

**PREVENTION AND COMBATING OF CHILD TRAFFICKING IN
HUNGARY AND IN THE NETHERLANDS IN LIGHT OF THE
INTERNATIONAL STANDARDS**

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Introduction

“Trafficking in human beings is a major problem in Europe today. Annually, thousands of people, largely women and children, fall victim to trafficking for sexual exploitation or other purposes, whether in their own countries or abroad. All indicators point to an increase in victim numbers.”¹

Trafficking in human beings is one of the gravest human rights violations today both in Europe and all over the world. As a general concept, victims are from poorer countries while the richer ones are the destinations for them, however the trends in the flow of trafficking in human beings is influenced by several other factors, too. The victims might cross not only the borders of states but even continents but still might be relocated merely within the boundaries of the same country or county.

Trafficking in human beings and smuggling of people differs in the means and aims of the conduct: the essential element of the trafficking is some kind of threat or use of force or other forms of coercion used in order to exploit one person by another.² The purpose of the exploitation might be sexual exploitation, forced labour or slavery, servitude or the removal of organs.

Unfortunately, significant number of victims of this modern kind of slavery is children among other vulnerable groups such as women, people with disabilities and people belonging to minorities. Children – in terms of the United Nations Convention on the Rights of the Child anyone under the age of 18 – are several times transferred into other countries with fake identification documents or without any official document which makes more difficult the identification of child victims.

¹ Explanatory Report to the Convention on Action Against Trafficking in Human Beings, Warsaw 2005.

² The two definitions were clarified by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

The thesis focuses on the phenomenon of child trafficking in Hungary and in the Netherlands. Hungary is primarily a source and a transit country of trafficking in human beings whereas the most common purpose of such crimes is the sexual exploitation of the victims.³ According to governmental resources, in 2012, 22 criminal actions were registered as human trafficking under Article 175/B of the Criminal Code – in force at that time - of which in 4 cases the victim was minor, while in 2011 from 18 only 3 cases involved underage victims.⁴ According to the Alternative (NGO) Report on the Implementation of the UN Convention on the Rights of the Child in Hungary (2006-2012), the child victims are mostly trafficked to the Netherlands and Switzerland, while the trafficking within the territory of the country does exist.⁵

Unlike Hungary, the Netherlands not only a source and transit country but destination as well for the purpose of forced prostitution and forced labour.⁶ Several actors collect data about child trafficking in the Netherlands:⁷ besides Dutch Rapporteur on Human Trafficking, the Comensha Coördinatiecentrum Mensenhandel [Dutch Coordination Centre on Trafficking in Human Beings]⁸ as an NGO, the Landelijk Expertisepunt Jeugdprostitutie [National Expertise Centre on Youth Prostitution]⁹ financed by the Ministries of Justice and Health and the Nationaal Expertise Centrum Mensenhandel en Mensensmokkel [National Expertise Centre on Human Trafficking and Migrant Smuggling] which is under the supervision of the Office

³ European Commission. Together against Trafficking in Human Beings. Hungary. Available at <http://ec.europa.eu/anti-trafficking/NIP/Hungary;jsessionid=2xqLSGtc1IZLw7H7HI72H2L1ylgbXtsjpp0wl mTmYS2lrQ5QH5Jj!760991597> [last access on 26/11/2014]

⁴ ANNEX VI Data on registered criminal actions, plaintiffs and perpetrators according to the Unified System of Criminal Statistics of the Investigative Authorities and Public Prosecution. Decree of the Hungarian Government 1351/2013. (VI. 19.) on the National Strategy against Trafficking in Human Beings (2013-2016)

⁵ The Alternative (NGO) Report on the Implementation of the UN Convention on the Rights of the Child in Hungary (2006-2012), Család, Gyermek, Ifjúság Egyesület (Publisher), Budapest, Hungary, 2013, p. 55

⁶ European Commission. Together against Trafficking in Human Beings. The Netherlands. Available at <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Netherlands> [last access on 26/11/2014]

⁷ FRA Thematic study on Child Trafficking [The Netherlands], Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman. Leiden, The Netherlands, 2008, p. 17

⁸ Dutch Coordination Centre on Trafficking in Human Beings, Comensha. Website: www.comensha.nl [last access on 26/11/2014]

⁹ Landelijk Expertisepunt Jeugdprostitutie [National Expertise Centre on Youth Prostitution]. Website: www.jeugdprostitutie.nu [last access on 26/11/2014]

of the Public Prosecutor.¹⁰ As the Dutch Rapporteur on Human Trafficking emphasized, however in 2011 there were 1,222 possible victims reported to the Coordination Centre for Human Trafficking, large part of actual human trafficking is invisible and the statistic about uncovered cases are not reliable neither.¹¹ In 2011, the 39 % of the registered victims with Dutch nationality was a minor.¹²

These two jurisdictions were not compared deeply only in the framework of reporting mechanisms of the European Union among other Member States.¹³ Nevertheless, the Netherlands and Hungary are facing similar difficulties while combating child trafficking but the solutions differ particularly in the approach towards victims and the services provided for them. I will compare the relevant regulations and policy tools in light of the international and European standards as well as the best practices in the field.

Combat against child trafficking has three main pillars: prevention, prosecution and victim assistance. In my thesis I will slightly touch the topic of prosecution and briefly summarize the relevant national legislation – to that extent which is necessary to understand the paper. The focus rather will be on the assistance of child victims, their needs and rights and the preventive measures will be discussed only when it is connected to them.

The first chapter deals with the general legal framework of child trafficking in Hungary and in the Netherlands. Within the framework of the relevant international and European regulations I will pinpoint the provisions related to victim's assistance and prevention. I will conclude the chapter with the national legislation of child trafficking. In the second chapter I will look

¹⁰ National Expertise Centre on Youth and Prostitution (Expertisepunt Jeugdprostitutie). Website: <http://www.jeugdprostitutie.nu/engels> [last access on 26/11/2014]

¹¹ National 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, 2012, p.12

¹² Office of 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, 2012, p. 3

¹³ See European Union Agency for Fundamental Rights, Child Trafficking in the European Union Challenges, perspectives and good practices. Luxembourg: Office for Official Publications of the European Communities, 2009

at the promotion and protection of the rights of child victims of trafficking in Hungary and in the Netherlands. These children need special care and attention as well as are entitled to have justice and fully participate in the criminal procedures. Despite the special needs these victims are still children; their best interests should prevail throughout the proceedings and enjoy all the rights reserved for children.

