

15.1 Introduction

Efforts to tackle human trafficking are receiving a lot of attention, both in the media and in politics. The perception of human trafficking as a serious problem has, if possible, actually increased and a wide range of measures are being taken to tackle it. For example, a task force has been created, the police and public prosecution services have made human trafficking a priority and there is more specialist help available for victims. Another development has been the introduction of a programmatic approach designed to identify areas in which practical barriers can be placed in the way of human traffickers. The organisations that provide help for victims are also cooperating more closely with partners in the chain by sharing information and referring victims.

Human trafficking takes place covertly. Even the victims are often unwilling to report their exploitation, which is why efforts to prevent human trafficking depend so heavily on identifying and responding to signs that it is occurring. It is therefore essential to raise awareness. It is crucial that signs of possible abuses are recognised. Employees of the police forces and of various government inspectorates are being trained in this. However, numerous other professionals can also encounter situations involving exploitation. It is vital to find ways of informing these professional groups about the problem and how they can identify the signs.

This summary follows the order of the chapters in the report: legislation (§15.2), international developments (§15.3), victims and help for victims (§15.4), B9 and continued residence (B16/7) (§15.5), victims as offenders and the non-punishment principle (§15.6), the administrative and integrated approach to human trafficking (in the sex industry) (§15.7), investigation (§15.8), suspects and offenders (§15.9), the public prosecution service and prosecution (§15.10), case-law on exploitation in the sex industry (§15.11), exploitation in sectors other than the sex industry (§15.12) and human trafficking with a view to organ removal (§15.13).

15.2 Legislation

15.2.1 Sentences

The sentences for human trafficking were increased with effect from 1 July 2009. Since then the maximum prison sentence for human trafficking without aggravating circumstances has been eight years. Persons convicted of any aggravated form of human trafficking face a sentence of at least a imprisonment for up to twelve years.

Chapter B9 of the Aliens Act Implementation Guidelines (the B9 regulation) has also been amended in several respects. For example, in April 2009 a new description of the target groups appeared, which was intended to reflect more clearly that the B9 regulation applies identically to (potential) victims of human trafficking who work or have worked in the sex industry and (potential) victims of human trafficking subjected to other forms of exploitation (article 273f of the Dutch Criminal Code). The period of reflection is now also available to victims and potential victims who enter the country through Schiphol airport. These most recent amendments to the B9 scheme apply with retroactive force from 1 January 2009. Chapter 5 contains a summary of the operation of the current B9 regulation and the rules for continued residence (Chapter B16/7 of the Aliens Act Implementation Guidelines).

15.2.2 Bill to regulate prostitution and tackle abuses in the sex industry

An important development in the legislative field was the publication of the draft bill to regulate prostitution and tackle abuses in the sex industry. Under the terms of this bill, every sex business must be licensed. At the time this report went to press it was not yet known when the bill would be sent to parliament. Although the advisory report of the National Rapporteur on Trafficking in Human Beings (NRM) on the bill is attached as an appendix (see appendix 5) and still applies in full, this section also refers to some of the issues and problems raised in that report which still need to be addressed .

A positive aspect of the bill is that it creates a national framework within which every municipality must adopt rules governing sex businesses and independent prostitutes. This will reduce the discrepancies between municipal policies on prostitution, and hence the differences in supervision and enforcement that human traffickers can take advantage of. However, uniform rules and consistent policy are also crucial in tackling human trafficking and from that perspective municipalities are still given too many options, with all the risks that entails. The proposal to link licences to activities rather than to an establishment will greatly help in the fight against human trafficking. The proposal corresponds to a large extent with the recommendation in the NRM's Fifth Report (2007) calling for the formulation of a national legislative framework for prostitution policy based on the principle that every municipality *must* set rules for *all* establishments where commercial sexual transactions are undertaken or where commercial facilities are provided for such transactions to be undertaken with or for a third party.

The scope of application of the bill is not yet entirely clear. For example, the scope of the term 'sex businesses' is very wide when seen in the context of the draft explanatory memorandum. At the same time, the current title of the draft bill seems to be restrictive ('to regulate prostitution and *some* other forms of sex-related business activity'). The title of the bill should itself reflect the fact that it also encompasses new and future forms of commercial sexual activity, of which webcam sex, where sexual acts are performed commercially for a third party on the Internet, is just one example.

Furthermore, an independent prostitute is defined as a prostitute who does not work exclusively for a prostitution business. This definition, and the explanatory note to it, raises a number of questions relating, for example, to the definition of 'prostitution business'. For example, how can it be determined that a person is working only for a prostitution business and not at least partially for themselves? This distinction is particularly important in light of the proposal to make registration mandatory. That requirement is currently confined to prostitutes who work independently. The distinction would be less relevant if all sex workers had to register.

According to the proposal, the register of sex workers will include their names and addresses, a telephone number and a copy of their passport. The question is whether this is enough. A comprehensive system should also include a passport photograph and a record of the type of sex work performed (for example, at home or as an escort) and the workplace if the sex work is performed at a specific location. Given the sensitivity of these details, access to and use of this information must be accompanied by sufficient safeguards for the privacy of the individuals concerned.

The bill does not provide for an intake interview during the registration process, even though besides generating information this would provide an opportunity to identify possible signs of human trafficking. Holding such an interview would meet the obligation of government bodies to investigate the relevant facts before taking action.

The introduction of a national register will make it possible to enforce tighter supervision of the escort service industry and make it easier to regulate companies that advertise on the Internet. The register should also include a record if a licence, or an extension of a licence, is refused, together with an explanation of the reasons for the refusal. Other licensing authorities and regulatory authorities (municipalities) should also have access to this information. Supervisory authorities should have round-the-clock access to the register.

Under the terms of the bill it is an offence for a prostitute to work for a prostitution business that does not have a licence or to work independently as a prostitute without being registered or to advertise without a registration number. Making it a punishable offence for sex workers to work without being registered or to advertise without a registration number is in itself correct as the logical cornerstone of the duty to register. However, it should not as a matter of course be a criminal offence for a prostitute to work in an unlicensed establishment. It would seem more logical for the municipality to deal with this offence with an administrative fine, which is more in line with the policy principle that criminal law will not be used unnecessarily against victims.

One problem that remains is that the bill says nothing about the obligation of local authorities to take action or about the allocation of tasks between the local authority and the police. This vacuum increases the risk

that the provisions of the law will not be adequately supervised and enforced. However, it is worth noting here that the Human Trafficking Task Force is preparing a strategy document on this point.

15.2.3 Other legislation

Chapter 2 also discusses the Police Data Act and Police Data Decree, the Aliens Employment Act, an amendment to the Housing Act, the Public Nuisance (Administrative Fine) Act and the Closed Youth Care Act.

Pending legislation includes bills to implement relevant international law, such as the Council of Europe's Convention on Action against Trafficking in Human Beings (2005) and the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention, 2007). Other relevant pieces of legislation are bills to enhance the standing of victims in criminal proceedings, a draft bill to expand the possibilities for confiscating illegally obtained profits and a bill on the liability of companies for temporary employees that they hire.

