to the Polish Penal Code. Poland ratified the Palermo Protocol in February 2003

² E. Pearson, *Human Traffic, Human Rights: Redefining Victim Protection*, Anti-Slavery International, London, 2002, p. 211.

and it is possible to incorporate Palermo Protocol definition. This lobbying initiative has not been welcomed by some governmental institutions concerned, including the Ministry of Justice among others.

Migrant trafficked persons may be granted a special residence permit. Under Article 14 of the Alien Law (Amendments to a bill from September 2005) they may be given the possibility to stay legally in Poland to act as migrant victim witnesses in criminal proceedings. Under the Act on Protection of Aliens (2003) victims may apply for asylum for humanitarian reasons for up to two years. Trafficked persons may also be granted a two month reflection period. However, even though these provisions exist in theory, NGOs are not aware of their use in practice. Among the main reasons for this situation is that information is not sufficiently shared and spread out at the lower levels of the law enforcement institutions.

Examples of divergences of theory and practice:

Many Polish public prosecutors are not familiar with the special instructions submitted by the National Prosecutor Office on how to use and implement “**Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime**” in practice in the prosecution of trafficking cases.

The police and border guard representatives on the lower level are similarly poorly informed. There are special guidelines on how to identify cases of trafficking and trafficked persons themselves – developed by the Headquarters of the Police and the Headquarters of the Border Guards in cooperation with a group of experts. However, officers in the field, who are usually the first contact for trafficked persons, are not aware of these guidelines. No special training or education was provided for them by their superiors.

Poorly implemented identification procedures in law enforcement is one of the biggest obstacles to effectively combating and prosecuting criminals and the crime of trafficking. A second obstacle is the need for better victim/witness protection measures. The lack of a comprehensive scheme of social and labor inclusion for trafficked persons does not encourage victims who could greatly contribute to arrest of traffickers to come forward. The victims who are granted support measures and a stay permit are more keen to co-operate with the police and the judiciary and, eventually, to press charges against their perpetrators.

At the very least, Polish authorities should ensure the implementation of Article 14 of the Immigration Law—providing the right to stay for victims who act as witnesses in a criminal proceeding—and, furthermore, allocate proper funding to support them. A model program of vocational and social inclusion of trafficked persons into the labor market is currently being implemented by La Strada and 5 partners: NGOs, local government, and governmental institutions. Project IRIS—Intervention, Reintegration, Initiative, Sustainability—is still in the testing stage, exploring innovative solutions such as a system of motivation training, coaching for the process of vocational training and internships, and methods to enter the job market without the stigma of trafficking. Mainstreaming of the results of this initiative is planned for 2007-2008.

Polish policy on prostitution

The Polish policy on prostitution falls under the abolitionism model because outdoor and indoor prostitution are neither prohibited nor regulated by the State. Therefore the sex market

lies in a “grey area” as it is not explicitly forbidden but, on the other hand, it is not regulated and considered as a work. Nevertheless, according to Article 203 of the Criminal Code it is a crime to force a person to prostitute herself or himself and under Article 204 it is illegal for a third party to make profit from prostitution (pimping, procuring, etc.). This offence is punished with imprisonment up to three years, and can be extended up to ten years if the exploited person is a minor.

In Poland, the discussion on prostitution policy is mainly focused on whether or not to move towards a regulation of the sex market. The debate is spurred by the current situation: in practice hundreds of *de iure* massage parlors, clubs for men, “agencies for men”, etc. are de facto brothels where prostitution takes place and several tracts of national highways are populated by prostitutes.

National Action Plan 2005-2006

The National Program of Fighting and Preventing Trafficking in Persons for 2005-2006 is the continuation of activities undertaken within the framework of the National Program of Fighting and Prevention of Trafficking in People assumed by the Council of Ministers on 16 September 2003. The program was worked out by the Team for Fighting and Prevention of Trafficking in People established by the Order No. 23 of the Prime Minister, dated 5 March 2004.