Despite the thorough research, I am still aware of the limitations and shortcomings of the thesis. I focus on child trafficking committed with the purpose of sexual exploitation. Although I do not make a distinction between male and female victims, I do not deal explicitly with the phenomenon of sexual exploitation of young boys. Whether the trafficking was international or domestic is irrelevant except it is stated otherwise. The research was primarily a desktop research but occasionally I had the opportunity to meet professionals or researchers. I did not conduct structured interviews with them, therefore I refer to their publications or materials about to publish.

Chapter 1 – General legal framework of child trafficking in the Netherlands and in Hungary

1.1. International framework

Trafficking in human beings is one of the gravest human rights violations today both in Europe and all over the world. International organizations, local, national and regional NGOs and governments raise that child trafficking is an emerging issue and emphasize the importance of international cooperation. In this chapter I will discuss briefly the most important international instruments with special focus on the sections dedicated to victims' rights and their protection as well as prevention.

1.1.1. United Nations Convention on the Rights of the Child and its Protocol

The United Nations Convention on the Rights of the Child is the first legally binding international instrument aimed to cover full range of human rights in respect of children with the prominent position of the so-called principle “best interest of the child”. According to this principle “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.¹⁴ The Convention on the Rights of the Child is regarded as the most successful international agreement since 193 states have signed it and only two of them haven't ratified it yet.

The Convention requires State Parties to take all the necessary measures to “protect children from all forms of sexual exploitation and sexual abuse”.¹⁵ The Article 34, read in conjunction with Article 35, particularly prescribes measures to prevent of: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in

¹⁴ Article 3 (1) of the UN Convention on the Rights of the Child

¹⁵ Article 34 of the UN Convention on the Rights of the Child

prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials; (d) the abduction of, the sale of or traffic in children.’

In Article 39, the State Parties undertake the obligation to “promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts”.¹⁶ According to the Convention, “such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”.¹⁷ The UN Secretary General in Report of the independent expert for the United Nations study on violence against children elaborates the model set up by the Convention when he recommends “that States should provide accessible, child-sensitive and universal health and social services, including pre-hospital and emergency care, legal assistance to children and, where appropriate, their families when violence is detected or disclosed. Health, criminal justice and social service systems should be designed to meet the special needs of children.”¹⁸

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography prescribes the more detailed state responsibilities in connection with – among others – Article 34 and 35. Although the word of “trafficking” is not explicitly used, the sale of children is defined as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.¹⁹ The State Parties undertake the obligation to criminalize activities – irrespective of whether they are committed intra-state or inter-state - such as “offering,

¹⁶ Article 39 of the UN Convention on the Rights of the Child

¹⁷ Ibid.

¹⁸ Report of the independent expert for the United Nations study on violence against children, A/61/299, 29 August 2006, p. 26

¹⁹ Article 2 (a) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

delivering or accepting, by whatever means, a child for the purpose of: (a) sexual exploitation of the child; (b) transfer of organs of the child for profit; (c) engagement of the child in forced labour’ and ‘improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption’.²⁰

The Protocol elaborates the state obligations concerning victim protection which shall be implemented properly in all stages of the criminal procedure. First of all, in the treatment of the child victims the best interest of the child shall be a primary consideration, along with the recognition of their vulnerability and “special needs, including their special needs as witnesses”.²¹ Then, the victims shall be informed about “their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases”²² and their views, needs and concerns shall be “presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law”.²³ Furthermore, the states should be provide “appropriate support services to child victims throughout the legal process”²⁴ - including protection from intimidation and retaliation - and protect their privacy and identity as well as “avoid the inappropriate dissemination of information that could lead to the identification of child victims”.²⁵ Any “unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims”²⁶ shall be avoided, too.

²⁰ Article 3(1) (a) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²¹ Article 8(1) (a) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²² Article 8(1) (b) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²³ Article 8(1) (c) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²⁴ Article 8(1) (d) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²⁵ Article 8(1) (e) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²⁶ Article 8(1) (g) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Besides the provisions dealing child victims, the Protocol emphasizes the training - in particular legal and psychological training - and protection of professionals working with victims. The safety of these people and “the organizations involved in the prevention and/or protection and rehabilitation of victims of such offences”²⁷ is an issue that should be high priority for the states as well.

The Protocol designates the dimensions of the prevention: adoption and implementation of laws, administrative measures, social policies and programmes with the aim to raise awareness in the public at large but with particular attention to vulnerable groups.²⁸ By taken into consideration the nature of such offences, the states are highly encouraged to introduce measures which effectively prohibit “the production and dissemination of material advertising the offences”.²⁹

The monitoring procedure on the implementation of the Convention and the Protocol involves the periodic reviews submitted by State Parties to the Committee on the Rights of the Child³⁰ as well as United Nations Special Rapporteur on the sale of children, child prostitution and child pornography. The Special Rapporteur was given the mandate to consider matters relating to these topics and submit reports to the General Assembly and the Commission on Human Rights by expressing recommendations for the protection of the rights of the children concerned.³¹

²⁷ Article 8(5) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²⁸ Article 9(1)-(2) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²⁹ Article 9(5) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

³⁰ Article 44 of UN Convention on the Rights of the Child

³¹ Commission on Human Rights Resolution 1990/68

1.1.2. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

The Protocol supplements the United Nations Convention against Transnational Organized Crime with the aim “to prevent and combat trafficking in persons, paying particular attention to women and children, to protect and assist the victims of such trafficking, with full respect for their human rights; and to promote cooperation among States Parties in order to meet those objectives”.³² The application of the Protocol covers only “offences which are transnational in nature and involve an organized criminal group”.³³ The instrument was adopted on 15 December 2000 but came into force already on 25 December 2003 which demonstrates the concerns of the international community about the spreading of transnational organized crimes related to migration.³⁴

