



DETECTION, IDENTIFICATION, RECEPTION AND ASSISTANCE FOR TRAFFICKED PERSONS

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INTRODUCTION

Trafficking in human beings for sexual or economic exploitation, domestic servitude, organ transplantation, petty crimes etc is a form of organised crime and a serious violation of human rights that hampers social stability seriously. As trafficking in human beings is a multi-faceted phenomenon, it is generally agreed that a multi-disciplinary approach towards combating trafficking is the only option that has any prospect of success. Therefore there is a need for increased co-ordination and co-operation between all the governmental, non-governmental and international bodies involved in the fight against trafficking. Efforts should also be made to share best practices in combating and preventing trafficking in human beings as well as ensuring the collection and exchange of information and reliable data.

Although trafficking in human beings is in most countries quite a prominent subject of debate, daily practice shows that the victims are still harshly treated. In many countries, they are still regarded as illegal migrants who should be returned to their respective countries of origin.

The existing governmental approach is predominantly focussed on repressive strategies such as restrictive immigration policies and the strengthening of criminal action. But such an approach fails to meet the victim's needs.

Alongside repressive strategies to counter trafficking, there is a need to develop strategies aimed at improving and ensuring identification of possible victims and the protection of the basic human rights of victims of trafficking in human beings.

BELGIAN EXPERIENCE WITH MULTI-AGENCY APPROACH

Already in the early nineties several revelations were made public through the media, studies, investigations, in order to denounce the trafficking of women in view of

sexual exploitation. From that moment on, trafficking became an important issue on the Belgian political agenda.

In that period many recommendations have been formulated in order to reinforce the fight against the international trafficking in human beings on legal, administrative and social level.

The system that has been developed in Belgium strikes a practical and pragmatic balance between:

a) the need to offer victims a package of aid and support measures (including mandatory reception and assistance by approved and specialist reception centres, social assistance, counselling, medical care, legal assistance, the issue of temporary residence and work permits), on the one hand

and

b) combating the people and organised networks responsible for the exploitation affecting the victims, on the other hand. The action against these perpetrators is applied through the victims' (mandatory) co-operation with the legal investigation.

Since the mid-nineties, in Belgium the provisions apply to all forms of exploitation, not just sexual exploitation, they also cover other forms of labour exploitation.

Within this framework PAG-ASA has been officially recognised by the government and entrusted with the specific mission of receiving, assisting and supporting victims of trafficking in human beings who cooperate with law enforcement.

The Belgian multi-agency system is mostly consistent with international recommendations and obligations. Because of the scope of this work session, I will focus specifically on issues concerning the detection, identification and protection of victims based on our daily experience.

DEFINITION OF TRAFFICKING IN HUMAN BEINGS

One of the key challenges in combating human trafficking is the agreement to be reached on a definition of this issue: what is meant by trafficking in human beings.

There is still a great deal of confusion between trafficking, smuggling and illegal immigration. The importance of a definition cannot be underestimated, because the status of the trafficked person is dependent upon this. Therefore the existence of a legal definition of a trafficking situation is of the utmost importance to step towards an effective identification of trafficking victims.

To this regard, Belgium has changed its legislation in 2005 changing the current provisions so as get into line with new international and European instruments on trafficking in and smuggling of human beings.

Without going into detail, the main themes of the new law of 2005 are the following:

- A clear distinction has been made between trafficking and smuggling. The law clearly defines what is meant with trafficking.
- Coercion or abuse of a vulnerable position is no longer a component part of the offence but an aggravating circumstance.
- Exploitation in specific sectors have been defined: prostitution, exploitation of begging, trafficking in organs...
- Labour exploitation is defined as employment under conditions contrary to human dignity.
- It has also been defined that the offence is no longer confined to foreigners but also covers Belgian nationals.

This new law has already been criticised a lot because it is so broad. However it is too soon to judge whether or not this new definition has any effect on the identification of victims and/or prosecution of perpetrators. Time and jurisprudence will tell...

Within the framework of this multi-agency approach not only official authorities but also NGOs play an important role.

In theory frontline officers who detect and identify victims at field level, should provide the victims with information and, importantly, refer them to one of the specialised services. Many efforts have been done to make a transition from this theory into practice (such as specialised units at police level, training manuals, ... But detecting and identifying victims of trafficking is still a daunting task for many reasons...For example: a lot of the frontline officers, the policeman in the street (not the specialised units) should be better trained and sensitised concerning the problem of human trafficking. Because of conflicting policies (judiciary vs. migration), it has been noticed that victims are seen as illegal migrants in the first place. There is also a growing impression that an increasing number of cases are almost exclusively intelligence-led. This obvious lack of knowledge on the frontline level, should not be surprising since only a few police academies in Belgium have trafficking in human beings specifically mentioned on their curriculum.

