

PORTUGUESE REPORT
ON
TRAFFICKING IN HUMAN BEINGS

REPORT TO THE INFORMAL GROUP ON GENDER
EQUALITY AND ANTI-TRAFFICKING

TRAFFICKING IN HUMAN BEINGS

INTRODUCTION

The right to liberty, in its widest sense, was one of the first human rights to be recognised and protected worldwide. In the nineteenth century, there was already an international consensus regarding the abolition of slavery and trafficking of persons: Portugal was one of the first countries to abolish slavery in its colonies (in 1878), shortly followed by the rest of the European colonial powers. Despite this legal evolution, trafficking in human beings (the new designation for the well-known reality of slavery) remains one of the most profitable forms of international commerce.

Nowadays trafficking is still mainly directed towards obtaining profit from illegal labour force and sexual exploitation; however, it has recently acquired new and unthinkable dimensions, like trafficking for trade of human organs and illegal networks of children adoption and sexual abuse of children.

We all know that liberty is one of the fundamental human rights, enshrined in various Treaties and Pacts. The Universal Declaration of Human Rights (1984) - one of the basic texts in the human rights field - defended the abolition of any kind of servitude, torture and inhuman or degrading treatment and proclaimed the right to liberty, personal safety and juridical personality. When it comes to trafficking in human beings all these rights are violated.

Trafficking in human beings is, consequently, an abhorrent form of disrespect for human dignity; it is also a very complex issue, linked to terrorism and organised crime. Therefore, it must be addressed with courage and determination, by both individual Nations and the international community.

SITUATION IN PORTUGAL

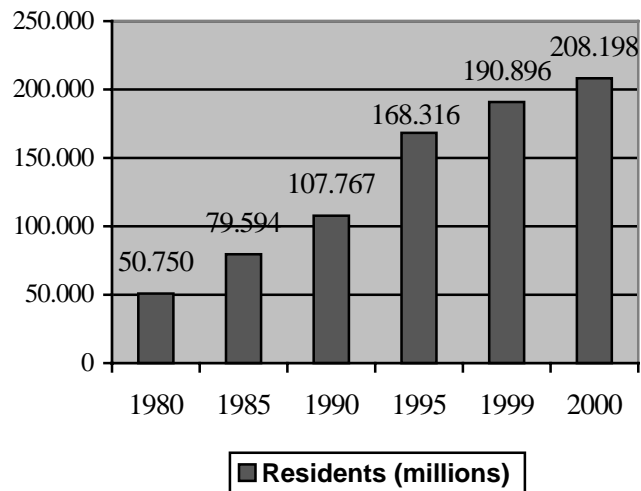
Portugal was, for centuries, a country where most of its population was forced to emigrate in order to survive, something which, to a lesser extent, still happens nowadays.. However, in the last twenty years, Portugal has also become an attractive country for immigrants from all over the world, especially from the Portuguese speaking countries (former colonies in Africa and Brazil) and Eastern Europe.

Portugal has indeed an inviting situation: geographically, it is located in one of the extremities of Europe, forming part of the Schengen space's border; culturally, it is a welcoming country with a strong tradition in migration, understanding and easily accepting foreigners; in addition the cost of life is low. It has also an inefficient fiscal system, opening breaches for the operation of illegal immigration and trafficking networks.

In Portugal, emigration fluxes were particularly important between 1965 and 1973, for economic reasons, with more than 100 thousand workers emigrating every year. From 1974 on, due to the political evolution in Portugal and to restrictive immigration policies adopted by the some destination countries, the emigration flux decreased substantially. Still, in 1997, the number of Portuguese emigrated all over the world was higher than 4 million.

From country of emigrants Portugal has, in the last decade, become a country of immigrants. Until 1980, immigration was never superior to 50 thousand residents; between 1986 and 1997, the number of foreigners living in Portugal almost doubled, rising from 87 thousand to 175 thousand (statistics given by SEF- Serviço de Estrangeiros e Fronteiras).

<i>Year</i>	<i>Residents (million)</i>
1980	50.750
1985	79.594
1990	107.767
1995	168.316
1999	190.896
2000	208.198



Statistical evidence shows that most of the illegal immigrants living in Portugal come from Eastern Europe, Africa and (to a lesser extent) Brazil, while legal immigrants are for the most part nationals of other European Union countries (notably the United Kingdom, Spain and Germany).