The Protocol identifies the term of trafficking in persons by distinguishing from the definition of smuggling of people as the first international instrument. Accordingly, it means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of

³² Article (2) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

³³ Article (4) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

³⁴ Joint east west research on trafficking in childring for sexual purposes in Europe: the sending countries, Muireann O’Briain, Anke van den Borne, Theo Noten, ECPAT Europe Law Enforcement Group, Amsterdam 2004, p.13

others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.³⁵

The Protocol furthermore elaborates on regulations related to the status of victims, the assistance and protection provided for them as well as the repatriation of them with the full observance of the special needs of children. In relation to the status of the victim, the states shall provide information about the legal procedures and assistance in order to enable them to present their views and concerns during the proceedings and obtain compensation for the damage they suffered.³⁶ The physical, psychological and social recovery involves “appropriate housing, counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; medical, psychological and material assistance; and employment, educational and training opportunities”.³⁷ The states shall provide for the physical safety of the victims while they are in their territory and permit victims to remain there in appropriate cases.³⁸ Repatriation of victims is possible when it is safe, the receiving state implements non-punishment policy and it should be preferably voluntary act.³⁹

The Protocol emphasizes that states shall prevent the victims of trafficking in persons from the re-victimisation as well, particularly the most vulnerable groups, children and women.⁴⁰

Among the preventive measures “research, information and mass media campaigns and social and economic initiatives”⁴¹ are mentioned, in cooperation with non-governmental organizations. Furthermore, the instrument prescribes the adoption and implementation of such educational, social or cultural measures which aims “to discourage the demand that

³⁵ Article (3)(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

³⁶ Ibid. Article (6) Section (2) and (6)

³⁷ Ibid. Article (6) Section (3)

³⁸ Ibid. Article (6) Section (5) and Article (7) Section (1)

³⁹ Ibid. Article (8) Section (2)

⁴⁰ Ibid. Article (9) Section (1)

⁴¹ Ibid. Article (9) Section (2)

fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”.⁴²

1.1.3. The ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

The Convention defines as the worst forms of child labour: “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.⁴³

The State Parties agree on to take all necessary measures to implement and enforce the provisions of the Convention, including penal and other sanctions, in order to prevent and combat these crimes. The use of education as a mean to eliminate child labour is emphasized in the field of prevention in general and of re-victimisation and through the assistance for the victims. All the Member States are expected to give effect of the Convention through “enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education”⁴⁴ while the “special situation of girls”⁴⁵ is taken into account.

⁴² Ibid. Article (9) Section (5)

⁴³ Article 3 of the The ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

⁴⁴ Article (6)-(8) of the The ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

⁴⁵ Ibid. Article (7) Section (2)e)

1.1.4. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (known as Lanzarote Convention) is the first international instrument to tackle all forms of sexual violence against children, including abuse perpetrated within the family environment. The emerging technological changes and enhanced global mobility may be exploited to facilitate and commit crimes against children. Beyond doubt, the cooperation between law enforcement agencies fighting against online sexual exploitation of children is more effective when the countries have common laws in that field. Furthermore, the harmonisation of domestic laws is a way of avoiding a criminal preference for committing acts in a country which previously had more lenient rules. Apart from sexual abuse, child prostitution and pornography and coercing children into participating in pornographic performances, the convention also deals with grooming and sex tourism.

The Convention sets as purpose “to prevent and combat sexual exploitation and sexual abuse of children, to protect the rights of child victims of sexual exploitation and sexual abuse and to promote national and international co-operation against sexual exploitation and sexual abuse of children”.⁴⁶ The preventive measures covers awareness raising among professional working with children, education for children (built in the primary or secondary education curricula), “effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed”⁴⁷ as well as awareness raising campaign addressed the

⁴⁶ Article (1) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

⁴⁷ Ibid. Article (7)

general public, with the participation of children and in cooperation with the private and civil sector.⁴⁸

It was set forth as a principle that the states shall “establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care”.⁴⁹ The assistance given to the victim in their physical and psycho-social recovery might include the removal of the alleged perpetrator from the environment of the victim or the removal of the child from the family.⁵⁰ The Explanatory Report highlights the importance of information services as telephone or Internet helplines since “whereby persons can safely reveal that they know about or have been victims of sexual abuse or sexual exploitation, or simply talk to a person outside their usual environment”.⁵¹

Furthermore, the victims shall be informed – “in a manner adapted to their age and maturity and in a language that they can understand”⁵² - about their rights and the services at their disposal and if it is necessary about “when the person prosecuted or convicted is released temporarily or definitively”⁵³, shall be enabled to express their views, needs and concerns and have access to legal aid.⁵⁴ The states shall take all the necessary measure necessary to protect the privacy of the victims and prevent their identification, intimidation, retaliation and re-victimisation, particularly mentioned “that contact between victims and perpetrators within court and law enforcement agency premises is avoided unless the competent authorities

⁴⁸ Ibid. Article (9)

⁴⁹ Ibid. Article (11) Section (1)

⁵⁰ Ibid. Article (14) Section (3)

⁵¹ Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Section 92.

⁵² Article (31) Section (6) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

⁵³ Ibid. Article (31) Section (1)b)

⁵⁴ Ibid. Article (31) Section (1)c), e), f)

establish otherwise in the best interests of the child or when the investigations or proceedings require such contact”.⁵⁵

1.1.5. Council of Europe Convention on Action against Trafficking in Human Beings

The Convention is a comprehensive treaty covering the preventive actions against trafficking, the protection of victims of trafficking as well as prosecuting traffickers – the multi-disciplinary approach is an essential element of effectiveness. The Convention applies to all forms of trafficking, domestic and international, irrespective of the fact that it is connected to organised crime. Furthermore, it does not make any distinction among the victims, includes women, men or children regardless of the form of exploitation.

