

spotlight europe

2010/09 – October 2010

Europe's Fight Against Human Trafficking

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Slavery in Europe? Very few Europeans are aware of the fact that human trafficking and forced labour exist in their midst. But even if many people have not noticed it, in recent years human trafficking has become one of the most flourishing types of organized crime in Europe. On the member state and European levels attempts to get to grips with this problem are gathering momentum. However, much remains to be done, especially with regard to the question of victim protection.

Thousands of people are brought to the EU every year or deprived of their liberty within the EU and forced into prostitution or compelled to do unpaid work. Human trafficking is a crime which, more than any other, goes right to the heart of the European understanding of human rights. Both the Universal Declaration of Human Rights and the European Charter of Fundamental Rights state in their opening articles that human trafficking and every kind of forced labour are wholly at variance with the inalienable dignity of human beings. They constitute a very fundamental challenge to the European notion of a strong state based on the rule of law which is committed to protecting the basic rights of the people.

The Current Situation

No one has any idea of the precise numbers involved. Throughout the world 12.3 million people, according to a recent study by the International Labour Organization, are victims of forced labour. Estimates suggest that 350,000 people are victims of human trafficking in the industrialized nations. In a situation report issued in December 2009 Europol refers to hundreds of thousands of victims of human trafficking in the EU.

Human trafficking is a lucrative business. Annual global profits are estimated to amount to US\$32 billion. In fact, after

drug and arms trafficking, human trafficking is one of the most profitable criminal activities in the world. Europol and the police forces in many member states also believe that human trafficking is currently the fastest growing criminal activity.

There are many ways in which criminals operate in this area. Sometimes they work singly, and sometimes they are part of international criminal networks which are based on a sophisticated division of labour. Their activities have continued to increase in areas where the rule of law and governmental structures have been undermined. Since the collapse of Yugoslavia perpetrators have found it convenient to take routes across the Balkans.

The price is paid by the victims. They are enticed by middlemen, who hold out the prospect of jobs and a living wage. However, when they arrive at the destination on which they have pinned their hopes, they are faced with exploitation and unfree labour, and are often forced into prostitution. Debt bondage, threats and violence make it impossible for people to escape.

More than 80 percent of human trafficking in western Europe occurs in order to exploit women (and occasionally men) for sexual purposes. However, human trafficking is not only in evidence within what is called the sex industry. Other forms of human trafficking are also on the increase. There is forced labour in households, in restaurants, in the textile and construction industries, and in agriculture.

In recent years “profitable” structures have crystallized in a variety of locations. In 2005 women from Lithuania were brought to the UK on a grand scale and forced to work as prostitutes. Estimates suggest that in Italy one out of three women who are forced into prostitution come from Nigeria. Up to 100,000 Chinese

workers are said to live in Paris in an isolated parallel society under conditions reminiscent of slavery.

Human trafficking does not in each and every case signify that victims have been transferred illegally over international borders. In many cases such border crossings are legal, for example, if the victims are EU citizens. But often borders are not actually being crossed. Many victims are forced into situations of dependence in their countries of origin. For example, in 2009 German citizens constituted the largest group of victims (25 percent) in Germany among the cases which have come to the attention of the Federal Criminal Police Office.