There is a significant difference in nature between these two types of immigration. The *legal immigration* from the European Union is closely related to the development of foreign investments in Portugal but there is as well a flux of retired persons who come to enjoy our climate and geography.

Most of those who enter *illegally* the country end up working in the civil construction or underpaid jobs. We have not enough data concerning sexual exploitation of illegal immigrants; the number of women, normally an indicator of the presence of sexual exploitation networks, is not very significant. It is also true that some of the persons who enter the country illegally see Portugal as a passage point between their countries of origin and the rest of the European Union space and do not remain in Portugal for long. Even among the illegal immigrants, there is a difference between those who come from the PALOP's (African Countries which have Portuguese as the Official Language)– with a low level of education who will mostly serve as unqualified workers in the civil construction – and those who come from Eastern European and usually have a university degree. Still they anyhow work as unqualified workers in the civil construction and cleaning services.

Immigration to Portugal has developed positively in a systematic way, due to various factors, inter alia, the economic growth our country has experienced in the last years and the relatively low capacity of our labour market to respond to the crescent demands of our rising economic productivity. This weakness in our labour market is aggravated by: 1) a low birth rate; 2) a secular tradition in emigration, 3) low productivity and innovation capacity by state companies, and 4) a high rate of unemployment affecting especially unqualified old workers. For all these reasons, if it were not for the immigrants, many of the Portuguese productive activities would be already experiencing recession (or would have even completely disappeared) with unthinkable consequences for the Portuguese economy.

In 2001, a detailed study - published in *Diário da República* in November 2001- indicated that there was an important need of foreign workers, especially to work in the areas of civil construction, cleaning systems and agriculture.

The total number of legal immigrants living in Portugal in the year 2000 was over 200 thousand; this number is expected to have risen to 350 thousand during 2001. As we have already seen, most of these immigrants come from Eastern Europe, while the number of immigrants from Africa and Brazil are losing relevance.

However, this data does not give us the complete picture of the immigration scenario in Portugal. The specialisation and complexity of the trafficking networks' operations make it difficult to effectively arrest the traffickers and have a reliable

estimate of the number and objectives of illegal persons who enter the country every year. Data available from the Ministry of Justice concerning the crimes of trafficking in human beings and procurement indicate that, in the year 2000, 21 criminal proceedings were tried and finalised, though leading only to eight convictions. This low figure reveals the current inefficacy of our judicial and fiscal system in combating these complex trafficking networks while at the same time it indicates that there must be many more persons involved in trafficking than those who are arrested and convicted. The total number of immigrants today in Portugal is undoubtedly higher than the figures on the number of legal persons entering the country annually.

IMMIGRATION LEGAL FRAMEWORK: PORTUGUESE LEGISLATION

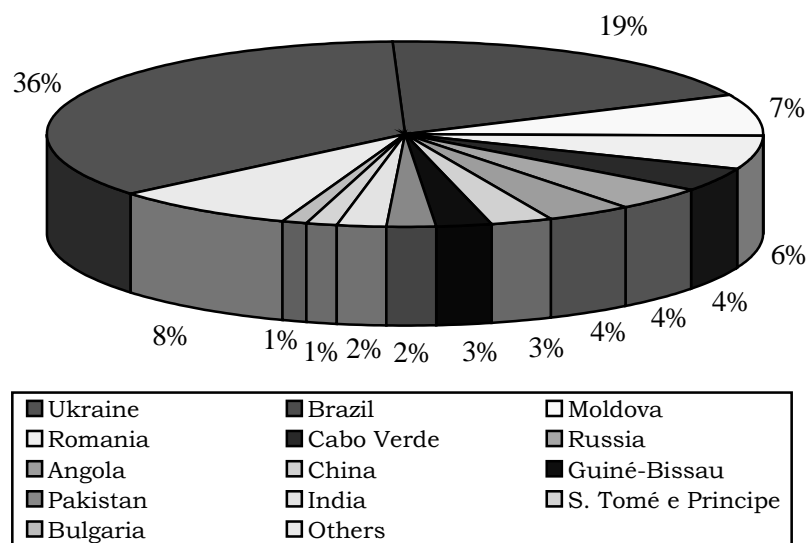
The *Decree Law 244/98* of 8 August has instituted a new juridical statute of immigration policy; it sets the conditions of entry, residence and expulsion of foreigners from the Portuguese territory. This diploma was created because of the innovations brought by the Schengen Agreements in the field of border control; the main objective of this new legal framework was to adopt a policy promoting the integration of immigrants and the defence of their fundamental rights. It should also allow to regulate the admission of foreigners according to the needs of the Portuguese labour market.

