

# **Legislation and Practice in the Reconceptualized Approach to Human Trafficking through the Examples of the Council of Europe, Hungary and the Netherlands**

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## **Executive Summary**

The complex issue of trafficking in human beings has aspects in gender discrimination, income inequality, minority issues, illegal migration, corruption, the global economic downturn, and so on. This issue has worsened so significantly that by the early 2000s it became an elemental part of human rights activists' discussions.

Understanding the complexity of human trafficking and translating it to a comprehensive legal definition were lengthy procedures. As by now, the international standard conceptualizes human trafficking by a human rights approach, by emphasizing that trafficking in human beings is a violation of basic human rights, such as dignity and personal liberty. Since this standard has been introduced by the Council of Europe, this jurisdiction is an essential element of this thesis, which will be compared with the Hungarian and the Dutch legislation and practices in law enforcement and victim protection.

By presenting these three jurisdictions' legislation and practices, this thesis aims to point out how state authorities and the civil sector could be more efficient in combatting human trafficking. In order to have a deep understanding on law enforcement and victim protection, the research for this thesis included interviews with Hungarian and Dutch policemen and social workers specialized in the field of human trafficking.

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## Introduction

In 2005, the drafting committee of the Council of Europe has adopted an innovative convention against trafficking in human beings (THB). Contrary to the previous treaties, the Convention on Action against Trafficking in Human Beings aims to address the issue from a human rights perspective. As it is stated in the Preamble, “*trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being*”.<sup>1</sup> The Convention is first of its kind among international treaties that it recognizes the significance of victims’ treatment in tackling the human trafficking crime. It stresses that without effective prevention measures, victim identification system, rehabilitation and reintegration programs, this complex crime is impossible to combat.

Considering the fight against THB, the Council of Europe is the firmest and most advanced regional human rights institution in the region. Due to its landmark innovations, the Convention on Action against Trafficking in Human Beings gives basis for the EU anti-trafficking policies and legislation that are implemented in the domestic level. Not only the Convention, but the European Court of Human Rights is an exemplary institution as well since its judgment on *Rantsev v. Cyprus and Russia*<sup>2</sup>, where the Court linked Article 4 of the European Convention on Human Rights (the ECHR) to human trafficking and declared specific state obligations under this Article in order to combat the crime. Binding states to secure effective steps to combat THB is absolutely essential because the legal language is often too vague and therefore unable to express the phenomenon of human trafficking rightly. The first jurisdiction this study presents is the Council of Europe, with special focus on its THB Convention, which was chosen because of its leading role in the international anti-

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<sup>1</sup> Convention on Action against Trafficking in Human Beings, CETS No.: 197, Warsaw, May 16, 2005, Preamble, Available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm> (Retrieved on November 6, 2013)

<sup>2</sup> Case of *Rantsev v. Cyprus and Russia*, European Court of Human Rights, January 7, 2010, No. 25965/04

trafficking agenda. As it is stated in the second chapter, *written law* and its *enforcement* obviously have to be differentiated in evaluating the efficiency of combating THB, and even if the Convention is a thoughtful piece of legislation, it lacks a firm enforcement policy.

I aim to compare the Council of Europe's standard with two European countries that are highly affected by the issues of human trafficking. I will analyze it through the Dutch and the Hungarian jurisdictions by only focusing on sexual exploitation (leaving out other types of human trafficking, as forced labour, the removal of organs, slavery and servitude). The analysis of the two states' legislation is presented in the first chapter, while the second chapter looks into the practical functions and malfunctions of the practice, thus the law enforcement and measures of victim protection. I had the opportunity to make interviews with the Hungarian and the Dutch policemen of the special human trafficking departments, and the first-hand information from them were absolutely helpful to understand the complex human trafficking related issues of these countries.

Mostly because of its the liberal law on prostitution, the Netherlands is one of the most common destination countries of human trafficking in Europe. Due to the international human rights community's attention on THB, the Netherlands became spotlighted by human rights activists from all over the world. Even if the Dutch parliament ratified the most important international and regional documents on human trafficking and made significant changes in legislation and policies, these steps are not sufficient yet to tackle this complex crime, which has aspects in gender and income inequality, corruption, migration, bureaucracy, lack of expertise and so on.

The third chosen jurisdiction is Hungary, which also has a unique position in the given issue. Located at the border of the Schengen area, Hungary is a transit and an origin country as well. Victims are very often trafficked to Hungary from the Eastern neighbor countries since transportation is quicker and easier from Hungary to Western Europe due to

the elimination of border controls within the Schengen zone.<sup>3</sup> Hungary has signed and finally ratified the Council of Europe Convention in April, 2013. Lagging behind the international and EU standards on trafficking for a long time was mainly caused by the improper human trafficking provision of the old, 1978 Criminal Code of Hungary. The new criminal code has been enforced in July, 2013 and the current human trafficking provision was drafted according to the latest EU requirements. Since there have been no cases decided on the new human trafficking provision, it is difficult and only questionable how the new law will work in practice.

Analysis of the cooperation between the two states will be an elemental part of the thesis. Due to the nature of the crime of human trafficking, it cannot be tackled by an individual effort but needs rather a strong international cooperation. The European regional agenda obliges states to join their governmental and civil society forces, to share information, technology and expertise to effectively combat trafficking in human beings.<sup>4</sup> However, when such cooperation is not successful, states tend to blame each other. On the one hand, Hungary often argues that the Netherlands legalized prostitution, and therefore it has the duty to prosecute perpetrators and protect victims. On the other hand, Dutch authorities often blame Hungary for not making significant, effective steps to prevent the crime, thus not setting up an effective agenda for the protection of people at risk of trafficking.

In this thesis I aim to look into state policies and analyze the reasons why international legislative requirements are or are not implemented in the domestic law. Are these state policies simply dependent on financial sources, are they driven by the interest of

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<sup>3</sup> United Nations Office on Drugs and Crime: *Drugs and Crime Trends in Europe and Beyond*, Vienna, April 29, 2004, p.13, Available at: [www.unodc.org/pdf/factsheets/unodc\\_factsheet\\_eu\\_29-04-2004.pdf](http://www.unodc.org/pdf/factsheets/unodc_factsheet_eu_29-04-2004.pdf) (Retrieved on November 6, 2013)

<sup>4</sup> Convention on Action against Trafficking in Human Beings, Chapter VI. and the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing the Council Framework Decision 2002/629/JHA, Para. 5, Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> (Retrieved on November 7, 2013)

key players, by negligence or by hypocrisy? Is there a common interest in the policies of Hungary and the Netherlands? In order to reveal the human rights politics of anti-trafficking agendas, in the second chapter I will determine the key players, their mission and work and thereby identify the main reasons of the ongoing and expanding crime of human trafficking in Hungary and the Netherlands.

In order to understand the complete picture of human trafficking politics of a state is very complex, involving not only the “3 P-s” (Prosecution, Protection, Prevention) but other aspects indirectly connected to human trafficking, as the state’s educational agenda, justice system, child care, minority policies, migration policies and so on. Due to the limited space and capacity, this paper will only focus on prosecution of perpetrators, and the relevant prevention and victim protection strategies of the two states.

## Methodology

During my fieldwork in 2012 in the Netherlands, formal interviews and personal talks with sex workers, police and social workers made me realize the multiple ways Eastern European women are disadvantaged and vulnerable in the red light districts.<sup>5</sup> As a field worker of *Prostitutie en Gezondheidscentrum* I interviewed Hungarian sex workers in the Amsterdam Red Light District. The research I was part of aimed to find out how social workers and the police could ensure and improve the safety of sex workers. At *Not for Sale*, I was part of a reintegration project whereby victims of human trafficking right after they

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<sup>5</sup> I only had the chance to talk to female victims, but this does not mean that male victims of sexual exploitation are not similarly disadvantaged. Quite the opposite: there is rising attention on how cases of male victims are underreported. See for example: Hilton, A.: *'I thought it could never happen to boys'.* *Sexual Abuse and Exploitation of Boys in Cambodia*. An Exploratory Study – January 2008. This research project was carried out on behalf of Social Services of Cambodia (SSC) for HAGAR and funded by World Vision Canada and World Vision Cambodia. Bogin, G.: Out of the Darkness. Male Adolescents and the Experience of Sexual Victimization. In: *School Social Work Journal*. Vol. 30 (2), Spring 2006

escaped from the influence of their traffickers were taught various skills for their rehabilitation and social reintegration.

For understanding the history of human trafficking, different political responses on a national and international level, I use primary and secondary sources from the libraries of CEU and the Peace Palace in The Hague. NGO and INGO<sup>6</sup> reports give me insight into the non-governmental objectives, obstacles and their critical views on governmental policies.

The core texts for this thesis are the Convention on Action against Trafficking in Human Beings and provisions related to human trafficking in the Dutch and the Hungarian Criminal Codes. Comparing these texts gives an insight into the scope of state action on combating human trafficking. The new Hungarian Criminal Code was enforced recently in July, 2013, which gives me the opportunity to compare the old and new provisions on human trafficking and analyze how the changes reflect to the international requirements and whether it fulfills the vision of the Convention. For the better understanding of the new Hungarian definition on trafficking in human beings, I had the chance to attend an event organized by the National Institute of Criminology where one of the drafters of new Criminal Code presented the reasons and rationale of the changes in the human trafficking provision.<sup>7</sup>

In order to gain a better understanding, it was important to make interviews with people working directly with victims and with the specialized police forces. I have a deeper knowledge of the Hungarian non-governmental sector's policies through *MONA Foundation for the Women of Hungary*, the *Hungarian Helsinki Committee* and the *Hungarian Baptist Aid*. I gained insight into the Dutch civil sector's work through fieldwork experiences in Amsterdam at *Not For Sale* and *Prostitutie en Gezondheidscentrum*. Besides understanding

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<sup>6</sup> An International Nongovernmental Organization (as the International Organization for Migration, Amnesty International or Not For Sale) generally has the same mission as an NGO but due to its international character it only focuses on topics that affects the international community and therefore has different strategies in realizing its mission.

<sup>7</sup> The event "Az emberkereskedelem elleni fellépés aktuális kérdései, különös tekintettel az áldozatokra" was held on November 30, 2012 at the National Institute of Criminology, Budapest.



the objectives and obstacles of the civil society, it is crucial to get to know the police forces' work in order to get the full picture of the anti-trafficking practices. For this purpose, I made interviews with policemen at the Hungarian National Bureau of Investigation in Budapest and at the Commerciele Zedenpolitie in The Hague. These interviews gave me an insight into the objectives and obstacles of the police, their scope of activity and the international cooperation between police forces.

Unfortunately, interviewing victims is to be left out from the methodology due to the difficulties visitors of shelter houses have to face. Most of those civil and governmental organs that operate shelter houses for victims of human trafficking keep the locations secret and obviously, strongly protect inhabitants. Even though interviews with victims would have given me a deeper understanding on the issue, this had to be omitted. Instead, I draw conclusions on concerns and opportunities of victims by work experiences at NGOs and NGO reports.

# **Chapter I. International and Regional Legal Definitions**

This chapter gives insight into the international, regional and domestic legal definitions on human trafficking. It is interesting to see how the current standard definition evolved, beginning in 2000 with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the UN THB Protocol)<sup>8</sup>, which is the first attempt for an international standard-setting. The reason why it took a relatively long time to draft a comprehensive law, which actually reflects the crime is, firstly because human trafficking is not a single act but rather a *process*, secondly because its acts and means are constantly *changing* according to new methods and trends and, thirdly because victims often *do not press charges* against their perpetrators. These factors make procedures complicated and often slow, which caused the legislative shortcomings as well. Even if only the Council of Europe's jurisdiction is relevant for this thesis among the regional and international definitions, it is important to understand the process of development of the legal definition on human trafficking, and therefore the UN THB Protocol and the 2011/36 EU Directive will be shortly presented as well.

## **1.1 The UN THB Protocol**

In order to better understand why the Convention on Action against Trafficking in Human Beings is important in the human trafficking discourse, the UN THB Protocol has to be presented. This document is crucial because currently all the other human trafficking legal instruments base their definitions on the UN THB Protocol's definition, phrasing it by the

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<sup>8</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime adopted by General Assembly resolution 55/25, 2000, Available at: <http://www.osce.org/odihr/19223> (Retrieved on November 6, 2013)

*means, actions* and the *purpose* of human trafficking. Moreover, it set the so-called ‘3P obligations’ of Member States, focusing on Prosecution, Protection and Prevention.

The UN THB Protocol is the first contemporary international treaty that sets the scope of human trafficking. It defines the crime by certain means, actions and the purpose. Accordingly, actions might be “*recruitment, transportation, transfer, harbouring or receipt of persons*”, by means of “*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*”.<sup>9</sup> The purpose of human trafficking is exploitation, which is minimum “*the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*”.<sup>10</sup> Consent of a person is irrelevant if any of the means listed above are used.<sup>11</sup> In case of victims younger than eighteen years old, means are irrelevant if actions for the purpose of exploitation are proved.<sup>12</sup>

Even if this instrument sets harsh punishment for criminals acting against children, and thus it recognizes the vulnerability of children, current improvements in the international human rights discourse make its scope outdated. The “disability movement” drew attention to the vulnerable position of persons with disabilities, including their defenselessness against sexual exploitation.<sup>13</sup> According to this development of international law, the means of trafficking should be irrelevant in cases affecting persons with disabilities as well. By now, there has been no international, regional or domestic law on human trafficking that

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<sup>9</sup> *Ibid.* Article 3 (a)

<sup>10</sup> *Ibid.* Article 3 (a)

<sup>11</sup> *Ibid.* Article 3 (b)

<sup>12</sup> *Ibid.* Article 3 (c, d)

<sup>13</sup> United Nations Convention on the Rights of Persons with Disabilities (the CRPD) adopted by General Assembly Resolution 61/106 on December 13, 2006, Article 16, Available at: <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (Retrieved on November 6, 2013)

recognizes the vulnerability of this group and firmly sets a state obligation to protect them from sexual exploitation.

