

# news



Dear Reader

It has been a long time since you last received a newsletter from us. However, here we are again with news from Switzerland and neighbouring countries. This newsletter is dedicated to the experiences with protection programmes for women affected by trafficking, as described by several of our partner organisations. The experiences of existing witness protection programmes will be helpful in view of further work to be done in Switzerland, since they point out both, protection and security measures, as well as various problematic areas.

A comparison between the countries shows that it is clear that everywhere the law for foreign nationals has priority over penal law or the protection of victims. This is a highly problematic fact. It criminalizes victims of trafficking in women because of their illegal residence or illegal activity, instead of granting them protection and security. It is a further difficulty that in none of the countries featured in this newsletter unconditional, permanent residence is foreseen for women affected by trafficking. Only in Belgium can victims achieve permanent residence if their testimonies in court lead to the sentencing of traffickers. However, this practice of instrumentalising the women affected as witnesses to serve the judicial apparatus is very dubious.

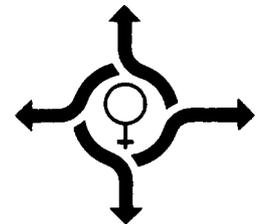
It can be observed that in all countries the legal definition of «trafficking in human beings» is reduced to trafficking for the purpose of prostitution. This means that the trafficking of domestic workers and marriage candidates is not taken account of in penal law.

There is a further difficulty relating to the discrepancy between the laws and their application: even if there are legal foundations for the protection of victims, as is the case in Germany or Austria, victims must be recognised as such in practice (e.g. by the police in a raid) in order to claim victim's rights. To this end, the police as well as the justice department must be sensitised to a great extent. This requires, among other measures, long-term information campaigns by specialised organisations that work with women affected by human trafficking.

In the Netherlands, conditions were established over a ten-year period that guarantee exemplary protection and security to victims of trafficking in women, since these measures were developed according to the needs of victims. However, even in the Netherlands, victims must return to their country of origin after any court proceedings.

All these experiences show that in no country the protection of victims has been realised in an optimum way, and that there are still gaps. This confirms our conviction that trafficking in women can only be confronted efficiently if the women affected are brought to the centre of attention. A prerequisite for this is secured and protected residence, so that women affected can be recognised as legal persons, who can therefore claim their human rights. On the basis of these reflections we will continue our work and our political involvement in Switzerland.

FIZ International Network  
Doro Winkler



**FIZ**

Information center  
for women from  
Asia, Africa, Latin  
America and  
Eastern Europe

# Trafficking in Women and Protection Programmes

## The Netherlands

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### Exemplary Regulations

When the Dutch Foundation against Trafficking in Women (STV) started in 1987, in most cases victims of trafficking were just deported as illegal aliens without any further investigation. Expulsion meant returning home with no money and very often with debts the women affected would never be able to pay off. At the same time, there was no guarantee that a return would avoid reprisals from the criminal network. That is why hardly any women ever pressed charges, and why traffickers were hardly ever convicted. Therefore the first campaigns undertaken by STV had the aim of refining the instruments for addressing trafficking in women at the level of legislation and litigation.

#### Improvement of the Legal Situation

Since August 1988, a special ruling was inserted in the Dutch Alien Code. This paragraph states that at the least suspicion of trafficking, a woman will be allowed three months' time to consider pressing charges. When she decides to do so, she is allowed to stay in The Netherlands until the entire court proceedings are completed. In 1993 this provision was extended to witnesses, e.g. illegal colleagues of women affected who are willing to testify.

The second aim of STV's programme was to sharpen the legal definition of «trafficking» to facilitate the prosecution of traffickers. In 1994, the relevant article

in the Dutch Criminal Code was amended and the maximum sentence for trafficking was raised.

Under the new law a person is guilty of trafficking in women if he or she «induces another person to prostitution by means of violence, threat of violence, abuse of authority or deceit, or undertakes any action which he or she knows, or could reasonably suspect, might bring the other into prostitution». Abuse of authority, or deceit, is assumed if the woman finds herself in a position which is not equivalent to the conditions under which an emancipated, independent prostitute in The Netherlands normally works. It is not legally relevant whether the women affected want to continue working as prostitutes under better circumstances or not. Additional to the new law there are special directives from the prosecutor general, which contain detailed instructions for the police on how to act in case of (suspicion of) trafficking and how to treat (possible) victims.

The third of STV's aims was to set up a system of victim support. Due to the fact that the women are entitled to temporary residence during the juridical proceedings, they have access to the Dutch social support system, including a safe shelter, social benefits, insurances, medical care, legal assistance, etc.

#### Problems

Although the measures described have brought about a real and important

improvement, there still are many bottlenecks. It's one thing to have a law, but to have it correctly and consistently implemented is yet another. Still many women are deported without any investigation.

However, even if there are court proceedings, once they are completed, the women affected still face deportation. Back home they are unprotected against reprisals, and they risk being rejected by society. At this moment, effective mechanisms for the compensation of victims, for the damage done to them, are still lacking.