15.3 International developments

Human trafficking also remains an important theme in various international forums. The activities of international governmental organisations – the United Nations (and the International Labour Organisation), the European Union (EU), the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE) – highlight particular concerns on a number of topics, including exploitation in sectors other than the sex industry, the root causes of human trafficking and the demand side of human trafficking. Vulnerable groups such as women and children also receive special attention at the international level. Child pornography is also being addressed in the development of instruments to tackle sexual and other forms of exploitation of children. Continued attention is also being given to combating human trafficking in connection with the deployment of troops and civilians to areas of conflict.

Various international organisations, in particular the EU and OSCE, have explicitly referred to the importance of countries adopting a national action plan against human trafficking. There are growing calls for states to appoint a national rapporteur or create a similar mechanism to monitor measures that have been taken and to evaluate policy.

During Sweden's EU presidency, the first steps have already been taken to establish a network of national rapporteurs and similar mechanisms with meetings in Stockholm and Vienna in 2009. It is not yet clear how the network will evolve in the future. A similar meeting was also held in Brussels.

A crucial aspect of efforts to tackle international human trafficking is the collection of reliable data. Various international initiatives have been taken in this context, including steps to formulate international standards for data collection. To this end, a set of indicators about which national governments should provide information for the purposes of international comparison is being developed. There is not yet a single formal international standard. Moreover, many of the standards that have been developed up to now require the collection of a lot of data, much of which is difficult to gather, with the likely consequence that the information supplied is incomplete and of poor quality. This creates the impression that while various international organisations are engaged in developing international data-collection systems different standards are being developed because of inadequate cooperation.

On paper, the international legal instruments are now very extensive. However, many countries are not yet party to instruments such as the UN Protocol against trafficking in persons and the underlying UN Convention against transnational organised crime. But these instruments form an important basis for international cooperation in criminal law, particularly with countries outside the EU, including countries whose nationals have also been registered as victims of human trafficking in the Netherlands, such as China and India.

The EU should also continue to highlight the importance of ratifying these instruments, for example in the context of the external dimension of the justice and home affairs policy. A third of UN member states are still not parties to the UN Protocol.

Although most countries have made human trafficking in the sex industry a criminal offence, few have done so with respect to human trafficking in other sectors (trafficking for forced labour) or human trafficking whose victims are men. Even states that have ratified the UN Palermo Protocol generally lag behind in its implementation due to the absence of comprehensive national legislation, a lack of resources for law enforcement and a lack of political will.

The Council of Europe's Convention on Action against Trafficking in Human Beings (2005) has also not been widely ratified. Even the Netherlands has not done because of its intention to amend the law to expand jurisdiction over human trafficking.

The European Commission's evaluation of the EU Action Plan on Trafficking in Human Beings shows that tackling human trafficking must remain high on the EU's agenda. On a positive note, the Netherlands is continuing to press strongly for this (see also recommendation 58 in the NRM's Fifth Report), since the evaluation of the EU's action plan shows that there is a wide gap between current legislation and its implementation in practice in Europe.

In March 2009, the European Commission presented a proposal for a new Framework Decision on Combating Trafficking in Human Beings. However, the adoption and implementation of the proposal for the new framework decision should not be at the expense of the ratification of the Council of Europe's Convention on Action against Trafficking in Human Beings (2005). Provisions concerning help for and protection of victims in the proposal must not curtail what has been reached in the Council of Europe's Convention. The proposal for a new EU framework decision must also not weaken the willingness to implement the provisions of the Council of Europe's Convention.

The EU Directive providing for sanctions against employers of illegally staying third-country nationals, which entered into force on 20 July 2009, is also important for efforts to tackle human trafficking. This directive prescribes a number of minimum standards for sanctions and measures against employers of subjects of third countries living illegally in a country. These minimum standards will probably require an amendment of Dutch law.

It is nowadays clear, both nationally and internationally, that human trafficking has to be regarded as a violation of human rights. This is also reflected in the work of the various bodies, including those of the UN, that supervise enforcement of human rights. It is a mark of progress that tackling human trafficking is now an explicit element of the Netherlands' foreign policy on human rights. The human rights strategy in Dutch foreign policy should, however, more clearly reflect the fact that human trafficking also affects adults who are exploited in sectors other than the sex industry.

It is important for countries, like the Netherlands, that address human trafficking as a human rights issue to anticipate the potential effects of measures to prevent human trafficking on those same human rights and to avoid collateral damage as far as possible. A strategy needs to be formulated for achieving this. A relevant factor in this context is that a number of international bodies that monitor compliance with human rights argue, also with respect to the Netherlands, that the provision of help to victims should not depend on their cooperation with the investigation, criminal or otherwise, of human trafficking.

15.4 Victims and help for victims

15.4.1 Shelter

There is a shortage of capacity to provide shelter for victims. It is not always possible to provide immediate shelter, not just for specific categories of victims of human trafficking such as men (usually victims of exploitation other than sexual), minors and victims suffering from particular problems such as psychiatric

disorders or addiction, but even for female victims of exploitation in the sex industry. The waiting time can range from several days to weeks and even months.

Everyone concerned agrees in principle on the importance of providing shelter specially tailored to the specific circumstances of the different groups of victims. The Human Trafficking Task Force's Action Plan proposed a pilot project on this topic, but unfortunately it has been delayed. The progress report on the action plan published on 9 September 2009 stated that in principle the pilot project is intended for all victims – women, men, any accompanying children and minors – whether they are Dutch or of another nationality. This leaves open the question of whether a distinction will be made between the sexes and between the various age groups in the facilities provided for category-based shelter. Category-based shelter does not mean that the distinction will no longer be made in these shelters. However, minors are not regarded as the primary target group of the pilot scheme, as is apparent, for example, from the fact that the tender for the project refers primarily to adult victims and does not cover essential aspects of care for minors, such as providing education and a pedagogical climate.

The purpose of the project is in fact to determine how a system of shelter and care can be designed for each individual group of victims, specifically including closed or protected facilities for underage victims, within an overall system of open and enclosed facilities. The project can incorporate the experience that has already been gained with facilities established for specific categories of victim such as Asja and MEISSA and in the Secured Care pilot project. It is important in this context that the pilot project should also explicitly be for underage victims, including girls for whom shelter in a closed or protected facility is most appropriate. Incidentally, it is unclear why agreement between the Ministry of Justice and the Ministry of Health, Welfare and Sport is required for underage victims. Primary responsibility for them would seem to rest with the Minister for Youth and Family. Another aspect requiring attention is the capacity, or lack of it, for enclosed youth care.

Examples of facilities established for particular categories of victim are the Asja van Fier Fryslan centre for girls aged between of 14 and 24, and De Roggeveen and MEISSA centres run by the Amsterdam Human Trafficking Coordination Centre, which possess specific expertise and employ special methods. The two-year Secured Care pilot project started in January 2008. This project represents an attempt to offer protection for underage aliens who may be at risk of disappearing and being exploited. This is also a small-scale shelter.

There is also a trend towards the creation of private care accommodation, particularly for underage victims of human trafficking. There are risks associated with these initiatives however praiseworthy they may be. Shelters of this type demand specific expertise and a professional context. A lack of expertise can cause a lot of additional harm for this target group.

