

Trafficking for exploitation outside the sex industry

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Introduction

Although slavery has long been officially abolished in all countries, it still exists today. People are being transported across borders or within countries with the intention to exploit them. These practices are currently most often referred to as trafficking in human beings (THB). Where THB was initially associated especially or exclusively with women and with exploitation in the sex industry, a wider interpretation is increasingly gaining ground. Males are also known to be exploited in the sex industry, while men, women and children are being exploited in other economic areas as well. Rightly therefore, the definition of THB in the UN Trafficking Protocol¹ covers trafficking for the purpose of exploitation in both the sex industry and other labour situations, and additionally trafficking for the removal of organs. In the Netherlands, the national criminal legislation on THB was broadened accordingly on the first of January 2005. This in turn implied a broadening of the area on which the reports of the Dutch National Rapporteur on THB and her bureau (BNRM), which have the task to collect information on THB and to report to the Dutch government, including recommendations on the fight against THB, should focus.² In order to explore this newly acknowledged realm of THB, this chapter focuses on exploitation in labour situations outside the sex industry ('other forms of exploitation'), particularly in the Netherlands. But first we touch upon two possibly confusing matters in defining and tackling THB.

Two possibly confusing matters in defining and tackling THB

Although significant, it is not always easy to make a distinction between trafficking on the one hand, and human smuggling and prostitution on the other. Here we discuss each distinction in turn.

Trafficking and smuggling

There is a tendency to regard THB as a form of illegal immigration and to confuse it with human smuggling. Although both phenomena can be regarded as undesirable consequences of globalisation, and although both traffickers and smugglers of human beings exploit people's desire to improve their lives by building a better future for themselves elsewhere, there are also fundamental differences (see also Shelley, 2003; ILO, 2005). Smuggling concerns assisting people to enter or stay in another country illegally. It involves, first and foremost, compromising a state's territorial integrity. It may be that a smuggled person is subsequently exploited, in order to pay for the journey, for instance, but this need not necessarily be the case. Furthermore, the transport and accommodation organised for the smuggled person may be so

¹ The Protocol to prevent, suppress and punish Trafficking in Persons, especially Women and Children, which is linked to the UN Convention against Transnational Organized Crime and came into effect in December 2003.

² The Rapporteur holds an independent position. Various methods are used to collect information for the reports, including literature study, the studying of laws, treaties and jurisprudence, interviews with key figures from the field, organising meetings, participation at symposiums, conferences and expert meetings and secondary analysis of information collected by others. The authors of this chapter both work for BNRM.

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dangerous or degrading, that he or she could be regarded as a victim whose human rights have been violated, but again this need not necessarily be the case. Whenever the 'voluntary' agreement between a human smuggler and the party smuggled is the result of deception, or involves high debts, and leads (directly or indirectly) to forced labour, the smuggling case becomes a trafficking case. THB is in itself and by definition a serious violation of the fundamental rights and personal integrity of the person being trafficked. It often involves cross-border activities, but this is not an essential feature. The essence of THB is exploitation, the abuse of people in the pursuit of profit, by way of violence, threats, deception or the abuse of the victim's vulnerable position, as a result of which his or her freedom to choose is considerably restricted. It is a form of modern slavery. The protocols supplementing the UN Convention against Transnational Organised Crime also make this distinction between human smuggling and human trafficking. Whereas the 'smuggling protocol'³ refers to the smuggling of migrants, the trafficking protocol refers to the trafficking of victims. And in the most recent proposal for a European Union Council directive dealing with trafficking and smuggling a similar distinction is made.

Trafficking and prostitution

The fight against THB for sexual exploitation is often confused with the battle that some wage against prostitution. They regard not only THB but all prostitution as a form of violence (generally against women) and as a form of slavery that needs to be combated or even criminalised. In this (abolitionist or prohibitionist) view, the phenomenon of prostitution is lumped together with the one of THB (Agustín, 2001). Countries or authors who do not seek a solution to the problem of THB by prohibiting the buying and selling of sexual services are criticised, often using suggestive or incorrect information (BNRM, 2005).