The need for such a program arises from the fact that some of the tasks listed in the previous Program require continuation while others were not implemented within the scheduled time framework. Furthermore, trafficking in people is a dynamic process undergoing constant change. New tasks listed in the Program reflect reaction to the changes. It is necessary to continue working on solutions necessitated by Poland’s membership in the European Union and its international obligations, particularly after signing and ratifying the Protocol of preventing, fighting and penalizing trafficking in people, especially women and children (appendix to the UN Convention against international organized crime). The task of the Program is to create conditions necessary to efficiently counteract and fight trafficking in people.

Program implementation shall require participation and cooperation of numerous subjects of governmental administration and non-governmental organizations. Designated subjects bear responsibility for the implementation of tasks assigned in the Program. The Team for Fighting and Prevention of Trafficking in People is responsible for monitoring its implementation.

The deadline for implementing the tasks assigned in the Program has been set for the end of 2006. Based on a report prepared by the Team, the Council of Ministers shall evaluate the results therein and determine the best way to organize activities aimed at fighting and preventing trafficking in people.

Financing of the Program

Tasks assigned to individual subjects shall be financed within the budgets at their disposal. It is necessary to single out the amounts required for implementing the goals and tasks assigned in their 2006 budgets. Certain elements of the program, particularly those related to investigation of the problem, data exchange, best practices, and training might be financed by EU programs, such as AGIS, Daphne II or EQUAL. Financial means amounting to PLN

500,000 shall be planned in the national budget for 2006, within section 42 (Internal Affairs) for implementing the tasks assigned in the Program, and for introducing procedures of support and protection for a victim/witness to trafficking.

The main areas of the Program are as follows:

- Strengthening systems of cooperation, education and prevention.
- Preparing a report on trafficking in people in Poland.
- Supporting research into trafficking in people in Poland, regarding its victims and methods of perpetrators in particular.
- Introducing of trafficking in people to programs of public media.
- Changing legislation aimed at effectively fighting trafficking in people.
- Preparing regulations specifying the conditions for granting stay visas and short-term stay permits to victims of trafficking who cooperate with appropriate bodies,
- Preparing methods for implementing state obligations towards the victims, citizens of third country.
- Improving effectiveness of action.
- Preparing and implementing a program of special training for police officers, border guard officers, prosecutors and judges on the procedures in cases of trafficking.
- Preparing teaching materials on procedures in cases of trafficking for police officers and border guard officers.
- Training the teaching staff of police forces (police officer colleges, training centres) in the problems of fighting trafficking in people.
- Continuing bilateral international cooperation with countries of origin and countries of destination of trafficking in people.
- Preparing manuals on trafficking in people for the representatives of institutions engaged in fighting and prevention of trafficking in people.
- Intensifying victim and witness protection.
- Increasing victim and witness protection against repeated victimization during the investigation, through application of appropriate procedures and technical means.
- Protecting child victims against repeated victimization during the investigation, through application of age-appropriate procedures and technical means.
- Preparing a model of support/protection for child victims of trafficking in people
- Ensuring (through budgetary means for financial support of non-governmental organizations and self-governing institutions) aid to the victim during the crisis situation and after cessation thereof.
- Establishing standards to be met by non-governmental organizations and other institutions capable of and responsible for providing aid to trafficking victims / witnesses.
- Creating a list of centres meeting the above standards.
- Introducing the problem of trafficking in people into the curriculum of social workers' education.
- Preparing and implementing programs of reintegration for victims of trafficking.
- Preparing and implementing programs of voluntary return of a victim of trafficking.

The National Action Program is a significant step forward in creating effective anti trafficking strategies and a multidisciplinary approach toward the problem of trafficking. The second

edition of the Program for years 2005-2006 has its own budget that allows it to carry out planned activities. Representatives of some NGOs in Poland (Foundation "Nobody's Children, La Strada Foundation) are invited to participate in working groups implementing the activities. They also monitor how governmental institutions fulfill their obligations.