15.4.2 Groups at particular risk

Chapter 4 discusses several groups that are particularly at risk of becoming victims of human trafficking. They include women from the 'La Strada' countries, women and girls in asylum-seeker centres and the mildly mentally handicapped.

Special attention is devoted to Roma children. It is not easy to respond adequately to indications of human trafficking involving this group of children, partly because of the specific cultural context, the legal complexity of the problem, the risk of stigmatising the Roma as a group, the possible involvement of the parents in the exploitation and the absence of a body to coordinate the activities of the various agencies concerned with the problem. One thing that is clear is that the problem can only usefully be addressed proactively and from a European perspective.

15.4.3 Registration

The responsibility for keeping a national register of (suspected) victims has been delegated to the Coordination Centre for Human Trafficking (CoMensha). However, the registration is incomplete and needs to be improved. The Ministry of Justice has provided CoMensha with additional funds for this

purpose. As part of the Human Trafficking Task Force's action plan, CoMensha has already submitted a plan for a project to improve the registration of victims. Together with the agencies that provide information, CoMensha will explore what information needs to be registered. CoMensha will also press for a commitment that the data will actually be supplied.

15.4.4 Care coordinator

The care coordinator manages the care providers and other partners in the chain and is responsible, among other things, for arranging suitable shelter and care.

Many regions still do not have a care coordinator. The task force says in its action plan that it will encourage municipalities to appoint a regional care coordinator.

15.4.5 Compensation

When the court makes an order for the payment of compensation in criminal proceedings it is collected for the victim by the Central Fine Collection Agency (CJIB). Between 2000 and 2003 the CJIB was involved in between three and five human-trafficking cases annually. That number has risen significantly since 2003 to between nine and seventeen cases.

Chapter 11 also illustrates the difficulty of actually *recovering* damages for victims. Although an order to pay compensation does mean that the victim does not personally have to chase the perpetrator to recover the money, the procedure offers no guarantee of an early settlement or even that the money will ultimately be recovered.

It is important in this context that the bill designed to strengthen the position of the victim in criminal proceedings makes provision for the payment of an advance on compensation by the Violent Offences Compensation Fund. The Minister of Justice has explained that this provision is intended for victims of violent crimes and sexual offences. The offences actually covered by the scheme will be specified in a later Order in Council but it stands to reason that the scheme will also apply for victims of human trafficking.

15.4.6 The Violent Offences Compensation Fund

In assessing applications from victims (at present only victims of sexual exploitation), the Compensation Fund mainly considers the extent to which the applicant was so dependent as to be persuaded to perform sexual acts with third parties. Circumstances that can influence the decision are: the victim's passport was confiscated; the victim had to surrender all or most of the earnings, the victim was under constant supervision or locked up, the victim's freedom of movement was constrained or the victim was intimidated or assaulted. The Fund received 25 applications from victims of human trafficking in 2007, 18 of which were awarded. In 2008, 19 applications were submitted, one of which was rejected because the Fund found on the basis of statements by the victim and further investigation of its own that human trafficking had not been shown to be a case of human trafficking.

In its action plan, the task force proposes measures to increase the use of the compensation fund.

15.5 B9 and continued residence (B16/7)

15.5.1 Clarification of the B9 regulation and associated agreements

The B9 regulation gives certain rights to victims of exploitation in the sex industry, but equally to victims of exploitation in other sectors. However, the terms of the regulation were not entirely clear with regard to the identification of victims of 'other forms of exploitation'. In April 2009, the relevant passages were clarified without revising the policy. This is a significant improvement since, particularly in the case of exploitation in sectors other than the sex industry, government agencies do not always seem able to

recognise signs of human trafficking and do not always know how the B9 regulation should be applied. Obviously, it is not only the police and special investigative services that have to immediately inform an alien of the rights laid down in the B9 regulation. The Labour Inspectorate must also do so if it discovers aliens who are not living legally in the Netherlands in a workplace. The Instructions on Trafficking in Human Beings for the public prosecution service and the police further state that victims of human trafficking must be reported to CoMensha for the purposes of arranging shelter and coordinating care. However, it should also be clear to other agencies such as the Labour Inspectorate and the Social Intelligence and Investigation Service (SIOD) that they have to report victims to CoMensha and what the procedure is for doing so. The B9 regulation recommends that in preparing actions targeted at illegal aliens the police should expressly consider the possibility of human trafficking and make preparations for providing care for possible victims. This can be done by contacting CoMensha before the actions take place. However, this is not mentioned in the public prosecution service's Instructions on Trafficking in Human Beings.

To avoid any misunderstanding on this point, it should be clear that all government agencies must report all victims of all forms of human trafficking to CoMensha. In other words:

- not only the police and OM must report victims, but also all other relevant agencies;
- not only victims of sexual exploitation should be reported, but also victims of other forms of exploitation;
- not only aliens should be reported, but also Dutch victims.

It is very important that all relevant government agencies are aware of the policy rules and associated agreements and pursue the same policy. Naturally, there has to be agreement on which government agency is responsible for (potential) victims. This can be achieved by making firm agreements in which tasks, powers and responsibilities are clearly allocated.

There is sometimes also confusion about the differences in the B9 regulation between victims and witnesses, for example over the period within which the IND has to decide on an application for residence.

There is regular overlap between criminal law and immigration law. A striking feature in this respect is the serious gaps in the knowledge of the other area of law among practitioners in each of these domains.

15.5.2 'Chanceless' B9 applications

There are victims who provide so little information when they report an offence that the case cannot ultimately be solved. The police and public prosecution service devote a lot of capacity to these complaints because every human-trafficking case has to be investigated. There is a suspicion that some individuals who are not actually victims seize on the B9 regulation as a last resort to secure continued residence. Every complaint must be treated with care, however, quite simply because it is so often difficult to recognise victims. There is no ready-made solution for the problem of balancing the need to respect the substantial interests of genuine victims on the one hand and the strain imposed on resources, including the accompanying use of facilities for shelter and assistance, by possible abuses of the regulation on the other. What could prove very useful would be to explore all of the circumstances surrounding the making of complaints in more detail. In that context, it is regrettable that the public prosecution service's research department (WBOM) has discontinued the study 'Human Trafficking: Chain, Victim and Knowledge Perspective'. The public prosecution service has done the right thing by drawing up a practical plan describing precisely what has to be done at each step of the process from the time of an informal interview to the decision not to prosecute or to investigate the case further.

The introduction of shelter for specific categories of victims and arranging adequate legal advice can be expected to increase the willingness of victims to report offences.

15.5.3 Linking of right of residence to reporting of offence/cooperation with criminal proceedings

Their cooperation with a criminal investigation is a precondition for granting a (temporary) residence permit to victims and witnesses in human-trafficking cases.

Aliens are informed that they can report an offence or otherwise cooperate with the investigation immediately, but that under the B9 regulation they can also do so after a period of reflection, during which they have up to three months to *calmly* consider their decision.

It is important to make a distinction between the likelihood of a possible prosecution for human trafficking and the possibility that a person is a victim of human trafficking. Even if a report does not provide any good leads and the investigation does not lead to a prosecution, the complainant may still be a victim. An unbelievable story does not necessarily mean that the individual concerned is not a victim of human trafficking. The human trafficker may have instructed the victim to apply for B9 status and provided her with a story for that purpose. The victim may also be reluctant to provide specific facts out of fear of the human trafficker. In deciding whether there is too little evidence of human trafficking, therefore, what needs to be considered is not just whether there is sufficient evidence for an investigation but also whether there are indications that the individual concerned is a victim.