The evolution of the immigration scenario in Portugal has lead, in the last years, to the introduction of amendments in this legal diploma, by means of Act 04/2001 of 10 January. This Act, usually called “Immigration Law”, determines that the Government must, every year, elaborate a report on the annual working needs and sectors where they are more striking, so that the immigration flux can be controlled depending on the demand. On the other hand, the Government clearly gives priority to the legal immigration channels by means of granting working permits and visas of one renewable year, and by establishing immigration agreements with foreign countries (ex: Agreements with the Russian Federation, Slovene, Ukraine and Bulgaria, among others).

Furthermore, *Decree-Law 244/98* of 8 August, amended by Act 97/99 of 26 July and *Decree-Law 4/2001* of 10 January, established that aiding illegal immigration is a crime. This crime is punished with imprisonment of up to 3 years, or from 1 to 4 in cases where the agent acts with the intent of profit. The members of groups, organisations or associations whose activity aims at aiding illegal immigration are more heavily punished, with imprisonment of 1 to 5 years, or 2 to 8 years in the case of the heads/ chief co-ordinators of such associations.

The publication of these diplomas led to a huge legalisation operation in 2001, through the granting of residence permits and authorisations to foreigners with working contracts in Portugal. The table below shows the number of residence authorisations given in 2001:

<i>Country of origin</i>	<i>Total</i>
Ukraine	42.252
Brazil	22.426
Moldova	8.404
Romania	6.926
Cabo Verde	5.174
Russia	4.777
Angola	4.723
China	3.203
Guiné-Bissau	3.082
Pakistan	2.784
India	2.670
S. Tomé e Príncipe	1.506
Bulgaria	1.465
Others	9.789
Total	119.181



ANTI-TRAFFICKING: LEGAL FRAMEWORK

Trafficking in human beings for sexual exploitation ends is considered a crime according to *Article 169 of the Portuguese Criminal Code*, recently amended by Act 99/2001 of 25 August 2001. Whoever by means of violence, serious threat, deceive, fraudulent manoeuvre, or by taking advantage of any situation of particular vulnerability, attracts, transports, accommodates, receives or creates the conditions for the practice, by a certain person, in a foreign country, of prostitution, will get two to eight years of imprisonment. The wording of the amendment act has enlarged the original scope of Article 169, enabling the prosecution and punishment of all those who are involved directly or indirectly in trafficking in human beings.

Children are covered by a special protection framework, defined in *Article 176 of the Criminal Code* (also revised by Act 99/2001), according to which of all those who attract, transport, provide for the accommodation or reception of a child under 16 years old, or make arrangements for the child to practice, in a foreign country, prostitution or relevant sexual acts are sentenced from 1 to 8 years of imprisonment. The new *regime* - defined by the Act of revision of 2001- now provides for the punishment of all those who, directly or indirectly, are involved in trafficking in children for sexual exploitation ends. The provisions of Article 176 apply regardless of the perpetrator resorting or not to violence, threat, fraud or deceit (although these are aggravating circumstances and thus raise the time of imprisonment from 2 to 10 years). Other aggravating circumstances include the victim being under 14 years of age or the perpetrator acting professionally or with the intent of profit.

Other situations described as trafficking in human beings for other purposes than sexual exploitation can be punished under the provisions on slavery and slave trade from *Article 159 of the Criminal Code*, which sets the possibility of 5 to 15 years of imprisonment. The Criminal Code also punishes the crime of threat, coercion, abduction and kidnapping.

Finally, the *Decree Law 325/95* of 2 December establishes the legal regime to prevent and combat money laundering, according to which those who convert, transfer or dissimulate assets deriving from, or products of, certain crimes are punished. Act 10/2002 of 11 February recently introduced amendments to this Decree/Law, with a view to explicitly including in that group of crimes the trafficking in human beings.