The phenomenon of trafficking in human beings is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a 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.”⁵⁶

The case of child victims are considered aggravated in the determination of the penalty. Regarding the assistance provided to victims, “each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of

⁵⁵ Ibid. Article (31) Section (1)g)

⁵⁶ Article 4 (a) of the Council of Europe Convention on Action against Trafficking in Human Beings

persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care”.⁵⁷

1.1.6. Status of ratifications

Both of the Netherlands and Hungary signed and ratified:

- United Nation Convention on the Rights of the Child and its Protocol
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- The ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
- Council of Europe Convention on Action against Trafficking in Human Beings

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was signed by both of the countries but only ratified by the Netherlands.⁵⁸

1.2. Anti-trafficking framework of the European Union

The European Union sets as a priority of building the area of Justice, Freedom and Security. As every coin has two sides, the abolition of internal borders within the Schengen area has disadvantages as well since facilitated the management of organized groups committing crimes with cross-border elements. Nevertheless the law enforcement agencies are also ready

⁵⁷ Article 12 (7) of the Council of Europe Convention on Action against Trafficking in Human Beings

⁵⁸ Information from the website of the Council of Europe <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=ENG> [last access on 26/11/2014]

to take advantage of the cooperation in criminal proceedings between the EU Member States.⁵⁹

1.2.1. Policy framework

In the Communication “Towards an EU Strategy on the Rights of the Child”⁶⁰ the Commission reaffirmed “the EU's obligation to respect fundamental rights, including children's rights, implies not only a general duty to abstain from acts violating these rights, but also to take them into account wherever relevant in the conduct of its own policies under the various legal bases of the Treaties (mainstreaming)”.⁶¹ Such a strategy was required “to increase the scale and effectiveness of EU commitments to improve the situation of children globally and to demonstrate real political will at the highest possible level to ensure that the promotion and protection of children’s rights get the place they merit on the EU’s agenda”.⁶²

The Stockholm Programme set as priority to mainstream the rights of the child based on the Charter of Fundamental Rights and the United Nations Convention on the Rights of the Child.⁶³ Accordingly, the European Commission was called to “identify measures, to which the Union can bring added value, in order to protect and promote the rights of the child. Children in particularly vulnerable situations should receive special attention, notably children that are victims of sexual exploitation and abuse as well as children that are victims of trafficking and unaccompanied minors in the context of Union migration policy”.⁶⁴

⁵⁹ European Union Agency for Fundamental Rights. *Child Trafficking in the European Union Challenges, perspectives and good practices*. Luxembourg: Office for Official Publications of the European Communities, 2009. p. 42

⁶⁰ Communication from the Commission - Towards an EU strategy on the rights of the child /* COM/2006/0367 final */

⁶¹ Ibid. Para. I.3.

⁶² Ibid. Para. II.1.

⁶³ The Stockholm Programme — An open and secure Europe serving and protecting citizen, European Council (2010/C 115/01)

⁶⁴ Ibid. Para. 2.3.2.

The European Commission adopted of the EU Agenda for the Rights of the Child and recommended to target EU actions to protect children when they are vulnerable:

The well-being of children can only be achieved in a society which is free of violence, abuse and exploitation of children. In March 2010, the Commission adopted two proposals for Directives aiming at reinforcing the framework for protection of some of most vulnerable children, those who are victims of sexual exploitation and trafficking. In the area of trafficking it is important that specific needs of children are fully taken into account in further development of trafficking policy notably within the integrated strategy on countering trafficking in human beings which will be adopted in 2012.⁶⁵

The European Union has recently accepted a communication about the “EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016” focusing on concrete measures based on the legislation therefore affirmed the commitment to tackle the problem as a priority. Comprehensive child-sensitive protection systems was foreseen in order to ensure interagency and multidisciplinary coordination in trafficking situations as well with the aim to identify those cases “where return is deemed to be the child’s best interest, the safe and sustainable return of children to the country of origin, in and outside the EU, and prevent them from being re-trafficked”.⁶⁶ Furthermore, the lack of common definition of a guardian or a representative along with its requirements and competencies was found a key issue and legal developments were put on the agenda.

⁶⁵ Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions, An EU Agenda for the Rights of the Child /*COM/2011/0060 final */

⁶⁶ Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions, The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 /*COM(2012) 286 final*/

1.2.2. Legal framework

Before the adoption of the Lisbon Treaty children were mentioned only once in the treaties with authorization for concrete EU intervention, namely as part of the commitment to combat crimes such trafficking in human beings and in children (in Pillar 3).⁶⁷ When the Lisbon Treaty declared the commitment of the EU to protect and promote children's rights in both internal and external affairs,⁶⁸ it did not enhance significantly the EU's competency to advance substantive rights but rather broaden the aspects of interpretation.⁶⁹ In addition, dismantling of the "three pillar system" enabled the EU to adopt more forceful legislative measures with the aim to establish the area of freedom, security and justice.⁷⁰

Another important source is the Charter of Fundamental Rights of the European Union which prescribes that the EU institutions and bodies and national authorities should respect human rights and freedoms when they implement EU law. The relevant provisions are clearly built on the most ratified international human rights instrument, the UN Convention on the Rights of the Child:⁷¹

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

⁶⁷ Article 29 of the Treaty of the European Union

⁶⁸ Article 3 of the Lisbon Treaty

⁶⁹ Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda. Stalford, Helen, Schuurman, Mieke, *International Journal of Children's Rights*. Nov2011, Vol. 19 Issue 3, p. 383

⁷⁰ *Ibid.* p. 383-384

⁷¹ Draft Charter of Fundamental Rights of the European Union – Text of the explanations relating to the complete text of the Charter as set out in CHARTE 4487/00 CONVENT 50, Brussels, 11 October 2000 (18.10) (OR. fr), CHARTE 4473/00, CONVENT 49

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.⁷²

By mentioning children's rights as a normative foundation it was open for further development "on more ideologically-sensitive basis of fundamental rights rather than as an incidental by-product of broader, internal market freedoms, as was typically the case previously".⁷³

One of these forceful normative measures is 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 Council Framework Decision 2002/629/JHA. The Directive 2011/36 prescribes the criminalization activities such as "the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".⁷⁴ In case of child victim, under the age of 18, none of these means are necessary element of the crime of trafficking in human beings.⁷⁵

The expression "position of vulnerability" refers to a "situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved".⁷⁶ The Directive

⁷² Article 24, the Charter of the Fundamental Rights of the European Union

⁷³ Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda, Stalford, Helen, Schuurman, Mieke, *International Journal of Children's Rights*. Nov 2011, Vol. 19 Issue 3, pp. 397

⁷⁴ Article 2 (1) of 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 Council Framework Decision 2002/629/JHA.