15.5.4 Objections

An alien must inform the police within fourteen days of being notified that a case will not be prosecuted further whether he or she will object to the appeal court against that decision pursuant to article 12 of the Dutch Code of Criminal Procedure. It is unclear how this can be reconciled with the fact that no period is stipulated for filing an objection as such in article 12 of the Dutch Code of Criminal Procedure (except in the case of a notification that a prosecution will not proceed, in which case the period is three months). The period of two weeks prescribed in the B9 regulation for informing the police of whether or not an objection will be lodged is only relevant in connection with the consequences for entitlement to residence. The deadline says nothing about the period within which an objection actually has to be submitted.

The BNRM's survey of objections relating to human trafficking shows that the objection was rejected in 43 of the 44 cases investigated. Although many of the complaints contained no leads or insufficient grounds for an investigation, according to the appeal court the police nevertheless often conducted a detailed investigation. The appeals court therefore found that the police had generally done their work well.

Since the middle of 2008 the appeals court in Amsterdam has explicitly considered whether or not the case was reported to the Expertise Centre on Trafficking in Human Beings and People Smuggling (EMM). Other appeal courts could follow that example.

The average period that elapsed between the receipt of an objection and the decision of the appeal court ranged from six to nine months.

15.5.5 Continued residence (Chapter B16/7 of the Aliens Act Implementation Guidelines)

The changes that have been made since August 2006 to the rules for continued residence after the termination of a residence permit under the B9 regulation are largely connected with observed shortcomings in the rules and a desire to relax the policy. The revised policy simplifies the rules both for the Immigration and Naturalisation Service (IND) and for victims and it seems legitimate to expect that the changes will shorten the period of uncertainty for victims. Nevertheless, there do seem to be some problems with the implementation of the policy in practice. One problem concerns the flow of information between the authorities involved in the criminal investigation of human trafficking (the police and public prosecution service), the IND and the alien or her authorised representative. IND officials sometimes have to take a great deal of trouble to discover the status or the outcome of the investigation or the trial in a human-trafficking case. That information can be crucial for victims given the potentially serious implications for their residence status. Both the Aliens Act Implementation Guidelines and the Instructions on Trafficking in Human Beings of the Council of Procurators-General require the public prosecutor to notify both the IND and the victim as soon as a decision is made not to proceed with the prosecution or the

final judgment is rendered. This rule is not always followed. There is often miscommunication, particularly when it is decided to discontinue a prosecution for human trafficking. The cases indicate that there is confusion about the notification to the individual concerned and the conditions attached to filing an objection. This is an area where the care coordinator could perform a useful role.

An alien who wishes to invoke ground a in the B16/7 regulation (a conviction for human trafficking or for another offence in an indictment that included human trafficking as a result of which there is an assumption in law that there are risks attached to repatriation to the country of origin) must personally submit a copy of the court's judgment to show that he or she qualifies for continued residence. However, the victim is not a party to the proceedings and therefore does not have a copy of the judgment and may not even be aware of it.

Since the amendment of the B16/7 provision, the prime responsibility for deciding whether a person is a victim has shifted from the judge to the public prosecutor, since even acquittal on a charge of human trafficking but a conviction for other offences constitutes grounds for continued residence. In practice, victims remain uncertain about the decision on a request for continued residence for an extended period, even though it is already clear at the time of the prosecution that the public prosecution service regards them as victims. The victim would be spared a lot of time and uncertainty if the rule were amended to allow an application for continued residence to be submitted as soon as the public prosecution service decides to summons a suspect. This practical amendment might also encourage victims to make a complaint with sufficient leads to launch a prosecution. It would then be necessary to create sufficient guarantees to ensure that the victim remains available and willing to cooperate with the investigation and prosecution.

To help improve the method of assessing whether a victim should be granted continued residence for reasons of safety, in 2005 the partners in the chain agreed to start preparing 'safety files' on registered victims. However, in practice no safety files have yet been compiled. Nor is there any evidence that the IND regularly performs a risk analysis of its own before deciding whether a victim can be required to return to his or her country of origin.

The IND's decisions to allow continued residence for urgent reasons of a humanitarian nature generally provide no insight into the considerations on which they are based.

15.6 Victims as offenders and the non-punishment principle

International legislation devotes a lot of attention to the problem of victims of human trafficking who have also committed or are suspected of committing a criminal offence and the associated principle that under certain circumstances they should not be prosecuted or punished (the non-punishment principle). At the same time, it is clear that the scope of this principle has not yet been clearly defined, as is apparent from the varying definitions of the principle in different international instruments. Non-punishment provisions in international instruments relating purely to migration-related crime are very limited and do not cover the problem of victims of human trafficking who may be involved in various types of criminal activity in a human-trafficking situation. Cases studied in the Netherlands and in several other countries show that victims of human trafficking can be involved in a variety of offences in a human-trafficking situation.

The Netherlands has chosen not to adopt a specific non-punishment provision for victims who are also suspects. There are, however, various grounds in the Netherlands on which it may be decided not to prosecute or not to punish these victims who are also suspects. The non-punishment principle can be applied in Dutch legal practice with reference to the interpretation of the principle in the various international legal instruments. To avail of the possibilities arising from the non-punishment principle, however, it is important that victims are also identified as such by all of the relevant agencies in the chain. In practice, it is difficult to identify victims of human trafficking, particularly when those victims are initially suspected of a criminal offence committed in the human-trafficking situation. Furthermore, the risk of prosecution can cause victims of human trafficking who are suspected of offences to think of themselves more as offenders than victims and so not make a complaint. Even if a person is identified as a victim, it seems that in practice the relevant actors are not always aware of the existence of the legal possibilities of refraining from punishing or prosecuting the victim. Awareness of the problem and knowledge of the legal

possibilities are therefore crucial for applying the options for victims ensuing from the non-punishment principle in practice.

Exploitation of victims in criminal endeavours is a form of human trafficking that is still not always recognised as such. In the case of exploitation in criminal activity, the BNRM is particularly aware of offences against the Opium Act committed under compulsion or pressure in a human-trafficking situation. For example, victims of loverboys and other human traffickers are sometimes forced to commit drug-related offences. Minors are particularly vulnerable to exploitation in crime; victims in this category seem to commit theft and drug offences more often than other offences. This may be connected with a different system of sanctions for minors.

It is important to be aware that offences committed by victims are not always carried out under compulsion by the human trafficker. Victims will sometimes commit a crime, such as shoplifting, as a way of escaping from the human trafficker, as has occurred in the UK. There was a case in Austria where a victim destroyed her passport for the same reason. How to deal with this problem is an issue that needs to be addressed.

Quite apart from the consequences under criminal law, offences committed by victims in a human-trafficking situation can have consequences for their status under immigration law. For example, the BNRM is aware of a case of a convicted victim who did not receive a B9 residence permit although she cooperated fully with the criminal investigation into her human traffickers, who were in fact also convicted of the offence.