According to Article 4, the UN THB Protocol only applies to offenses committed by an organized criminal group, which have a transnational nature. This provision had to be amended in order to clarify that human trafficking that takes place *within borders* shall also be prosecuted. Among other organizations, a UN Report also drew attention to the growing issue of domestic trafficking since the middle of the last decade.<sup>14</sup> As the Report claims, domestic trafficking is an especially widespread crime in the Netherlands. Article 4 is furthermore incomprehensive because it narrows down its application to human trafficking committed by an organized criminal group. As the UN Report points it out, criminals involved in sexual exploitation, especially criminals from Eastern Europe and the Balkans are not involved in big, organized groups.<sup>15</sup> Victims are often recruited by their own families, friends, or husbands mostly in poor, rural areas. In these cases it is difficult to prove the involvement of an organized criminal group and thus encumber criminal procedures.

In a contrary point of view, the vision of Article 4 does not narrow down the definition of human trafficking or hinder the work of domestic forces. Anne Gallagher, an expert on international law on human trafficking argues that this interpretation “fails to capture accurately the nature of State Party obligations under the instrument as a whole”.<sup>16</sup> The “instrument as a whole” is the entire UN Convention against Transnational Organized Crime and the Protocols Thereto<sup>17</sup> (the UN Convention), where the Protocols focus on specific areas of crimes. According to Gallagher, the UN Convention aims for domestic

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<sup>14</sup> Sandeep, C. (ed.): Inside Europe: human trafficking and organized crime on the European continent. In: *Forum on Crime and Society*. Vol. 6 (1,2), 2007, UN Office on Drugs and Crime, p. 70

<sup>15</sup> *Ibid.* pp.: 72-74

<sup>16</sup> Gallagher, A.: *The International Law of Human Trafficking*. Cambridge University Press. New York, 2010, p.79

<sup>17</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto adopted by General Assembly Resolution 55/25, November 15, 2000, Available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (Retrieved on November 26, 2013)

legislation to have appropriate provisions on human trafficking, regardless of the crime's transnational nature, whether it is committed by an organized criminal group or not.

As I aim to point out throughout this paper, provisions on human trafficking cannot afford to be vague because the phenomena of human trafficking is ambiguous enough and if the legal wording is not specific, law enforcement will not be effective. The particular Articles of the UN Convention imply that the Convention applies to offences that “are transnational in nature and involve an organized criminal group”.<sup>18</sup> Even if the instrument as a whole fights all kinds of human trafficking, the Articles narrow down the application of the treaty and therefore it is doubtful that the document as a whole can be interpreted otherwise.

Besides Article 4, the UN THB Protocol narrows its scope down by its particular attention on women and children. The special vulnerability of women and children is stated in the original title, in its Preamble, in the statement of purpose and in the obligatory measures on protection of victims. Acting in light of the context of the Protocol, State Parties might take preventive and protective measures by focusing especially on women and children, which is probably advantageous for the targeted group, but certainly unfavorable for men. Most of the registered victims are surely women and children and due to gender discrimination and their physical vulnerability, they need special attention from the authorities and experts. However, it is omitted from the discourse of the Protocol that male victims of sexual exploitation need to face certain issues and are differently traumatized than women and thus they also need to be treated by specific measures. There is a growing attention on male victims of sexual exploitation in the discourse of human trafficking. It is now recognized that male victims are unfairly underdocumented and that there is a great lack of expertise on the protection of male victims of sexual exploitation.<sup>19</sup>

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<sup>18</sup> *Ibid.*, Article 3

<sup>19</sup> See for example: Hilton, A.: *'I thought it could never happen to boys'.* *Sexual Abuse and Exploitation of Boys in Cambodia.* An Exploratory Study – January 2008. This research project was carried out on behalf of Social Services of Cambodia (SSC) for HAGAR and funded by World Vision Canada and World Vision Cambodia.

The UN THB Protocol is a significant contemporary international document because it provides a basis for understanding the complexity of human trafficking by the action-means-purpose factors. “An important aspect of this definition is an understanding of trafficking as a process comprising a number of interrelated actions rather than a single act at a given point in time.”<sup>20</sup> It focuses on crime prevention and requires appropriate criminal law from State Parties. It is however one-sided in the sense that it puts too much emphasis on crime prevention at the expense of victim protection. As Chapter II of the UN THB Protocol requires, victims’ rights are protected on a basic level. Accordingly, State Parties are required to protect the privacy and identity of victims, to provide information on legal proceedings and assistance to these. However, the Protocol does not have a strong, unequivocal provision on state obligation to assist victims in their recovery. It only requires states to “consider implementing” measures for victims’ recovery. Protection of victims from revictimization should be an elemental part in the anti-trafficking agenda. If victims are not protected after the prosecution period, there is a great chance of being exploited again since their social disadvantages remain or even grow worse.

As the previous Special Rapporteur on Violence against Women, Ms. Coomaraswamy stated, the UN THB Protocol stays within the context of crime control, while not paying enough attention on human rights. The Rapporteur pessimistically noted that this is “a failure of the international human rights community to fulfil its commitment to protect the human rights of women”.<sup>21</sup> These shortcomings were aimed to be corrected by the drafting

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or Bogin, G.: Out of the Darkness. Male Adolescents and the Experience of Sexual Victimization. In: *School Social Work Journal*. Vol. 30 (2), Spring 2006

<sup>20</sup>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*, HCR/GIP/06/07, April 7, 2006, Para.10, Available at: <http://www.unhcr.org/443b626b2.html> (Retrieved on November 26, 2013)

<sup>21</sup>*Integration of the human rights of women and the gender perspective*. Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44 on February 29, 2000. E/CN.4/2000/68, p. 7. Available at:

committee of the Convention on Action against Trafficking in Human Beings by recognizing the human rights aspects of the crime as the protection of victims.

## **1.2 Council of Europe Convention on Action against Trafficking in Human Beings**

The 2005 Council of Europe Convention on Action against Trafficking in Human Beings<sup>22</sup> (the Convention) has brought a significant change in the human trafficking discourse. It was adopted only five years after the UN THB Protocol. The legislative process, by the establishment of an Ad Hoc Committee on Action against Trafficking in Human Beings (CAHTEH), already started in 2003 when the UN THB Protocol just entered into force. The attempt to reestablish the anti-trafficking standard within such a short time drew criticism towards the UN THB Protocol.

In order to revise the unclear scope of the UN THB Protocol, the Convention explicitly states where it amends or clarifies the definitions of the UN document. Firstly, in Article 2 the Convention states that it applies to all forms of trafficking in human beings, “whether national or transnational”, connected or not with organized crime. The drafters aimed to make it clear that the Convention has a wider scope than the UN THB Protocol and that it offers a stronger protection to victims.<sup>23</sup>

Secondly, the Convention emphasizes the importance of equal treatment of victims by its open non-discrimination principle, obliging State Parties to “protect and promote the rights of victims” regardless of “sex, race, colour, language, religion, political or other

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[http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/\\$FILE/G0011334.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/$FILE/G0011334.pdf)  
(Retrieved on November 7, 2013)

<sup>22</sup> Convention on Action against Trafficking in Human Beings, CETS No.: 197., Warsaw, May 16, 2005, Available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm> (Retrieved on November 6, 2013)

<sup>23</sup> *Ibid.* Para.61 (Explanatory Report)

opinion, national or social origin, association with a national minority, property, birth or other status”.<sup>24</sup>

The Convention also stresses the different needs of victims, whether women, men or children, while gender equality and child-specific approach remains to be a crucial obligation for State Parties.<sup>25</sup> On the contrary, the UN THB Protocol only emphasizes that State Parties shall take into account the “age, gender and special needs of victims” in the assistance and protection of victims.<sup>26</sup> Moreover, as the Explanatory Report stresses, the Convention does not make a distinction between legally or illegally present victims, which is a step closer to the below explained non-punishment principle.<sup>27</sup>

### **1.2.1 Victims’ protection**

Compared to the UN THB Protocol, the language of the Convention is more unequivocal and stricter towards Member States’ duties. By the ratification of the Convention, states not only have to “consider implementing” measures to protect the rights of the victims<sup>28</sup> or protect the privacy of victims “to the extent possible under its domestic law”<sup>29</sup> but are obliged to do, without abusing their rights as sovereign states. Chapter III of the Convention lists State Parties’ duties towards victims, which has a considerably firmer language than the equivalent sections of the UN THB Protocol.<sup>30</sup>

The drafters of the Convention aimed to amend the UN THB Protocol and they “intended to enhance the protection afforded by it and develop the standards contained

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<sup>24</sup>*Ibid.* Article 3

<sup>25</sup>*Ibid.* Para. 53 (Explanatory Report)

<sup>26</sup> UN THB Protocol, Article 6

<sup>27</sup> Convention on Action against Trafficking in Human Beings, Para.62 (Explanatory Report)

<sup>28</sup> UN THB Protocol, Article 6(3)

<sup>29</sup> *Ibid.* Article 6(1)

<sup>30</sup> Chapter III of the Convention on Action against Trafficking in Human Beings and Chapter II of the UN THB Protocol



therein”.<sup>31</sup> The first essential requirement from Member States is the development of a process that enables state authorities and experts to *identify* victims of human trafficking. The identification process is crucial to be taught for those who most probably make contact with victims, such as border authorities, asylum authorities and the police. Since previous human rights documents did not oblige Member States to develop such identification approach, this provision is regarded to be a landmark development in human trafficking law. Gallagher claims that it is the most important innovation of the Convention regarding victim protection, which “explicitly acknowledges that correct identification of victims is essential to the provision of protection and assistance, and that failure to correctly identify a victim will likely lead to a denial of that person’s rights as well as problems in the prosecution process.”<sup>32</sup> Obviously, if the authorities fail to identify the victim, s/he remains to be abused by the traffickers. In other cases, victims are detained but their statuses are not identified by the authorities. This is a common bad practice in asylum procedures partly because of the lack of gender-specific approaches in EU Member States’ asylum offices that burdens victims of gender-related crimes as human trafficking, domestic violence or female genital mutilation (FGM).<sup>33</sup> If immigration authorities lack the expertise to recognize signs of human trafficking and the victim is silent about it, s/he will not get appropriate mental and physical help and moreover, due to the victim’s illegal activities, s/he might be prosecuted as well.

Protection of victims’ *privacy* is the second essential duty of Member States. The Convention obliges Member States to protect the private life and personal data of victims, to ensure that the identity of a child victim is not publicly known and to consider establishing measures encouraging the media to protect privacy of victims. In contrary to the language of

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<sup>31</sup> Convention on Action against Trafficking in Human Beings, Article 39

<sup>32</sup> Gallagher, A. (2010): p.116

<sup>33</sup> Ali, C. & Querton, C. & Souldard, E.: *Gender-related asylum claims in Europe: Comparative analysis of law, policies and practice focusing on women in nine EU Member States*. Partners: Comision Espanola de Ayuda al Refugiado, France terre d’asile, Asylum Aid, Consiglio Italiano per i Rifugiati, Hungarian Helsinki Committee, May 2012, pp.:104-158

Article 6(1) of the UN THB Protocol, the Convention does not (explicitly) allow Member States to tailor the protection of victims' privacy to the domestic law but bound them to the provisions of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.<sup>34</sup>

After identifying victims, State Parties are required to assist them in their physical, psychological and social recovery. Measures taken for victims' *recovery* shall ensure the standards of living, medication, translation, counseling, legal assistance and education for children. The Convention notes that measures for recovery cannot be dependent on the victim's willingness to act as a witness.<sup>35</sup> This is an important improvement in the human trafficking discourse, since victims' unwillingness to cooperate in the prosecution process is a prevalent phenomenon due to fear or due to emotional connections they feel for their traffickers. Therefore, in order to make the victim cooperate with the authorities, s/he might need professional mental and physical help first. State Parties shall provide at least 30 days "reflection and recovery period" which should be enough for the victim to overcome the influence of criminals and make a decision whether to cooperate with the authorities or not. If it is considered necessary, the authorities shall issue residence permits to victims. State Parties are required to return victims to their home countries "with due regard for the rights, safety and dignity of that person".<sup>36</sup> Article 16 moreover obliges State Parties to take steps for the economic and social recovery of victims, which includes their reintegration into the labour market or educational programs whereby victims can be protected from revictimization.

Finally, the Convention is the first instrument that explicitly sets the *non-punishment principle* for victims which prohibit states to punish victims as long as they are compelled to

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<sup>34</sup> Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, CETS No.:108, Strasbourg, January 28, 1981, Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm> (Retrieved on November 7, 2013)

<sup>35</sup> Convention on Action against Trafficking in Human Beings. Article 12(6)

<sup>36</sup> *Ibid.* Article 16(1)

commit a crime.<sup>37</sup> Reading the Article together with the Explanatory Report, the Convention obliges states to provide “substantive criminal or procedural criminal law provision, or any other measure, allowing for the possibility of not punishing victims [...] in accordance with the basic principles of every national legal system”.<sup>38</sup>

According to Gallagher’s interpretation, the provision is weak due to its limited scope. For example, since Member States only have to avoid punishment, they may still detain and prosecute victims. Furthermore, states shall “provide the possibility” of non-punishment according the basic principles of their criminal systems, which lessens the possibility of implementation of the provision. As Gallagher argues, the weakness of the provision basically allows the continuation of prosecution and punishment of victims of human trafficking, mostly because of their illegal status or their involvement in the sex industry or other crimes. “Until this point, no international or regional legal agreement had acknowledged this reality”, that victims of human trafficking are frequently detained and prosecuted by states – writes Gallagher.<sup>39</sup> As it will be presented below, a year after Gallagher’s book was published, the EU Directive 2011/36 clarifies the legislative shortcomings Gallagher noted.

While the UN THB Protocol aims to focus on women and children, the Convention emphasizes the *protection of men* and extends the *special measures for the protection of children* as well. As it is written in the Explanatory Report, measures taken by Member States has to be approached by bearing in mind the special needs of women, men and children while also taking into account gender equality. Gender equality means “accepting and valuing equally the complementarity of women and men and the diverse roles they play in society”<sup>40</sup>, emphasizing that gender difference is not what the Convention aims to combat.

