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Permanente Vertegenwoordiging van het  
**Koninkrijk der Nederlanden**

**Permanent Representation of the Kingdom  
of the Netherlands to the Organisation for  
Security and Co-operation in Europe (OSCE)**

## **Trafficking in Human Beings**

### Legislation

In the Netherlands, trafficking in human beings is forbidden under **article 250a of the Penal Code** (see annex for non-official English translation)

At the moment only sexual exploitation of minors and of none-consenting adults, in the sense of forced or involuntary prostitution, the transportation of a person over a national border with the intention of bringing him or her into prostitution in another country (whether consenting or not), as well profiting from such exploitation, fall within the range of the trafficking provision. An amendment to include other forms of *sexual* exploitation has been adopted and will come into force shortly.

A law is being drafted to bring other forms of exploitation and the removal of human organs within the scope of the penal law as well. A draft law to this purpose is to be presented this summer to parliament for further discussion (no text available yet).

The organisation of prostitution of consenting adults under normal (working) conditions is not punishable.

The available legal penalties are Imprisonment for maximum 6 years and/or a fine of maximum € 45,000,-

When the crime is committed in relation to a minor of less than 16 years of age *or* by two or more persons in co-operation, *or* when it causes serious physical damage: imprisonment of maximum 8 years and/or a fine of maximum € 45,000,-

When the crime is committed by two or more persons in co-operation *and* causes serious physical damage *or* is committed in relation to a minor of less than 16 years of age: imprisonment of maximum 10 years and/or a fine of maximum € 45,000,-

### Witness Protection

The position of an intimidated witness is - in general - regulated in the criminal code and further elaborated in instructions by the Public Prosecutor Generals' Office (College van Procureurs-Generaal). (Instructie getuigenbescherming 2001; text available in Dutch only).

Specifically for victims and witnesses of trafficking in human beings the so-called B-9 regulation is in place (text available in Dutch only). The B-9 regulation is based on immigration law and provides shelter and assistance to (possible) victims and witnesses of trafficking.

The - general - instruction on witness protection applies to witnesses and other persons who have co-operated with law-enforcement agencies entrusted with the

investigation and prosecution of criminal offences and with regard to whom there exists an 'urgent necessity' for protection because of that co-operation or because of action by the government related to that co-operation. It is the Prosecutor Generals' Office that takes the decision on the granting of protection.

The B-9 regulation is applicable to aliens who are a possible victim of trafficking or who are witness of and report the crime of trafficking. Both victims and witnesses should be co-operating with the law-enforcement agencies in the investigation and prosecution. The decision on the granting of the protection of the B-9 regulation is taken by the (local) chief of police. Under the B-9 regulation the assistance and aid is provided in a joint response between police and NGO's.

The B-9 regulation seeks to provide shelter and protection to victims as well as facilities for the investigation and prosecution of suspects / perpetrators. In practice, the facilities described in the B-9 regulation are linked to the co-operation of the victim and witness in the judicial procedure. Formally, there is no obligation to provide statements and testimonies, in practice law-enforcement is highly dependent on these statements and testimonies.

As possible forms of assistance and aid to victims and, to a lesser extent, to witnesses, the B-9 regulation includes the provision of assistance such as medical and psychological counselling, legal advice and vocational training as well as protection.

Under the B-9 regulation, the removal of the alien from the Netherlands is postponed during the 3 months reflection period, during which the victim should decide whether or not she wants to file a complaint against her traffickers. A witness is not granted this reflection period. When the alien (witness and/or victim) has decided to co-operate with the law-enforcement agencies, a temporary residence permit is issued.

The temporary residence permit is to be renewed every one year and is granted to victims for maximum the duration of the proceedings in first instance and in appeal, whilst for witnesses it is valid for as long as his presence in the country is deemed necessary by the prosecution.

After the expiration of the temporary residence permit, both victim and witness can apply for a (permanent) residence permit on other grounds, which includes, for the victim, humanitarian reasons.

### Best Practice

Out of a long list of best practice initiatives in this field in the Netherlands, the following may be mentioned:

- The appointment of a national (co-ordinating) public prosecutor in the field of human trafficking.
- The presence of specialised public prosecutors on human trafficking in all regional prosecutions' departments.
- The existence of a national project consisting of police experts on trafficking and on prostitution issues, who meet in two-days sessions every two months.
- The gathering, every two months, of police-officers on operational questions with regard to trafficking in human beings.
- The appointment of the Dutch National Rapporteur on Trafficking in Human Beings.

- The facilities, assistance and aid provided by the B-9 regulation to victims and witnesses of trafficking.
- The existence and use of a list by law-enforcement agencies, listing possible signals that could be indicators of the presence of trafficking victims.
- The state-financing of the NGO Foundation against Trafficking in Women (STV).
- The state-financing of the international victim-assistance and protection project La Strada.
- The presence within the Immigration and Naturalisation Office of regional contact-officers on trafficking in human beings.
- The installation of a multi-disciplinary monitoring group on the effects of the lifting of the ban on brothels.

## **ANNEX Article 250a of the Penal Code (non-official translation of 30 January 2001)**

### **Section 1**

Any person who:

1. by force or some other physical act, by threats of violence or of any other physical act, by misuse of authority arising from the actual state of affairs or by deception, induces another person to make him/herself available for the performance of sexual acts with a third party for remuneration or, under the said circumstances, takes any action which he or she knows or may reasonably be expected to know will result in that other person's making him/herself available for performing those acts;
2. recruits, takes with him or her or abducts a person with a view to inducing that person to make him/herself available for performing sexual acts with a third party for remuneration in another country;
3. induces another person to make him/herself available for performing sexual acts with a third party for remuneration or takes any action which he or she knows or may reasonably be expected to know will result in that other person making him/herself available for performing those acts when the other person is a minor;
4. wilfully profits from sexual acts of another person with a third party for remuneration, while he or she knows or must reasonably assume that that other person is making him/herself available for performing those acts under the circumstances referred to in para. 1;
5. wilfully profits from sexual acts of another person with a third party for a remuneration, if the other person is a minor;
6. forces another person by violence or some other physical act or threat of violence or other physical act or by misuse of authority arising from the actual state of affairs or by deception to benefit him or her from the proceeds of his or her sexual acts with a third party.

shall be guilty of trafficking in persons and as such liable to a term of imprisonment not exceeding six years and a fifth category fine, or either of these penalties.

### **Section 2**

The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine or either of these penalties:

1. trafficking in persons by two or more persons acting in concert;
2. trafficking in persons in respect of a person who is under the age of sixteen;
3. trafficking in persons if force or some other physical act as referred to in paragraph 1 results in serious physical injury.

### **Section 3**

Trafficking in persons by two or more persons acting in concert under the circumstances referred to in section 2, para. 2 or 3, shall be punishable by a term of imprisonment not exceeding ten years and a fifth category fine or either of these penalties.