

THE NETHERLANDS

This text is largely based on the report on the E-Notes, Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008 and 2009), Fermo, (Italy) 2009; chapter on The Netherlands, p. 183 – 186, written by Marjan Wijers.

The phenomenon

The Netherlands is a country of origin, transit and destination for men, women and children trafficked for the purposes of exploitation in the sex industry, forced labour and services. The largest group of trafficked persons who were registered in 2009 were Dutch, Nigerian, Romanian, Chinese and Bulgarian. The percentage of Dutch victims has increased over the years up to 39% in 2008. The statistics indicate that the majority of victims of human trafficking within the Netherlands are women, between the ages of 18 and 30, trafficked into the sex industry. With the broadening of national legislation in 2005 to encompass a wider definition of human trafficking, it is likely that statistics for trafficking men will further increase. The enhanced attention to labour exploitation in other industries, such as agriculture and domestic labour will probably lead to increasing statistics. The national police, government and NGOs are trying to raise awareness on trafficking outside the sex industry, but society still associate human trafficking mainly with forced prostitution.ⁱ

National anti-trafficking legislation and institutions

In Dutch law, forcibly recruiting, transporting, moving, accommodating or sheltering another person with the intention of exploiting her/him is punishable as trafficking of human beings. All forms of trafficking were criminalized in the Netherlands in 1911 under article 250a of the Dutch Criminal Code; in 2005 this extended under Article 273f to align national law with the United Nations Trafficking Protocol and other international tools.

With effect from January 2008, the punitive measures for human trafficking have been increased. The maximum fine that can be imposed for a case of human trafficking is now 74,000 Euros. From July 2009, the maximum term of imprisonment for all aggravated forms of human trafficking is 12 years and for unqualified forms of human trafficking is eight years. When the offence is committed under the most aggravating circumstances, the maximum sentence imposed is eighteen years.

The government prosecuted 221 persons for human trafficking offences in 2007, compared to 216 for the year 2006. According to the Dutch National Rapporteur's Office, the average prison sentence imposed for 2007 ranged from 20 to 23 months-a reduction from 27 months. Dutch national anti-trafficking legislation complies with the provision on jurisdiction in the Council of Europe Convention on Action against Trafficking in Human Beings, which is in effect since 1 August 2010.

An important is the development of a Bill to regulate prostitution and tackle abuses in the sex industry, which was drafted in 2009 as the Regulation of Prostitution Act. This bill provides that all commercial sex businesses are to be licensed to improve the regulation and monitoring of the sex industry in the Netherlands. It proposes a more comprehensive set of regulation, and punitive



measures for sex workers and sex businesses that operate without a license. The Bill provides that all sex workers' names, addresses and passport details are to be recorded. There is much resistance against the proposals in this bill (which is not yet adopted by the Dutch parliament) especially on the forced registration of sex workers and the criminalization of those that are not registered.

The national position on human trafficking is stipulated in the **National Human Trafficking Action Plan 2004 (NAM)**. In 2006, additional measures were made to include minors and child prostitution to the topics of prevention, reporting and registration, investigation and prosecution. The Human Trafficking Task Force is assigned to identify and remedy shortcomings in current anti-trafficking efforts and ensure that policy is implemented as effectively as possible through interventions by relevant figures. In July 2009, the Task Force presented an Action Plan in which it formulated ten specific measures to address problems with current anti-trafficking efforts.ⁱⁱ

Identification, protection of rights and referral

Efforts to identify and address human trafficking cases in industries other than the sex industry are still preliminary. Misunderstandings regarding the relationship between human trafficking and prostitution remain and can impact how police and authorities identify and investigate trafficking cases. The result is that human trafficking cases may not be treated as such, or that police efforts are directed away from the needs of trafficked persons.

Dutch police forces have formed specialist teams for human trafficking, however, improvements to training and information provision within the police are needed for more effective identification and treatment of trafficked persons. In 2008, the police's National Expert Group on Trafficking (LEM) published a guidebook — The Reference Framework on Human Trafficking. This handbook provides guidelines for police to follow when investigating human trafficking cases. National police forces share information about their experiences and findings in the Expert Centre on Human Trafficking and Human smuggling (EMM).

In the EMM the national investigation department of the police (DNR), the Immigration & Naturalisation Service, the Military Police and the Social Intelligence and Investigation Service (SIOD) work together. The police and public prosecution services have given priority to investigating and prosecuting human trafficking in recent years, but they lack sufficient capacity to effectively identify and follow up on all trafficking cases. The responsibility for keeping a national register of (presumed) trafficked persons falls upon the Coordination Centre for Human Trafficking (CoMensha), the former Foundation against trafficking in women. Only registered trafficked persons are entitled to support and advice from national service providers.

The state and its bodies have a duty of care towards trafficked persons. The police are required to clearly inform (presumed) trafficked persons of their options and rights and the possibilities of pressing charges. The identification of victims is generally the first step; an official complaint or statement made by the victim can form the basis of further investigation and prosecution.

The B9 Regulations (refers to chapter B9 of the Aliens Act Implementation Guidelines 2000) allows aliens who are victims or witnesses of human trafficking to remain legally in the Netherlands. The regulations allow for a three-month reflection period in which victims and witnesses can decide



whether or not to cooperate in criminal proceedings. Further, it allows foreign nationals who are trafficked to be granted a residence permit for a period of one year during an investigation and prosecution period if they choose to cooperate in criminal proceedings. In the event of a foreign national with a B9 permit required to stay for more than three years, they may apply for continued stay, even if the criminal case is still pending or the charges are eventually dropped. During the reflection period, and for the period in which a temporary residence permit is granted, the government provides trafficked persons and presumed trafficked persons with the necessary protection and legal, financial, medical, social and psychological assistance.