In the investigation for the crimes supra mentioned, it should be underlined that the Constitution of the Portuguese Republic was subject to its 5th. revision on 12 December 2001 (Constitutional Act 1/2001), and this revision allowed for some exceptions to the general prohibition of entering a person's home during the night – one of them concerns the cases of particularly violent or highly organised criminality, including trafficking in persons.

Furthermore, Act 5/2002 of 11 January established measures for combating organised and economic crime, setting up a specially enlarged legal regime (allowing for the breaking of the professional confidentiality and loss of assets to the State) for the gathering of evidence in relation to several crimes, among them the crime of trafficking in children.

In what concerns the protection of victims, Act 61/91 of 31 August 1991 has provided for a number of measures to protect women victims of violence in general; Act 107/99 of 3 August 1999 created a national network of support centres for women victims of violence, though none of those centres is specifically targeted at women victims of trafficking.

Finally, Act 93/99 of 14 July ensures the protection to witnesses in the proceedings concerning, inter alia, trafficking in human beings; its provisions apply to anyone who is aware of relevant facts, including the victims themselves. It should also be noted that Article 87 paragraph 1 of the Decree Law 244/98 foresees the possibility of waiving the visa necessary to obtain a residence permit to those foreigners who co-operate with the investigations into organised crime, including trafficking in human beings. Thus, victims of trafficking can obtain a residence permit if they co-operate with justice in the investigations and not fear being forced to go back to their country of origin (where they would be exposed to threats and menaces of various kinds).

Despite the existence of this enlarged system of combat against trafficking and other forms of organised crime, breaches in the juridical system persist and undermine its efficiency. The Portuguese legal system was finding it troublesome to keep pace with the evolution on the forms and objectives of trafficking in human beings, leaving without punishment many crimes due to the absence of legal provisions regarding them.

Therefore new legislation is currently under preparation and discussion: the Council of Ministers has approved a bill to be submitted to the National Parliament, which foresees the punishment of those who assist not only the entry and permanence in Portugal but also the transit of illegal migrants. Two other bills are currently under consideration by the Portuguese Parliament: one further amends the provisions of the Criminal Code concerning trafficking in persons; the other aims at establishing measures for the protection of victims of trafficking.

On 25 June 2002, the Government announced the creation of a National Immigration Plan which will entail amendments to the legal framework presently in force; a survey of the foreigners in Portugal and the definition of a framework policy to determine the conditions (labour market, health, education) Portugal can offer to

immigrants. In this regard it is the government's intention to interact with regional organisms and NGOs in order to combat the illegal trafficking networks.

ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

❖ Governmental action

Portugal has yet to elaborate a specific and organised plan of action to prevent and combat trafficking in human beings, although the fight against trafficking is one of the objectives of the Global Plan for Equal Opportunities, approved by Cabinet resolution 49/97 of 24 March 1997. The implementation of measures involve the Ministries of Finance, Justice, Home Affairs and Solidarity and Social Security in co-ordination with national and international non-governmental institutions. Spontaneous action are undertaken, but with a relatively low degree of co-ordination between them.

In 2001 a major step towards an organised action on combating terrorism and organised crime was made with the Great Planning Options for 2002 (Act 109-A/2001). This Plan foresees the implementation of an information-sharing Unit, in which all security forces and services are represented, which is of fundamental in co-ordinating an integrated intervention in combating illegal migration and trafficking in human beings. It also foresees a closer co-operation of the "Foreigners and Border Office" with working groups of the European Union and international organisations which work towards combating illegal migration, within the fight against networks assisting illegal migration and trafficking in human beings.

❖ Co-operation with NGOs and International Organisations

The efforts of the Portuguese Government to prevent and combat trafficking, and to assist its victims are undertaken in close co-operation with national and international NGOs as well as with several international organisations which Portugal is a party to.

In this area of co-operation, the European Union plays a key role. In fact, European Institutions develop an important work in the fight against trafficking in human beings. Since 1996, the European Union has established a large number of programs against trafficking in human beings and sexual exploitation of children, inter alia programs STOP and STOP II (to prevent and combat trafficking in human beings and all forms of sexual exploitation of children, including child pornography), and DAPHNE (to protect children, adolescents and women against violence). A number of initiatives undertaken by the Portuguese civil society and private institutions have been financed through these programs.

