

**Introduction by Torsten Moritz****OSCE HDIM Warsaw 1st October 2009**

Moderator,

Special Representative,

Excellencies,

Ladies and Gentlemen,

It is a great pleasure to speak to you today. I represent the Churches' Commission for Migrants in Europe, an umbrella of churches of Anglican, Protestant and Orthodox tradition as well as council of churches across most of the European OSCE members states and with strong links with churches in the non European OSCE members states. We work for these churches as ecumenical agency on migration and integration, asylum and refugees, and against racism and discrimination in Europe.

As part of our mandate we since 2002 coordinate a Europe wide network of churches, NGOs and state partners in capacity building as well as being active in advocacy towards the different European institutions. This happens in the context of larger coalitions against trafficking.

The issue which we are about to discuss – access to justice and safety for victims of trafficking is a crucial concern. It is obviously a crucial concern for those who have become victims of trafficking. Testimonies, which we hear day after day from trafficked persons, but also members and partners confirm that the ability to rebuild lives centrally depends on safety of return and access to justice. Re-trafficking could be considerably be reduced if the return is happening at the right time and under the right circumstances and if alternatives to mandatory return are possible if needed.

At the same time I would like to highlight the importance of safety of status and/or safe return and access to justice for the general system of the rule of law. Failures and gaps in the system of safeguarding victims' rights can and will have consequences for the chances to hold perpetrators accountable and to achieve at least some redress. The impunity of perpetrators, which we still observe in too many cases, is partly caused by the fact that protection of victims and access to legal redress are not granted.

What are in the current situation the main obstacles for realising the right to stay and pursue legal claims against their traffickers in civil or labour proceedings ? Let me share some insights with you – some will probably be familiar to you, others offer more new insights.

The failure to recognize trafficking aspects in irregular migration too often means that the trafficked person is out of the country of exploitation before the exploiters can even begin to worry about the consequences of their deed.

They do not need to fear legal prosecution nor will they ever be held accountable in the penal or civil justice system.

Rather than offering you a lot of analysis, let me first look at an example. It is the example of M., which was related to me last week: M. is the 18 year old son of a former miner who comes from the declining industrial region of a country of the CIS. He left school at 17 to go abroad and work on a building site in a country of the Mediterranean. A friend had arranged the contact and somehow provided a tourist visa. Once he arrived, M. was shocked to see that his passport was taken by the building contractor, who told him there had been some mistake with his papers which needed to be sorted out. He was happy when he was given some food and also paid for the first four weeks. And there were dozens of others who were in the same situation. However when the fifth, sixth week had passed and he did not receive any money he went to the boss to complain. All of a sudden the boss, with whom he could until then communicate in his native language no longer wanted to speak his language and made him understand that he should better keep quiet if he did not want to get into trouble – after all as it had been discovered his visa was not a bona fide one and he had worked without permit. The situation continued like this for four more weeks – until M. fell on the building site and hurt his ankle. Once again he went to the boss and asked if there was a doctor he could see – he was told that this was a bad idea. M. still wonders if it was a coincidence that there was a raid on the building site the next day and he was detained. He was comparatively lucky, as the detention centre was not too overcrowded and he could even see a nurse, who gave him some balm against the swelling of his ankle. Again, he was “lucky”: After three days of detention he received a visit from the embassy of his country.

The embassy clerk was sympathetic to his situation, but clearly explained to M. that he would the next days receive a laissez passer and be deported. After all he should be happy that his host country would not ask him to pay for his deportation and that he would not have to stay too long in detention – thanks to an EU readmission agreement with his country of origin. Given the circumstances, M. thought that this was a fair deal. He is now back at home, empty handed with debts to his friend for the fake visa. In addition, the doctor who examined him in the hospital expected a little tip – after all he had bandaged what turned out to be a broken ankle. M. is now living with his father, back at home but without the money he wanted to make and some debts instead. So it is clear that he could use some form of payment for the work he did or for the work accident he had. However there is no way he will ever be able to claim that- he cannot even think of accessing a court given that the place he worked is some 2.500 kilometres away, for him the 700 kilometres to his country's capital where he could address a claim to the embassy of his host country are too far. He is currently being assisted by a church-sponsored charity, which offers him an IT course – maybe some way for him to build a better life. The colleague who told me this story reports that M. was mainly shocked how things like this could happen in another country that was so rich, wealthy and seemed so cultivated.