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<sup>37</sup> *Ibid.* Article 26

<sup>38</sup> *Ibid.* Para. 274 (Explanatory Report)

<sup>39</sup> Gallagher, A. (2010): p. 118

<sup>40</sup> Convention on Action against Trafficking in Human Beings Para. 54 (Explanatory Report)

It is an important step in the human trafficking discourse because there are more and more studies revealing male survivors of human trafficking. As the Dutch National Rapporteur writes, the growth of the number of male victims of THB is striking: “the number of reported victims of human trafficking rose sharply between 2007 and 2011 (from 716 to 1,222), and the proportion of male victims actually trebled (from 7% to 19%)”.<sup>41</sup>

Due to deeply rooted social norms on gender roles, male victims tend to feel extremely ashamed about their experiences and perhaps admitting these experiences are more difficult for male than female victims. The abusive situations male victims are forced into oppose societies’ view on male characteristics. Generally, vulnerable men can be seen with disdain, scorn or ridicule in many societies. Moreover, male victims can be accused of homosexual acts which are in most countries of the world socially not accepted (even if the legislation is liberal on this matter). It is important that State Parties take that into consideration that men (even if they might less likely become victims) may have serious difficulties in processing the trauma and need special assistance in it.

Due to their physical and psychological vulnerability, children also need to receive special protection and assistance. The Convention, in comparison with the UN THB Protocol, has a special attention on child victims. As long as the victim’s age is uncertain but is presumed to be a child, the victim shall be regarded as a child and all the specific measures should be applied accordingly. If the victim is identified as an unaccompanied minor, he or she needs to be provided with a representative who acts in the best interest of the child. Important to note, that the protection of the rights of child victims depends on an effective identification system and that states should establish special measures for the identification of child victims.

Firstly, State Parties are required to provide education for child victims. This obligation has a great importance because due to the lengthy criminal proceedings of these

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<sup>41</sup> Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children: *Trafficking in Human Beings: Visible and Invisible. A quantitative report 2007-2011*. The Hague: BNRM, 2013, p. 108,

cases, children may stay in various protection or detention centers for months. Secondly, since a child is vulnerable even within the family environment, returning a child victim to his family can only be concluded after the detailed scrutiny of the child's case and the best interest of the child. For similar reasons, children's privacy and private information shall be protected with additional measures.<sup>42</sup>

### 1.2.2 Crime prevention

The innovative and detailed sections on victim protection of the Convention are not at the expense of sections on crime prevention.<sup>43</sup> Recognizing the procedural difficulties state authorities also have to face with during human trafficking cases, the crime prevention provisions of the Convention make sure that "criminal justice authorities are given the best possible chance to secure prosecutions and convictions through the cooperation of victims".<sup>44</sup>

Article 19 is a particularly innovative provision, which criminalizes those who *knowingly use the services of a victim of human trafficking*. But how do investigators trace and prove this act? How wide the scope of this article is? Are for example chocolate consumers eating the products of exploited persons punishable under this law? Even the Explanatory Report leaves this provision wide, basically making it possible for Member States to punish a consumer of exploited workers' products, if the consumer's knowledge on the victimhood is provable. Obviously, in the reality of investigating procedures this is hardly feasible. The essence and realistic innovation of this provision is that it targets brothel owners, making them responsible for their employees. The owner of the business under this provision can be liable for criminal offense if he knowingly employs trafficked persons. This

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<sup>42</sup>Convention on Action against Trafficking in Human Beings, Para. 137-142 (Explanatory Report)

<sup>43</sup> *Ibid.* Chapter IV. and V.

<sup>44</sup> Gallagher, A. (2010): p. 122

provision fills a legislative gap, since it has never been considered to directly criminalize brothel owners in the human trafficking discourse.<sup>45</sup> If police are authorized to frequently check the owners of businesses that are hotspots for human trafficking, illegal activities and corruption can be tackled easier. This provision is mostly important for states with liberal politics on prostitution and as it will be shown in the second chapter, the Dutch police for example developed a system that scrutinizes brothel owners on the basis of the Convention's Article 19.

The Convention moreover highlights the importance of the criminalization of activities relating to travel and identity documents.<sup>46</sup> The drafters realized that without the criminalization of these crimes, human trafficking is invincible since forging, confiscating or damaging these documents of victims are crimes inherent in human trafficking.

In Article 22 the Convention recognizes the corporate liability with the intention of making responsible commercial companies, associations and other legal entities for their criminal activities. Within this Article, the criminalization of a person in a leading position for failing to recognize criminal activities of human trafficking is also recognized.

The Convention stresses that investigators cannot exclusively depend on victims' direct accusations but they should investigate *indirectly* as well, through other evidence.<sup>47</sup> This rule was developed on similar reasons as the non-punishment principle, that victims' words and acts are strongly influenced by the traffickers and therefore investigators must not simply rely on those. Victims are in most of the cases silenced by their fear of pimps or other perpetrators, they may not know how and whom they should talk to or they might be afraid of possible negative consequences on their families. The variations of fear may be endless and unknown in these cases.

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<sup>45</sup>Gallagher, A. (2010): p. 123

<sup>46</sup> Convention on Action against Trafficking in Human Beings, Article 20

<sup>47</sup> *Ibid.* Article 27

### 1.3 European Union Directive 2011/36

The 2011/36/EU Directive on preventing and combating trafficking in human beings and protecting its victims<sup>48</sup> (the Directive) was adopted in order to promote a unified effort of EU Member States to combat human trafficking, since it is recognized in the EU that it is unlikely to tackle serious, transnational crimes by an individual effort.<sup>49</sup> The Directive is crucial to be mentioned, firstly because of its innovative measures in the human trafficking discourse within and across the EU and, secondly because it is relevant for the presentation of the new Hungarian Criminal Code.

The Directive recognizes that different forms of human trafficking have different *push* and *pull* factors. As these factors are identified, characteristics of potential victims can also be specified.<sup>50</sup> Pushing factors could be poverty, unemployment, domestic affairs or anything that the potential victim runs away from. Pulling factors are those concepts that the potential victim is seeking for in a new life such as wealth, family, a successful career or stability. Thus, the Directive gives a particular attention to all forms of human trafficking by drawing attention on different ways of tackling different kinds of exploitative crimes.

The most important developments of the Directive are firstly that it gives a broader definition on trafficking in human beings than the previously presented Convention by listing *additional forms* of exploitation as forced begging and the exploitation of criminal activities (whereby the victim is coerced to commit criminal acts) as pickpocketing or drug dealing.

Secondly, the Directive provides a more precise and clear definition on the non-punishment principle than the Convention does. Accordingly, victims of human trafficking

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<sup>48</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing the Council Framework Decision 2002/629/JHA, Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> (Retrieved on November 7, 2013)

<sup>49</sup>Obotka, T. & Payne, B.: Implementing Action against Trafficking of Human Beings under the TFEU: A Preliminary Analysis. In: *New Journal of European Criminal Law*, 2012, Vol. 3 (3,4), pp: 298-302

<sup>50</sup> EU Directive, Para. 3

should be “protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking.”<sup>51</sup> Important to note that here, victims are also protected from *prosecution*, which was not recognized previously in the Convention. Moreover, the non-punishment principle applies to an open list of criminal activities<sup>52</sup> that victims might have been coerced to commit (as prostitution or illegal migration), which broadens their protection in the investigation procedures. The Directive recognizes “the aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators”.<sup>53</sup> Important to note, that the essential prerequisite of this provision is the development of an adequate identification system. “The earlier a person is identified as a victim of trafficking, the sooner steps can be taken to avert or discontinue such penal or administrative measures in relation to any alleged offences. It is therefore essential that effective mechanisms and procedures be in place so that victims of trafficking can be identified as quickly as is reasonably possible.”<sup>54</sup> Eventually, through this specific provision, the fear and difficulties human trafficking victims need to face with during the prosecution period is recognized in the legal language.

Thus, according to this latest non-punishment principle, no EU Member State would be permitted to punish or prosecute victims of THB who have committed activities due to human trafficking. There is however no established guidelines or manners that show how investigators could link these coerced criminal activities to human trafficking and as it is

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<sup>51</sup> EU Directive, Para. 14

<sup>52</sup> *Ibid.* Para. 14: „criminal activities such as [...]”, which implies that the list of criminal activities victims are coerced to do is endless.

<sup>53</sup> *Ibid.* Para. 14

<sup>54</sup> Organization for Security and Co-operation in Europe (OSCE), Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings: *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team*, 2013 p.16 Available at: <http://www.osce.org/cthb/101002> (Retrieved on November 8, 2013)



presented below, Member States still enjoy a wide margin of appreciation on non-punishment of victims in criminal procedures.

Wide margin of appreciation can already be exemplified relating to the non-punishment principle in a decision of the English Court of Appeal in a case involving minors from Vietnam who were identified as victims of human trafficking and were convicted of cannabis cultivation.<sup>55</sup> As the Directive defines, authorities are “entitled not to prosecute” victims “in accordance with the basic principles of their legal systems”.<sup>56</sup> Consequently, those criminal activities that are not proved as results of human trafficking can be punishable by the authorities. But until what extend the police can prove the link between a criminal activity and human trafficking? Obviously a victim should not be excluded from criminal liability, but in the case of human trafficking, perpetrators’ influence can be more intense and can have a long-lasting effect on the victims, which should be taken into consideration by the authorities. Therefore, even if the Directive is a step towards a strong victim protection in the EU, as the English Court’s example shows, state sovereignty remains an essential phenomenon, which may hinder the efficiency of law enforcement. In every areas of law in the EU, Member States’ sovereignty remains to be an excuse for human rights abuse, which in this case goes at the expense of victims’ rights protection.

The Directive sets the penalty of minimum 5 years for the crime and at least 10 years in cases under aggravated circumstances. One of these circumstances is a crime committed against a victim who is among the particularly vulnerable group. The definition of the particularly vulnerable victim is “at least child victims”, which makes the provision weak and gives a variety of way of interpretation for the domestic jurisdictions. As the Directive states, other factors, as gender, state of health or disability *could be* taken into account when

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<sup>55</sup>Obotka, T. & Payne, B. (2012) : pp.:310-311

<sup>56</sup> *Ibid.*

assessing the vulnerability of the victim.<sup>57</sup> Knowing how wide margin of appreciation Member States have in the EU, this provision leaves a gap for the protection of vulnerable people besides minors.

## 1.4 Evaluation

Drafters of the Convention made significant improvements in the international discourse of human trafficking, putting a great emphasis on the protection of rights of victims. After human rights experts' critics on the UN THB Protocol, the drafters of the Convention had a strong pressure to correct the legislative errors. As a result, the Convention took a human rights approach in the fight against human trafficking.

As it has been recognized by the drafters, without special attention on victims and possible victims, the crime cannot be tackled since their vulnerability is also the reason of the continuing crime. Thus, the cycle of human trafficking can only be ended if victims are protected from revictimization and if states make effective measures to prevent human trafficking.

The road to drafting legislation on the international and European level has been a long process. Besides the obvious malfunctions of institutions and legislatures, the reasons of this delay are the complexity of this crime and the constant change of its methods. It took time for experts to understand the *phenomenon* of human trafficking and for legislatures to translate this understanding to a *legal definition*. The major step, to develop a comprehensive legislation has been finalized by the Council of Europe' Convention. From this point, there is an opportunity to make meaning of the law through judicial interpretation and to make it a standard for Member States' legislation and practice.

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<sup>57</sup> EU Directive, Para. 12

Table 1. Comparison of the UN THB Protocol, the Council of Europe (CoE) Convention and the EU Directive

	<b>UN THB Protocol</b>	<b>CoE Convention</b>	<b>EU Directive</b>
Entry into force	December 25, 2003	February 1, 2008	April 15, 2011
Ratifications/ Accessions <sup>58</sup>	158	40	28
Innovations	<ul style="list-style-type: none"> <li>-Definition on the basis of Actions, Means and Purpose of THB</li> <li>-“3P Obligations”: Prosecution, Protection and Prevention</li> </ul>	<ul style="list-style-type: none"> <li>-Applies to all forms of THB<sup>59</sup></li> <li>-Establishes the open non-discrimination principle to victims</li> <li>-Focuses on male victims as well</li> <li>-Non-punishment principle</li> <li>-Victim-identification system</li> <li>-Strong protection for child victims</li> <li>-Criminalizes those who knowingly use the services of victims</li> <li>-Investigations cannot exclusively depend on victims’ accusations</li> </ul>	<ul style="list-style-type: none"> <li>-Recognizes different push and pull factors of different forms of THB</li> <li>-Recognizes additional forms of exploitation (for eg. forced begging)</li> <li>-Clarifies non-punishment principle (by prohibiting the prosecution of victims)</li> </ul>
Shortcomings	<ul style="list-style-type: none"> <li>- Applies to crimes that have a transnational nature and are committed by an organized criminal group</li> <li>-Attention only on women and children</li> <li>-Insufficient protection of rights of victims</li> </ul>	<ul style="list-style-type: none"> <li>-Weak non-punishment principle: Member States could still detain and prosecute victims</li> </ul>	<ul style="list-style-type: none"> <li>-Wide margin of appreciation in the EU</li> <li>-Weak definition on “particularly vulnerable group”</li> <li>-Rights of persons with disabilities are not taken into account<sup>60</sup></li> </ul>

<sup>58</sup> Ratifications/Accessions as of November 8, 2013

<sup>59</sup> Whether the crime has a transnational or national nature, is committed by an organized criminal group or not

<sup>60</sup> Even though the EU ratified the Convention on the Rights of Persons with Disabilities (the CRPD) and thus its institutions are bound to the provisions of the CRPD, the Directive has made no significant step further for the protection of the rights of persons with disabilities.

## **Chapter II. Domestic Legal Definitions**

Since August, 2013, the jurisdiction of the Convention on Action against Trafficking in Human Beings has entered into force in Hungary as well, thus both countries are bound to its provisions. Moreover, as Member States of the European Union, they are both obliged to implement the EU Directive 2011/36 into their domestic legislation and practice. This chapter gives an insight into the Hungarian and the Dutch provisions on human trafficking, showing whether they comply with the regional jurisdictions' requirements.