⁷⁵ Ibid. Article 2 (5)

⁷⁶ Ibid. Article 2 (2)

defines exploitation which “shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs”.⁷⁷

Furthermore, the Directive 2011/36/EU elaborates on the penalties, liability of legal persons, the rules of the investigation and the procedure and emphasizes the principle of non-prosecution or non-application of penalties to the victim as well as the assistance given to them. The implementation of EU legislation combating trafficking is regularly reviewed to ensure that it is effective therefore it is a good reflection point to determine and assess the role of the EU in this field.

Directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography was adopted on 13th December 2011 and replaced Council Framework Decision 2004/68/JHA. The Directive 2011/92 is intended to complement the Directive 2011/36 since several times the victims of human trafficking have also been child victims of sexual abuse or sexual exploitation.⁷⁸ Sexual abuse of minors, child prostitution, child pornography and coercing children into participating in pornographic performances as well as solicitation of children are criminalized.

1.2.3. Institutional framework

First of all, we have to mention the Commission which works with children’s rights protection during the implementation of EU policies and proposal of new laws to the Parliament and the Council, managing the EU’s budget and allocating funding, enforcing EU law and representing the EU on international level. The flagship initiative of the above

⁷⁷ Ibid. Article 2 (3)

⁷⁸ Recital (7) Directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography

mentioned communication of the Commission - "Towards an EU Strategy on the Rights of the Child" - was to establish the Hotline for Missing Children across all member states. Paul F. Nemitz, the Director for the Fundamental Rights and Union Citizenship in the Justice Directorate of the European Commission – which is assigned with task to coordinate the promotion and protection of the rights of the child among the Commission's services - has assured that “the Commission has fulfilled many of the objectives set out in the EU Agenda for the Rights of the Child”.⁷⁹ He mentioned the relevant new legislations in the area of justice and home affairs (Directive 2011/92/EU and Directive 2011/36/EU) and one of the currents initiatives on EU Guidelines supporting the establishment of integrated child protection systems.

Concerning the work of the European Parliament it is worth to mention that the adoption of children's related normative measures have become easier since the introduction of the ordinary legislative procedure; as result of the qualified majority voting in the Council it is expected that more proposals embracing sensitive issues will be passed than previously. The special legislative procedure is available in the field of child protection and by the effect of the passerelle clauses the Council is allowed to replace the ordinary legislative procedure with the special without any treaty amendment (on the condition of previous notice to the national parliaments with veto the deferral in 6 months).

In addition to the main institutions of the EU, the Fundamental Rights Agency of the European Union as the guard of fundamental rights across the European Union works on the field of promotion and protection of the rights of the child: collects and analyses information and data, provides assistance and expertise, releases communications and raises rights awareness. The FRA recently published reports on child trafficking (2006), on

⁷⁹ Realising the rights of the child everywhere: Moving forward with the EU, Eurochild & UNICEF, 2014, Brussel, p. 16

unaccompanied asylum-seeking children (2010) and on guardianship of children deprived of parental care (2014).

In order to strengthen the commitment and efforts of the European Union and the Member States to prevent and combat trafficking in human beings, the position of EU Anti-Trafficking Coordinator was elaborated in the EU Anti-Trafficking Directive 2011/36/EU. The EU Anti-Trafficking Coordinator is responsible for improving coordination and coherence as well as preventing duplication of effort among EU institutions, EU agencies, Member States and international actors and developing existing and new EU policies to address trafficking in human beings.⁸⁰ The Member States shall transmit the information gathered by the national rapporteurs or equivalent mechanisms to the Coordinator which will be used as a contribution to report of the Commission on the progress made in the fight against trafficking in human beings. Ms Myria Vassiliadou holds the office of the Coordinator since March 2011 and she is based within the European Commission, DG Home-Affairs.⁸¹

1.3. National legislations

In order to combat child trafficking measures shall be taken to prevent such crimes, to protect the victims, to prosecute the perpetrators whilst ensuring full participation for children. Prevention takes place mainly by non-legal means but it is worthy to analyse the deterrent effect of the penalties imposed on the offenders of such crimes. The question is raised what is more effective; to criminalize such behaviour as a distinct crime or to assess the fact that victims were children as aggravating circumstances for committing trafficking of human beings.

⁸⁰ Recital (29) 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 Council Framework Decision 2002/629/JHA.

⁸¹ Website of the European Commission – Together against trafficking in human beings available at <http://ec.europa.eu/anti-trafficking/About/Coordinator/> [last access on 26/11/2014]

1.3.1. Criminalization of child trafficking

The New Hungarian Criminal Code⁸² reformed the trafficking in human beings in compliance with the Palermo Protocol and the EU Directive 2011/36. According to the Explanatory Memorandum, since these two international instruments work with two different terms it was necessary to transpose both of them⁸³. In order to comply with the Palermo Protocol the Criminal Code states that any person who sells, purchases, conveys or receives another person or exchanges a person for another person, also the person who recruits, transports, houses, hides or appropriates people for such purposes for another party, is guilty of a felony punishable by imprisonment for up to three years,⁸⁴ while in the next paragraph prescribes the criminalization of such activities for the purpose of exploitation in accordance with the EU Directive.⁸⁵

Article 192 (3) envisages that the punishment shall be imprisonment between two to eight years if the criminal act is committed:

- to the detriment of a person kept in captivity,
- by force or threat of force,
- by deception,
- by tormenting the injured person,
- to the detriment of a person who is in the care, custody, supervision or treatment of the perpetrator,
- for the unlawful use of the human body,
- by law enforcement agent,
- in criminal conspiracy,

⁸² Act C of 2012 on the Criminal Code

⁸³ Explanatory Memorandum to the Act C of 2012 on the Criminal Code, available at <http://www.parlament.hu/irom39/06958/06958.pdf> [last access on 26/11/2014]

⁸⁴ Article 192 (1) of the Act C of 2012 on the Criminal Code

⁸⁵ Article 192 (2) of the Act C of 2012 on the Criminal Code

- in the framework of business operation.