II

Recent Developments in International Law

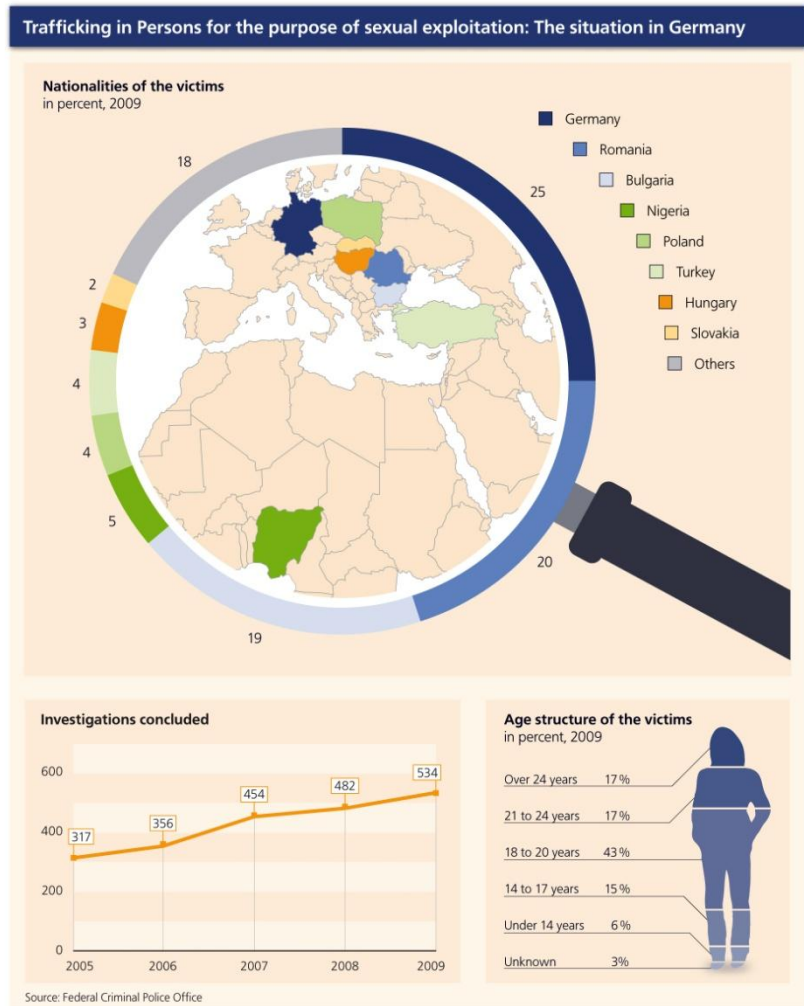
In the course of the last decade human trafficking has become a political issue. International organizations such as the United Nations, the OSCE and the Council of Europe have responded by concluding international agreements and setting up action programmes. A central feature is to make a distinction between the problem of human trafficking and the subject of illegal migration. This means that the victims are now being decriminalized.

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which was adopted in 2000 to supplement the United Nations Convention against Transnational Organized Crime (it is also known as the Palermo protocol), provides the first legally binding international definition of the phenomenon. It does not criminalize the victims and makes a clear terminological distinction between human trafficking and the kind of smuggling which is merely concerned with the illegal crossing of borders.

- In 2003 the OSCE adopted an action plan to combat human trafficking. As a preventive measure in the countries of destination it suggests that people from non-EU countries should be able to work legally. Furthermore, it describes ways of providing protection and assistance to the victims and their families. The action plan also led to the appointment of a Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

- The 2005 Council of Europe Convention on Action against Trafficking in Human Beings adopts the definition of human trafficking contained in the Palermo protocol. It calls on the member states to provide protection and assistance for the victims, and states that the right to receive protection and assistance should not be made conditional on whether or not a victim is willing to act as a witness. The authorities are asked to cooperate with non-governmental organizations and other relevant bodies.

Freedom, Security and Justice” explicitly includes the suppression of human trafficking.



III

Europe Tackles the Problem

The decisive impetus within the EU came from the Treaty of Amsterdam and the programmes adopted in Tampere (1999) and The Hague (2004). Furthermore, the goal of creating a “Common Space of

- The Treaty of Amsterdam integrated the suppression of human trafficking into *Police and Judicial Co-operation in Criminal Matters*. The same year saw the first legally binding instrument, the Joint Action adopted by the Council to combat trafficking in human beings and sexual exploitation of children. The member states agreed to harmonize their national criminal justice arrangements and to cooperate more closely in the area of criminal prosecution.

- The Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings was a pioneering document. Its purpose was to harmonize

the legislation of the member states, and to reach agreement on common definitions, incriminations and sanctions. It differs from the supplementary UN protocol with regard to the territory to which it applies, and expressly includes offences committed by persons within the borders of a member state.

- In 2003 the European Commission set up a consultative group called *Experts Group on Trafficking in Human Beings*. In 2004 the experts submitted a report containing a set of recommendations. A number of subsequent publications refer to these proposals, and have made an ongoing contribution to the whole process.

- In 2004 the EU adopted the directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration. Germany implemented

- An EU plan relating to the implementation, norms and procedures advocated by the Hague programme was issued at the end of 2005. Its purpose was to combat human trafficking in a more effective manner. The member states were asked to set up governmental coordination structures, to coordinate national policies, and to ensure that the victims were treated appropriately. The plan called for preventive strategies and media campaigns designed to raise public awareness of the issue.

