

# 11th High-level Alliance against Trafficking in Persons conference

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## **Cooperation to complement the criminal justice response**

### Panel 5

First of all I would like to thank the OSCE for organising this High level conference and especially Maria Grazia for inviting me. I feel very honored to speak to this highly distinguished audience today.

Since it is already the final part of the conference I am in the comfortable position to build on what have been said yesterday and earlier today.

The focus of my presentation is, how the cooperation with the various stakeholders can be complementary to a criminal justice response because as was already pointed out by previous speakers criminal proceedings remain of high importance in the combating of trafficking in general and in cases of THB for labour exploitation in particular. I will explain how stakeholders can be complementary and what problems you might encounter when cooperating, in addition I will give some concrete examples of extensive cooperation in cases of THB for labour exploitation in the Netherlands. My presentation is mainly based on the outcomes of a research that I have conducted on combating THB for labour exploitation, co-funded by the European Commission and of which findings are published in a book. A flyer of the book can be found outside.

But first of all why is a criminal law approach still important?

Several reasons can be given for that:

1. First, it reflects the severity of the crime, criminal law is used only as a last resort.
2. Second, law enforcement in general does have broad experience in cooperation national and international, and the legal frameworks for such cooperation are in place. This is important in order to be able to uncover the whole trafficking chain and that is at the same time the third reason for the importance of criminal law
4. A fourth reason then is the existence of extended powers for law enforcement purposes or reasons of public order. Think for instance about the use of special investigative techniques such as systematic observations or wire tapping.

Then the next question is how can stakeholders be complementary?

Stakeholders often have valuable information, information that might help law enforcement with building evidence in a case and might help to detect cases of trafficking.

Which stakeholders are we talking about? Who are the stakeholders

1. Several units from municipalities; for instance those endowed with monitoring housing regulations: are people allowed to live in certain buildings, is sanitation appropriate, but also fire security when monitoring buildings and especially companies whether the place is safe to work or to live.

What does that have to do with THB? There might be a violation of labour laws if people have to work under unsafe conditions, there might exist a exploitative situation if people live in unsafe houses provided for by the employer.

2. Secondly of course the labour inspectorate, controlling working conditions, safety at work and illegal work. They can provide interesting information on exploitative working conditions and situations, as we will hear in the next presentation.

3. A third interesting stakeholder which has not been addressed

these days so much is the tax service. All companies have to provide yearly reports to the tax services, and an imbalance between costs and profits might raise questions on how a company is performing. For instance, high profits with a small group of employees might raise questions on the working hours and conditions, as well as illegal employment.

4. A fourth stakeholder is the chambers of commerce; which companies are registered, who are the owners, do they have more than one company, are many people registered as self-employed are there indication for bogus self-employment. A couple of years ago there were reports in the Dutch Newspapers of an enormous increase of the number of Czech women registering as hair-dresser. Nobody could give an explanation to the phenomenon as the increase was not really visible on the streets. This can give reason to ask for additional questions.

5. A fifth group is the trade unions, which have been discussed over the last days.

6. A sixth group is civil society and individuals. They often work in the companies were also possible victims of THB are working, they live next door to where possible victims of THB are living and therefore can provide valuable information. Although mobilising civil society might not be an easy task because civil society might not have the idea that there is a case of exploitation or that it is wrong what an employer does, that he treats foreign workers different from national workers. In my view a hidden discrimination lies at the bottom of these perceptions and this has to be broken before civil society can play a role in this.

So stakeholders can have important information on cases of trafficking and therefore play an important role in the detection of cases of trafficking at the first place and in the identification of possible victims of THB for labour exploitation in the second place.

But how can the information be shared. This question was

explicitly looked at in our research and to answer this question we have conducted a number of interviews with the stakeholders.