If the victim under eighteen is trafficked for the purpose of exploitation such act should be punishable by imprisonment from five up to ten years, while the victim is under fourteen or in case of the qualified criminal offence of 192 (3) to the detriment of a minor under eighteen the sentence could imprisonment for five to fifteen years. The same applies if the crime is committed to the detriment of a minor for the purpose of exploitation, namely to produce child pornography material. The most serious offence is when the victim is (i) under fourteen in case of qualified criminal offence or (ii) has been suffered particularly serious detriment or danger of life or (iii) has been exploited to produce child pornography material.⁸⁶

If we look at the Dutch regulation we can see the same solution; the human trafficking provision is placed under the title “Serious offences against personal liberty” in the Criminal Code.⁸⁷ Article 273f makes the punishment of maximum eight-year term of imprisonment and/or a maximum fine of €67,000 applicable to anyone who “by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs”.

The new provisions of Article 273a of the Dutch Criminal Code entered into force on 1 January 2005 by replacing the former article which made human trafficking crime only in case of exploitation in the sex industry. Since it incorporated the terms of the former crime the related case-law is still valid under this provision.⁸⁸ The minor victim constitutes an

⁸⁶ Article 192 (6) of the Act C of 2012 on the Criminal Code

⁸⁷ Dutch Criminal Code, Wetboek van Strafrecht, 2 March 1881

⁸⁸ National Rapporteur on Trafficking in Human Beings (2012). Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis. The Hague: BNRM, p. 19

aggravating factor irrespective of whether the suspect knew about it. In this case the use of coercion is not an element of the offence because the legislature paid no significance to the will and consent of the minor.⁸⁹

1.3.2. Term of exploitation

Since the EU Directive 2011/36 made the element of the crime the purpose of exploitation the Hungarian legislature had to incorporate it, however jurists made the same proposal *de lege ferenda* for other reasons, too.⁹⁰ Article 192 (8) of the Hungarian Criminal Code defines the term of exploitation as a conduct to try to take advantage of the status of the victim taken into or kept in exploitative situation. The Explanatory Memorandum stated that it was necessary to introduce the definition of exploitation because the relevant international instruments do not give a proper description only an exemplificative list which cannot cover all the possible scenarios. The purpose of exploitation already stands if the perpetrator takes steps to gain the benefit no matter it is pecuniary or of any other form. Nonetheless, it is supposed to encompass all the cases mentioned by other international instrument such as sexual exploitation, forced labour, begging, slavery or the exploitation of criminal activities.

The Dutch Rapporteur on Human Trafficking in the Fifth Report emphasized that the legislature should more clearly define the term of exploitation; the victim's subjective experience to regard himself or herself exploited is a factor in assessing the situation but nevertheless is not enough to determination of an exploitative situation.⁹¹ Unlike the Hungarian solution, in the Chinese Restaurant case, the Supreme Court found:

⁸⁹ Ibid. p. 31

⁹⁰ Miklós Hollán proposed to delete the manners of the criminal activity from Criminal Code and rather focus on the aims of exploitation in order to comply with the international obligations as well as to improve the protection of the objective, the right to self-determination. In Hollán Miklós: *Emberkereskedelem*, HVG-ORAC, Bp, 2012, p. 310

⁹¹ Fifth report of the Dutch Rapporteur on Trafficking in Human Beings, the Netherlands, the Hague, 2007, p. 14

The question of whether and, if so, when there is ‘exploitation’ within the meaning of Article 273a (old) DCC cannot be answered in general terms, but depends greatly on the circumstances of the case. In a case like this, other relevant factors include the nature and duration of the work, the restrictions imposed on the individual concerned and the economic benefit gained by the employer from the work. In weighing these and other relevant factors, the standards that apply in Dutch society should be adopted as the frame of reference.⁹²

⁹² Den Bosch Court of Appeal 17 September 2010, LJN: BN7215 (Chinese restaurant)

Chapter 2 – Protection and promotion of the rights of child victims of trafficking

Children – due to their age and maturity – are more suggestible, not experienced therefore cannot foresee the consequence of his or her acts and more easily fall victim of crimes. The author of the United Nations study on violence against children, Paulo Sérgio Pinheiro emphasized that “the impact of violence can stay with its victims throughout their lifetime. Early access to quality support services can help to mitigate the impact of the event on the victim, including preventing longer term consequences such as becoming a perpetrator of violence.”⁹³ In this chapter I will look into the national legislation of Hungary and the Netherlands in the field of victim’s rights, protection and assistance.

The Committee on the Right of the Child in Comment No. 6 clearly stated that “the enjoyment of rights stipulated in the Convention are not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness”.⁹⁴ Throughout this chapter I will talk about victims irrespective of their nationality, I will make distinction only when the legislation treats state nationals and non-state nationals differently. The same applies to the gender of the victims.

2.1. About the victims

Trafficking in human beings is a quite prosperous crime with low risk factor: the perpetrator involves the victims in several illegal acts (possessing fake IDs, fraud, lack of residence or work permit, prostitution and other violent crimes) therefore the victims are afraid of being

⁹³ Paulo Sérgio Pinheiro, World Report on Violence against Children, United Nations, Geneva, 2006, p. 337

⁹⁴ Committee on the Right of the Child in Comment No. 6 on Treatment of unaccompanied and separated children outside their country of origin, 2005, para. 12

prosecuted as well. Furthermore, as it is an organized crime, the victims fear to give witness statements because they are being dread of revenge.⁹⁵

2.1.1. Potential victims

Judit Forrai in his book “Sex, prostitution, violence” asks the question why children and youngsters are potential victims. According to the author, youngsters are more likely to try new things, would like to be more independent, would like to earn money but at the same time does not have enough information about everyday life and relationships. Furthermore she says that teenagers are often rebels, sensitive, struggling with self-esteem problems trustable, look for their identity and friends and partner, but mainly dominated by their peers – therefore the family ties are loose and they have an instable emotional life.⁹⁶