Another problem is that victims who are also convicted offenders run the risk of being declared undesirable aliens and consequently being placed in aliens' detention and deported. The possible consequences under immigration law for the residence status of victims who are also offenders are therefore an area of concern.

15.7 Administrative and integrated approach to human trafficking (in the sex industry)

There have been several positive developments in this area. As part of the efforts of the Human Trafficking Task Force to improve supervision of the prostitution sector, a protocol/manual on 'supervision of the licensed prostitution sector' is being written in consultation with the Ministry of the Interior and municipalities.

15.7.1 Prostitution sector

Since the legalisation of prostitution, there are now three sectors: the illegal, the legal licensed and the legal unlicensed. The idea that has been put forward of curtailing the licensed sector is in itself (in other words, without additional measures) an ineffective way of preventing human trafficking and abuses, since it could cause a shift to illegal forms of prostitution, which are more difficult to monitor and regulate through policy.

Prostitution, legal and illegal, takes many forms, and developments in the sector follow in rapid succession. To deal effectively with the effects of this in the form of human trafficking, an integrated approach incorporating administrative measures as well as criminal sanctions is required. One aspect that shows the need for this is the fact that in many places exploitation in (illegal) prostitution is sometimes unconsciously facilitated, for example by hotels. New measures could be taken to address this, although experience shows that a crack down on one form of prostitution almost immediately causes activities to shift to other segments of the prostitution sector.

It is generally accepted that one of the aims of the policy should be to increase the ability of prostitutes to control their own lives so that they are less likely to become victims of human trafficking. However, it has to be noted in that context that this scarcely follows in those cases where human traffickers use severe means of coercion.

A point that needs to be considered in any measures that are taken is that many prostitutes do not speak Dutch.

15.7.2 Prostitution policy and administrative enforcement

The aforementioned effect – that dealing with forms of exploitation in prostitution quickly leads to the relocation of illegal activities – is reinforced by the fact that municipalities are allowed to formulate their own policy on prostitution. Consequently, there is no uniform policy towards the prostitution sector. For example, certain forms of prostitution are licensed in one municipality but not in another. Many municipalities also fail to adequately formulate and monitor the prostitution policy and its administrative enforcement. This is not helped by the hands-off approach of the Association of Netherlands Municipalities (VNG). Smaller local authorities in particular are sometimes reluctant to tackle human trafficking, either because they do not realise the urgency of the problem or because they do not feel they have sufficient powers.

The municipalities are responsible for pursuing an adequate prostitution policy. The police play an important role in the supervision and prevention of illegal prostitution. But in many municipalities there is no clear division of tasks between the local authority and the police. The powers to exercise supervision can differ from one local authority to another, and in some cases no powers have been delegated at all. This encourages human traffickers to be calculating in planning their activities.

Other agencies besides the local authority itself also have a role in supervision, including the fire brigade, the tax authorities and the Labour Inspectorate. There are numerous indications that not all of them perform their supervisory duties in the prostitution sector properly. These additional ‘eyes and ears’ are sorely missed. That is regrettable in a sector which is very sensitive to human trafficking, tackling which depends very much on identifying the signs. Illegal prostitution is often difficult to identify simply because it is difficult to prove that sexual acts are being performed commercially with third parties.

Oversight is particularly difficult in the case of forms of prostitution that occur outside clubs, as in the case of escort services and prostitution offered on the Internet. The effectiveness of the labour-intensive ‘hotel procedure’ in controlling escort services appears to have weakened, perhaps because the method has become too well known. It is questionable whether the escort-service industry can be controlled at all. The control of licensed prostitution businesses does not in fact guarantee that human trafficking can be eradicated from them. Nor are the administrative controls in the prostitution sector always carried out properly. The superficial inspection of a prostitute’s papers, for example, will not expose exploitation. It requires holding interviews in a safe setting.

The Erotic Advertisements Covenant, under which anyone placing advertisements for erotic services must give their licence number or VAT number in the advertisement, has scarcely any effect in curbing exploitation since its scope is too narrow (it only covers some printed media) and because the numbers are not checked.

15.7.3 Administrative approach to organised crime/human trafficking

The instrument of the administrative report (the written notification from the police to the executive of a municipality that in the course of their duties they have discovered facts and circumstances relevant for the municipality’s enforcement of human-trafficking policy) does not work properly. The police do not seem to have sufficient capacity to write good reports. The reports usually contain no information on which the municipalities can base specific action. For their part, municipalities also sometimes fail to pass on useful information to the police.

15.7.4 Integrated approach

The programmatic approach, which involves systematic cooperation between chain partners, is useful and necessary, but a number of pilot projects revealed that in terms of execution it needs to improve. In practice, the partner organisations do not cooperate, or at least not in the envisaged manner. Organisations are often unclear about what precisely they are required to do, or what they are expected to do does not match their priorities. Consequently, scarcely any information has been gathered about companies or agencies that unconsciously play a role in human trafficking. The integrated approach to human trafficking

is not universally followed, partly because the partners concerned do not perceive human trafficking to be a problem and are therefore not willing to invest in a joint approach. Even partners that do adopt the integrated approach are sometimes hesitant. There is in fact no overview of how widely the integrated approach is followed; it is not known how many municipalities have adopted a chain approach to human trafficking, what similarities and differences there are between them and how effective they are.

A care coordinator for victims of human trafficking is sorely missed in various police regions.

15.8 Investigation

15.8.1 Policy and organisation

In practice, police forces do not all give the necessary priority to human trafficking. The Reference Framework on Human Trafficking (2008) published by the police's National Human Trafficking Expert Group (LEM) contains useful guidelines for the police in how to handle human-trafficking cases and it is highly recommended that all forces adopt these guidelines. However, it is unclear whether and how the forces can be obliged to do so. This subject may be addressed in the next Police Force Monitor on Prostitution and Trafficking in Human Beings (2009/2010).

The various forces share information about their strategies and policies in the LEM. Since 2007, meetings of the LEM have not been attended by experts from all the forces but only by a select few (alternately with and without external partners). As a result, the LEM is in danger of losing its usefulness in prompting and motivating police forces.

15.8.2 Identifying and investigating signs

It is often difficult to identify victims of human trafficking as such. It is in any case important that any visible signs of human trafficking are spotted. It is quite possible that this does not always happen, but it is unclear on what scale. To identify signs of human trafficking properly it is important that both members of the public and employees in every level of organisations that may be confronted with human trafficking (including the police) know what it involves, can recognise victims and know how to act on a suspicion of human trafficking. That situation has not been reached yet. There is still room for improvement in the capacity of various agencies, including municipalities, the IND, chambers of commerce, the police, doctors, operators of sex establishments, social workers and others to identify signs of human trafficking.

There are many different manifestations of human trafficking (including sexual exploitation, non-sexual exploitation and the loverboy problem). Each of them requires, partially at least, a different approach. Efforts to address human trafficking outside the sex industry in particular are still in their infancy and call, in some cases, for a change of attitude on the part of the relevant organisations (aliens police, the IND and the Ministry of Justice's Repatriation and Departure Service (DT&V)). It is still not universally accepted that very serious forms of human trafficking can also occur in sectors outside the sex industry and that just as much priority should be devoted to identifying and investigating them. The police forces constantly have to make choices in establishing priorities. The decision on where to deploy capacity is not always made in favour of tackling human trafficking. The administrative supervision of the prostitution industry also requires manpower and is not always – as has been agreed – facilitated by municipalities. The result is that some warnings of human trafficking are not investigated and investigations are dropped.