However, there are disadvantages associated with a repressive approach to prostitution in the fight against trafficking. Opponents of such an approach take the view that it is precisely the criminalization that plays into the hands of criminal and exploitative networks in the sex industry (see, for example, Sørensen, 2003). They feel that prostitution continues regardless of criminalisation, while at the same time sex workers are being stigmatised, criminalised or - because their clients could be prosecuted - marginalised. Moreover, they have to solicit their clients in secret, which makes their work more dangerous (e.g. Boonen, 2000, p.47; Östergren, 2003⁴).

The reverse of the prohibitionist or abolitionist approach is the labourist approach. Labourists take the view that not all (migrant) prostitutes are victims of THB (see e.g. Gülçür & Ilkcaracan, 2002; Butcher, 2003). They regard prostitution as work and a prostitute not as a victim, at least not by definition (see also Boonen, 2000; Verhoeven, 2003), but as a person competent to act for herself. According to labourists, the essence of THB and forced prostitution is that, within the context of a labour situation, a person's freedom to choose is violated. The fact that it concerns prostitution is less relevant. Labourists seek solutions to THB in improvements in the conditions under which prostitutes live and work, and a strengthening of their legal position (Haveman, 1998; Loff et al, 2003), for example by regulating the sex industry.

Whatever position one may take in the debate briefly described above, it is important not to devote too much energy to this debate itself, all the more since the study by a Norwegian working group on the legal regulation of the purchase of sexual services, which compared the Swedish

³ This UN Protocol Against the Smuggling of Migrants, by Land, Sea or Air came into force January 2004.

⁴ At a presentation of the risks of the Swedish policy that criminalizes buyers of sexual services, at the meeting *Weven met een zijden draadje*, Rotterdam, 20 November 2003.

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(abolitionist) with the Dutch (regulative) approach, showed that neither solved the problem of THB, while both had (albeit different) negative side effects (Working group on the legal regulation of the purchase of sexual services, 2004 (English abstract)). It would be more fruitful to join forces to tackle THB, the issue on which international agreement has already been achieved in drawing up the UN Trafficking Protocol, and that involves coercion, forced labour, or the exploitation of minors, not only in the sex industry, but elsewhere as well.

With regard to exploitation in those other economic sectors, the partly ideological and moral debate on prostitution described above, does not play a role. However, there are other issues involved, as will be shown in the following sections.

'Other forms of exploitation' do they occur in the Netherlands?

The main reason for the new trafficking article in the Dutch Penal Code (art. 273a)⁵ was to amend national law in line with international treaties, such as the aforementioned UN Trafficking Protocol and the EU Framework Decision on combating trafficking in human beings⁶, rather than a sense of urgency based on actual (local) experiences with 'other forms of exploitation'. There is in fact limited insight in what might be going on in this respect, but on the basis of information from neighbouring countries, we at BNRM suspected that 'other forms of exploitation' occur in the Netherlands as well.

Experiences in neighbouring countries

A report from the Belgian Centre for Equal Opportunities and the Fight Against Racism (1998), for example, goes into exploitation of foreign football players and of domestic servants in diplomat families. From the annual reports of this Centre we know furthermore that, for some time now, a substantial proportion of all trafficking victims in Belgium are victims of exploitation outside the sex industry. Percentages mentioned range from 25 to 50% (Centrum voor Gelijkheid van Kansen en Racismebestrijding, 1999; 2000; 2002). High percentages, but the reports also mention definition problems: when is something trafficking, when moonlighting or smuggling?

A report from a French parliamentary commission (2001) deals with exploitative employment of foreign workers in clandestine confection and leather workshops and in restaurants, forced begging by minors and domestic slavery.

The findings in these reports were among the reasons for BNRM to prompt the Dutch government to make haste with the new THB law and to study the occurrence of 'other forms of exploitation' in the Netherlands (BNRM, 2002).