### **2.1 The Netherlands**

Very much affected by issues concerning human trafficking, the Netherlands has long ago recognized that domestic legislation is crucial for the effective fight against human trafficking. Even if the international discourse follows more or less the same approach for the “3P obligations”, domestic law has to be suited for the local circumstances, which in the case of the Netherlands meant that the liberal law on legalized prostitution needed to be balanced with specific measures that protect the rights of sex workers.

The “Dutch model” became known within the discourse on human trafficking as the legalizing approach. Prostitution was never prohibited in the Netherlands, but due to its immoral perception, brothels were forbidden by law since 1911. Contrary to the law, the society regarded the illegally continuing brothels with tolerance. The “Dutch model” regards prostitution as a natural phenomenon of society which does not have to be excluded, but regulated. The ideology of this approach crystallized in 2000, when the bill that legalized brothels, outdoor and indoor prostitution was passed by the Parliament. At the same time, the state's agenda on fighting involuntary prostitution and human trafficking had to become more

specified and stricter.<sup>61</sup> The office of the National Rapporteur on Trafficking in Human Beings was established the same year and two years later a specified police division on sexual exploitation was formed within the National Police of the Netherlands.

Even if efforts were made to combat human trafficking, the reports of the National Rapporteur show that these did not meet the international requirements. The UN THB Protocol in 2000 set a definition that “covered not only exploitation in prostitution or other types of sexual services [...] but also embraced other forms of exploitation, such as forced labour or labour under such conditions that one could refer to it as modern slavery.”<sup>62</sup> As the *Ten Years of Independent Monitoring* report of the National Rapporteur states, the Dutch legislation was behind the international standard in 2002 because it did not criminalize all forms of human trafficking, such as the removal of organs.<sup>63</sup> The Rapporteur several times recommended the legislators to bring the Dutch criminal law in line with the international standard.

The new law on human trafficking eventually entered into force in 2005. Article 273a of the Dutch Criminal Code was renumbered in 2006 as Article 273f and unlike the old Article which was under the title Offences against Public Morals, the new one was placed under Offences against Personal Liberty, emphasizing that exploitation is a violation of the victim’s liberty.<sup>64</sup> It is a landmark in the Dutch legislative history because eventually, all forms of exploitative work and the removal of organs were listed among punishable offenses under human trafficking.<sup>65</sup>

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<sup>61</sup> Fehér, L.: *Nemzetközi Emberkereskedelem*. MTA Jogtudományi Intézete, Budapest, 2008, pp:97-98

<sup>62</sup> Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children: *Trafficking in Human Beings. Ten years of Independent Monitoring*. The Hague: BNRM, 2000. p.24

<sup>63</sup> *Ibid.* pp.:24-25

<sup>64</sup> “Het Nederlandse Wetboek van Strafrecht” (The Dutch Criminal Code) Available only in Dutch at: <http://www.wetboek-online.nl/site/home.html> (Retrieved on November 27, 2013)

<sup>65</sup> Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children: *Trafficking in Human Beings. Ten years of Independent Monitoring*. The Hague: BNRM, 2000 p. 25

However, even if other forms of human trafficking are now included in the legislation, the state practice does not reflect to the definition. As the latest report of the Dutch Rapporteur shows, there is insufficient attention on human trafficking outside of the sex industry due to the wrong perception that these are “less serious” crimes.<sup>66</sup> The Rapporteur notes that besides THB outside of the sex industry, there also has to be adequate state response to new forms of exploitation, such as forced begging.

The Dutch provision considers human trafficking in national and transnational forms, and does not differentiate victims on the basis of their nationalities. Article 273f defines human trafficking by the *purpose of exploitation* or the *intention to exploit* or the *removal of organs*. “Different from various other countries, the essence of the Dutch anti-trafficking law is ‘(intended) exploitation’, regardless of nationality of the victims or of movement across borders”.<sup>67</sup> Thus, exploitation of Dutch nationals in abusive labour in the Netherlands is also considered human trafficking and is punishable in the same way as it would be in cases of foreigners.

The specialty of the Dutch legal model is that it protects the individual freedom of choice of a legally present adult’s own will to work in the prostitution business if the owner of that business keeps the regulations. Moreover, the legal framework distinguishes victims of trafficking from victims of other crimes due to the co-called B9 Regulation. Accordingly, victims, possible victims or witnesses of human trafficking can remain in the Netherlands during the investigation and prosecution period and receive state protection for that time. After the procedure, the victim may apply to residence permit based on the B9 Regulation. It is firstly, for the purpose of prosecution and investigation procedures and secondly, for the

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<sup>66</sup> Dutch Ministry of Security and Justice Press Release: *Approach to trafficking in human beings: more focus on minors, prostitution sector and new forms of exploitation required*. September 19, 2013, Available at: <http://www.government.nl/ministries/venj/news/2013/09/10/approach-to-trafficking-in-human-beings-more-focus-on-minors-prostitution-sector-and-new-forms-of-exploitation-required.html> (Retrieved on September 17, 2013)

<sup>67</sup> Smit, M.: Trafficking in Human Beings for Labour Exploitation. The Case of the Netherlands. In.: *Trends in Organized Crime*, June 2011, Vol.14 (2/3), p. 186

victims' safety. It enables them to stay in a shelter house, receive health care and other means of subsistence. The victim is entitled to these rights if, within the reflection period of three months s/he decides to cooperate with the authorities and testify against the perpetrators.<sup>68</sup> Obviously, shelter and assistance are not unconditional rights of victims of THB in the Netherlands. The victim has to effectively cooperate with the authorities to gain the benefits and it remains a question how many victims qualify for these benefits. Probably there is no ideal victim for the authorities in criminal procedures, but in cases of human trafficking, as it will be detailed below, victims often tell ambiguous stories, cannot remember events and perpetrators or are emotionally connected to their own traffickers, which could be considered uncooperative behaviour by the decision-makers.

Lately there have been several amendments to the human trafficking law in the Netherlands. After the proposal of the Minister of Security and Justice, the maximum prison sentence has increased from eight to twelve years, which reflects the seriousness of the crime and complies with the Directive. Punishment for employment of illegal immigrants has also been increased from three to four years, which also makes employers more responsible for their recruitment and employment.<sup>69</sup>

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<sup>68</sup> Pieters, B.: Dutch Criminal and Administrative Law Concerning Trafficking in and Smuggling of Human Beings, the Blurred Legal Position of Smuggled and Trafficked Persons: Victims, Instigators or Illegals? In.: Guild, E. & Minderhoud, P. (eds.): *Immigration and Criminal Law in the EU*, MartinusNijhoff Publisher, Leiden, Boston, 2006, pp.:225-229

<sup>69</sup> Press Release of the Government of the Netherlands: *Maximum punishment for trafficking in human beings to be increased*. March 1, 2012, Available at: <http://www.government.nl/documents-and-publications/press-releases/2012/02/29/maximum-punishment-for-human-trafficking-to-be-increased.html> (Retrieved on September 17, 2013)

## 2.2 Hungary

After a long drafting process, the new Hungarian Criminal Code finally entered into force in July, 2013.<sup>70</sup> This part of the thesis analyzes the changes in the Hungarian human trafficking provision, compared to the previous Criminal Code and the manner it is brought in line with the Directive. The previous Criminal Code's provision on human trafficking did not meet the international standard due to its legal wording, since the *purpose of exploitation* was absolutely missing, which caused serious problems for investigators and prosecutors. However, since the new THB provision has not yet been under judicial interpretation by the courts, it is only possible to speculate on the effectiveness of this new legal definition.

### 2.2.1 The “old” provision on human trafficking

The term trafficking in human beings is present in the Hungarian legal system since 1999, when the Criminal Code was amended with Section 175/B.<sup>71</sup> Considering requirements of the UN THB Protocol, the definition of the criminal offense was amended in 2002. Prior to Section 175/B, there were no concrete terms on human trafficking, only other forms of criminal activities related to THB, such as Kidnapping, Criminal Action against Sexual Ethics, Profiteering from Sexual Services and the Offense of the Change of Family Status (such as smuggling).<sup>72</sup>

The provision was placed under Crimes against Freedom and Human Dignity. The Universal Declaration of Human Rights<sup>73</sup> made the concept of human dignity dominant and

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<sup>70</sup> Act C of 2012 on the Criminal Code of Hungary

<sup>71</sup> Section 43 of Law LXXXVII of 1998 of Hungary

<sup>72</sup> Hrabovszki, Z. & Kenéz, A.: *The Hungarian Judicial Practice against the Offence of Trafficking in Human Beings*. Speeches in the National Monitoring and Report Mechanism to Address THB: the Role of National Rapporteurs, OSCE, pp.: 3-4, Vienna, 2007, Available at: <http://www.osce.org/cthb/25184> (Retrieved on November 9, 2013)

<sup>73</sup> Universal Declaration of Human Rights adopted by the General Assembly on December 10, 1948, Paris, Available at: <http://www.un.org/en/documents/udhr/> (Retrieved on November 9, 2013)



therefore the violation of human dignity is considered one of the most serious offenses against human rights. Some jurisdictions regard human dignity the core of human rights<sup>74</sup>, which is therefore a strong judicial argument. Violation of human dignity means objectification, exploitation and violation of the autonomy of another person. As the Hungarian judicial interpretation stresses as well, human trafficking is an offense to “liberty, dignity, and self-determination, and by which a human being becomes an object and - disregarding or neglecting his or her will – becomes part of commercial trade”<sup>75</sup>.

Even if it is accepted that the provision was listed among serious offenses, its legal wording itself did not reflect the actual criminal act, which caused significant obstacles in the justice system. According to the definition of Section 175/B, a person who *sells, purchases, exchanges a person or recruits, transports, houses, hides and appropriates another* is guilty of human trafficking. As it is detailed in the second chapter, police investigators were hardly able to work effectively under this law since evidence on these above-listed acts were rarely possible to find for a court case.

The most problematic part of the provision was that *exploitation*, as the purpose of the criminal activity was excluded from the definition. The local authorities were not alone with concerns towards the Hungarian legislation. Experts on human trafficking criticized Hungary for its outdated law on human trafficking. “Hungarian officials and outside experts continued to cite the narrow scope of Hungary’s trafficking laws and a precedent set by the Hungarian Supreme Court – specifically that a victim of human trafficking must have either been bought or sold by another person, or that direct or recently committed violence as opposed to the use of psychological coercion or abuse of a position of vulnerability had been used as a form of

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<sup>74</sup> Human dignity appears in the Basic Law for the Republic of Germany (Article 1, Para.1), in the Constitution of the Republic of South Africa (Article 1,a) or in the Charter of Fundamental Rights of the European Union (Article 1)

<sup>75</sup> Hrabovszki, Z. & Kenéz, A. (2007): p.8

coercion”<sup>76</sup> - concludes the 2012 Trafficking in Persons Report, which pointed out that the “old” provision on human trafficking created too strict evidentiary requirements for investigators.

The inappropriate loan translation from the English *human trafficking* is the Hungarian *emberkereskedelem*. The Hungarian word rather focuses on the “trading” of humans and consequently it was defined in the Criminal Code by acts listed above as selling, purchasing, or recruiting. The English word however, rather focuses on a crime whereby the perpetrator makes advantage of someone through slavery-like labour, prostitution, or by the removal of organs. Modern-day slavery, the synonym of human trafficking, is not necessarily or only exchanging persons for money but the violation of their dignity, disrespect of their autonomy by the perpetrator’s psychical or physical advantage.

However, even if exploitation was not part of the definition on human trafficking, it was present in other provisions indirectly as in the sections on Living on Earnings of Prostitution<sup>77</sup>, Endangering of a Minor<sup>78</sup> and in connection with the Violation of Personal Freedom.<sup>79</sup> These provisions linked the purpose of exploitation to broader provisions as pimping and forced labour.<sup>80</sup>

Concerns about this provision were present for fourteen years. Even if it has been earlier shown that the number of trafficking victims from Hungary is extremely high, the legal ground for effective investigation has not been changed soon enough. Moreover, international changes as the elimination of border controls within the Schengen area, technological developments and the growth of economic inequality all prompted Hungarian legislators to draft a new definition on human trafficking.

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<sup>76</sup> US Department of State Diplomacy in Action: *Trafficking in Persons Report 2012*. p. 181 Available at: <http://www.state.gov/documents/organization/192595.pdf> (Retrieved on November 9, 2013)

<sup>77</sup> Act IV of 1978 on the Criminal Code of Hungary, Section 206

<sup>78</sup> *Ibid.* Section 195 (3)

<sup>79</sup> *Ibid.* Section 175 (2)

<sup>80</sup> Hollán, M.: *Emberkereskedelem. A kizsákmányolás büntetendő esetei és a büntetőjogi szabályozás határai*. HVG-ORAC, Budapest, 2012, pp:292-293

The Hungarian case shows as well that legal definitions on human trafficking that are too equivocal, hinder police investigation, prosecution procedures and causes difficulties in judicial interpretations. Even if exploitation was indirectly linked to the human trafficking section, it was hardly possible to prove human trafficking cases.<sup>81</sup>

### 2.2.2 The “new” provision on human trafficking

The new law, Section 192 is under Crimes against Personal Liberty of the Criminal Code<sup>82</sup>, differentiating it from crimes against sexual morals and from crimes against human dignity.

As Viktória Végh, one of the drafters of the new Criminal Code presented, the aim of the new human trafficking provision was the creation of a complex definition that makes the judicial and investigation proceedings simpler and quicker.<sup>83</sup> The wording of the old Code on means and actions of human trafficking were kept in Section 192(1), but paragraph 2 expands the scope with *exploitation*, as the purpose of the crime. According to the provision, exploitation is the purpose to make advantage of the vulnerable position of the victim.<sup>84</sup> According to the explanation of Ms. Végh, persons in vulnerable positions are not only children, but the socially, economically, mentally or physically disadvantaged as well. Thus, the term “vulnerable position” should not be interpreted explicitly, but in the broadest possible way, that everyone who has been objectified in order to be taken advantage of is considered vulnerable.