In a manual made for criminal justice practitioners by the United Nations Office on Drugs and Crime several reasons are listed why child victims are more vulnerable than adult victims:

- “Child victims may be naturally compliant: an instruction from an adult may be followed without question;
- With a lack of life experience children may consider abnormal conduct normal. Similarly, children may not know the words to describe what has happened to them;
- There may be nowhere or no one for a child to go back to. Many child victims of trafficking are unaccompanied when recovered. It may be impossible to trace relatives or they may be dead or displaced;
- Even when traced, parents may not want the child back. Children may be seen as a burden to very poor parents or the parent may be ill. In some locations it is regarded as a shame if you are a failed migrant. The child may be well aware they are not wanted at home;

⁹⁵ Az emberkereskedelem viktimológiai aspektusa, Dr. Fehér Lenke, in Prostitúció, prostitúcióra kényszerítés, emberkereskedelem, dr. Fehér Lenke – dr. Forrai Judit, Nőképviselési társaság, 1999, Budapest, p. 145

⁹⁶ Szex, prostitúció, erőszak, dr. Forrai Judit, 2009, Budapest, p. 131

- The child may not want to return to his or her family. In some cases children have experienced one of the most profound betrayals of trust: that committed by a member of their own family, sometimes their own parents, when the child was given to the traffickers.”⁹⁷

The literature identifies different groups as potential victims in the Netherlands and in Hungary.

2.1.2. Vulnerable groups in the Netherlands

In Dutch works as well as in the national media they mostly talk about the loverboys’ victims. “The introduction into prostitution and the subsequent exploitation are carried out by means of (gradual) emotional manipulation, possibly accompanied by physical threat or mistreatment. [...] Typical here is that the method used has such an effect on the girl that in some cases she does not (really) feel abused. [...] Because winning affection and attachment by entering into a relationship is a time-consuming activity that is hard to carry out from a distance, loverboys are a typical national phenomenon.”⁹⁸ The loverboys look for girls who are more vulnerable in some sense: feel neglected in the family or have poor family relations, already suffered some form of mistreatment or sexual abuse or a drug user.⁹⁹ Apparently, the loverboy method is consonant with the above discussed general risk factors for minor victims.

The Dutch Rapporteur on Human Trafficking found that loverboys phenomenon is under-reported which could be explained by the fact that the professionals working in youth care institutions are not trained to recognize the signs of victim of trafficking in human beings.¹⁰⁰

Other resources affirm this suggestion: the study of the Verwey-Jonker Institute revealed that

⁹⁷ United Nations Office on Drugs and Crime, Anti-human trafficking manual for criminal justice practitioners, Module 9, New York, 2009, p. 3

⁹⁸ Trafficking in Human Beings, First report of the Dutch National Rapporteur, Bureau NRM, 2002, The Hague, p. 30

⁹⁹ Ibid. p. 31

¹⁰⁰ Trafficking in Human Beings, Ninth report of the Dutch National Rapporteur, Bureau NRM, 2013, The Hague, p. 203

“approximately a quarter of the youth care institutions that participated in the study said they had organized internal activities to promote expertise on the subject of the loverboy problem”.¹⁰¹

In addition, the Movisie NGO (which is a social centre for development) pointed out in their study another problem: “while the prospect of receiving training encourages organizations to supply figures, in our estimation organizations will not increase their reporting on a solely voluntary basis (if there is no duty to report), even after receiving training”.¹⁰² Personally, I have doubts about this explanation because despite of the fact that in Hungary all the professionals working with children bear criminal liability to report child abuse or bad treatment the child trafficking cases are still under-reported.¹⁰³

The other group which is frequently mentioned the unaccompanied underage aliens. We can make a distinction between those who came or brought to the Netherlands with the purpose of working in prostitution and those who arrived for other reason and applied for asylum and became the target of the recruiting for such work later. The Dutch Rapporteur on Human Trafficking recommended in the First Report that the minors should be placed separately from full age inhabitants in the reception centres and receive tailor made support.¹⁰⁴ The Report considers them more vulnerable because “they are often under physical and mental pressure from their uncertain position and future, both in the Netherlands and in their homeland”.¹⁰⁵

2.1.3. Vulnerable groups in Hungary

In the Hungarian literature two groups are mentioned at-the-risk: children living in state care and Roma minors. Dutch TV channel, the Nieuwsuur made a report about the issue trafficking

¹⁰¹ Ibid. p. 203

¹⁰² Ibid. p. 205

¹⁰³ Report of the Countering new forms of Roma children trafficking: Participatory approach (CONFRONT), Central European University, Manuscript, p. 14; description of the project is available at <http://cps.ceu.hu/research/confront> [last access on 26/11/2014]

¹⁰⁴ Trafficking in Human Beings, First report of the Dutch National Rapporteur, Bureau NRM, 2002, The Hague, p. 136

¹⁰⁵ Ibid. p. 136

in human beings from Hungary to the Netherlands in October 2012. They featured several prostitutes working in the Netherlands as well as made shot on the field, in Hungary: they visited Roma neighbourhood near to Nyíregyháza and a child care institution. The underage inhabitants told about the issue of prostitution and trafficking openly and many of them affirmed that these phenomena exist in their care home. One of them mentioned that the loverboys are waiting for them next to fence.¹⁰⁶

In relation to the first group we can mention Ágnes Solt, who found in her research¹⁰⁷ that children removed from family at their teens feel the authorities' intervention as force pressed upon them therefore they try to escape again and again. When they are out of the institution they look for care, emotions, safety and fall victim of grooming easily. In other cases young people meet the opportunity within the premises of the child care home: returning fugitives tell nice stories about helpful people or they try attract their peers with purpose. The report of the CONFRONT project highlighted that the children in care are more endangered when they runaway and one of the reasons the bad practice of the institutions. Under the law, "institutions are obliged to notify the police within 24 hours about the disappearance of the child. In reality, the notification takes place in the 24th hour, basically one day after the child went missing."¹⁰⁸

The European Roma Rights Centre published a report "Breaking the silence – Trafficking in Romani communities" in 2011: however no disaggregated data by ethnicity is available in case of Hungary¹⁰⁹ they shared some numbers referring to interview with the representatives

¹⁰⁶ The report is available at the website of Nieuwsuur: <http://nieuwsuur.nl/video/426662-naar-de-bron-van-mensenhandel.html> [last access on 26/11/2014]

¹⁰⁷ Emberpiac, A Magyarországot érintő nemzetközi emberkereskedelem társadalmi, kriminológiai jellemzői, Gyurkó Szilvia, Virág György (editors), Eszter Foundation, Budapest, 2009, p 44.