Since then, more publications came out, indicating situations of labour exploitation in other western European countries as well. Anderson and Rogaly (2005), for example, who studied forced labour in the UK, found abuses in a wide range of labour situations, such as cheap takeaways, expensive restaurants,

⁵ Punishable under this article are certain activities (recruiting, transporting, accommodating someone) using specific means (force, violence, deception, misuse of a vulnerable position) with the intention to exploit that person (in the sex industry, forced labour, or slavery like practices), profiting (economically) from sexual acts of minors, and certain activities aimed at removal of organs.

⁶ The purpose of this EU Framework decision is to bring the member states more in line as far as legislation and regulations with regard to THB are concerned. The Framework decision came into force in August 2002.

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mushroom picking, bakeries, private homes, fishing vessels, all night stores, the food managing and packaging industry, construction, (contract) cleaning and (residential) care. In a 2005 ILO study on trafficking for labour and sexual exploitation in Germany, malpractices were observed in domestic services, construction, the hotels and catering industry (abuse of seasonal workers), the fun fair/entertainment sector, the international transport business and the distribution of advertisements (Cyrus, 2005).

Research in the Netherlands

A literature review that was indeed commissioned, as recommended by BNRM, and that was carried out by Van der Leun and Vervoorn (2004) shows that there is a lot of illegal employment in the Netherlands and that illegal employment is on the increase. Although the authors found little tangible evidence for slavery-like situations, they considered the risk of excesses to be growing, because of the involvement of malafide employment agencies - which reduces the distance between criminal circuit and undocumented worker - and because of a seemingly growing number of illegal workers in private homes. According to Bucquoye et al. (2003), in Europe the demand for services in private homes will grow, due to changing family structures, limited availability of affordable day care for children and because of the ageing population. Although illegal domestic workers who live with the families that employ them, may be relatively well protected from discovery of their illegal status by the authorities (Willemsen, 2005), the limited visibility, social isolation and multiple dependency that can easily develop in such a situation, also make these illegal workers particularly vulnerable to exploitation.

Van der Leun and Vervoorn concluded that excesses can be found when you look for them. Paraphrasing this conclusion, we are convinced you will *not* see them when you do *not* look for them. After all, the same goes for exploitation in the sex industry.

Building on the outcome of the aforementioned literature study, BNRM decided to extend the knowledge about 'other forms of exploitation' in the Netherlands by collecting recent⁷ casuistry on the topic. Starting at the beginning of 2005, very short questionnaires were sent out to a large number of possible respondents (social workers, legal advisors/lawyers, police, labour inspectors, and pressure/support groups for specific minorities). Because of the novelty of the subject, a rather broad working definition of 'other forms of exploitation' was used: flagrant wrongs in a labour situation outside the sex industry, in which a victim is forced to work. Some of the many possible indicators mentioned were: force (physical or otherwise), bad working conditions (for example unreasonable hours, low pay), lack of freedom (for example no possession of one's own passport) and multiple dependency (for example debt bondage, or being dependent not only for employment, but also for food, transport or shelter). Respondents who indicate that they encountered possibly exploitative situations, are being interviewed extensively, either by phone or face to face. More organizations (such as branch/employers' organisations, and trade unions) will be approached in the near future.

Preliminary results

So far, we received a great variety of signals of very bad circumstances and lack of freedom in labour situations. They concern jobs in cleaning, restaurants, factories, meat processing, agriculture, construction and other industries. Victims are most often individuals who reside and/or work in the Netherlands

⁷ As from 2000.

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illegally or who have a dependent status in the form of a permit to reside with a partner.⁸ Individuals with illegal or a dependent status, especially those who do not speak Western European language, are particularly vulnerable for exploitation, as is apparent in the following examples.

In 2003, the labour inspectorate and the police specialised in illegal migration jointly inspect a Chinese restaurant. They find S. a 23 year old Chinese waitress working on a false id-document. S. works there for a few euros a day, as well as a place to sleep (a room above the restaurant). She is taken to the police station for further questioning, but does not want to make any additional statement. She seems afraid and police officers discover that her body is covered in small scars. Some of the fresh scars on her back are possibly caused by hot cigarette butts. They suspect that the employer also abuses his illegal waitress privately. However, due to the lack of any incriminating statement, this does not lead to an investigation.