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<sup>81</sup> Police could mostly prosecute human trafficking cases under Pandering. For example, in 2010 the police prosecuted 126 cases under Pandering and only 8 under THB. Presentation of Ms. Szonja Szabó, Police Major of the Hungarian National Bureau of Investigation at the Centre for Information and Research on Organised Crime, Utrecht. Available at: [http://www.ciroc.nl/presentaties/presentatie\\_szabo.pdf](http://www.ciroc.nl/presentaties/presentatie_szabo.pdf) (Retrieved on November 9, 2013)

<sup>82</sup> Act C of 2012 on the Criminal Code of Hungary

<sup>83</sup> On the event “Az emberkereskedelem elleni fellépés aktuális kérdései, különös tekintettel az áldozatokra”, which was held on November 30, 2012 at the National Institute of Criminology, Budapest

<sup>84</sup> Act C of 2012 on the Criminal Code of Hungary, Section 192(8)

Aggravating circumstances are listed in five categories according to the victim status, to the means and methods of the crime, to specially defined methods of the crime, and to specially defined qualifications of the perpetrator(s). These circumstances are listed in Section 192 (3)-(6) and its complexity already received critiques. According to an explanatory report, in contrast to the original intention of the legislator, the system of aggravating circumstances has not become more perspicuous than the previous provision's definition.<sup>85</sup>

The Hungarian anti-trafficking agenda got closer to the EU standard concerning victims' protection. The Hungarian Government Regulation 354/2012 presents the victim identification system and the state authorities' duties in the identification process.<sup>86</sup> State organs that have the duty to apply the identification system are health care institutions, educational institutions, personal care workers, police, asylum authorities, labour authorities, consular officers and immigration authorities. If employees of these state institutions have a reasonable ground to assume that a person is a victim of human trafficking, the authority has the duty to conduct an "identification interview" with the person. For the recognition of victims of human trafficking, the guideline lists a number of indicators relating to appearance, mental state, identification documents, family members, and so on. The effectiveness of this identification system greatly depends on the proficiency of the responsible authorities. If they do not receive training on the crime of human trafficking, it is unlikely that they would reasonably assume one's victim status, or that they would perform effectively during the interview. Unfortunately, there is no standard set for the Hungarian identification authorities for obligatory trainings.

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<sup>85</sup> Karsai, K. (ed.): *Kommentár a Büntető Törvénykönyvhöz*, CompLex, Budapest, 2013, p.395

<sup>86</sup> Hungarian Government Regulation 354/2012. Available only in Hungarian at: [http://kih.gov.hu/aldozatsegito-szolgalat-jogszabalyai/-/asset\\_publisher/4frusdbuyVxX/content/354-2012-xii-13-korm-rendelet-az-emberkereskedelem-aldozatai-azonositasanak-rendjerol?redirect=http%3A%2F%2Fkih.gov.hu](http://kih.gov.hu/aldozatsegito-szolgalat-jogszabalyai/-/asset_publisher/4frusdbuyVxX/content/354-2012-xii-13-korm-rendelet-az-emberkereskedelem-aldozatai-azonositasanak-rendjerol?redirect=http%3A%2F%2Fkih.gov.hu) (Retrieved on September 22, 2013)

As Ms. Végh presented, placement of victims of human trafficking into shelter houses is the obligation of the state. If a person is identified as victim of human trafficking and has no safe home, the interviewer is obliged to contact the National Institute of Family and Social Policy which is responsible for providing shelter for the victim, where they can stay for a maximum of ninety days. The Ministry of Human Resources currently operates one shelter house, which is clearly not enough space for the returning victims. Therefore the state provides funds for other, NGO-operated shelter houses in order to take part in the protection of victims.

Since the regulation on state obligation for victim identification has entered into force on January 1, 2013, there has been no information released on the actual efficiency of this method. However, there are some visible concerns that indicate issues on victim protection relating to shelter houses. As a 2013 report of the International Organization for Migration states, the Hungarian state's shelter house has capacity for maximum twelve persons.<sup>87</sup> It is not clear however, what characteristics play a role in the selection of those entitled to the shelter's benefits. Besides the state shelter, the Hungarian Baptist Aid operates shelter houses, which are partly funded by the government. However, each of these have place for only six victims, and consequently they are often rejected due to the lack of room. Protection of victims after their return is crucial to end the cycle of human trafficking, to prevent revictimization. If shelter houses do not have enough capacity, alternative solutions shall be developed for victims' protection, as alternative locations for sheltering, or alternative protection services. As the European Commission's anti-trafficking report on Hungary states, "low educated young adults – mostly women – in East, North Eastern Hungary are the most

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<sup>87</sup>Van Selm, J.: *Az Emberkereskedelem Áldozatainak Beilleszkedését Célzó Intézkedések Hatékonyságának Értékelése*, International Organization for Migration, Paris, 2013, p.43, Available only in Hungarian at: [http://publications.iom.int/bookstore/free/FIIT\\_study\\_HU.pdf](http://publications.iom.int/bookstore/free/FIIT_study_HU.pdf) (Retrieved on November 27, 2013)

vulnerable”.<sup>88</sup> Prostitution can seem to be the easiest (and only) way to get out of poverty and debts, which makes the risk of revictimization among this group extremely high.

Besides the new definition on human trafficking, there are other innovations of the new Criminal Code worth mentioning. As Section 26(2) defines, statute of limitation in cases involving minors has been increased from three to five years, but only if the victim is under twenty-three years of age.<sup>89</sup> Moreover, the previously absent provision on child prostitution gained a separate provision in the new Criminal Code, which has been listed under Crimes Against Sexual Morals in Section 203.

Table 2. Comparison of the provisions on human trafficking of the Dutch Criminal Code (DCC) and the Hungarian Criminal Code (HCC)

	<b>DCC Article 273f</b>	<b>HCC Section 192</b>
Entry into Force	2005	2013
Main characteristic	<ul style="list-style-type: none"> <li>-under Offenses against Personal Liberty</li> <li>- lists all forms of THB</li> <li>-essence: (intended) exploitation</li> <li>-exploitation = at least exploitation in prostitution, other forms of sexual exploitation, forced labour, slavery, servitude</li> <li>-levels of protection of minors: 18 and 16 years of age</li> <li>-maximum punishment: 12 years</li> </ul>	<ul style="list-style-type: none"> <li>-under Crimes against Personal Liberty</li> <li>-lists all forms of THB</li> <li>-exploitation = making advantage of another made/kept in a vulnerable position</li> <li>-levels of protection of minors: 18 and 14 years of age</li> <li>-maximum punishment: life imprisonment</li> </ul>

<sup>88</sup> European Commission: Together against Trafficking in Human Beings. Report on Hungary. Available at: <http://ec.europa.eu/anti-trafficking/NIP/Hungary.jsessionid=DGNhSwBZlBL3p2hG45F3GYnSmpb2ZmpsQnh97Khp60bNKhcjsq3p!-1752337833> (Retrieved on September 22, 2013)

<sup>89</sup> Act C of 2012 on the Criminal Code of Hungary, Section 26(2)

### **Chapter III. Practices in Law Enforcement and Victim Protection**

After clarifying the international, regional and domestic legal definitions on human trafficking, this chapter aims to show how the Netherlands and Hungary implement their law in practice, how law enforcement and victim protection work in human trafficking cases. Moreover, it also shortly presents what the Council of Europe does for the domestic implementation of its legal requirements.

In the comparative analysis of the two states' practices, their different statuses within the crime of human trafficking have to be noted. Hungary is in the first place an origin and transit country, which demands different policies than what a country of destination requires. An origin and transit country needs strong policies on border controls and preventive measures. A destination country needs stronger victim protection measures, and in the special case of the Netherlands, it needs more frequent and strict monitoring policies. However, considering these states' situations within the crime does not mean that they only have to focus on one particular aspect of the crime combat. As it is mentioned before, human trafficking has different social, legislative and political aspects that all play part in the continuation of this crime. For example, even if Hungary had strong border policies, human trafficking can still occur if it does not focus on victims' empowerment and does not implement preventive measures for revictimization. Also, if the Dutch authorities give special attention on victims' protection but omit other aspects, the crime is not combated in the long run either.

Part of this chapter relies heavily on interviews with the Hungarian and the Dutch police, who are working exclusively on the crime of human trafficking. Police investigators know very well how the legislation frames their work in practice and how it could be

improved. Moreover, since the crime mostly occurs internationally, it is important to get first-hand answers on their cooperation.

### **3.1 Council of Europe: GRETA and the European Court of Human Rights**

The Group of Experts on Action against Trafficking in Human Beings (GRETA) is the Council of Europe's responsible organ for monitoring the implementation of the Convention's provisions into Member States' domestic law and practices. It publishes reports on measures taken by Member States and recommends certain steps to be taken after experts of GRETA conducted research on the country. This research consists of several parts.

Firstly, GRETA prepares a questionnaire for the specific country on the implementation of the Convention. It is not clear who the targeted persons or institutions are that answer GRETA's questionnaire. However, as "Rule 7" of the evaluation procedure<sup>90</sup> states, GRETA *may* ask the civil society *as well*, which implies that the questionnaire is primarily prepared for governmental organs. If GRETA only requests information from the government, the reliability of the entire research is questionable, since no government will be critical on its own policies related to human rights issues, as trafficking.

After the written communication, GRETA may make country visits. The experts may decide to make additional forms of research, if needed. Finally, the appointed Rapporteur of GRETA drafts and later on presents the country report.

Obviously, as other international monitoring systems, this is also not a strong mechanism, since GRETA's observations are not binding. It is important for the country's

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<sup>90</sup> Rules of procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties. THB-GRETA (2009)3, Strasbourg, June 17, 2009, Available at: [http://www.coe.int/t/dghl/monitoring/trafficking/Source/THB-GRETA\(2009\)3\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Source/THB-GRETA(2009)3_en.pdf) (Retrieved on October 13, 2013)



reputation considering its efforts taken to combat trafficking in human beings. Also, the country reports can be used for sources of information in other researches for expert bodies combating human trafficking or for advocacy of human rights NGOs.

Even if this paper only focuses on the Convention on Action against Trafficking in Human Beings in relation to the Council of Europe, it has to be mentioned that the European Court of Human Rights also has an important role in the anti-trafficking policy of this jurisdiction. In *Rantsev v. Cyprus and Russia*<sup>91</sup> the Court, by using its argument that the European Convention on Human Rights (ECHR) is a living instrument, linked the scope of Article 4 to THB. Thus, human trafficking is classified under slavery, servitude and forced labor. This judgment is especially significant because since Article 4 is an *absolute right*, it always, in every circumstance, has to be guaranteed by the state. This case is moreover crucial because the Court set *specific measures* to be taken for Member States to tackle human trafficking. It is therefore not enough that the crime is punishable under criminal law, but states are obliged to “put in place adequate measures regulating businesses often used as a cover for human trafficking”, to set adequate measures relating immigration,<sup>92</sup> to provide training for law enforcement and immigration authorities,<sup>93</sup> and it stresses that the obligation to investigate cases of human trafficking shall not be dependent on the victim’s or its next kin’s testimonies.<sup>94</sup> States are also obliged to “take operational measures” to protect victims and potential victims, where the authorities suspect the crime might have happened.<sup>95</sup>

This judgment is groundbreaking for the specific obligations it set for Member States under Article 4. The Court emphasized that states must take an *active role* in tackling trafficking in human beings. It is not simply enough to draft legislation since it is only a passive measure, but the authorities have to have a proactive role in protecting vulnerable

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<sup>91</sup> Case of Rantsev v. Cyprus and Russia, European Court of Human Rights, January 7, 2010, No. 25965/04.

<sup>92</sup> *Ibid.* Para. 284

<sup>93</sup> *Ibid.* Para. 287

<sup>94</sup> *Ibid.* Para. 288

<sup>95</sup> *Ibid.* Para. 286

groups, to investigate cases where they suspect the crime, to make preventive measures, such as awareness raising. Moreover, to put a higher burden on authorities in human trafficking investigation is important because the already traumatized victims often do not dare to give testimonies, are not able to tell comprehensible stories or are not aware of their victimhood. These are very often obstacles of the justice system, as it became clear from the interviews I made with the Hungarian and the Dutch police.

## **3.2 The Netherlands**

### **3.2.1 Law Enforcement: special characteristics of a THB investigation, the role of victims and brothel owners, and the Dutch criminal provision**

The special division on trafficking in human beings is called the *Commerciele Zeden* and was established in 2002, two years after the legalization of prostitution in the Netherlands. Since the government passed the law on the legalization, it also became responsible for the brothels, thus needed to take steps to make the environment of sex workers safe. One of these steps was the establishment of special police forces that are experts on human trafficking. On the effectiveness of the legislation, the objectives and obstacles of the police, I asked Ms. Anita Bakker, investigator at the *Commerciele Zedenpolitie* in The Hague.<sup>96</sup>

The team of the *Commerciele Zedenpolitie* underwent three training courses since 2002, which educated the team mostly on victim treatment. As Ms. Bakker explained, due to the high sensitivity of the victims, every word the police say has a great importance which can affect the outcome of the investigation. The cooperation of the victims are crucial in the investigation, since without their willingness to press charges against the perpetrators and to

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<sup>96</sup> Interview with Ms. Anita Bakker, Investigator at the *Commerciele Zedenpolitie*, The Hague, March 13, 2013

act as witnesses, the police will be unlikely to find enough evidence to bring the case to courts. Also, if these victims will not want to lodge complaints, they would probably speak against the police at the court and therefore the investigators have to build a very strong case to eventually sentence the perpetrators. Victims have a time limit of eighteen years to lodge a complaint against the traffickers; however, this is a disproportionately long time since the police are often unable to investigate eighteen years after the crime had been committed. Therefore, even if victims in the Netherlands have a long period of consideration, the longer they think, the more difficult it becomes for the police to investigate after the criminals.