Due to this, the identification greatly depends on the victim himself. If the individual does not approach law enforcement, board guards or NGOs, then the identification of victims is rather difficult.

Another problem is the changing profile of the victims of trafficking (ex. often in cases of sexual exploitation: win-win situation), consequently victims do not always consider themselves as victims. Above that most victims are not always willing to cooperate and experience shows that they are rarely prepared to tell their stories.

Specifically victims of labour exploitation are difficult to identify.

Labour exploitation is not necessarily organised by criminal gangs¹. The documents and cases of economic exploitation also reveal that these criminal organisations are not openly involved in economic exploitation². Most of the sectors involving forced labour are based on regular services for which there is a huge demand. And social or kinship networks play a leading role. However, the involvement of these networks does not mean the dignity of the victims is unaffected. Economic exploitation may occur against the background of sometimes extreme acts of violence and threats. This may be compared with what happens also regularly for prostitution.

Detecting victims of labour exploitation is thus not an easy task. For one thing, the victims of labour exploitation are not always willing to cooperate and secondly, they are not often prepared to tell their stories to the social inspection³. It is not always easy trying to realise what is involved in human trafficking cases. The federal police also acknowledge this to some extent. The issue is most acute in the case of local police services: district police officers are not always familiar enough with the issues associated with illegal immigration and employment, they do not have any investigatory experience in this area and they are not highly motivated⁴. The victims' statements are crucial for prosecuting the perpetrators, and for analysing the way the threats develop and their patterns change.

PROCEDURE⁵

Current legislation on trafficked persons originated in different directives (the ministerial circular of 7 July 1994⁶ on issuing residence and work permits to foreign nationals, trafficked persons and in the ministerial directives of 13 January 1997⁷ and 17 April 2003)⁸.

These (clarify the circular of 1994 and) feature specific directive for all services involved in assisting trafficked persons (police, social inspectorate, and social laws inspection services, public prosecutor's offices, industrial tribunals, specialist reception centres and the Aliens Office).

¹ Dupuis B., *When human dignity is violated*, Inforevue Federal police, September 2004.

² The 2003 annual report's review of a number of cases of prosecutions in the Law on criminal organisations shows that solely a minority of cases refer to economic exploitation. 23 of the 114 people trafficking cases were linked to economic exploitation.

³ Social inspectorate (FPS Social security). Annual report MERI 2003, General report on the activities of the MERI (Mensenhandel en Risicosectoren, Trafficking in human beings and risk sectors) units in 2003 activities and observations during the period from 1999 to 2003. National Coordination Office for Trafficking in Human Beings.

⁴ *Ibidem*, page 11.

⁵ Mainly based on the annual report of the Center for Equal Opportunities and against Racism, 2005

⁶ *Belgian Official Journal* 7 July 1994.

⁷ *Belgian Official Journal* 21 February 1997.

⁸ Amendment of articles 8, 2° and 3° and 10, *Belgian Official Journal* 27 May 2003.

They seek to promote a dynamic form of co-operation between all these stakeholders, on the basis of a **multidisciplinary and integrated approach** to combating human trafficking.

The temporary residence and work permits are issued to third country trafficked persons in three phases in parallel with the stages involved in the judicial inquiry into the activities of the perpetrators.

In order to enjoy 'victim protection status', the victims have to meet three basic requirements:

- 1) leave their exploitative environment;
- 2) accept the mandatory assistance offered by an approved centre specialising in providing reception facilities and assisting trafficked persons (through **all** the phases of the proceedings);
- 3) lodge a complaint or make statements concerning the people or the networks of traffickers who have exploited these victims.

The procedure unfolds in three key phases in practice⁹:

- reflection period,
- declaration of arrival and
- a Certificate of Registration in the Register of Aliens - CIRE

Emphasis should be put on the fact that the definitive regularisation is one of the unique features of the Belgian protection status in the context of trafficking in human beings: victims are offered the possibility of securing a definitive residence permit in Belgium. The definitive regularisation process marks the end of the protection status.

The procedure unfolds in three key phases in practice¹⁰ (reflection period, declaration of arrival and a Certificate of Registration in the Register of Aliens - CIRE):

- 1) *Front-line services detecting and identifying the victims at field level, providing the victims with information and referring them to a specialist reception centre. These front-line services play a key role in detecting and identifying victims;*
- 2) *A 45-day reflection period (in the form of an **order to leave the territory**). This period of time is designed to enable trafficked persons to recover a*

⁹ Article 8, 1°, 2° et 3° of the Directive of 13 January 1997, amended on 17 April 2003, *Belgian Official Journal* 27 May 2003.