Many police forces have formed specialist teams to investigate human trafficking, but other divisions (such as the regional criminal investigation teams) also conduct investigations. It is evident that they sometimes lack knowledge and expertise of human trafficking. In regions without a specialist human-trafficking team, information about human trafficking is not always gathered properly and investigations seem to be more difficult to conduct. Detectives trained in dealing with human-trafficking cases are not always available to hear complaints.

It is not only identifying victims of human trafficking that is difficult, but also securing their cooperation with investigations and prosecutions. Victims are unwilling to report offences and their reports sometimes contain very few leads for an investigation. For successful investigations it is also important to use alternative solutions and strategies, such as accumulating evidence from other sources. As stated in the Instructions on Human Trafficking, all investigating teams should include detectives specialising in financial crime.

Human trafficking is always a local phenomenon but is frequently organised by international gangs. Cooperation with the police in other countries is therefore vital but little is known about this. There are also problems with international cooperation, for example because of differences in legal systems and interests. International cooperation is also very time-consuming.

15.8.3 Information and follow-up

It is important for the investigation of human trafficking to make use of information available to other partners in the chain, although naturally the provisions of the Personal Data Protection Act have to be observed. Nevertheless, the sharing of information seems to raise various obstacles for investigations into human trafficking. Some of these barriers are technical in nature and relate, for example, to computer systems. But others can be traced to attitudes. These obstacles must be removed as far as possible in view of the importance of the information and the need to share it.

The EMM, which acts as the national repository of information about human trafficking provided by all of the agencies involved in its supervision, control and investigation and in providing assistance to victims, does not function satisfactorily. On the one hand not all of the information is supplied, and on the other the information that is available is not properly analysed and processed. The disappointing output then undermines the motivation to provide information. The Human Trafficking Task Force commissioned a study into the exchange of information between police forces and the EMM. The resulting report, 'Trade; you'll pay for this', led to the decision to start a pilot project with the Regional Information and Expertise Centres (RIECs) in Rotterdam and Groningen designed to improve the flow of information between the RIECs and the EMM.

The importance of the exchange of information between international police forces is growing all the time. By merging and analysing operational information from different countries it is possible to learn more about the methods used by human traffickers and how they are tackled. In the EU this is a task for Europol but the exchange of information through Europol is not optimal. The Netherlands can play its part by adhering to the agreements on the provision of information to Europol.

15.8.4 Victims

The police naturally have a duty of care towards any victims of human trafficking they encounter during investigations. The victims must be given shelter. A practical problem facing the police is the shortage of places in (suitable) shelters and the occasional difficulty of reaching the relevant aid agencies. The police are also required to clearly inform victims of their options and their rights and to give them the opportunity to make a complaint. There are quite a few indications that victims who wish to report an offence are not always given the opportunity to do so by the police and that victims are not kept properly informed of progress with the police investigation.

15.9 Suspects and perpetrators

15.9.1 Striking figures

Dutch people comprised (in 2007) the largest group of suspects (95 out of 280 suspects) and the largest group of convicted persons (24 out of 73 convicted human traffickers). This illustrates once more that human trafficking does not necessarily have an international dimension. Interestingly, 30% of the suspects and 28% of convicted perpetrators were not in custody at the time of their trial.

15.9.2 Loverboy method

Human traffickers are quick to adapt their methods in response to changing circumstances or a crack down by the government. The so-called loverboy method provides an example of this. The popular image of a young man seducing vulnerable young Dutch girls into forming such a deep commitment that he can then get them to work in prostitution for him is no longer so clear cut. The practice is no longer confined to young men, nor exclusively to vulnerable young girls nor even only to seduction techniques; the methods are also used in transnational human trafficking and in exploitation outside the sex industry. The changeability of human trafficking practices calls for an awareness of the changes that can occur in the group of victims. It is regrettable that it is not possible to derive sufficient information from the data of the public prosecution service about the extent to which loverboy methods are used.

15.9.3 Facilitators

Efforts to tackle human trafficking depend not only on receiving signals from individuals and agencies that are, coincidentally or otherwise, confronted with human trafficking. Another important factor is that numerous individuals and institutions consciously or unconsciously assist human trafficking by directly or indirectly facilitating it. In the well-known *Sneep* case, a 'consultancy firm' handled the defendants' administrative affairs and a real estate company organised cars, mobile phones and accommodation. Doctors performed breast enlargements and abortions. Tattooists applied tattoos to the women involved.¹

Professional groups that may become entangled with organised crime include taxi drivers, lawyers, civil-law notaries, employees of travel agencies and hotels and builders of websites. Culpable involvement in the narrow sense (intentional) occurs rarely, by contrast with the failure to observe standards of care (culpable involvement in the wider sense). Besides these private parties, employees of social services, municipalities, chambers of commerce, the IND, the Labour Inspectorate, the tax authorities and the police can also play a role.

The so-called barrier model could be used to explore ways of removing the basic conditions for human trafficking, while at the same time identifying the conscious and unconscious facilitators.

15.9.4 Internet

A special effort is needed to devise methods of preventing the many possibilities that the Internet affords to human traffickers to commit their offences while easily avoiding detection.

15.9.5 *Pekari* and *Koolvis*

The *Pekari* project and the ensuing *Koolvis* case were innovative in several respects. For example, the scale of the international cooperation was unprecedented and for the first time there was successful cooperation with the country of origin of the perpetrators and the victims (through the organisation NAPTIP). This probably ensured that the entire criminal organisation was identified rather than just a part of the organisation that could be replaced. Furthermore, the cultural context in which human trafficking in Nigeria occurs was anticipated by employing the services of a Nigerian priest. However, the 'waterbed effect' remains a persistent problem in human trafficking, in Nigeria and elsewhere. Human-trafficking organisations do not recognise borders so cross-border cooperation is essential if they are to be tackled effectively.

15.10 The Public Prosecution Service and prosecutions

The public prosecution service has been very ambitious in its use of criminal law to tackle human trafficking in recent years. However, human-trafficking cases do not automatically reach the public prosecution service. To realise its ambitions, the public prosecution service must actively pursue cases.

¹ KLPD, *Schone Schijn* [Keeping up Appearances] (2008).

This is why human trafficking is one of the areas in which the public prosecution service has decided to intensify its policy. In the new regions established by the public prosecution service prosecutors have been appointed who can devote 50% of their time to human-trafficking cases. These regional officers will also have a role in securing human-trafficking cases. The Office for Financial, Economic and Environmental Offences recently assigned the human-trafficking portfolio to a prosecutor and an advocate-general has also been assigned the human-trafficking portfolio. Coordination on cases in the public prosecution service takes place in the 'portfolio owners meeting'.

Aspects that demand attention are the need to safeguard continuity in the public prosecution service, especially where there is a rapid turnover among the specialist officers, and to ensure there is sufficient capacity. There still seems to be too little time in terms of practical implementation. It is important that there is sufficient expertise and capacity at the local level to support the regional officers.