Even though the program means progress, there are still areas of activities to be improved. Not all governmental institutions obliged to take part in the program are fully involved in implementing the program. Some of them are rather passive and act in bureaucratic way. This is a case of Ministry of Justice in the process of incorporating the Palermo Protocol's trafficking definition into the Penal Code. Representatives of judiciary system (judges) in Poland are very reluctant to take part in the series of specialized training for professionals organized by Ministry of Interior, Ministry of Labor and Social Policy, Headquarters of the Police, Headquarters of the Border guards, and NGOs. Despite invitations for judges in all regions of Poland, only a few of them actually participated in the trainings that were held in 14 administrative districts (voivodships) in Poland. As a consequence, judges are not updated about the current development of the phenomenon of trafficking in Poland, its new trends and forms. This directly influences the situation of victims/witnesses of the crime of trafficking because judges are often not able to identify the crime of trafficking or victims of this crime, do not accept the explanations of victims from the perspective of NGOs, and in some cases treat trafficking victims as illegal migrants who cannot benefit from the victim/witness protection provisions.

Part of the National Action Program is a program of support and protection for victims of trafficking in persons. This program is designed for a one year period from January 1st to December 31st, 2006. This program is implemented by La Strada Foundation based upon agreement with the Ministry of Interior. This program covers the following activities:

1. Crises intervention

- a) Needs assessment of the victim by La Strada representative
- b) Case-management (counseling, consultation, support, securing of safety of the victim)
- c) Professional interpretation
- d) Safe travel/transportation
- e) Safe accommodation, food, basic needs
- f) Medical and psychological services, medicines

2. Assistance during the contacts with the law enforcement

- a) Legal counseling

3. Assistance with the process of legalizing their stay

4. Organization of a safe trip back to the country of origin and contact with NGO/service providers in country of origin – based on agreement of the victim and upon his/her request.

Program Victim/Witness Protections: Its Limits

Although the program of victim protection and support is a step forward, it has serious limits in not treating all victims of trafficking equally. This program does not fully cover all trafficked persons identified by NGOs. All services described above are available only for the limited number of migrant victims trafficked into Poland and also only for those who are willing to cooperate with the law enforcement. These limitations decrease the number of beneficiaries in the program in a significant way and create a situation where trafficked

persons are divided into two categories: those who receive assistance from the state institutions (under the condition of cooperation) and those who are identified and assisted by NGOs and receive support from non-governmental sources. NGOs see this situation as a serious obstacle in the process of developing the effective victim protection measures in Poland.

Situation of victims

No comprehensive protection scheme is currently available for all victims of trafficking though witness anonymity can be provided in court if agreed by the judge, and there is a lawyer, or a social representative (i.e. NGO), who can make oral or written statements. Social welfare, support measures and voluntary return to the home country are provided by NGOs since only refugees and foreigners with permanent residence status can access social welfare supplied by the State. NGOs are then crucial for the trafficked persons' assistance since they offer a range of social, legal, medical and psychological services to help them to overcome the trauma suffered and to support their social inclusion.

In many cases, trafficked persons cannot fall back on the support of the State because they have no legal residence status or cannot prove their identity. Moreover, they risk being detained, deported, prosecuted or punished for the illegality of their entry or stay, for having been involved in prostitution or other illegal activities (such as begging), or for other offences that are a direct consequence of their situation as trafficked persons (such as the use of false papers). In particular, women who are trafficked into the sex industry are faced with triple marginalization: as women, as migrants, and as prostitutes. Even if trafficked persons do not face any/all of the problems above, many are still confronted with a lack of support services. Although trafficking is widely recognized as a serious human rights violation, most States do not provide adequate remedies to victims, such as assistance, protection and compensation. Even if short term assistance and protection are offered, long term solutions, such as access to the labor market or long term residence permits for victims who cannot or do not want to return to her/his home country, are lacking.