One of the most important and active bodies in the area is the Commission for Equality and Women's Rights (CIDM), which co-ordinates a working group composed of 14 public and private institutions and services –including security forces and NGOs– working with prostitutes. One of its projects -*Projecto de Rua em Rua*- was developed in 2001 in partnership with public and private, national and international entities (namely the Ministries for Home Affairs, Health and Employment and Social Security, municipalities, NGOs and academics). The project was funded by the European STOP initiative and had two main trends: investigation and training. The investigation component was carried out by the University of Porto (Psychology and Educational Sciences Dep) and aimed at gaining a better and deeper understanding of the female population of prostitutes, with emphasis on the working of trafficking and sexual exploitation networks, and at studying the adequacy of institutional responses (the results of this study are due to be published soon).

CIDM has recently submitted a new application (for financing under the EU initiative Interreg III) to develop a project to be undertaken at the national level and more directly related to the question of trafficking and aimed at creating adequate social responses to this problem.

Regarding field work, several Portuguese NGOs carry out an important work concerning the protection of victims:

- The NGO “*O Ninho*” provides assistance to prostitutes.
- The “*Women's Association against Violence*”, a women's NGO, also has a welfare and legal support service for women victims of violence; it runs a shelter in the Lisbon area, set up with the support of a private company and the Commission for Equality and Women's Rights.
- The Portuguese League for Social Prevention (*Liga Portuguesa de Profilaxia Social*) currently develops the VAMP project aimed at providing social and medical support to prostitutes of both sexes through a mobile unit which undertakes three missions a week.
- The Association for Family Planning runs “*Espaço Pessoa*”, a program for supporting victims of prostitution.
- The “*Portuguese Association for Victim Protection*” (APAV), a NGO based in Lisbon with branches in other Portuguese towns develops an important work concerning victim protection by providing psychological assistance and counselling to victims. In 2000, APAV ran a campaign to stop violence against women - co-financed by the European initiative DAPHNE and with the support of the Portuguese government, namely through the involvement of security forces, which comprised an awareness-raising campaign and the publication of a handbook targeted to professionals dealing with women victims of violence.
- The Portuguese Committee for the Refugees develops projects in the area of asylum seekers' and refugees' integration, co-financed by the European initiative EQUAL, the European Fund for Refugees and the Operational program for Lisbon and Tejo Valley Area (PORLVT).

- The High Commissariat for Immigration and Ethnic Minorities has promoted various important campaigns and projects. One of the most relevant in the area was “*Projecto Em Cada Rosto...Igualdade*”, financed by the European Social Fund and in partnership with the Portuguese Mission under the International Migration organisation (IMO). This project aimed at promoting the integration of immigrants and ethnic minorities. It also created a Permanent Information Centre, where interested people can find all the information needed regarding immigration and integration in the destination society. The Centre collects and gives information about immigrant communities and ethnic minorities in Portugal; co-operates with other national and international organisations to promote the integration of these communities and combat all forms of racism and exclusion and helps immigrants and ethnic minorities in better understanding their rights and duties in Portugal.

The creation in February 2002 of *Eurojust* (an European unit, in which Portugal co-operates aimed at reinforcing legal co-operation with the view of fighting the most serious forms of criminality, inter alia trafficking in human beings, and facilitating the co-ordination of the investigations and criminal proceedings in several Member States) should be underlined. Portugal had already ratified the Convention establishing an European Police Service (*Europol*), among others aimed at preventing and fighting the trafficking in human beings. All these European structures are of the utmost importance as Portugal is part of the Convention implementing the Schengen

Agreement and must therefore act in co-ordination with the rest of the European structures in order to effectively control the movement of persons across the European borders and within its territory. The recent EU Seville Summit has further defined a new strategy to assist third countries in co-operating with the EU migration policy, in order to control migration flows and fight trafficking in human beings.

On the other hand, Portugal is party to a number of instruments which, directly or indirectly, address the issue of trafficking in human beings.

Most recently, Portugal ratified the Rome Statute of the International Criminal Court (Decree of the President of the Republic n.º 2/2002 of 18 January 2002). According to its article 7 the tribunal is competent to judge crimes against humanity, and includes in the definition of slavery the trafficking in human beings, in particular women and children.