¹⁰ Article 8, 1°, 2° et 3° of the Directive of 13 January 1997, amended on 17 April 2003, *Belgian Official Journal* 27 May 2003.

peaceful frame of mind so as to be able to take carefully-thought-out decisions about their immediate future;

- 3) *A provisional residence permit is issued to the victims, who make a declaration or lodge a complaint within 45 day, by way of a **declaration of arrival** (DA) valid for three months. During this phase, too, assistance from a specialist centre is mandatory and the victims may be provided with a C work permit entitling them to work;*
- 4) *The Aliens Office asks the Public Prosecutor or the Labour Auditor what follow-up has been given to the victim's declaration or complaint. The information provided to the Public Prosecutor's Office or the Labour Auditor has to answer two questions:*
 - a) *Is the inquiry still underway ?*
 - b) *Given the current status of the inquiry is the person in question regarded as a trafficked person ?*

When the Public Prosecutor's Office or the Labour Auditor is unable to say yes to both questions, the victim's declaration of arrival is extended once for three months.

- 5) *If the Public Prosecutor or the Labour Auditor can say yes to both questions, the victim is issued with a **Certificate of Registration in the Register of Aliens** (CIRE), which is valid for 6 months and may be extended until the end of the legal procedure.*
- 6) *When the complaint or statements lead to a conviction on the basis of the Law on trafficking in and smuggling of human beings, the victim is issued with an open-ended residence permit¹¹. This principle also applies when a conviction is handed down on the basis of another piece of legislation but where the Public Prosecutor's Office includes the component of trafficking in human beings in its indictment and where the complaint or the statements were of importance for the judicial proceedings. The basic thinking here is the fact that the victims have lodged a complaint or made statements against people who are much more powerful and better organised than the victims themselves. What is more, they run the risk of suffering from reprisals at any time, whatever the outcome of the trial.*

¹¹ The text of the 1997 Directive also specifies that an open-ended residence permit may not be requested solely when the victim's declaration or complaint leads to a summons to appear but also when this declaration results in a referral by the investigating court or an indictment or request for confinement before the investigating court. These clarifications were made to refer to cases where the victim has actively cooperated in the inquiry and where the perpetrator was not, in the end, able to appear before the criminal court, for example, because between the referral decision by the council chamber and the summons to appear before the criminal court, the perpetrator has died or left the country or alternatively the council chamber decided to confine the perpetrator. In these cases, too, the victim may therefore seek and obtain an open-ended residence permit.

- **Centres specialised in reception and assistance for trafficked persons**

In order to be able to guarantee reception facilities and assistance for trafficked persons in Belgium, three specialist centres have been approved and funded by the Government: Payoke in Antwerp, Pag-Asa in Brussels and Sürya in Liège.

The three centres have specific facilities for sheltering and assisting victims.

Most of the victims have been referred to the centres by police services after the victims have been discovered during police checks. The other victims have been referred to the centre by other social services, public prosecutor's offices, labour auditors, the Aliens Office, individuals or, alternatively, the victims get directly in touch with the relevant centre.

However, we notice in our recent statistics that the number of victims referred to PAG-ASA by police services is going down, while those referred to us by social services or private persons goes up.

PAG-ASA has a multidisciplinary team of social assistants, care workers and criminologists. We offer victims a three-part assistance plan:

- (1) psycho-social support, counselling and medical assistance,
- (2) administrative support and
- (3) legal assistance.

We also have a reception centre (at a secret address) where victims may be accommodated if need be. Otherwise, the assistance is offered on a non-residential basis. Without going into details here, we can justifiably claim that thanks to the quality of the work and the expert knowledge built up over the last 10 years, PAG-ASA and the other two centres more than comply with the recommendations made by the Expert group ¹².

a) Residential or non-residential reception and assistance

PAG-ASA offers victims residential reception facilities in our shelter which has places for 16 victims. But if residential care is not necessary non-residential assistance is provided. Residential reception facilities are offered when victims have no accommodation opportunities other than the environment where they were being exploited or in a place where their personal safety may be in jeopardy. In this case, the victims are supposed to comply with the rules of procedure (including compliance with the need for confidentiality, involvement in activities, ...). The victims are