Marjan Wijers  
Stichting tegen Vrouwenhandel (STV),  
Utrecht

# Germany

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## Collaboration between NGOs, Police and Justice

In recent years, the number of women affected by human trafficking has increased steadily. According to German criminal law, there is only the offence of «human trafficking», which exclusively concerns women and men who were lured to Germany under false pretences and, once here, forced into prostitution. In Germany, the police provide a classic type of witness protection. This relates to culprits who testify as crown witnesses (Mafia, terrorists etc.) and disclose important facts regarding the structures of organisations. These witnesses are mostly endangered because of their knowledge, with which they can incriminate other culprits.

The witnesses who testify against «human traffickers» in court, however, are victims of crime and therefore require support by advisory bodies. Additionally, they mostly have a very limited knowledge of the structures or of people involved in the trafficking organisations, and they are endangered to a great extent just because they are willing to testify.

Human trafficking is an act of violence that leads to unpredictable physical and psychological damage in victims. It intervenes gravely with their right to self-determination and often has traumatic effects. For these reasons, besides effective (police) protection, victims also need intensive support. This support must be provided by specially qualified advisory institutions, often NGOs. To this end, a good relationship of co-operation between the investigating authorities,

witness protection programmes and advisory institutions is indispensable.

### Models of Co-operation

It is on the basis of these facts that police detectives and women from advisory institutions have met. Together they developed a concept of co-operation for the protection and support of victims of human trafficking who act as witnesses. A working group named «trafficking in women» has been in existence since February 1997, meeting 3 to 4 times a year. This working group includes representatives of the relevant ministries and the German Federal Bureau of Investigation as well as representatives of advisory institutions contributing expert knowledge.

The working group introduced a process based on the division of tasks between the police and the advisory institutions (AI). According to the concept of co-operation, police detectives have to inform witness protectors and the AI if there is any suspicion of human trafficking, or if there are potential victims who act as witnesses. In this way the police witness protectors take on protection measures, such as data protection and escorting to court. The AIs are in charge of the social and psychological care of the victims acting as witnesses. Questions about housing are determined jointly. In most cases the accommodation is provided by women's shelters. This concept serves as a basis for future co-operation.

Even if such co-operation at first provokes conflicts due to different backgrounds and experiences of the different parties involved, they are nevertheless an important and indispensable precondition in the work against human trafficking and its success.

### Necessities

Finally, many measures necessary to solve existing problems are within the authority of the various Länder (counties) of the German Federal Republic. By now, some of the Länder have launched initiatives, such as granting temporary protection from deportation to victims of human trafficking.

The implementation of the concept of co-operation has progressed further in some Länder, while it is not even known in others. Difficulties frequently emerge in the process of co-operation, due to the different mandates and the agreements required. From the point of view of the witness, co-operation is successful in those cases where tasks are clearly separated. However, campaigns to raise awareness about the specific problems of women affected by trafficking and exchanges will continue to be necessary.

Christiane Howe  
Association against international sexual  
and racist exploitation (Agisra e.V.),  
Frankfurt am Main

# Trafficking in Women and Protection Programmes

## Austria

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### Victim Protection Institution

In January 1998 an intervention body for women affected by human trafficking was established as a part of LEFÖ (Women Emigrated from Latin America in Austria). Since its existence the programme has been a recognised establishment for the protection of victims. Our work includes social and psychological, as well as legal and health-related advice. LEFÖ arranges for the women to stay at a secretly kept «emergency apartment». In our function as an intervention body we are informed about women who have been arrested as prostitutes, and whom the authorities suspect to be «victims» of trafficking.

Besides the institution of our victims protection programme, there is, theoretically speaking, also a legal witness protection programme. Yet, so far its application has always been rejected as being too expensive.

#### Legal Context

In Austrian criminal law the definition of trafficking in women is included in the offence of «human trafficking» and is given when women in a country other than their country of origin are brought to prostitution.

Since the majority of women affected by trafficking are illegal migrants, the regulations of the law for foreign nationals (FrG) and their application are decisive for our work.

Under the FrG, the women cannot obtain legal residence in Austria. They have either no visa at all, or entered the

country on a tourist visa, which prohibits them from working. Consequently they violate immigration and labour laws if they start working.

According to the FrG and under certain conditions the authorities can refrain from detaining and deporting women. This practice enables women to find shelter in our «emergency apartment», even though they still lack legal residence status in Austria. The unsecured residence status often causes further traumatising of the women.

The FrG foresees temporary residence for humanitarian reasons. This particularly applies to women who act as witnesses in proceedings against traffickers in women, as well as to victims of human trafficking who want to claim their civil rights. However, this is a legal «can regulation», i.e. the authorities can decide on this temporary residence at their own discretion.

The FrG is given priority over the penal law when applying the law, and in practice, women affected by trafficking are often still deported and not treated as victims of crime.

#### Problems

The law doesn't foresee any work permits or social benefits for women affected by trafficking. Moreover there is no possibility for the women we support to have health insurance, even though medical treatment is often necessary. We further criticize the fact that the legal definition of «human trafficking» is limited to trafficking with the aim of prostitution.