IV

Member States Have a Moral Obligation

The basic European framework for the suppression of human trafficking now comprises a large number of directives and regulations. However, the current situation is deemed to be unsatisfactory by all of the observers, no matter whether they are representatives of non-governmental organizations or the criminal justice and prosecution authorities.

This is in part due to the complex nature of the crime. And in the final analysis visible success hinges on the unmistakable political engagement of the member states. They are ultimately responsible for translating the decisions adopted on the European level into national legislation and effective implementation provisions, and for incorporating the

corresponding elements into their own legal practice. Successful police work hinges on the willingness and the ability of the various authorities to engage in cross-border cooperation.

What is Trafficking in Persons?

“Palermo-Protocol”

First definition of trafficking in persons. The **UN-Protocol**, better known as “Palermo-Protocol” came into effect on 25 December 2003.

- **Trafficking in persons means** the recruitment, transportation, transfer, harbouring or receipt of persons.
- It describes 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.
- **Trafficking in persons is exploitation.** Exploitation includes the prostitution of others, forced labour or services, practices similar to slavery, servitude or removal of organs.

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this directive in 2007. It envisages the introduction of a series of protection mechanisms for the victims of human trafficking.

Only a handful of member states have demonstrated a willingness to go beyond the purely formal adoption of the required legislative elements. A Commission Staff Working Document dated March 2009 deplores the fact that currently not enough criminals are being brought to justice in Europe. Furthermore, it notes that “victims . . . (are) not receiving adequate assistance, protection or compensation.”

The Commission also comes to the conclusion that the member states do not have enough information about the rights of the victims and the support that they require. Only two countries, The Netherlands and Sweden, have appointed national rapporteurs with special responsibility for the suppression of human trafficking. And only eight other countries have indicated that they have set up similar mechanisms.

V

Sweden Triggers a New Dynamic Momentum

The Swedish EU Presidency has triggered a new dynamic momentum in the fight against human trafficking. This Scandinavian nation has for a long time taken the lead in the suppression of modern forms of slavery. It was the avowed goal of the Swedish government to impart greater importance to the fight against human trafficking, to make available new resources for its suppression, and to do more to coordinate existing efforts to deal with the problem.

The issue featured prominently at a ministerial conference in October 2009, and was highlighted in a subsection of the Stockholm Programme, the new five-year programme which contains guidelines for the EU’s common domestic and security policy. It describes the severity of the crime, and puts forward proposals for new ways of combating trafficking which transcend the borders of the member

states and include cooperation with non-EU states.

The proposed measures impinge on a large number of policy areas which are in some way or other concerned with the prevention or suppression of exploitation, such as employment, education or non-discrimination. The programme also envisages improved research and a broad dialogue with civil society organizations.

The Stockholm Programme describes a new EU Anti-Trafficking Coordinator with responsibility for the suppression of human trafficking. The incumbent’s tasks will include ongoing liaison with the Standing Committee on Internal Security, and responsibility for the establishment of partnerships with non-EU countries, and for monitoring progress.

At the same time the Council called on the Commission to submit proposals on how cooperation agreements with non-EU countries could enhance the fight against human trafficking. Such agreements would provide the EU with an opportunity to make full use of all the leverage at its disposal, including judicial cooperation and an improved exchange of information. Europol and Eurojust were called on to play a greater role in the cross-border fight against human trafficking.

In addition to the Stockholm Programme, the Swedish EU Presidency drew up proposals for a new directive designed to replace the framework decision of 2002. The proposals contain a number of new provisions. For example, particularly vulnerable victims are to receive more protection during criminal proceedings than has hitherto been the case. Human trafficking will increasingly be defined as a violation of human rights, and victims will not be punished for participating in unlawful activities. There will be greater support for victims and more medical assistance.



The rules governing extraterritorial jurisdiction are to be improved in order to make it possible to prosecute EU citizens for crimes committed in other countries, and to facilitate the use of investigative tools. The new directive will constitute a qualitative leap with regard to discouraging demand. The conscious use of services provided by victims of human trafficking is to be made a punishable offence. In March 2010 the Commission submitted its proposals for the new directive to the Council.

An initiative launched by the Swedish EU Presidency has led to an action-oriented paper (AOP) on strengthening the EU external dimension on action against trafficking in human beings. The aim of this paper is not only the continuous development of EU internal policy on

combating human trafficking; it also seeks to strengthen the commitment and coordinated action by the EU in order “to prevent and fight trafficking in human beings for the purposes of all forms of exploitation in partnership with non-EU states, regions and organizations on the international level.”

