

Protecting the Victims of Trafficking in Human Beings for Sexual Exploitation

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Assisting Victims of Human Trafficking for Sexual
Exploitation and Measuring the Costs

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Trafficking of human beings

- **Prostitution**
- Sweat shops
- **Domestic labour**
- Forced marriage
- **Agricultural labour**
- Construction
- **Hospitality**
- Sport
- **Adoption**
- Organ transplants
- **Begging**
- Forced criminality

Trafficking and smuggling

- Trafficking is enforced
- **Smuggling involves consent**
- Trafficking is a process with several actors involved:
 - Recruitment agencies
 - Friends or relatives
 - Hotels
 - Sub-contractors
 - Bar owners
 - Exploiters/clients

Definition of THB

- Council of Europe Convention on Action against Trafficking in Human Beings, Art 4
- Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Art 2
- “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Three elements

- The act
- The method
- The motivation

- Consent of victim not relevant where any of methods in mentioned are used – one cannot consent to be trafficked
- Where victim is under 18, there is trafficking if only act and motivation are present
 - None of the methods need to be proved

Exploitation

- Directive, Article 2.3
 - Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude , or the exploitation of criminal activities, or the removal of organs

Rantsev v Cyprus and Russia

European Court of Human Rights

Application No. 25965/04, Judgment of 7 January 2010

- Para. 284:

The State's human rights obligation includes having in place legislation "...adequate to ensure the **practical and effective protection** of the rights of victims or potential victims of trafficking..."

Rantsev v Cyprus and Russia

- Para 286
- “...Article 4 may, in certain circumstances, **require a State to take operational measures to protect victims, or potential victims, of trafficking...** In order for a **positive obligation** to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of ... Article 4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 ... where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation of risk”.

European Commission's Group of Experts on Trafficking in Human Beings

- Opinion No.6/2010 of the Group of Experts on Trafficking in Human Beings of the European Commission, On the decision of the European Court of Human Rights in the Case of *Rantsev v Cyprus and Russia*, 22 June 2010

International Journal of Refugee Law, Volume 22, Issue 4, 2010, Pages 673–676

Protection of victims of sexual exploitation

- Directive, Art 11 –general measures – sexual exploitation is not treated separately
 - Assistance and support before, during and after criminal proceedings – as soon as there are reasonable grounds to believe the person has been trafficked
 - Not conditional on cooperation in the prosecution

Nature of Assistance

- Must be enough to include “at least standards of living capable of ensuring victims’ subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate”.

Protection during criminal investigation and proceedings

- **Art 12**
- access to legal counselling and legal representation, including for claiming compensation
- shall be free if the victim cannot pay
- Avoid secondary victimisation:
 - Unnecessary repetition of interviews
 - Direct visual contact between victim and accused
 - Giving evidence in open court
 - Unnecessary questioning about victim's private life

Measures to protect child victims

- Arts 13-16
- Recognises the particular vulnerability of child victims of trafficking, both in general and during criminal investigations and proceedings
- Obligation to take account of the personal and special circumstances of unaccompanied child victims

Council of Europe Convention


- **Art 10** – duty to have personnel who are trained to identify and help victims
- If there are reasonable grounds to believe a person has been trafficked, they cannot be removed from the State until identification process is complete; and they must receive assistance

Protection of private life

- **Art 11**
- Duty to protect the private life and identity of victims
- Special duty to protect the identity of children

General Assistance Measures

- **Art 12** – obligation to assist victims in their physical, psychological and social recovery. The minimum:
 - Standards of living to enable subsistence, including appropriate and secure accommodation, psychological and material assistance
 - Access to emergency medical treatment
 - Translation and interpretation services
 - Counselling and information on their rights and the services available
 - Assistance to have their interests taken into account during criminal proceedings
 - Access for children to education

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- General duty to take “due account” of the victim’s safety and protection needs
 - Provide necessary medical or other assistance to victims who do not have adequate resources
 - Assistance is not to be conditional on the victim’s willingness to act as a witness
 - Services are to be provided on a “consensual and informed basis”

Recovery and reflection period

- **Art 13** – a period of at least 30 days for those for whom there are reasonable grounds to believe they are victims of THB
- To enable them to recover and escape influence of traffickers and/or take informed decision on cooperating with the authorities
- They are entitled to assistance

Residence permit

- **Art 14** – duty to issue a renewable residence permit to foreign victims of THB, in one or other of two situations or both:
 - Where it is considered necessary owing to the victim's personal situation
 - Where it is necessary so that the victim can help the authorities in investigation or criminal proceedings
- See also: **EU Residence Permits Directive: 2004/81/EC**

Repatriation and return of victims

- Possible entitlement to refugee status or subsidiary protection
 - **UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION**: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (2006)
 - **Council Directive 2011/95/EU** of 13 December 2011 (“Qualification Directive”) , Art 15

The Cost of Human Trafficking

- ILO, *Profits and Poverty: the Economics of Forced Labour* (2014)
 - http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf
- “It is estimated that the total illegal profits obtained from the use of forced labour worldwide amount to US\$150.2 billion per year.” (p 13)

Costs for the Victims

- Unpaid earnings
- Medical, physical and psychological trauma
- Shelter and maintenance
- Rehabilitation
- Legal assistance for compensation claims (against the State and/or traffickers)
- Reintegration

Costs for the State

- Training of relevant professionals
 - Police
 - Border guards
 - Social workers
 - Medical staff
 - Judges and prosecutors
 - Consular staff

Costs for the State

- Assisting and helping trafficked people
 - Shelters
 - Medical, psychological and practical assistance
 - Interpretation and translation
 - Financial support for NGOs assisting trafficked people
 - Awareness-raising
 - Rehabilitation programmes
 - Repatriation

Costs for the State

- Criminal law
 - Investigation and prosecution
 - Police costs and court costs
 - Cost of maintaining convicted traffickers
 - Cost of law reform to address THB