In 2003 L., well educated, thirty and pregnant migrates to the Netherlands in order to move in with O., whom she has met in her hometown in Morocco. She is granted a temporary residence permit on the condition of her relationship. L. has been led to believe that O.'s financial situation is comfortable, but upon arrival L. finds out that he does not have a regular job and the couple shares a small room with two others. Using psychological pressure and violence, O. forces L. to do all the housework and to work in a factory as well. Although the working conditions in the factory are normal, L. becomes a victim of economic exploitation in the sense that she is forced to work and does not have access to her own income: O. spends the money and leaves L. materially neglected. On top of all this, O. abuses L. by videotaping their sexual intercourse without her consent. L. is under the impression that he shows these shootings to others, possibly at a charge.⁹ Due to the abuse, the workload, the worries and the progressing pregnancy, L. eventually becomes exhausted. The birth of a son does not change anything in the relationship: O. does not even provide enough food for the baby, while L. has no control of her income. When L. can no longer stand the situation, she takes her child and runs away to a women's shelter. At the shelter, she is offered, among other things, legal assistance to arrange an independent residence permit.

Some of the cases that were reported to BNRM, such as those mentioned above, are undoubtedly examples of THB. Others clearly indicate abuse of the vulnerable position of individuals, but do not constitute situations that can be described as THB and still others are in between cases. The boundary between illegal employment and exploitation in the sense of THB is not always clear, and exploitation does not only occur in employer – employee relationships, as the next case illustrates.

C., a foreign male (from an EU country) has a (dependent) residence permit on the basis of his marriage to a (Dutch) woman. In 2002 his wife dies, and he loses his legal status. C. and his then 6 years old son tramp about for a while, before ending up living in a shed owned by a rack renter. During the procedure for a new residence permit, they do not qualify for public housing facilities. Apart from rent, the rack renter also demands domestic services of his 'tenant', and confiscates his credit card as means of coercion. Eventually, the landlord throws C. and his son out. Shortly thereafter C. gets a new residence permit, and he and his son find suitable housing.

⁸ From cases not described in this contribution, another group at risk appears: less able, not very assertive women who face all kinds of social and psychological problems.

⁹ In cases of labour exploitation within private homes, sexual abuse or exploitation are not seldom involved as well.

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Although we have not yet finished our study, we can conclude that 'other forms of exploitation' in the sense of THB do indeed occur in the Netherlands. Perhaps not on a very large scale, but the cases that have come up so far are not restricted to one or two specific economic areas either. Comparable notes were heard at a meeting BNRM organised together with the Dutch Ministry of Justice in March 2005, with the aim to inform (possible) partners in the fight against THB of the broadening of the definition, but also to encourage and stimulate them to tackle 'other forms of exploitation' and to talk about responsibilities and division of tasks between themselves. Police, special investigation services and social workers attended the meeting. Many indicated having encountered manifestations of exploitation outside the sex industry. At the same time it was obvious that, due to lack of capacity to tackle exploitation *within* the sex industry, not everybody was 'ready to go', as far as tackling 'other forms of exploitation', or taking care of the victims involved, is concerned. Clearly, not everybody warms easily to the case of undocumented migrants who end up being exploited in a labour situation. Similar reluctance was voiced during the final conference of the Network for European Women's Rights, in Birmingham.¹⁰ It seems that a change of attitude is requisite.

What needs to be done?

In spite of the aforementioned reluctance amongst some, we are of the opinion that 'other forms of exploitation' also need to be tackled and that police, social workers, as well as the general public, must be alert to its signals. Not only because we will not see it otherwise, but also because those practices have to be stopped, as they can have very serious consequences. This is clearly the case in another example, involving a Moroccan girl.