Besides this recent ratification, Portugal had already ratified:

- Convention on laundering, Search, seizure and Confiscation of the Proceeds from Crime (1997);
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1992);
- International Convention for the Suppression of the Traffic in Women of Full Age Geneva (1937);

- International Convention for the Suppression of the Traffic in Women and Children (1921);
- International Convention for the Suppression of the White Slave Traffic (1910);
- International Convention on Civil and Political Rights (1978) and additional protocols thereto;
- International Convention on the Elimination of All forms of Racial Discrimination (1982)
- Convention on the Elimination of All Forms of Discrimination against Women (1980);
- Convention on the Rights of the Child (1990);
- ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (whose article 3 a) determines that the concept of worst forms of child labour comprises namely all forms of slavery or practices similar to slavery, such as the sale and trafficking of children;
- ILO Convention 29, on Forced Labour;
- ILO Convention 105, on the Abolition of Forced Labour;

The *United Nations Convention against Transnational Organised Crime*, and the Protocols to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and against the Smuggling of Migrants by Land, Sea and Air thereto, of 5 November 2000, were signed by Portugal on 12th December 2000. The process of ratification of both instruments is near completion.

Bilaterally, on 29 May 2000, Portugal signed a co-operation agreement on criminal matters with the Russian Federation, which foresees the co-operation between the competent authorities of both countries, inter alia, on the fight against trafficking in persons, exploitation of prostitution and, in particular, the sexual exploitation of children.

The Friendship and Co-operation Agreement signed between Portugal and Ukraine on 25 October 2000 also provides for mutual co-operation concerning trafficking in persons.

TRAINING PROGRAMS OF RELEVANT STATE AUTHORITIES

Most of the training programs that are held in Portugal are work of NGOs with the financial support of the government or European initiatives.

As mentioned before, project “*De Rua em Rua*” had a training component and aimed as well at sharing examples of good practices. For such purposes, 19 technicians working with or for prostitutes (like social workers, nurses, magistrates and law enforcement officials) were given 126 hours of training. This training comprised visits to the national institutions working in the field of assisting victims of prostitution, three workshops and visits to the transnational partners involved (Association “On the Road” – Italy, and Servicio Galego de Igualdade – Spain).

This project “*De Rua em Rua*” was run in partnership with the Home Affairs Ministry’s project “*INOVAR*”, which aims at providing police forces with adequate training and resources so as to improve their capacity to assist victims in the best possible manner. The INOVAR mission group was established pursuant to cabinet resolution 6/99, of 8 February 1999, and it goes in line with efforts undertaken by the Portuguese authorities to put an emphasis in the protection of human rights in police training.

It should further be added that the by APAV, in partnership with the Ministry for Home Affairs and co-financed by the European initiative DAPHNE, issued a handbook aimed at professionals dealing with women victims of violence, including advice and examples of good practices in the reception, attendance and treatment of these victims.

In what concerns awareness raising programs most of the work is done by the Commission for Equality and Women’s Rights (CIDM). This Commission has published material aimed at raising public awareness (for eg. a compilation of legal texts and international instruments on prostitution and trafficking in women and children (2000), a book on stories of prostitutes, entitled *Histórias da Vida* (2000), a pamphlet with information about support services and facilities available for male and female prostitutes (2001).

Besides these publications, the CIDM also organised an international seminar on 6-7 December 1999, co-financed by the European Commission’s STOP programme, on Trafficking in and Sexual Exploitation of Women, addressing issues such as the role of different legal systems and their harmonisation in combating trafficking networks, the impact and use of media either to promote or curtail sex trade and the rehabilitation and “building” of a new image for women. This was an awareness raising seminar for governments, non-governmental organisations and the public at large more

Other awareness raising campaigns have been conducted on the issue of preventing and combating violence against women, using brochures, TV spots and pamphlets. The High Commissariat for Immigration and Ethnic Minorities has taken part in many of these campaigns by producing TV spots and issuing pamphlets.

RESEARCH /MEDIA COVERAGE

Trafficking in human beings is not a taboo subject in Portugal, but the truth is that “television only picks up the theme (...) when the daily news and bulletins, in relation to very particular situations, dedicate to them headlines and leading stories, which as a rule only happens when scabrous or particularly shocking details are combined with the subject of the sex trade itself”, as one can read in the conclusions of the 1999 above mentioned seminar.

Although this tendency is changing towards a more systematic approach of the problems, the basic trend persists. Special relevance has been given to the issue during the recent Seville Summit, where the migration problem was discussed in great detail.