As Ms. Bakker said, the reason why a human trafficking investigation is different than any other criminal investigation is that often victims have feelings for their traffickers and thus their complaints are ambiguous and not expressed well. On the one hand they rationally know that the situation they are stuck in is unfair and wrong but on the other hand they feel they have a strong tie with the person who brought them to the sex industry. This explanation is very similar to what the Hungarian investigators stated. According to them, victims often compete in their work with each other in order to bring more profit for the trafficker. Thus, the reason why police have additional obstacles in the investigations of these cases is that they firstly have to “cure” the Stockholm syndrome of the victim and make her feel safe to lodge a complaint against the perpetrators.

As my interviewee explained, most victims of sexual exploitation in The Hague are Hungarian. Even though numbers of victims from Hungary might be shocking, their victim status is at least disclosed. Firstly, it can be said that the cooperation between the Hungarian and the Dutch police is better established now, which makes investigations more effective. Secondly, according to the experiences of my interviewee, victims from Eastern Europe are more willing to cooperate, tell details about the perpetrators and the series of events. On the contrary, victims from African states are often unwilling to work with the police and can

hardly say anything about the criminals. Victims from African states are often forced into prostitution by their own families or by their entire community and are threatened by them to send money home. The police cooperation between the Netherlands and these states are not functioning smoothly enough yet. Thus, even if African victims are fewer than the Eastern Europeans in the Netherlands, there are also not as many investigations and prosecutions in the cases of African victims due to these procedural hardships.

Since 2012, the *Commerciele Zedenpolitie* began to work closer with the brothel owners. Every time a brothel owner is about to employ a sex worker, the brothel owner may ask the police to interview the sex worker in order to screen out possible cases of sexual exploitation. If the police have a reasonable ground to assume after the interview that s/he is a victim of human trafficking, the police advise the brothel owner not to let him or her work. If the brothel owner anyway employs the person, s/he risks being guilty as if the sex worker's victimhood is proved by evidence. Making brothel owners responsible is a good example how the Convention's Article 19 work in practice in the domestic implementation.

This method is problematic if it is only a half-measure for victim protection. Even if a sex worker is not allowed by the police to work at a brothel in The Hague, the police only sweep the problem under the carpet. If the person who was given a negative advice is in fact a victim of human trafficking, s/he could be taken to another city where the same things happen which would have happened in The Hague. In positive outcomes of this method, even if the victim is taken to another city and forced into prostitution, the police are able to provide enough evidence against the perpetrators soon enough to rescue the victim. In unsuccessful outcomes, the victim is taken to a place untraceable for The Hague police and thus it only polishes the reputation of the city but does nothing good for the victim.

Ms. Bakker spoke positively about the Dutch-Hungarian police cooperation. Even if it is slow due to administrative bureaucracy, it is better and better every year. In April, 2013 the

Commerciele Zedenpolitie was about to begin an international investigation together with the Hungarian Police's Trafficking in Human Beings Department. The Dutch and the Hungarian Police are obliged to report all human trafficking cases to Europol, which functions as a bridge between EU states' police teams. However, if police officers are not trained on equally high standards, the cooperation cannot be effective. Authorities need to be educated on the phenomena of human trafficking in every state of the EU (and across) to be able to recognize the signs of the crime, to be able to handle with the victim and to know the best ways to investigate and cooperate internationally.

According to my interviewee, the Dutch provision on human trafficking is broad, but since it focuses on *exploitation* as the purpose of the crime, it makes the work of the police easier. Exploitation is the act of taking advantage of another's vulnerable situation. As Ms. Bakker explained, when measuring the severity of exploitation, the reference point shall be a person, legally working in prostitution, entitled with all rights in the Netherlands. If a person in the sex industry cannot enjoy the same rights than the reference point, the person is considered to be exploited. "The legislature and the Supreme Court refer to a situation of exploitation, in the context of the sex industry, if the circumstances of the individual's situation are not the same as those normally experienced by an articulate prostitute in The Netherlands".<sup>97</sup> In this interpretation, assessing the circumstances of work and the nature of work will also have a crucial importance for the court's decision.

Ms. Bakker states that as long as prostitution remains, there will be sexual exploitation, thus they are inevitably linked. Surprising to hear this from a Dutch state authority, since it might seem like a statement incompatible with the Dutch national human trafficking policies. However, if it is assumed that prostitution would never be erased, legalized prostitution in the Netherlands functions as a hotspot for human traffickers. If

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<sup>97</sup>Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children: *Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis*. The Hague: BNRM, 2012. p. 27

prostitutes are taken to the Netherlands, there is a bigger chance that they would be found, registered and rehabilitated due to the high standards Dutch authorities and civil workers set.

Obviously, the Dutch policy-makers cannot defend their legal prostitution agenda by claiming that they are eventually doing a favor for other states if their prostitutes are taken to the Dutch red light districts. This is not only politically incorrect, but also unsustainable since it does not deal with the root of the problem.

According to the 2009 Report of the Dutch National Rapporteur on Trafficking in Human Beings, law enforcement authorities prosecuted 221 persons for human trafficking offenses in 120 cases in 2007.<sup>98</sup> As it is shown below, this number is strikingly different from the Hungarian statistics of the same year, which can only be explained by the obvious deficiency of the old Hungarian provision on THB.

### **3.2.2 Victim Protection: the work of CoMensha and the duties of state authorities**

As previously stated, the scope of the Dutch police's work is not limited to investigation. Police forces receive training on the treatment of victims, they are in everyday contact with sex workers during the obligatory field work, and they provide special protection services for victims of human trafficking.

Also because there is a shared responsibility for victims of human trafficking, the cooperation of the police and the civil society in the Netherlands considering human trafficking is well established. Due to the annual reports of the National Rapporteur, improvements and malfunctions can be easily seen through, which is essential for a developed and efficient policy against THB.

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<sup>98</sup> European Commission. Together against Trafficking in Human Beings. Report on the Netherlands, Available at: <http://ec.europa.eu/anti-trafficking/NIP/Netherlands.jsessionid=5SgnSGgfXYmTc14ksh7zqg7bZ4nXpWrYvj1QtCkXqQ0CyRmP59x4!-1181792443#A3> (Retrieved on November 14, 2013)

One of the most important key players in the Dutch anti-trafficking policies is the *Coordination Centre for Trafficking in Human Beings* (CoMensha), which is one of the member organizations of *La Strada International*, a European NGO network fighting against THB. CoMensha closely collaborates with the police and national authorities because it identifies, registers and shelters victims of human trafficking. Police investigators are *obliged* to report all possible victims of human trafficking to CoMensha due to a procedural rule. The Dutch Rapporteur is however critical about the realization of this rule, since numbers show that there is a lack of consistency in police's reports.<sup>99</sup> Besides the police, the Royal Netherlands Marechaussee and the Inspectorate of the Ministry of Social Affairs and Employment have the duty to report suspected victims, but the Dutch Rapporteur expressed dissatisfaction considering these authorities' obedience as well.<sup>100</sup> The Rapporteur emphasized the duty of authorities to act proactively, since the number of invisible human trafficking victims could be still high.

Since the decision of the European Court of Human Rights in the aforementioned case of *Rantsev v. Cyprus and Russia*, states are obliged to take operational measures in order to protect victims and potential victims. As the reasoning stresses, Article 4 of the ECHR "entails a procedural obligation to investigate situations of potential trafficking" and considering the Cypriot authorities' positive duties to take protective measures, the Court concluded that they failed to comply with this duty thus breached Article 4.<sup>101</sup> Thus, immigration and law enforcement authorities are bound to take a proactive role in the protection of human trafficking victims.

Important to note that the government supports the maintenance and establishment of shelter houses with a great supply of funding. In 2008, a new shelter was opened by the

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<sup>99</sup> Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children: *Trafficking in Human Beings: Visible and Invisible. A quantitative report 2007-2011*. The Hague: BNRM, 2013, p. 23

<sup>100</sup> *Ibid.* pp.:36-37

<sup>101</sup> Case of *Rantsev v. Cyprus and Russia*, European Court of Human Rights, January 7, 2010, No. 25965/04, Paras.: 294-298

government that specifically aimed to give support for male victims of human trafficking, which is without exaggeration a unique development on the global anti-trafficking agenda. In 2010 the Ministries of Security and Justice and Health, Welfare and Sport provided funding for additional places in shelters within the pilot project of the so-called “Categorical Shelter for Victims of Human Trafficking” program.<sup>102</sup>

### 3.3 Hungary

#### 3.3.1 Enforcement of the “old” provision: obstacles of investigations, means and characteristics of criminal gangs

Early cases on human trafficking were conducted by two separate bodies; one that was responsible for the secret investigations and another, which acted as the prosecutor in front of courts. Due to procedural shortcomings, the need has grown to have one, expert body within the police that investigates and represents the case in front of the courts. This section relies on the interview with two Hungarian police investigators from the Trafficking in Human Beings Department on the previous provision on trafficking in human beings and the scope of the Department’s work.<sup>103</sup>

The Trafficking in Human Beings Department at the Hungarian National Bureau of Investigation was established in 2004 under the Organized Crime Division. The scope of work of this special division is limited to human trafficking crimes that have an international aspect. If the case has no international trait, the investigation is conducted by the local and regional police offices.

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<sup>102</sup> European Commission. Together against Trafficking in Human Beings. Report on the Netherlands, Available at: <http://ec.europa.eu/anti-trafficking/NIP/Netherlands.jsessionid=5SgnSGgfXYmTc14ksh7zqg7bZ4nXpWrYvj1QtcKXqQ0CyRmP59x4!-1181792443#A3> (Retrieved on November 15, 2013)

<sup>103</sup> Interview with Mr. Zoltan Csizma (Police Captain) and Ms. Szonja Szabó (Police Major) at the Hungarian National Bureau of Investigation, Trafficking in Human Beings Department, Budapest, January 3, 2013



The greatest obstacle for the procedures of the investigators was the legal definition on human trafficking. According to Section 175/B of the Hungarian Criminal Code, the trafficker “sells, purchases, conveys or receives another person or exchanges a person” or “recruits, transports, houses, hides or appropriates people”.<sup>104</sup> Providing evidence on the acts listed in this provision is extremely difficult for the police. Selling, purchasing or receiving persons are those parts of the criminal activity that occur within a short period of time, mostly without witnesses and evidence. The victim may not know the moment or day when s/he was “sold” to another person, since in many cases it takes a long time for the person to realize his or her victimhood. Moreover, as the investigators said, girls are often emotionally connected to their pimps and thus ignore or fail to notice that they have been utilized.

Policemen in the Trafficking in Human Beings Department are not specialized in victim protection or reparation; this is operated by other civil and state organs. The only obligation the police have towards victims of human trafficking (and of any other crime) is witness protection. Thus, if the victim is not considered safe, the police are required to provide protection for the period when the victim acts as a witness. However, the duty of witness protection often only functions formally in human trafficking cases, especially where there had been an established relationship between the perpetrator and the victim, since the protection of personal data and information on family relations are not feasible anymore.

As my interviewees told, most of the Hungarian sex workers in the Netherlands return to Hungary after a certain time, either because their court cases are finalized or because they realize that reality in the red light districts is far from what they imagined. The period after their return is critical due to the high risk of revictimization and therefore it is crucial that the Hungarian anti-trafficking policy focuses on the returning sex workers. Returned Hungarian victims of human trafficking will be most likely back in the cycle of crime – as Mr. Csizma

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<sup>104</sup> Act IV of 1978 on the Criminal Code of Hungary, Section 175/B(1)

said. Even if their perpetrators are convicted, they fall prey to another one since their vulnerability and social environment remain the same.

As the investigators told, criminal groups in Eastern Europe and the Balkans are generally small. Perpetrators are often family members, friends or neighbors. They know the local circumstances and they know how to induce the locals to do illegal activities or to work in prostitution. Also, criminals are often not members of specialized criminal groups. They are rather parts of local gangs or frivolous criminal groups that are eager to gain financial profit. Perpetrators are often even known within the specific local environment. Pimps develop trustful relationships with victims who fall prey to an emotional and financial trap. It is very easy to get in this trap (especially in environments where *pull* factors are high) and it is very difficult to get out because victims are often under continuous surveillance and threat.

Besides the traffickers, Hungarian “girls are also fooling each other” – said Ms. Szabó, alluding that prostitutes often help their pimps by convincing others to work in the sex business. It may happen because they have not realized they are victims of human trafficking (if they are not aware that they have been financially exploited) or because they are emotionally tricked by their pimps and would like to help them in any way.