The AOP forms the basis for a holistic approach to the external dimension of the fight against human trafficking. Its main points are enhanced cooperation with non-EU states and international organizations; a better understanding of causes and contexts; preventive measures to warn potential victims in the countries of origin; measures directed against demand in the countries of destination; protection and support for victims; and programmes for the safe and voluntary return and reintegration of victims from other countries.

The AOP is a very detailed document and describes numerous types of action and political objectives. They include

- An improvement in the exchange of information within the EU

A better analysis of the available data and measures designed to promote the development of anti-trafficking policy

- The targeted use of funding instruments in the area of the EU external dimension

- The creation of rapid reaction teams (Europol, Frontex)

- A better analysis of causes

- The compilation of a threat analysis and a list of non-EU countries which should be

prioritized in the fight against human trafficking

- The realignment of existing cooperation agreements with non-EU states
- Better identification of victims at EU borders and
- Reducing demand, appropriate protection and care for the victims, suitable accommodation and legal support.

Reports will monitor the implementation of the AOP. The first report is due to appear in 2011.

VI

Europe's Credibility is at Stake

Thousands of human rights violations, ongoing support for criminal structures and the emergence of parallel worlds in which other forms of criminality thrive constitute a continual challenge to the validity of the common idea of a state based on the supremacy of the rule of law and to the European understanding of human rights.

As a result of the various initiatives of the Swedish Presidency the EU has taken an important step towards mapping out a coherent policy and coordinated procedures both within its borders and in conjunction with non-EU states. Further progress may be expected to materialize, for as a result of the Treaty of Lisbon the EU has become more capable of taking action in the areas of freedom, security and justice.

An effective European policy designed to suppress human trafficking and forced labour in the EU must contain the following elements:

- Commitment to a coherent and comprehensive policy approach. The EU

should develop a comprehensive approach in the fight against human trafficking. Comprehensive in this context means that in keeping with its complexity the issue will be treated on a cross-sectional basis. The harmonization of criminal law and enhanced cooperation between the criminal justice authorities and the prosecutors' offices should no longer constitute the core activities. Legislation and measures adopted in development cooperation, in the area of labour and social affairs, and also with regard to migration and asylum law must be coordinated. The initiatives of the Swedish EU Presidency point in the right direction.

- Commitment to the human rights of the victims. Much still needs to be done to enhance the level of victim protection. The definition of human trafficking in the Stockholm Programme and the action-oriented paper is rather imprecise, since they take it to be a purely migration policy issue. However, as is demonstrated by recent data provided by the police authorities, this is not the case. Furthermore, conferral of victim status continues to depend on willingness to cooperate with the authorities, which suggests that the principle of criminal prosecution is more important than the human rights of the victims. This has far-reaching implications, especially for foreign victims who, if they do not have permanent residence permits, can be deported to their countries of origin, where they are without protection and at the mercy of the perpetrators.

- Translation of political priorities into specific instruments. The EU and its member states must translate the fight against human trafficking into comprehensible measures and instruments. Thus the common approach should be reflected in the EU budgetary structure. Measures designed to suppress human trafficking are currently divided up on the basis of areas of responsibility. All EU programmes and the corresponding activities on the nation-state level should

become part of a common framework and regularly scrutinized in order to ascertain whether or not they are effective and appropriate. Organizations which support and assist the victims must be given sufficient resources.

- On the nation-state level the issue should be dealt with by a specific individual. Thus in The Netherlands and Sweden government advisers with responsibility for the fight against human trafficking have proved their worth. Their annual reports provide a comprehensive picture of current developments and are linked to specific policy recommendations. The Dutch and Swedish examples are models that deserve to be imitated. They may well lead to the appointment of an EU co-ordinator for the suppression of human trafficking.

- Improve the information base. The fight against human trafficking can be improved if more is known about what is actually going on. This is one of the principal goals of the proposed establishment of an informal EU network of national rapporteurs or similar contact points. The network should include not only EU member states, but also the EU as a whole, and international institutions such as OSCE, UNODC, IOM, ILO and other non-governmental organizations. The network should also submit proposals on how to improve the data on human trafficking and how it might be aligned and made more comparable. The Commission and the EU Presidencies should review the work of the network on a regular basis and issue reports about its activities.

For Further Reading:

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Responsible

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