The Instructions on Human Trafficking were amended and clarified on several points on 1 January 2009.

Since 2005, exploitation in sectors other than the sex industry and certain activities relating to the removal of organs have also been made criminal offences under the heading of 'human trafficking'. It has therefore become relevant to gather statistics on the prevention of these forms of offence. The text of article 273f of the Dutch Criminal Code makes it impossible to distil this information from the OM data on the individual sections and subsections of that article. What is known is that several cases in 2006 and 2007 involved exploitation in sectors other than the sex industry and that no cases involving the removal of organs have yet been brought.

In 2008, 61% of the prosecutions for human trafficking led to a conviction. Between 2003 and 2007, there was a noticeable downward trend in the number of unconditional prison sentences of more than four years. This trend seems to contradict the growing political awareness of the seriousness of human trafficking, which led among other things to the raising of the sentences from 1 July 2009.

For the first time, this report presents the data on appeals. Of the 265 appeals heard in cases involving human trafficking between 1997 and 2007, the defendants were convicted wholly or partially for human trafficking in 237 cases (89%). Over the entire period, a prison sentence of more than four years was imposed in 19% of the appeals. In 5% of the cases in first instance in 2007 prison sentences of more than four years were imposed.

The figures presented in Chapter 10 relate to the public prosecution service's performance in a particular period (2003-2007). A constraint of this system is that it provides no insight into how cases were handled from beginning to end. A cohort analysis should therefore be conducted to provide this information.

The Council for the Judiciary is considering the question of whether cases of a particular type should be concentrated in specific courts. Human trafficking is one of the areas mentioned in this context.

15.11 Case law concerning exploitation in the sex industry

Article 273f of the Dutch Criminal Code is not a straightforward article. It is multilayered. The history of international treaties and knowledge of the methods used by perpetrators and the problems facing victims are also relevant for the interpretation and application of this provision.

The investigation into Dutch case law on human trafficking in the sex industry shows discrepancies in how various legal aspects are interpreted and a lack of uniformity in the evaluation of the context of violence, coercion, deception and the possibility for victims to escape from their situation. Statements by victims, and above all their internal consistency, play an important role in weighing the evidence. It is noteworthy in this context that judges sometimes actively look for an explanation for inconsistencies in the statements by victims. This suggests that in these cases the judges have recognised the specific problems associated with the statements of victims in human-trafficking cases. The impression to emerge from the almost 200 judgments since January 2007 that were studied is that even where there is a finding that coercion has been proved, the Dutch prostitution policy sometimes seems to play a role in the evaluation of whether a victim could reasonably have made a different choice. This is perhaps explicable on the grounds of the

explanatory memorandum of the original proposal for article 273a of the (old) Dutch Criminal Code, in which the comparison was made with the 'articulate Dutch prostitute'. However, this comparison can only refer to the situation where the prostitute is *already working* in prostitution and cannot be a factor in assessing the 'freedom of choice' to *enter* prostitution. The number of acquittals in human-trafficking cases is high, even by comparison with the number of acquittals in rape cases for example. Contrary to what might be expected, the study showed that this is only partially due to the absence of reliable statements by victims and witnesses.

For some years now there has been talk of establishing a training course on human trafficking. The Training and Study Centre for the Judiciary (SSR) has already produced a basic and an advanced course. The original idea was for a course made up of six modules covering international legislation, the immigration law background, the social context and the legal problems and concluding with a professional forum. The course has not yet been launched, however, and judges only sporadically attend the existing courses.

There is no specialisation in human trafficking in the judiciary, although the public prosecution service has now started appointing specialist regional public prosecutors.

The number of human-trafficking cases brought before the district courts annually has ranged from 100 to 150 in the last few years. The accumulation and retention of sufficient specialist knowledge and expertise is not promoted by allocating them among nineteen courts. The creation and retention of expertise would be enhanced by concentrating human-trafficking cases in a single court .

The BNRM study showed a variation in both the sentences demanded and the sentences imposed in human-trafficking cases. There seems to be a need for guidelines. Basic principles for the appropriate sentence for human trafficking were formulated for the first time in the *Sneep* case. These were a prison sentence of eight to ten months for each victim, depending on the duration of the exploitation, the level of violence used and the role of the suspect. In that context, a period of exploitation of nine months was regarded as 'relatively short'. Interestingly, aggravating circumstances are seldom explicitly mentioned either by the public prosecution service in the indictment or by the judge in the particulars of the offence. The BNRM's study did not encompass pre-trial custody. What the judgments did show is that 30% of the defendants and 28% of those convicted were not being held in custody at the time of the trial. The BNRM intends to study this subject in more depth.

Studying the judgments in criminal trials yields a lot of information. For example, most of the judgments in 2007 involved human trafficking cases in which victims were forced to work in prostitution in the Netherlands. Almost three-quarters of the convicted perpetrators were pimps. Half were involved in recruiting victims and 35% escorted victims to the Netherlands from other countries. Roughly a quarter had to guard the victims and slightly fewer than a fifth were responsible for transporting the victims to and from the workplace. A minority of the perpetrators, 5%, operated a sex business. These perpetrators often performed several different roles. It is impossible to tell whether the sex businesses were licensed, unlicensed or illegal.

The judgments that were studied show that it is particularly difficult for victims to secure compensation for material damage. This is often loss of income. In the majority of the judgments these claims (or this part of the claim) were felt to be too complicated and the victims' claims were declared inadmissible. Nevertheless, a slight change has been apparent in the more recent judgments, particularly when a financial report has been prepared for the claim for the confiscation of illegally obtained profits and it is available at the time of the trial. A problem, however, is that the claim for confiscation of criminal assets is often not raised at the time of the main trial. There is room for improvement there. The financial report could also be submitted to the judge for the purposes of the decision on the injured party's claim. Finally, the injured party's claim, submitted for the hearing of the main trial, could also be adjourned to be dealt with at the same time as the later claim for confiscation of criminal assets. The law would have to be amended to allow this.

The study of the case law shows that in cases where the court declares that attempted human trafficking has been proved the offence was in fact committed. Scarcely any prosecutions for 'attempted human

trafficking’ as such were found. Nevertheless, the jurisprudence of the Supreme Court on attempted human trafficking does provide scope to press this charge more often.

A successful prosecution at an earlier stage could have a preventive effect.

15.12 Exploitation in sectors other than the sex industry

15.12.1 Identification and perception of exploitation in other sectors

Growing attention is being devoted to identifying forms of exploitation outside the sex industry. For example, the Ministry of Social Affairs and Employment produced a fact sheet entitled ‘Labour and Exploitation’ to raise awareness among potential victims. However, although Dutch legislation makes no distinction between sexual and other forms of exploitation, in practice there are differences in how they are identified, investigated, prosecuted and tried. These discrepancies are mainly related to the perception and recognition of situations of other forms of exploitation. The impression is that other forms of exploitation are seen as ‘less serious’ than sexual exploitation. In principle, the seriousness of the exploitation does not depend on the sector in which it occurs.

It also seems that care for victims of other forms of exploitation creates or could create practical problems, especially since the numbers involved are sometimes substantial. Victims of other forms of exploitation are not always reported to CoMensha.