¹² *Report of the Expert Group on trafficking in Human Beings, Chapter 5: 'Assistance, protection and social inclusion of trafficked persons', pp. 100-114 and Explanatory Paper 11 'Social assistance and the development of standards', pp. 177 – 186.*

encouraged to take an active part in the reception centre's community life (breakfast, keeping common parts of the building clean, looking after their own rooms, ...). The time spent in the reception centre may vary from one victim to another but a deadline is generally decided upon. However, the assistance-related aim of PAG-ASA involves providing victims with some level of independence as soon as possible so as to facilitate their social inclusion. The average length of a stay in the reception centre is about 6 months.

b) Psycho-social counselling

In common with all victims, trafficked persons have generally suffered a serious violation of their physical and mental well-being. These victims are also isolated in communicative (they do not understand the language of the country where they are being exploited) social and cultural terms. This isolation is primarily caused by their status as foreigners in Belgium and the distance travelled. Threats to the victims or family members in their countries of origin or debts they have incurred to pay for the trip are the kinds of factors that have to be duly taken account of in the assistance provided to victims.

All these victim-related characteristics call for specialist assistance to start with, a serious willingness to listen to the details of the exploitation suffered, to build up trust with the victim and lend support for the following stages of the procedure.

The three key components of counselling:

- Helping the victims to get over the exploitation and the associated traumas;
- Lending support to the victims in developing their own lives;
- Working with each victim individually to develop a realistic project, involving helping victims to enrol for language courses, vocational training or active jobseeking.

This takes place during regular meetings between the victims and the members of the assistance team. If the victims require extra counselling they are referred to a suitably adapted structure. It should be stressed here that the assistance programme is sometimes difficult to implement owing to the temporary nature of the victim's residence permits, the worries about whether the documents will be extended or not and uncertainty about the final phase of the specific protection status: regularisation.

c) Administrative support

This assistance mainly involves requests for documents linked to trafficked person status: order to leave the territory (45 days, reflection period), declaration of arrival (3 months, may be extended), Certificate of Registration in the Register of Aliens (6 months, may be extended) and regularisation. If victims want to return to their

countries of origin, we get in touch with Caritas or IOM (International Organisation for Migration) in order to arrange for the voluntary return of the victims. Where appropriate, the family in the country of origin or local organisations are contacted to be sure the victim can count on reception facilities and assistance.

d) Legal assistance

This assistance is closely bound up with the progress of the judicial proceedings for people trafficking where the victim is offered support. The aim in this case is to guarantee the victim's rights and interests during the proceedings. This first of all involves providing the relevant person with information (details about entitlements and responsibilities and the structure and operation of the Belgian legal system). This is of central importance because the victims are not invariably aware of the implications of the requirement for them to agree, as part of the protection status, to make statements or lodge complaints about the people who exploited them. As victims do not always tell their stories during the first interview, it is vital for them to be well prepared for any other interviews. Victims are generally offered a lawyer, whereupon they are allowed to take an independent decision about whether or not to bring a civil action in the case. We are also entitled to take legal action in cases involving people trafficking, on their own behalf or on behalf of the victims.

TO CONCLUDE

The Belgian model places emphasis on a dynamic form of co-operation between all the stakeholders in detecting, identify and guiding victims towards specialist reception centres. Although this is slightly changing, still most of the victims are discovered and identified by the police (or supervisory services).

We emphasise the importance of extensive, continuing training to be offered to *all* front-line services that may be in contact with trafficked persons. Daily practice clearly shows that in Belgium improvements are still feasible. We notice that not all victims enjoy the same treatment from the various actors on the ground, notwithstanding the harmonised rules that are available¹³.

Sometimes the alleged victims are immediately referred to a specialist reception centre, and other times not, without there being any clear reason for the different treatment. In some cases, protection status is not offered, and the victims are regarded more as illegal immigrants than trafficked persons. There is no consistency concerning who is offered the victim protection status and who is not.

¹³ Circulars of 1994, 1997 and 2003 featuring directives for all the relevant departments and the directive from Justice Minister on the policy for investigating and prosecuting in cases involving trafficking in human beings (COL. 10/04) and its annexes.

It has been noticed that the protection status often is offered when the statements have been made. Victims are sometimes referred to the centres according to the amount of information initially provided and its relevance, even though the reflection period is specifically used towards this end. Victims of sexual exploitation and victims of labour exploitation are also treated differently sometimes with the latter type of victims often being labelled as engaged in 'undeclared employment'. Some actors on the ground are apparently sometimes unaware of the specific protection status for trafficked persons.

It is obvious that this multi-agency approach has proved to be successful for those victims who have been identified as such and benefit of the victim protection status. Unfortunately, the system is failing to detect some of the victims. The precise number of people 'slipping through the net' can only be estimated. Through better training and more co-operation with the specialised centres, improvements can be made in this area.