A., from Morocco, is ten years old when, in 2000, her mother entrusts her to a Moroccan family that lives in the Netherlands. A. is brought into the country illegally. There she lives in a small apartment together with the large family. She has to do all the house work, take care of the children (of whom some are older than she), and be available 24 hours a day. A. is not being paid, she is being abused, she is not allowed to go out, and she does not go to school. After a couple of years she escapes, the police find her out on the streets and put her up in a general shelter. From there she moves on to protected living.

The family not only exploited the girl, but violated several basic rights by not giving her the opportunity to make friends or to play, and by shutting the door to education, thus severely damaging her development.

This girl escaped on her own, but only after a long time. Yet how many victims do not manage that, and how many comparable situations go on unnoticed? The question remains as to how we stop such practices and how we catch the people profiting from them (for example recruiters, businesses that use cheap illegal labour, individuals who provide false identity documents against payment, individuals who offer poor accommodation against exorbitant sums, and families that exploit an au pair or a domestic worker).

Recognizing the victims

It is crucial to recognize the victims, to know which signals to look for and to act upon them. In this respect it is worth mentioning that, in the Netherlands, the existing list of signals, used by the police to

¹⁰ The conference took place June 30 – July 1st 2005, and was organised by the Centre for the Study of Global Ethics of the University of Birmingham (for reports see www.newr.bham.ac.uk).

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recognize victims of exploitation in the sex industry, is currently being adapted to be used to recognize victims of 'other forms of exploitation' as well.

A complicating factor is that people in exploitative labour situations may not regard themselves as victims, and they can be rather self-contained and little communicative about their experiences, as is known to be the case with many trafficking victims who end up in the sex industry. Reasons for this reserve are the often illegal residence or working status, which makes them afraid of deportation, should their status become known to the officials. The often not so rosy perspective in the country of origin makes deportation an unappealing alternative, especially when there are debts to be paid. Furthermore, victims of 'other forms of exploitation' may have to deal with threats, fear of repercussions, and with feelings of shame over what has happened to them, and over the fact that they failed to make it abroad. These feelings of shame show in some of the interviews in a recent Dutch study on the possibilities to return to the country of origin after alien detention.¹¹ One respondent states: "... the longer I stay in Europe, the more the home front expects from me. We want to return to our country of origin one day, but not empty handed. I would be burning with shame and rather die than to go back empty handed". Another respondent: "How can I justify the fact that I spent 15 years in Europe without bringing something back?" and a third: "I really can not arrive empty handed" (Van Kalmthout et al., 2005; p11; 56; 92). Exactly because the victims of exploitation may be unwilling to bring their case forward, Anderson and Rogaly (2005) recommend to base investigations into forced labour situations - to the extent possible - on intelligence-led investigations, taking account of complaints from trade unions and other agencies, instead of relying on the testimony of victims. In the Netherlands, 'intelligence-led investigations' is a popular topic, and is an approach that is being tried out at the moment, but the expectation of many is that the testimonies of victims will still play a decisive role in successful prosecution of perpetrators. An extra complication in recognizing the victims, is that part of the exploitation takes place in hidden sectors, such as the informal economy and behind private family doors (as was the case with the Moroccan girl in the example presented above), while these families are sometimes protected by diplomatic immunity. Still, in cases that take place in private homes, somebody (be it relatives, friends, or neighbours) must have an idea of what is going on. How do we get them to act upon the situation?

Public information and education campaign

The question is, are signals of exploitation being recognized, is it known that exploitative conduct can be punishable as THB, and where can one report abuses? A public information and education campaign by the government is recommended to raise awareness of the phenomenon of THB. In the first report BNRM made such an appeal to the Dutch government with respect to exploitation within the sex industry. The fact that in the Netherlands sexual services from consenting adults can be bought freely and without breaking any law, does not relieve clients from the responsibility to buy these services only in the regulated sector, or from the responsibility to be vigilant even then. At the moment, an information and education campaign targeting (possible) clients of the sex industry, is in preparation.