In general, State policies tend to concentrate on measures in the area of crime control and migration policies and much less on the assistance and protection of the human rights of trafficked persons. Along with fear of reprisals, the stigma of prostitution and feelings of shame or guilt, the absence of adequate assistance and protection prevent many trafficked persons from reporting to the authorities, pressing charges and/or acting as witnesses. It is estimated that only a small fraction of trafficked persons are actually identified. Additionally, only a small percentage of the identified trafficked persons decide to press charges or to act as a witness.³

Statistics

In Poland one of the most important sources of data on trafficking in persons is the National Prosecutor's Office in Warsaw. Statistics on trafficking provided by this office provide data on the offences against victims of trafficking and the number of persons arrested, (noted in table 7 below).

³ Marjan Wijers

Number of offences and offenders for trafficking in Poland: 1996-2003

Year	Offences	Offenders
1996	26	59
1997	31	58
1998	25	64
1999	14	24
2000	38	119
2001	35	71
2002	11	40
2003	30	134

Source: National Prosecutor's Office – Warsaw.

The National Prosecutor's Office in Warsaw also provides information regarding the number of victims of trafficking in Poland. The official figures are shown below. The general trend indicates a decrease in the number of the victims of trafficking during the period 1997-1999, while since 2000 there has been an increase despite a drop in 2001.

Number of Victims of Trafficking in Poland: 1996-2003

Year	No. of victims
1996	232
1997	163
1998	109
1999	109
2000	172
2001	93
2002	167
2003	261

Source: National Prosecutor's Office – Warsaw.

Statistics from the La Strada Foundation for 2005

From January to December 2005, **224 clients** were under the care of La Strada. Within this number **137 were new clients** (18 from Ukraine, 9 from Moldova, 6 from Bulgaria, 3 from Russia, 2 from Romania and 1 the Czech Republic, 1 from Slovakia, 1 from Nigeria, 1 from Belarus), 147 of them were Polish clients. During the reported period of time, the shelter hosted 36 women in the shelter: 9 were migrants, 1 Bulgarian, 1 Ukrainian, 1 Nigerian, 1 Slovakian, 2 Russian and 27 were Polish.

Statistics from the La Strada Foundation for 2006

From January to June 2006 the LS Poland shelter hosted 20 women – 6 migrant trafficked persons (3 Bulgarian, 1 Ukrainian, 1 Russian, 1 Romanian) and 14 Polish trafficked persons:

- 12 women lived in the shelter from 1 to 1,5 month (crises intervention)

- 8 women lived from 1,5 month to 10 months (program of reintegration).

Within the reported period of time **118 clients** were under the care of La Strada. Within this number **61 were new clients** (6 from Ukraine, 4 from Bulgaria, 1 from Russia, 1 from Romania, 2 from Chechnya, 2 from Vietnam, 1 from Moldova), 3 of them had children (in total 5 children). 44 persons of the new client's group were Polish.⁴

Recommendations

Summary of main recommendation in following areas:

Advocacy & Lobbying:

- establish an independent office of National Rapporteur on trafficking in persons

Awareness raising:

- raise awareness on the trafficking for forced labour and other forms of exploitation of migrant labour work whether it involves Polish migrants abroad or foreign migrants coming to Poland as a country of destination.

Legal framework:

- lobby for incorporation of the definition from the Palermo Protocol into a special vocabulary that supplements the Polish Penal Code.
- ensure that legal provisions for migrant victims of trafficking in Alien law are implemented in practice
- ensure that anti trafficking procedures are shared and spread out among professionals who deal with the trafficking cases in practice
- ensure that identification procedures are implemented in the practice of law enforcement
- raise judiciary representatives awareness of the current situation of trafficking and recent anti trafficking developments in the country and CEE region

Victim/witness protection

- enhance program of victim/witness support to all trafficked persons, including services to domestic (Polish) victims returning to Poland

⁴ La Strada Annual Report 2005, La Strada Interim report 2006