What we have uncovered is the following:

- first there is a lack of awareness for cases of THB for labour exploitation and for forced labour
- second stakeholders are not familiar with criminal law and lack investigative powers and they furthermore tend to think that THB lies outside their mandate and therefore that they do not have to take action.
- third the definition of THB for labour exploitation is a complex one and it is not clear at all when a case must or can be qualified as a case of THB for labour exploitation.
- fourth and related to the previous aspect is that stakeholders often see only part of the trafficking process and therefore it is difficult to recognise it as an aspect of THB. For instance when looking at migrants how can one know that one person might be or become a victim of trafficking and the others not.
- fifth and maybe that is the most important one is that there is a lack of information exchange between the stakeholders. I will elaborate a bit more on this aspect

Reasons for the lack of information exchange are:

- the information exchange is not legally formalised
- there is competition between authorities to deal with THB-cases (so that is the opposite of lack of awareness), and therefore they do not want to share the information otherwise the other is taking over the case
- when information is exchanged there is a lack of feedback from the authorities the information was shared with so for the next time there is less willingness to share the information
- complex data protection regimes, different stakeholders fall within a different regime of data protection. But also the principles of data collection such as the purpose limitation and rules on the storing of sensitive data need to be taken into account when exchanging information.

How to deal then with these issues?

A possible tool might be the 'programmatic approach', which is now more and more applied and tried in the Netherlands. It is a tool to bring the multidisciplinary approach into practice by bringing together stakeholders of administrative, criminal and sometimes international nature together, both at regional and national level and if required also at international level. They formulate a common goal and agree on the data protection framework. It is a proactive approach where a certain problem area is looked at by all the stakeholders that deal with that problem and information available at the stakeholders is shared. For this aim covenants are concluded and all stakeholders commit themselves to look at the problem to collect information and to share information. In the covenants that have been concluded so far it was extremely difficult to come to a common goal as well as to conclude an agreement on the sharing of data. There is a huge resistance and fear for sharing information often because people are not familiar with the data protection regulations and assume that information sharing is not allowed, often because different data protection regimes apply. Although when looking more closely at the specific regulations than one must admit that in these regulations possibilities are created to share information especially when it is done for law enforcement purposes or for maintaining of public order. Thus more expertise on data protection regimes and possibilities is required. Otherwise the argument that information sharing is not allowed because of data protection regulations will be abused in the future as well as. It is now too often used as an argument to cover the real reason not to share information namely that the organisations do not want to share information, for instance.

Now I want to discuss two cases in which information sharing was with other stakeholders was crucial for the criminal case:

## **Asparagus case**

Asparagus farm where people seemed to be exploited

- Since 2005 the farmer was monitored and had been fined for more than half a million Euros by labour inspection for violating the aliens employment act and the act on minimum wages.
- Based on a meeting between the major, prosecution service and head of police it was decided to take administrative action despite signals of physical abuse and the locking of persons at night no action by law enforcement was taken.
- Action then was taken by the fire safety unit from the municipality was based on the housing act because too many people were living in the shed where she had made some accommodations, by the way with the agreement of the municipality in first instance. 55 people were found in the shed
- Mayor labeled it as modern slavery, only thereafter it was realized by all authorities involved that it might have been a case of THB, and only then concerted action was taken. Workers/victims had already left without being duly informed about their rights and possibilities.
- The action took place in May 2009. The farmer was arrested in January 2010 but released from prison after half a year of pretrial detention
- Last week 16<sup>th</sup> of June she has been arrested again for renewed exploitation of workers, now Polish workers. The case is scheduled on 30 June.
- To collect the evidence information documented by the labour inspectorate to prove the exploitation was used.

This case shows three things:

1. the negative consequences THB cases are only approached from an administrative angle, exploitation will remain.
2. Lack of information exchange by labour inspection, although they were and are obliged to share the information with SIOD, intelligence and investigation service at ministry of social affairs and expertise center

3. A positive aspect: information collected by other stakeholders, in this case labour inspectorate and sections of the municipalities are helpful in bringing a case before the court

### **Krupuk case**

Is about Indonesians working in food processing

Information from several sources: Intelligence unit, aliens police, municipality unit urban development, social intelligence and investigation service. Information was brought together at an early stage

They are living with many persons in one room on mattresses on the ground. The rooms were dirty, mices and cockroaches were found in the room, poor sanitation, and they had to work and live in the same space, therefore very hot inside and dangerous as well as the had to fry krupuk in hot oil.

Were illegal in the Netherlands, did not speak the language and did not know the society

The investigation was led by the SIOD, social intelligence and investigation service after agreements with other stakeholders (f.i. aliens police)

What does this case learn to us:

- helpful to have an separate unit within the labour inspection that can do investigations we will hear more of this practice in the following contribution
- cooperation needs intensive contact between all stakeholders and a willingness from all to achieve the goal of combating this form of THB. For this understanding of each other's role and mandate is required.

I have come to the end of my presentation and would like to thank you for your attention.