The inaccuracy of the old human trafficking provision has been emphasized by the investigators for a long time. As Csaba Kiripovszky, former Police Captain stressed already in 2008, criminal cases brought to court are disproportionately low to the actual number of crimes. Since the provision had “little to do with reality”, the Department was able to start 20-25 prosecutions a year because it was hardly possible to provide evidence on human trafficking.<sup>105</sup> Thus, due to the shortcomings of the Trafficking in Human Beings Section, police investigators could mostly prosecute on grounds of sections Living on Earnings of

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<sup>105</sup> Matalin, Dora: *Gyermekotthonnál vadásznak a kerítők*. Népszabadság Online. December 9, 2008. Available only in Hungarian at: [http://nol.hu/belfold/lap-20081209-20081209\\_02-29?ref=sso](http://nol.hu/belfold/lap-20081209-20081209_02-29?ref=sso) (Retrieved on September 23, 2013)

Prostitution<sup>106</sup> and Pandering<sup>107</sup> of the old Criminal Code. Data present it as well: while the police prosecuted 126 cases in pandering, they only prosecuted 8 cases in trafficking in human beings in 2010.<sup>108</sup>

### **3.3.2 Prevention and Victim protection by the Hungarian Baptist Aid**

As it is presented above, the Hungarian police forces provide no specific victim support services. Prevention and reintegration programs are mainly operated by non-governmental organizations. One of the most active ones among them is the Hungarian Baptist Aid. I had the opportunity to interview two program leaders on their prevention and reintegration programs in order to gain insight into prevention and victims' rights protection in Hungary.<sup>109</sup>

One of the prevention programs of the Baptists is the V4 Youth against Human Trafficking. This one-year program, which runs in 2013, aims to do awareness-raising among youth in the Visegrad countries. It targets high school graduates since this group is highly vulnerable just before they choose their careers. The presenters therefore educate them about human trafficking, facts about working abroad and raise awareness about fake job advertisements. Under this program, the Baptists reached about 600 students, mostly in the North East region of Hungary where the population is under high risk due to poverty, lack of infrastructure and employment opportunities. Measuring the output of prevention programs is difficult, or at least it takes years to find out whether the awareness-raising classes prevent youth from falling prey to exploitation. Clearly, the final choice will be on the individual, but

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<sup>106</sup> Act IV of 1978 on the Criminal Code of Hungary, Section 206

<sup>107</sup> *Ibid.* Section 207

<sup>108</sup> Presentation of Ms. Szonja Szabó, Police Major of the Hungarian National Bureau of Investigation at the Centre for Information and Research on Organised Crime, Utrecht. Available at: [http://www.ciroc.nl/presentaties/presentatie\\_szabo.pdf](http://www.ciroc.nl/presentaties/presentatie_szabo.pdf) (Retrieved on September 24, 2013)

<sup>109</sup> Interview with Ms. Kato Fellegi, Program Coordination of V4 Youth against Human Trafficking, Budapest, October 15, and Ms. Agnes De Coll, Anti-Trafficking Program Officer of the Hungarian Baptist Aid, Budapest, October 25, 2013

it is absolutely necessary to educate youth on human trafficking since all of them are at risk. Children in foster care institutions are particularly vulnerable since they often have no family bound, future perspective or other grounds of stability and therefore they are ready to leave everything behind. Prevention programs targeting children in these institutions would be essential but so far there has been no firm initiative for that from the government or the civil society's side.

As to the consequences of the Hungarian Government Act CXXXV of 2005 on Crime Victim Support and State Compensation, the state is obliged to provide legal and monetary aid, information and advice, and to protect the victim's fundamental rights. Monetary aid is the most common support of the state, which is an important but only a short time solution.<sup>110</sup>

Currently the Ministry of Human Resources operates one shelter house that has space for six persons for 90 days. This period of time cannot be enough to reintegrate the victim in the society but it serves to prevent crisis and protect the victim under threat.<sup>111</sup> In case of emergency, the time limit can be extended for another, maximum 90 days. Fortunately returning victims have other options and can also stay in the shelter houses of the Hungarian Baptist Aid. Due to obvious reasons there is no sufficient information online on the victim services of the Baptists. I interviewed the Anti-Trafficking Program Officer, Ms. Agnes De Coll in order to get first-hand information on their policies of victim protection.

As my interviewee explained, the primary criterion for being entitled to the benefits of a shelter house is actually the willingness to go to a shelter. According to experiences, returning victims often refuse to go because most of them already spent a long period of time

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<sup>110</sup> Justice Service of Ministry of Public Administration and Justice: The Hungarian Victim Support Service. Available at: [http://kih.gov.hu/documents/10179/16456/AS\\_info\\_english](http://kih.gov.hu/documents/10179/16456/AS_info_english) (Retrieved on November 13, 2013)

<sup>111</sup> Hungarian Government Regulation 1351/2013. (VI. 19.) : *Az Emberkereskedelem elleni irányelvhez és az Emberkereskedelem Felszámolását Célzó Európai Stratégiához kapcsolódó, valamint az emberkereskedelem elleni küzdelemről szóló 2008-2012 közötti nemzeti stratégiát felváltó 4 éves stratégiai tervdokumentum.* (Hungarian National Strategy against Trafficking in Human Beings for 2013-2016), p. 63, Available only in Hungarian at: [http://emberkereskedelem.kormany.hu/download/4/d7/70000/Emberkereskedelem%20elleni%20nemzeti%20strat%C3%A9gia%202013-2016\\_kiadv%C3%A1ny.pdf](http://emberkereskedelem.kormany.hu/download/4/d7/70000/Emberkereskedelem%20elleni%20nemzeti%20strat%C3%A9gia%202013-2016_kiadv%C3%A1ny.pdf) (Retrieved on October 15, 2013)

in shelters abroad and they do not wish to be under supervision again. In these cases they cannot be forced to go to a shelter, even if their situation is considered unsafe. The locations of the shelters often change due to security reasons. Moreover, there is no fixed number of available places since it changes according to the available funds. In contrast to the state shelter, the aim of the Baptist shelters is to provide all possibilities for rehabilitation and reintegration. Victims receive psychological and social help that enables them to return to employment or educational institutions. There is no specific time limit set for the victims because each person needs an individual assessment for that. However, the success of the reintegration program is unrealizable without the victim's personal will and strength.

Important to note that both in prevention and protection programs, there is a striking lack of knowledge on and facilities for human trafficking outside of sexual exploitation, as labour exploitation, which affects men all over the world. For example, there is no facility in Hungary for men's shelter houses. Also, boys are generally not aware of their vulnerability concerning the risks of labour exploitation. Facts and figures on male exploitation need to be included in future campaigns and policy papers. The next four year's national anti-trafficking strategy contains no specific plan or methodology to tackle male exploitation, which leaves an important gap in the fight against trafficking in human beings.

### **3.3.3 Changes according to the new Criminal Code and the national anti-trafficking strategy**

The new Criminal Code of Hungary has been enforced in July, 2013. Under the international and national pressure, the legislators needed to draft a law that follows the requirements of the EU and the Council of Europe and is more up to date on trends of criminal activities, transnational policies and investigation methods.

Mr. Csizma stressed that the amendment of the human trafficking provision is inevitable for a more effective anti-trafficking agenda in Hungary. Besides the new trafficking provision, the new Criminal Code also includes a separate section on Forced Labor, which was not elaborated by the old Code. As Mr. Csizma said, these legislative changes were absolutely necessary and were welcomed by the investigators.

In order to bring the policy in line with the requirements of the EU and Council of Europe, besides the new human trafficking provision, Hungary was obliged to set up the National Strategy against Trafficking in Human Beings for 2013-2016.<sup>112</sup> According to a press release of the government, relevant authorities have begun to implement the four-year strategy, which is a challenging plan to improve victim protection, preventive awareness-raising projects, remedies, prosecution, cooperation of civil and state sectors and the reintegration system.<sup>113</sup>

The new Criminal Code will be certainly helpful for the specialized investigator teams but since there has been no case decided on the specific, new provisions, only speculations could be drawn on the effectiveness of the new legislation. The new national strategy also has promising elements. For example it requires the state to develop a system for the professional training of authorities and social workers dealing with victims of human trafficking,<sup>114</sup> a 24-hour toll-free helpline available from abroad,<sup>115</sup> the expansion of capacity and services of

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<sup>112</sup> *Ibid.*

<sup>113</sup> Press Release of the Hungarian Ministry of Interior: *Megkezdődött az emberkereskedelem elleni stratégia végrehajtásának előkészítése*. June 26, 2013, Available only in Hungarian at: <http://www.kormany.hu/hu/belugyminiszterium/europai-unios-es-nemzetkozi-helyettes-allamtitkarsag/hirek/megkezdodott-az-emberkereskedelem-elleni-strategia-vegrehajtasanak-elokeszítése> (Retrieved on November 4, 2013)

<sup>114</sup> Hungarian Government Regulation 1351/2013. (VI. 19.): *Az Emberkereskedelem elleni irányelvhez és az Emberkereskedelem Felszámolását Célzó Európai Stratégiához kapcsolódó, valamint az emberkereskedelem elleni küzdelemről szóló 2008-2012 közötti nemzeti stratégiát felváltó 4 éves stratégiai tervdokumentum*. (Hungarian National Strategy against Trafficking in Human Beings for 2013-2016), pp.:28-29, Available only in Hungarian at: [http://emberkereskedelem.kormany.hu/download/4/d7/70000/Emberkereskedelem%20elleni%20nemzeti%20strategia%202013-2016\\_kiadv%C3%A1ny.pdf](http://emberkereskedelem.kormany.hu/download/4/d7/70000/Emberkereskedelem%20elleni%20nemzeti%20strategia%202013-2016_kiadv%C3%A1ny.pdf) (Retrieved on October 15, 2013.)

<sup>115</sup> *Ibid.* p.31

shelter houses,<sup>116</sup> or the development of a Transnational Referral Mechanisms for victims with the Netherlands, Belgium, Switzerland, that would make the identification more effective.<sup>117</sup>

However, the preventive measures set for the following four years are far from promising, even though it would be an essential element in the Hungarian anti-trafficking policy. The national strategy only plans to increase media advertisement, stronger protection of kindergartens and schools, or the creation of a website functioning as a forum for information spreading.<sup>118</sup> This part of the strategy absolutely leaves out the urgent need for special protection of vulnerable groups, as children with unstable background, orphans, and the socially, mentally or physically disadvantaged youth. For example the implementation of education on human trafficking in the general school curriculum should not be dependent on funding, and it could make a significant change. Besides educating children in state schools, children under state care must receive special attention on this matter, since they are the obvious targets of perpetrators.

## **3.4 Evaluation**

### **3.4.1 Victim protection**

Victim protection has different policies in the two countries. While in the Netherlands victims of human trafficking have different rights than victims of other crimes due to the B9 regulation, the Hungarian system does not differentiate between victims of different crimes.

Victim support system exists in Hungary, operated both by state organs and civil society, but it is not as systematic as in the Netherlands. As Ms. Szabo stated, it is not just

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<sup>116</sup>*Ibid.* p.33

<sup>117</sup>*Ibid.* pp.:39-40

<sup>118</sup>*Ibid.* pp.:40-49

because the Netherlands is a more advanced or structured state, but also because there are more victims found there than in Hungary and therefore it was necessary for the Dutch authorities to develop a strong victim protection system.<sup>119</sup> This way of thinking however ignores two things that could improve anti-trafficking policies regarding human rights protection.

Firstly, as it was presented above, the previous provision on human trafficking in the Hungarian legal system was insufficient and caused significant obstacles for the police to investigate and bring cases to the courts. Consequently, many cases were not finalized and criminals were not convicted or were convicted for other crimes than THB. Therefore, data on the number of victims in Hungary can be misleading since the provision was not sufficient for fourteen years. Moreover, before the accession to the EU in 2004, Hungary was not supervised by a higher body on the protection of victims of human trafficking. A Governmental Act on victim support was enacted in 2005, showing commitment to the observation of Member States' duties. There is no sufficient data on the ways in which the state supported victims before 2005, but it can be reasonably assumed that it was less organized than it is now. Insufficient victim protection had created a strong barrier between authorities and victims, which also created erroneous information on victims. Including human trafficking, the number of victims of gender-related crimes is unreliable because besides their fear of their traffickers and state authorities, they also feel ashamed. This is particularly problematic in cases of male victims of sexual abuse, as it was noted before. Therefore, it cannot be boldly said that there are more victims in the Netherlands than in Hungary only because more are registered there.

Secondly, even if it is correct that there are more victims in the Netherlands than in Hungary, is it indeed reasonable to claim that it is the duty of the Netherlands to protect and

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<sup>119</sup>Interview with Mr. Zoltan Csizma (Police Captain) and Ms. Szonja Szabó (Police Major) at the Hungarian National Bureau of Investigation, Trafficking in Human Beings Department, Budapest, January 3, 2013



recover Hungarian victims? Wouldn't it be more efficient if Hungarian experts worked with Hungarian victims? If Hungarian victims remain in the Netherlands, use the state's recovery system and apply for residence and work permit through the B9 regulation, it is very unlikely that they find a job outside of the sex business in the Netherlands or that they would go back home and try to seek for other job opportunities in Hungary because of the following issue. Even if a Hungarian sex worker is found to be a victim of a crime and is taken to recovery programs, s/he will still have no language skills, no professional experience, no social network (besides others in the sex business), and thus no springboard that helps him or her to start a career in the Netherlands. Consequently, even if victims are treated by the state and the civil sector by all kinds of efforts in the Netherlands, it is not efficient because eventually a residence or work permit alone is not helpful or actually useless for victims of human trafficking. Generally, victims' recovery programs would be way more helpful in their home countries, since there they have the language skill, knowledge on circumstances and perhaps a social network that may help the person in the beginning of a new carrier.

### **3.4.2 International cooperation**

Cooperation between the Dutch and Hungarian human trafficking forces is improving year by year. Due to EU and Council of Europe regulations, officers are obliged to cooperate at least if the case concerns both states. Moreover, due to developing technologies and the network of Europol, police cooperation within the EU should be quick and easy.

Dutch and Hungarian policemen often make field trips to the other country's officers and visit the relevant institutions, authorities and independent experts. Just before I made the interview with the Hungarian police in January, they visited the Netherlands where they were taught about shelter houses and other victim recovery programs to get insight into the Dutch victim protection system. As the Dutch policewoman I interviewed told me, the two states

began a cooperative investigation program in April, 2013. The Dutch Minister for Migration Fred Teeven visited the Hungarian Baptist Aid's shelter houses in February, 2013 to strengthen the cooperation between the two states and develop a more effective victim protection agenda.

Unfortunately the bureaucracy still makes the operations slow, as both the Hungarian and the Dutch investigators complained during the interviews. However, their continuous field trips and cooperative investigations show positive tendency, which will hopefully be an established system. In the case of human trafficking, EU institutions, directives and decisions make a harmonious framework, which clearly strengthen policies and the fight against THB. Although this is out of this paper's focus point, but it would be essential for the future to make similar agreements and to establish similar institutions across the EU borders, since there is a rising number of victims from African and Asian states.

### **3.4.3 National monitoring**

Under the EU and the Council of Europe' jurisdictions, Member States are required to establish national monitoring institutions on human trafficking. In the Netherlands the Bureau of the Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children was established in 2000, in order to tackle illegal activities as the result of the legalized prostitution. The current Rapporteur, Ms. Dettmeijer-Vermeulen works independently and reports to the government. The reports are available online and bring the government and civil society's action in a critical perspective.<sup>120</sup>

In the Hungarian context, the functions of the national rapporteur are currently carried out by the National Coordinator, who is Ms. Berta, Deputy State Secretary for EU and

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<sup>120</sup> Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children. Reports available at: <http://www.dutchrapporteur.nl/reports/> (Retrieved on October 20, 2013)

International Affairs, under the Ministry of Interior. The independency of an independent body in name can always be questioned but the independency of a governmental organ is hardly possible. It is necessary for Hungary to establish an institution that is outside of the government's context, because the main reason why international communities require national monitoring bodies is to receive *critical* reports on governmental and civil actions.