The trafficking of domestic workers (domestic staff for diplomats, au-pairs, etc.), catering staff and marriage candidates is not reflected in penal law.

Our experience in the last two years confirms our belief that the structures of trafficking in women can only be confronted by placing the women affected at the centre of attention, irrespective of the question of whether they are «useful» as witnesses or not. This means that women who are affected by trafficking, and who would like to remain in Austria, must be given permanent residence and work permits. It has to be recognised that they have become the «victims» of serious crime. As long as the FrG has priority over penal law, women affected by trafficking will not be recognised as such.

Evelyn Probst and Eva Kaufmann  
LEFÖ Intervention Body for Women  
Affected by Human Trafficking, Vienna

# Belgium

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## Residence of Women Affected

In Belgium, a parliamentary commission of enquiry was set up in 1992, in order to take measures against international trafficking in women. In 1995, the work of this commission resulted in an alteration of the law with regard to human trafficking and child pornography.

The new 1995 law concerning human trafficking with the aim of prostitution is defined under penal law and foresees imprisonment of one to five years. If force or violence is used against a person who is particularly exploitable (affected by human trafficking), traffickers can be sentenced to 10 to 15 years of imprisonment. In practice, however, sentences are usually between two and five years.

These sentences, which are far too low, do not exploit the full range of legal possibilities, and continue to make human trafficking a safe and profitable business in Belgium.

### Residence Permits

Apart from the effected changes in penal law, Belgian legislation grants residence to those victims who are willing to testify against traffickers. In this way persons affected by human trafficking are granted residence if they press charges against traffickers or exploiters and co-operate in court proceedings.

As a first step, women affected are given a residence permit of 45 days. During this period of consideration, the victim can decide whether she wants to press

charges or not. If she decides to do so, she is granted residence for three months, which is extended until the proceedings are completed.

If the actual help of a victim leads to the sentencing of a trafficker in human beings, the victim can obtain permanent residence in Belgium. During this whole period the person affected is also given a work permit.

At the moment a so-called «stop procedure» is being discussed; i.e. even if a legal investigation of human trafficking is suspended on the basis of technical reasons, the victim would be allowed to stay in Belgium permanently, as long as the victim can prove that he or she is integrated in society.

Further measures comprise sensitisation of the various departments of public prosecution, as well as informing the police with regard to the complex issues of human trafficking. Additionally, multi-disciplinary co-operation within several authorities has been established, in order to co-ordinate the proceedings in cases of human trafficking.

Bruno Moens  
Payoke, Antwerpen

# Trafficking in Women

## Switzerland

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### Situation Today

On 15th March 2000, FIZ handed over a petition to the Federal Council. This petition requested a protection programme for women affected by human trafficking and was supported by more than 7500 individuals and organisations.

On the basis of our experience as an advisory body for women affected by trafficking, we wanted this petition to draw attention to the fact that an improvement of the situation of the women affected is urgently needed. Today, victims of trafficking in Switzerland are criminalized and deported because of their «illegal residency». They are treated as culprits, instead of offering them protection and security. As a result of our petition, the Federal Council created a working group, with the purpose of investigating whether the penal code needs to be altered as far as trafficking in women is concerned. Thus one of our demands has been made an issue, namely, that trafficking in women is not only considered as a legal offence if aimed at prostitution, but also if aimed at marriage, domestic work, or other forms of forced labour. The working group was also set up to investigate which measures are necessary to better protect victims of trafficking, and in particular if any specific victim support bodies need to be created. This demand was a further part of our petition, since women affected by trafficking are confronted with specific experiences of violence and exploitation, and need professional support.

### Hearing about Human Trafficking in Berne

The working group organised several hearings in order to listen to the experiences of investigation authorities, police and NGOs.

FIZ was among the NGOs invited and reported on the existing obstacles in Switzerland in the combating of trafficking in women. Our report was based on the experiences of many years of providing advice for women affected, and on the investigation of the socio-political causes and consequences of trafficking in women. At the same time we used some examples to point out the gaps and shortcomings of the existing laws and every-day practice.

It must be criticised that the questions asked by the members of the working group frequently related to prevention programmes in the countries of origin and the possibilities for return. Undoubtedly these are important aspects in the fight against trafficking in women. In the first place, however, Switzerland needs to realise improvements on its own territory. The problems associated with the trafficking in women cannot be tackled by taking measures in the countries of origin alone. The conditions in Switzerland, which form the basis for trafficking in women, must also be taken into consideration. The demand for cheap labour in the sex business or in the domestic work area, but also the restrictive migration

policy, which often prohibits women from achieving legal residence and work status are a «fertile ground» for trafficking.

Equally, it must be observed that a majority of the profiteers and traffickers are here in Switzerland and have hardly been made responsible so far.

FIZ will keep pressuring for constructive solutions to improve the situation of women affected by trafficking.

Doro Winkler  
FIZ

### Masthead

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