Such a campaign regarding THB for exploitation outside the sex industry is also needed. This is in fact what the UN Commission on the Status of Women also calls for in her resolution *Eliminating demand for trafficked women and girls for all forms of exploitation*: "to raise public awareness of the issue of

¹¹ These findings are relevant because a common feature among most irregular migrants in alien detention and victims of THB, is that they went abroad in order to improve their (economic) situation. Besides, although not all undocumented foreigners who end up in alien detention have experienced exploitative labour situations, we know that some have.

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trafficking in persons".¹² It is important to proclaim that exploitation can and will not be tolerated in our society. It has to be prevented when possible, and when it does occur nevertheless, it must be spotted and dealt with.

Concluding remarks

We plead for attention to trafficking for 'other forms of exploitation', without slackening in our efforts to tackle exploitation in the sex industry. The cases presented in this chapter illustrate that a variety of factors can lead to a situation in which a victim – male or female, adult or minor - provides work or services under the menace of some sort of penalty, be it physical harm, threats to denounce his or her illegal status to the authorities, or other forms of abuse or intimidation. In other words: it is not necessary for a victim to be held in captivity in order to speak of grossly exploitative labour situations. While extremely poor or hazardous working conditions do not as such constitute exploitation in the sense of THB, in combination with restriction of the victim's personal freedom, for instance due to debt bondage, they can represent a severe violation of human rights. A recent ruling of the European Court of Human Rights¹³ shows that states that signed the Universal Declaration of Human Rights do have the obligation to protect inhabitants from being held in slavery or servitude. In line with earlier jurisprudence, the Court judged that states, by virtue of art. 1 of the Universal Declaration of Human Rights, are under the positive obligation to take measures in their national laws, that offer concrete and effective protection against violation of the rights warranted in art. 4 of that Declaration¹⁴ to anyone in their jurisdiction. This applies not only to violations that result from acts by a state or state bodies, but also to violations inflicted by private individuals.

Still, the concept of exploitation in labour situations outside the sex industry is not crystal clear. In the Netherlands as well as in many other countries we do not know the exact dividing line between illegal employment and trafficking for exploitation outside the sex industry. In due course, additional jurisprudence (national and supra national) will hopefully bring more clarity. However, we do not have to wait for that. As BNRM recommended in its third report on THB, we need to strive for agreement on the scope of the term 'other forms of exploitation' on an international, at any rate European level. This may give prosecutors and judges a handle on future cases, as well as facilitate international cooperation in (police investigations of, and in possible extraditions in) trafficking cases.

In conclusion, a remark about the people who are at stake: the victims. In the current political climate, undocumented migrants cannot count on much compassion in the Netherlands or in the rest of Europe. Great efforts are made to tackle illegality. In the Netherlands, for example, we have a governmental memorandum on undocumented migrants (Illegalennota, 2004), as well as a steering group on the approach of illegality, and a nationwide network of intervention teams that tackles moonlighting, social security and tax fraud, as well as employment of undocumented migrants. In such a repressive climate, it is crucial that the authorities involved recognize, regard and treat victims of THB, first and foremost, as victims of a crime, also when the exploitation took place outside the sex industry. This approach is legitimized, at least on paper: the above mentioned Illegalennota concerns the approach of illegality as well as the tackling of exploitation of undocumented migrants, and states that special attention should be

¹² March 2005.

¹³ It concerns the case of Siliadin against France (decree 73316/01, Strassbourg, 26 July 2005).

¹⁴ No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

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paid to victims of trafficking among people who are being encountered without a (valid) residence permit. In this respect it is also worth mentioning that, in the Netherlands, the so-called B9 regulation, which offers alien victims of THB the possibility of a temporary residence permit for the duration of the criminal investigation and the prosecution - similar provisions exist in Belgium and Germany - now also applies to victims who were exploited outside the sex industry. They too are entitled to shelter, medical assistance and legal aid. However, what these arrangements will look like in practice remains to be seen since most currently existing services are tailored to the needs of females who fall victim to exploitation in the sex industry. For instance, the shelters currently used to accommodate victims (mostly shelters for battered women) may be adequate for female victims of domestic slavery, but they are not suited for males who have been exploited in, for example, restaurants or agriculture.

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