Significant changes have been made in the past two years in the Hungarian anti-trafficking agenda, deriving from the requirements of the EU Directive. The criminal provision now fulfills the requirements of EU and Council of Europe jurisdictions, and the victim identification procedure has been implemented by a Government Regulation. Other areas however, as the establishment of effective victim sheltering and prevention programs are still in initial stages.

Table. 3. Comparison of anti-trafficking policies in the Netherlands and Hungary

	<b>Netherlands</b>	<b>Hungary</b>
Law enforcement	<p><i>Commerciele Zedenpolitie</i> (established in 2002)</p> <ul style="list-style-type: none"> <li>-field visits in the red light district</li> <li>-initial, screening interviews with sex workers</li> <li>-criminal investigation</li> <li>-prove of exploitation by reference points</li> </ul>	<p><i>Trafficking in Human Beings Department</i> <sup>121</sup> (established in 2004)</p> <ul style="list-style-type: none"> <li>-no specific victim protection</li> <li>-procedural difficulties due to the old THB provision</li> <li>-criminal investigations on other provisions (Pandering, Livings on Earnings of Prostitution)</li> </ul>
Victim protection	<p><i>Coordination Centre for Trafficking in Human Beings</i> -identifies, registers, shelters victims</p> <p><i>Ministry of Security and Justice, Ministry of Health, Welfare and Sport</i> -funds shelters</p> <p><i>B9 Regulation</i> -specific regulation for victims of THB: shelter and assistance during investigation and prosecution</p>	<p><i>Hungarian Baptist Aid</i> -prevention programs -reintegration and rehabilitation in shelters</p> <p><i>Ministry of Human Resources</i> -operates a shelter</p> <p><i>Justice Service of Ministry of Public Administration and Justice</i> -legal and monetary aid as state compensation</p>
National monitoring	<p><i>Bureau of the Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children</i> (established in 2000) -reports annually on relevant legislation and regulations, prevention, criminal investigation and prosecution (reports are available online) -independent body</p>	<p><i>National Coordinator</i> (established in 2008) -reports to the Government annually on steps taken and to be done (reports are not available online) -head of the <i>National Coordination Mechanism</i> (body consisting state and NGO partners) -governmental body</p>

<sup>121</sup> Since there is no data on the enforcement of the new Hungarian Criminal Code, information here relies on the enforcement of the “old” provision, Section 175/B of Act IV of 1978 on the Criminal Code of Hungary

## **Chapter IV. Limits of Fulfilling Regional Requirements**

This part of the thesis overviews the manner the above described domestic legislation and practices fulfill the current standard of the Council of Europe in the fight against trafficking in human beings. This overview serves to provide recommendations for state authorities and NGOs to strengthen their actions against THB, to cooperate more effectively and to fill legislative gaps in this complex human rights issue.

As it is listed in Chapter I., the Convention on Action against Trafficking in Human Beings has various innovations compared to the UN THB Protocol. Firstly, it emphasizes that human trafficking shall be punishable whether it takes place in a national or transnational form, committed by an organized criminal group, or not. As by now, both the Hungarian and the Dutch legislation and practice implemented this essential requirement. For example, as it is mentioned above, it is recognized by the Hungarian authorities that criminal groups in this region are generally small and that victims are often trafficked by their own family, neighbor or “friends”. Similarly, it is recognized by the Dutch authorities that domestic trafficking is especially present in the Netherlands, which is as severely punishable as a transnational variation of the crime. In the period of 2007-2011, one third of the registered victims in the Netherlands were Dutch.<sup>122</sup>

The second relevant innovation of the Convention is the emphasis on the *equal rights* of victims of human trafficking. It recognizes the growing trend of exploitation of men and that male victims should benefit from the same rights as females. In the case of Hungary, there is a considerable lack of facilities for and knowledge on male victims of THB. There is no possibility for male victims in Hungary to receive rehabilitation benefits in shelters, there

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<sup>122</sup> Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children: *Human trafficking is happening here. Fact sheet accompanying the Ninth report of the Dutch Rapporteur*, The Hague: BNRM, 2013, p. 3

is no specific prevention program directed to men, but also, there is no specific attention on this issue in the next four year's National Strategy against Trafficking in Human Beings. In the case of the Netherlands, the government opened a shelter for male victims of THB in 2008, which is a remarkable step forward to the protection of male victims. However, as the Dutch Rapporteur noted in her reports, there is insufficient attention on exploitation outside of the sex industry, which gives ground to assume that even though there is a shelter for male victims, there is still a great lack of expertise on male victims of THB because they are the foremost targets of labour exploitation.<sup>123</sup> This thought brings us to the analysis of the next essential requirement of the Convention, the criminalization of *all forms* of trafficking in human beings.

By now, both states' legislation punish all forms of THB, which are sexual exploitation, forced labour or services, slavery, servitude and the removal of organs. In 2005, the Dutch Criminal Code was amended by listing all forms of human trafficking. But again, as the Rapporteur warns, there is no sufficient attention on human trafficking outside of the sex industry, due to the general perception that those are less serious violations of human rights. In Hungary, all forms of human trafficking were criminalized already by the previous provision, and by the new Criminal Code, Forced Labour also has a separate provision in Section 193. However, considering the fact that there are no facilities for male victims of human trafficking for rehabilitation and reintegration, it can be assumed that even if all forms of THB are criminalized, there is no available and effective remedy for all victims of THB. A human rights approach to tackle human trafficking is not only essential in cases of sexual exploitation, but all other forms of THB as well.

Another important development of the Convention is the requirement of Member States to establish a system for *victim identification*, which as well by now has been realized

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<sup>123</sup> *Ibid.* p. 6

by both states' legislatures. The Hungarian Government Regulation 354/2012, which sets the identification mechanism, entered into force on January 1, 2013. In the Netherlands, victim identification mechanism has been in practice for a longer time, since the Dutch Rapporteur already presented evaluation on this regard based on data from the period between 2007 and 2011. According to this report, responsible state authorities often do not fulfill their obligation to report possible victims to CoMensha and therefore the number of invisible victims remains high.<sup>124</sup>

Due to the regularly present procedural hardships in human trafficking investigations, the Convention stresses that criminal investigations should not entirely depend on victims' statements, but the authorities are obliged to seek other evidence too and conduct investigations without victims' testimonies. According to my Dutch interviewee, this is recognized in the Netherlands in the practice, which means that authorities may be held liable if they fail to investigate suspicious cases. As it is in the Hungarian 2013-2016 National Strategy against Trafficking in Human Beings, it is eventually recognized in Hungary as well, that even if victims are crucial for the efficiency of the procedures, THB investigations should be possible to conduct *without* victims' testimonies.<sup>125</sup>

Furthermore, it should be also an essential requirement to *burden victims* with interrogations and hearings *as little as possible*, because the lengthy and detailed interrogations could traumatize victims more. It is not only harmful for victims, but for the criminal procedures as well, since victims may decide to cease the proceedings because of their lengthy and exhausting circumstances.

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<sup>124</sup> Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children: *Trafficking in Human Beings: Visible and Invisible. A quantitative report 2007-2011*. The Hague:BNRM. 2013, pp.:36-37

<sup>125</sup> Hungarian Government Regulation 1351/2013. (VI. 19.) : *Az Emberkereskedelem elleni irányelvhez és az Emberkereskedelem Felszámolását Célzó Európai Stratégiához kapcsolódó, valamint az emberkereskedelem elleni küzdelemről szóló 2008-2012 közötti nemzeti stratégiát felváltó 4 éves stratégiai tervdokumentum*.

(Hungarian National Strategy against Trafficking in Human Beings for 2013-2016), p. 55, Available only in Hungarian at:

[http://emberkereskedelem.kormany.hu/download/4/d7/70000/Emberkereskedelem%20elleni%20nemzeti%20strat%C3%A9gia%202013-2016\\_kiadv%C3%A1ny.pdf](http://emberkereskedelem.kormany.hu/download/4/d7/70000/Emberkereskedelem%20elleni%20nemzeti%20strat%C3%A9gia%202013-2016_kiadv%C3%A1ny.pdf) (Retrieved on October 15, 2013.)

Another important element of the human rights approach is the implementation of the *non-punishment principle* into practice by the authorities. Victims are regularly coerced to commit criminal activities and then prosecuted because of these. Authorities have to bear a high burden to investigate human trafficking cases that involve criminal activities committed by victims and the principle of margin of appreciation should not stand in the way of the implementation of the non-punishment principle.

Lastly, measures to strengthen the protection of children are in both states' criminal laws strong, but are insufficient in practice. According to the Dutch Rapporteur's ninth report, there is a lack of expertise on child trafficking in the Dutch youth care sector and therefore their protection against traffickers is not enough. The fact that minors could fall prey to exploitation due to the inadequate protection of state means that the Netherlands does not fulfill the regional treaties' requirements. Moreover, the Rapporteur warned that a high number of victims of "loverboys" are Dutch minors, and that there is inadequate attention and care about them, as victims of human trafficking.<sup>126</sup> In the case of Hungary, it is urgently necessary to establish strong protection measures for children in state care institutions because even if these children are the most common targets of traffickers, there is currently no adequate state or civil response to it. There is no clear suggestion on steps to be done in this regard in the national strategy for the next four years, which is especially worrisome. It has to be recognized that Hungary is not only a transit but a destination country as well and therefore strong measures to protect children and prevention programs are essential for combating child trafficking.

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<sup>126</sup> Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children: *Human trafficking is happening here. Fact sheet accompanying the Ninth report of the Dutch Rapporteur*, The Hague, 2013, pp.:2- 3



## **Chapter V. Conclusion**

Through the international discourse on human trafficking, experts have come close to drafting a legislation that focuses not only on perpetrators, but on the protection of the rights of victims as well. Thus, the international and regional jurisdictions show a human rights approach in combating human trafficking by now.

The UN THB Protocol was an important first step in the international discourse because, by recognizing that human trafficking is not a single act but rather a process, it set the basic definitions on means, actions and the purpose of human trafficking. However, as it was primarily focusing on the obligations relating criminal law, the UN THB Protocol only briefly set standards on the protection of victims' rights. Due to its shortcomings on the human rights approach of THB, the drafting committee of the Convention on Action against Trafficking in Human Beings was already established when the UN THB Protocol just entered into force. The Convention aimed to set firm obligations for Member States by its innovative provisions as the identification system, the reflection period, the non-punishment principle, and its focus on the equal rights of victims. Some of the shortcomings of the Convention were rectified in 2011 by the definitions of the EU Directive, such as the non-punishment principle, which now forbids Member States to prosecute or detain victims on grounds of their coerced criminal activities. Moreover, new forms of the crime were presented in the Directive's definition on THB, such as forced begging.

As it was presented through the examples of the Netherlands and Hungary, the law-making process took a long time on the domestic level as well. Recognizing and understanding the phenomenon of human trafficking and translating that understanding into the legal language was certainly complicated and long. In the case of Hungary, there have been significant changes in the past years, mainly due to the pressure of the European Union. The definition of the criminal law has been brought in line with the international standard and

the development of victim identification system has been recognized. Due to these legislative developments, there is a possibility to develop a well-functioning practice and to establish judicial interpretations.

However, there are plenty of reasons for certain malfunctions of the law and practice in both states. Considering the case of Hungary, authorities primarily have to acknowledge that Hungary is not only a transit, but an origin country as well and therefore, much firmer prevention measures have to be established, such as awareness-raising and the education of the youth. The Dutch authorities have to recognize that prostitution is not a profession anyone would voluntarily like to do and that most of the sex workers in the Dutch red light districts are either coerced by another directly or forced into it indirectly, due to the lack of opportunities at their home countries. Moreover, both states' authorities have to establish protection measures for male victims of trafficking, since there is a striking lack of facilities for and knowledge on them, and therefore they cannot enjoy the same rights as female victims in their rehabilitation and reintegration. The idea that victims in most cases are the most effectively recovered at their home countries have to be considered by both states. Perhaps if all the efforts and funds spent in the Netherlands for the recovery of Hungarian victims would be placed in Hungary, there could be a more efficient system for victim protection.

Generally, rehabilitation and reintegration of victims are the most time-consuming and expensive parts of tackling trafficking in human beings, since these programs not only need facilities, as safe houses, but also the constant employment of experts, as psychologists and doctors. Prevention programs on the other hand, can be realized by lesser efforts and they also operate sustainably since they generate discussions and interest within societies. Thus, putting more effort in prevention programs would not only help possible victims, but it should also be in the interest of states.

It has to be stressed that there is no effective legislation without political will, effective monitoring systems, and expertise. Human trafficking will not be tackled until the authorities, by understanding the complexity of human trafficking, situate their role in this crime and draft their national strategies accordingly. Moreover, it is essential for the key players in the anti-trafficking agenda to follow new forms, trends and technologies of criminals. As the European Court of Human Rights emphasized, authorities have to bear a proactive role in tackling human trafficking, thus a comprehensive legislation is not sufficient yet. Firm procedural rules have to be established, civil and state actors have to closely cooperate and critical reports have to be issued on the developments and shortcomings of the system.

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- Interview with Ms. Agnes De Coll, Anti-Trafficking Program Officer, Budapest, October 25, 2013
- Interview with Ms. Anita Bakker, Investigator at the Commerciele Zedenpolitie, The Hague, March 13, 2013
- Interview with Ms. Kato Fellegi, Program Coordination of V4 Youth against Human Trafficking, Budapest ,October 15
- The event “Az emberkereskedelem elleni fellépés aktuális kérdései, különös tekintettel az áldozatokra”, National Institute of Criminology, Budapest, November 30, 2012

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