What does this real life experience tell us ? First of all, the issue of identification still remains a major challenge: in a considerable number of OSCE participating states, there has been progress in training law enforcement and other relevant actors in identification of women and girls trafficked for sexual exploitation. The OSCE, in particular ODIHR and member states need to be congratulated on that.

However there are still too many cases, where non-specialised staff in police, in immigration in labour inspections are the first to intervene and often trigger measures under foreigners law (e.g. detention, expulsion) which block access to justice. The situation for male victims of sexual exploitation or - even more dramatic – persons trafficked for purposes outside sexual exploitation is largely unsatisfactory.

In more than one OSCE participating state, there is repeated anecdotal evidence that in the exploitation of labour force, immigration assumes a part in the strategy of exploiters not to pay salaries to workers without proper documentation: the workers are deliberately hired because they are undocumented and once they have worked on a job for several weeks or even months, as they demand that the promised wages be paid, they are by the exploiters reported to financial control or immigration. Usually the main preoccupation of these authorities is to investigate the lack of residence permit and work permit, i.e. the penalisation of the workers. State actors in this way become accomplice in a process which is characterised by the exploitation of the migrant work force, often people who have been fraudulently deceived about their future by those who received or recruited them – something which clearly constitutes trafficking. I am aware that there have been repeated discussions in this very forum on the need to separate irregular migration and trafficking, but we need to recognise that trafficking today rarely is the case of the 18 year old girl who is offered the participation in a knitting class abroad and finds herself exploited in prostitution. Trafficking today is more often the history of a slippery slope, the exploitation of vulnerable migrants gradually getting worse.... If we are against this background not willing to reconsider aspects of policies on irregular migration, effort of prosecution of trafficking will too often remain without result. As I have mentioned, states rather run the risk of becoming accomplices in this crime – the choice is there !

The unwillingness to see this problem in its complexity seems surprising, given the repeated political declarations at anti-trafficking conferences and not least meetings of the very organisation assembled here to the protection of victims. Certainly the colleagues here in Warsaw and Vienna are doing their very best to address trafficking in its entity.

You will have seen on the table outside the report "Compensation for trafficked and exploited persons in the OSCE region". I can only recommend for your attention. The report for example concluded that: "in view of the fact that a small minority of trafficked persons claim compensation and even fewer receive compensation payments, states must make more efforts to improve compensation systems for the benefit of trafficked persons, in light of their international legal obligations.

There is no single model that will guarantee that compensation is made to all or a majority of trafficked persons and there are numerous practical barriers which may prove difficult to overcome. They should therefore ensure that a multiplicity of remedies is available so that trafficked persons have some chance of success in making a claim. It is possible for states to borrow the best attributes from some existing schemes in order to establish or improve their own systems. However, states should do this within the development of a comprehensive policy on compensating trafficked persons".

Yet, it seems that little has been achieved in practice. Cynics might argue that this shows that declarations made at international fora are nothing but hot air. I do not share this position, but rather would argue that what we are seeing is the defeat of communicating and taking seriously the anti-trafficking argument outside a narrow, specialised sphere, which the anti-trafficking community represents.

### **1. The marginalisation and sidelining of anti-trafficking work**

Other issues, which seem to be dominating the discussions on anti-trafficking lead to a policy, in which the human rights of trafficked persons are once again marginalised. An overarching political consideration in this context is the intention to fight irregular migration. As we have seen, very often other considerations become secondary against this main aim of this policy. To take a recent example: in the context of discussions on the EU return directive, those negotiating the return of person without proper documentation – civil servants, politicians - were clearly unwilling to hear that there may be persons sitting in detention, who would under human rights considerations need to be protected against removal and who could have a valid reason to press charges.