Other forms of exploitation obviously occur and every relevant actor should therefore respond adequately to excesses .

15.12.2 Investigation and prosecution of other forms of exploitation

In practice, however, investigative agencies still know relatively little about the problem of other forms of exploitation. There is no clear picture of the scale of the problem, the conditions under which people are forced to work and the extent to which criminal organisations are involved. The other forms of exploitation are described as a ‘blank spot’ in the National Threat Assessment 2008. The relevant agencies (the Labour Inspectorate, the Social Intelligence and Investigation Service (SIOD), the police) do not always notify one another of indications of exploitation. The Labour Inspectorate only occasionally reports signs to the SIOD. Furthermore, combinations of different indications of exploitation are not always recognised as potential instances of human trafficking. The circumstances are more usually regarded as a series of isolated instances of breaches of labour and administrative law. Because the various agencies fail to make the connection between the various events, either internally or through consultation with other agencies, they fail to see them as a possible case of exploitation.

The public prosecution service’s Office for Financial, Economic and Environmental Offences does not always act on information from investigations or does not always conduct an investigation into human trafficking, even though the public prosecution service has made human trafficking a priority. The failure to act on indications of human trafficking is also connected with the fact that the scope of the element ‘exploitation’ has not yet been clearly defined in case law. This makes it difficult for investigative services and the public prosecution service to assess which situations the courts will regard as human trafficking.

The public prosecution service has started a pilot project to encourage the adoption of the integrated approach towards other forms of exploitation with the police in the Zuid-Holland-Zuid region.

Training courses in human trafficking have been provided for employees of various departments in the Labour Inspectorate. The SIOD has made the fight against other forms of exploitation a priority and it recently established an internal ‘Programme to improve efforts to tackle human trafficking’.

Certification of SIOD investigators had not yet been introduced when this report was written. Although working-conditions inspectors can also come across evidence of human trafficking, such as poor working conditions, the responsible division of the Labour Inspectorate has also not yet received any training in

identifying human trafficking. On the other hand, Aliens Employment Act inspectors and the Labour Market Fraud inspectors have received training.

15.12.3 The text of the law

Not for the first time, the question has arisen of whether the text of article 273f of the Dutch Criminal Code should be amended to clarify the scope of other forms of exploitation. The text of the law is certainly not straightforward. One reason for this is that the text is taken almost verbatim from international provisions. The explanatory memorandum to article 273f of the Dutch Criminal Code provides little help for the courts, to whom further interpretation was consciously left. A survey of the legislation and case law in a number of other countries shows that the legal practice in those countries faces similar problems and that the legislation in the various countries, although always based on the Palermo Protocol, differs in certain respects. Countries in which forms of exploitation outside the sex industry have long been punishable (such as Belgium and the US) have meanwhile gained a lot of experience in prosecuting these forms of human trafficking. Judges in the Netherlands could perhaps learn from similar cases abroad. An international database of judicial rulings might be a solution. Amending the act would not solve the problems relating to the interpretation and appreciation of what constitutes other forms of exploitation.

15.12.4 Case law on exploitation in sectors other than the sex industry

Although the scope of the offence of human trafficking involving forms of exploitation in sectors other than the sex industry has not yet been clearly defined in case law, a number of trends have emerged in the jurisprudence. Three of the twelve cases involving these forms of exploitation to date have led to convictions for human trafficking. In the judgments studied, the elements most often found not to have been proved were (the intention of) exploitation and coercion through 'abuse of a vulnerable position'. It is possible that the workplace (behind the front door or at a business location that is part of the formal economy) and the degree to which the relationship between the perpetrator and victim is commercial influence where the judge draws the line between bad employership and exploitation. It is also possible that convincing evidence of exploitation is easier to supply if the victim's bodily integrity is violated by physical violence than by, for example, physically harmful work or an exhausting working regime.

As regards the criterion that the victim does not or does not reasonably feel that he or she is free to escape from the working situation, the subjective perception of a lack of liberty raised complications in a number of judgments. Judges still seem to deal differently with the question of whether the worker had a reasonable alternative to becoming involved in this situation of exploitation. Judges in other countries seem to be more willing to assume that the victim had no real alternative to working for the exploiter.

In four of the twelve cases studied in the Netherlands the victims/employees were involved in criminal offences closely related to the situation of exploitation. In two of these cases the victims were prosecuted for those offences. This fact is interesting in the context of the possibilities provided by the non-punishment principle (see Chapter 6). In the two judgments that led to acquittal on charges of human trafficking, the court, in finding that there was no question of exploitation, did mention the criminal nature of the work, but it was not apparent from the judgment that the court had attached any weight to the fact that the work the workers had to perform was punishable.

In half of the cases that were examined, according to the indictment sexual services were also performed by the employees/victims. One case involved commercial sexual services with a third party; in the five other cases the employees/victims were sexually abused by the defendants themselves. The question that arises is whether the performance, under compulsion, of sexual services with a single person, outside the sex industry, can fall within the scope of article 273f of the Dutch Criminal Code. No court has yet ruled on this issue. A similar discussion has arisen in Belgium.

Practice also seems to confirm that there is an increased risk of exploitation in certain forms of ethnic entrepreneurship and that exploitation also occurs within relationships and/or families. There is little certainty about the extent to which cultural background can be taken into account in a judgment in a case involving other forms of exploitation.

15.12.5 Risk sectors and risk groups of other forms of exploitation

Several groups at risk of other forms of exploitation are discussed in Chapter 12. What stands out is that people from Central and Eastern European countries and people living illegally in the Netherlands often work through male fide employment agencies. This makes them vulnerable to exploitation. Although certified employment agencies are guilty of fewer abuses than non-certified companies, the percentage is still relatively high. This is therefore another area of concern.

Domestic staff employed by diplomats face an additional risk of exposure to exploitation because the immunity of diplomats complicates prosecution in the event of abuses. The Ministry of Foreign Affairs has taken various steps to improve the position of the domestic staff of diplomats. For example, domestic workers are given instructions, which include pointers on human trafficking. The instructions are given verbally. There is no written information, such as telephone numbers of social workers, the police or the ministry. A domestic worker is therefore perhaps unable to contact the appropriate agencies if he or she experiences a situation of exploitation.

Exploitation within marriage is another area of attention. There are no details available on its nature and scale.

15.13 Human trafficking with a view to organ removal

There is interest in the subject of organ removal in the Netherlands. The news media regularly report on it. It is also an important topic at the international level. There is scarcely any information about the actual occurrence of the phenomenon in the Netherlands. The Fifth Report of the National Rapporteur on Trafficking in Human Beings already noted the urgency of remaining alert. That still applies.

For example, there is evidence that persons from the Netherlands travel to organ-exporting countries. With a view to possible abuses in relation to human trafficking it is important for facilitating, support and executive agencies, such as medical personnel and health insurers, to remain alert to the origins of organs for organ donations, particularly in the case of medical tourism.

Further research into the trade in bodily organs, organ tourism and human trafficking with a view to organ removal in the Netherlands may be helpful in this regard.

In her letter concerning the policy on Ethics on 7 September 2007, the State Secretary for Health, Welfare and Sport stated that she intended to ratify the Council of Europe's Biomedical Convention. This has not yet been done.