In 2008, 235 B9 residence permits were awarded and reflection period permits granted. CoMensha takes responsibility for sourcing shelter for registered victims. A key issue is the lack of shelter for trafficked persons, or the capacity of shelters to meet the demands and specific needs of trafficked persons. Consequently, one person may be moved a number of times between shelters, or may have to wait on a waiting list before finding stable housing. Registered trafficked persons are assigned a care coordinator, who assists with meeting other needs, such as education, financial aid, child support, psychological, legal and medical needs.ⁱⁱⁱ

Access to justice

In principle, trafficked persons have the legal right to claim redress for material and immaterial damages. By law, national police must inform trafficked persons of the opportunities for legal advice, compensation and any other government funded payment eligible to them. There are various ways in which trafficked persons can obtain monetary compensation for tangible losses such as loss of income, medical costs; and for intangible losses such as damages for pain and suffering. It can be done through the criminal courts, a civil procedure, the national Violent Offences Compensation Fund or through labour laws. Despite the provisions available, there are multiple hurdles involved in the compensation process, and many victims of trafficking never receive the justice that they are entitled to.

Prevention

As for prevention activities and materials directly targeting (presumed) trafficked persons in the Netherlands, NGOs have produced information leaflets, especially on the rights of trafficked persons and undocumented workers. Also the Ministry of Social Affairs published a leaflet in several languages on the rights of migrant workers, especially focused on workers from new EU countries.

For trafficking into the sex industry, there are many prevention campaigns to warn vulnerable (young) girls for “loverboys” practises (at schools and child care homes). The foundation Meld Misdaad Anoniem (Report Crime Anonymously) has started a campaign Schijn Bedriegt (Appearances are Deceptive) targeting clients of sex workers to report if they suspect forced prostitution. In the name of preventing trafficking, the Netherlands keeps a tight control over the issuing of work permits.

In regards to the informal work sector, work permits for *au pair* positions are, in practice, the only possibility. For the sex industry, there are no options as it is legally prohibited to issue work permits for labour in the sex industry. Work permits to third country national are only given for highly



specialized /skilled occupations; however, progress has been made to simplify the issuing of work permits for seasonal work.^{iv}

Major human trafficking cases in the Netherlands' recent history have increased public awareness surrounding the issue; much of this can be attributed to press coverage of the so-called Sneep and Koolvis cases. ("Koolvis" case where Nigerian criminals who trafficked young Nigerian girls to Europe for prostitution reasons were effectively brought down. Sneep was a case where a Turkish German gang running a prostitution ring of 100 women from Eastern Europe as well as the EU, put girls to work in window brothels. The group had hierarchic structure including leader and his brother, lower level pimps, senior prostitutes and bodyguards. Network of pimps monitored women, took ID papers and moved around. Violence, abortions, rapes, beatings, forced tattoos were used. In July 2008, six members including the ringleader, Saban B., were convicted and sentenced to seven and a half years imprisonment. In September 2009, Saban B. married one of 'his women' in prison, and later on he fled to Turkey while on leave to visit newborn daughter. He is currently settled in Antalya, running a nightclub and unlikely ever to be extradited.)^v

Monitoring and evaluation

The Netherlands meets the requirements of the Council of Europe in regards to monitoring and evaluation. It has a well-established National Rapporteur that, among its other core activities, undertakes the monitoring and evaluation of national anti-human trafficking policies and practices. The Rapporteur submits annual reports to the Minister of Justice.

The Dutch government responds to the reports and informs parliament of its conclusions. Through these reports, the Rapporteur plays an important role in monitoring policies to combat human trafficking and the associated legislation. The government generally publishes a reaction to the reports, which is then the subject of a plenary debate in the Lower House of parliament.^{vi}

Recommendations

- In order to prevent victims of trafficking from ending up in aliens' detention and being deported, the role of NGOs in the (early) identification of victims of trafficking should be formally recognised. To assess whether or not a person is a victim, apart from the police's judgment, information from NGOs and other assistance providers should be taken into account.
- A temporary residence permit and the attached support services should be granted to all identified trafficked persons and not only to those that are willing/ able to cooperate with the authorities.
- More expertise needs to be developed on trafficking for other purposes than the sex industry. This is needed in the identification process, the jurisdiction, and the support and assistance schemes.
- In order to solve the problem of the capacity shortage in shelters, solutions must be sought in follow up accommodation for people who have been granted a temporary residence permit and accommodation for specific groups, such as men, minors, people with psychological or addiction problems or drug abuse, should be available.
- If anti-trafficking measures conflict with prostitution policies, both policies will be ineffective. This was one of the main conclusions of the Sneep case. Mandatory registration of sex workers and the criminalisation of unregistered sex workers and their clients, as is proposed in the latest prostitution bill, carry the risk that sex workers, who cannot or do not want to register, end up in an illegal circuit



in which the chances of abuse, exploitation and violence are much higher and the chances of identification much smaller.^{vii}

i “E-Notes” Report. Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective. p.183.

ii Ibidem, p. 184.

iii Ibidem, 184-185.

iv Ibidem, p. 186.

v A short description on Sneep and Koolvis cases based on Carina O’Reilly’s presentation: “European disagreements and perspectives on organised crime, risk and human rights.” December 2010.

vi E-Notes” Report. Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective. p.185.

vii Ibidem, p. 186.