On the other hand those who have been involved in debating trafficking are often tragically unaware of the political discussions in related areas. In the afore-mentioned case it was for example astonishing that several EU presidencies held meetings of trafficking and the human rights standards around it, discussing and adopting action plans and the like, without being aware of the rules of return being determined at the same time in negotiations in council – there literally was NO exchange between the different discussions. While the specialised debate has gone far in the area of trafficking, it still remains a fairly isolated debate: the challenge therefore is to mainstream identification and protection into the consideration of those making legally binding policies, notably on migration.

It will in this context be necessary to continue to confront some of the myths around the residence status of trafficked persons, e.g. the myth of more generous or human rights oriented provisions being a “pull factor”. An evidence-based discussion on the experiences from countries, which have introduced some form of residence status to trafficked persons (under different modalities) would in this context certainly help.

Other than migration policies, the need to address the organised crime dimension of trafficking is essential. This should not be limited in the sense of trying to find even better technical solutions, rather it is essential to understand what being a victim of trafficking actually means for the affected person. It is often core of the debate to underline that trafficking is a human rights violation, but in the interest of the trafficked person, it is essential to take seriously the fact that we are talking about a crime.

## **2. A lack of full understanding that trafficking is a crime against persons**

In this areas there are currently two principal challenges: one is a conceptual, the other one a more practical.

The conceptual one: Too often trafficking victims are still seen as the stupid silly boys /girls who got themselves into trouble and should be glad that they were rescued and can now return home – I wonder if this ever happens to victims of other crimes; I have for example not heard stories of victims of an organised armed robbery being told that they should not have accumulated so much money in the first place in order to avoid being robbed. Rather on the contrary, the victim is usually given the chance to launch a complaint/legal proceedings against the perpetrator. As we know, the trafficked person very often does have neither resources to find professional support in lodging such a complaint nor is he or she adequately informed of such a possibility. At the same time, they are often far away by the time any trial starts.

Reintegration programmes or courses offered, be it by national governmental administrations, be it NGOs or international organisations , very often are not designed or not funded to provide more than a mere minimum of support and immediate crisis intervention – thus even if trafficked persons would have the possibility of asking for compensation, they are not aware of it or equipped to do it. Adequately financed programmes and specialised legal staff would in this context help to make a difference. As outlined above, the review of mandatory return for trafficked persons would increase the chances of victims getting access to reclaiming their rights. It is in this context particularly worrying that recent research by NGOs but also this very organisation assembled here conclude that, although trafficked persons have an established right to compensation and various compensation mechanisms are in existence, the actual receipt of a compensation payment by a trafficked person is extremely rare. Generally, it is acknowledged that trafficked persons are entitled to compensation. Although most European countries have legal provisions for victims of crime to claim compensation for material and non-material damages, in practise, it remains one of the weakest rights of trafficked persons when it comes to accessibility.

In the area of compensation, the two central problems are obviously the lack of operational criteria and mechanisms to identify on the other hand and the procedures to give access. For identification, a lot of gaps and measures to address it have been identified for the area of sexual exploitation. I do not think we need to build much more knowledge in this area – but we need the political will and funding to make identification a reality.

For other areas, work needs to be strengthened in sharing and operationalising criteria and indicators for identification e.g. in labour exploitation or domestic work. These need to be accompanied by strong structures with a mandate to look at abuse and protect exploited workers in this areas – a mandate which should be more important than the one to investigate migration offences.

A broad coalition of NGOs around Anti Slavery International and La Strada will in the next year be building coalitions around the issue of compensation. Knowledge in this area is more developed than we often think – and still it is largely untranslated into political will.

I look forward to hearing from OSCE participating states how they are taking these issues forward -the challenge is there, it is for us to respond.

Thank you