¹⁰⁸ Report of the Countering new forms of Roma children trafficking: Participatory approach (CONFRONT), Central European University, Manuscript, p. 20

¹⁰⁹ Hungary has been called on to collect disaggregated data several times by international organizations. Last time, during the review of the state report on the implementation of the Convention on the Rights of the Child in September 2014, Hungary refused to provide disaggregated data with the reasoning of: „Statistical data on ethnic origin and socioeconomic background cannot be registered as it would be discrimination”. Cited from the List of

of the government and NGOs. “A police source estimated that 80% of trafficked persons are Romani while an NGO service provider perceived Roma to represent between 40-50% of victims. Furthermore, according to information provided by two NGOs supplying services to prostitutes/sex workers in destination countries (Switzerland and the Netherlands), approximately 25-30% of their beneficiaries are Hungarian women, of which 80% are Romani, a large number of whom have been trafficked and/or are exploited”.¹¹⁰

The ERRC report came to the conclusion that there are no “significant differences between generally known vulnerability factors and the vulnerability factors present in Romani communities”¹¹¹ and cited other opinions as well which refused “the widely-held perception that trafficking is a cultural practice of Roma”.¹¹² Among the vulnerability factors, they mentioned poverty and social exclusion, ethnic and gender discrimination, lack of education, growing up in state care, younger age, usury, domestic violence and substance abuse and other factors as disability or lack of identity documents. Nevertheless, all these factors can be grouped around the issue of poverty. The study is considered as a benchmark for picking up the topic of usury which was reported during the research not only in Hungary, but in Romania, Slovakia and the Czech Republic as well.¹¹³

2.2. Best interest of the child and the victim status

All the international instruments dealing with the rights of the child emphasizes that the child shall be treated as a child in any situation and his best interest shall be the primary consideration. In case of trafficking with the purpose of sexual exploitation the child might get several other ‘labels’ depending on the circumstances: victim, perpetrator of criminal

issues in relation to the report submitted by Hungary under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Replies of Hungary to the list of issues, 2014, July 25.

¹¹⁰ Breaking the silence, European Roma Rights Center, Budapest, 2011, p. 34

¹¹¹ Ibid. p. 41

¹¹² Ibid. p. 41

¹¹³ Ibid. p. 53

offences, fugitive from children's home, illegal migrant, unaccompanied minor, asylum-seeker and so on. It is a crucial issue to identify these children as victim and provide assistance tailor made to their needs.

Zsuzsanna Vidra, researcher of the "Countering new forms of Roma children trafficking: Participatory approach" (CONFRONT) project¹¹⁴ highlighted as one of the preliminary findings that the reason of the low number of registered child trafficking cases is the Hungarian authorities fail to identify the victims, they rather treat them as offenders.¹¹⁵ The Hungarian law calls young offenders those between the age of 14 and 18; but the authorities are not aware of the legislation that everyone is child under the age of 18, therefore they rather charge them of committing petty offences (prostitution). In her point of view, there is a serious misunderstanding of child prostitution because in practice they exclude children older than 14 years. In the report of the CONFRONT project we are told: "in case the police catch a minor in the street in the act of prostitution, the child will be accused of prostitution and the police will not handle the child as a victim".

Unfortunately, we can say that the professionals who meet child victims in their work solely embrace the attitude of the whole society towards child victims of crimes. Anna Betlen in her research referring to deep interviews with social workers and headmasters of child care institutions also confirmed this approach.¹¹⁶ The Mario project – Children on the move shared a line from an interview: "the professionals do not think of them as victims".¹¹⁷ The Trafficking in Persons Report 2014 of the US Department of States was concerned about it as

¹¹⁴ Interview with Zsuzsanna Vidai, researcher of the CONFRONT project, <http://archive.ceu.hu/node/38018>

¹¹⁵ Gyermekkereskedelem Magyarországon. Az áldozat nem tesz feljelentést, Székely Ilona, 168 óra, 2014.10.28. available at <http://www.168ora.hu/itthon/prostitutcio-gyermek-gyermekkereskedelem-kizsakmanyolas-eroszak-ensz-131382.html#sthash.Ub2AJTiX.dpuf> [last access on 26/11/2014]

¹¹⁶ Prostitúció és emberkereskedelem a szociális ellátásban és a gyermekvédelemben Magyarországon, Az áldozat-ellátás intézményrendszere, Kutatási részbeszámoló, „Az áldozatsegítő segítője” (TÁMOP – 5.6.1.C-11/1), Betlen Anna, 2013, p. 25

¹¹⁷ Mario project, Háttér tanulmány, Az úton lévő gyermekek helyzetelemzése: Magyarország gyermekvédelmi rendszerének kapacitása és alkalmassága az úton lévő gyermekek védelme szempontjából, Terre des Hommes, Budapest, 2013, p. 48; more information about the project available at <http://www.marioproject.org/> [last access on 26/11/2014]

well: “experts expressed concern about Hungarian police patrols’ lack of awareness of trafficking and insensitivity towards trafficking victims, adding that victim identification is highly problematic.”¹¹⁸ It is just getting more complicated since the New Criminal Code lowered the age of criminal responsibility in case of four serious crimes (e.g. homicide and robbery). Some suggests that “it would be necessary that the police develop a protocol to treat minors as victims when found in the street as prostitutes”.¹¹⁹

The recognition of victim status is closely related to the non-prosecution policy which entails that the child may not be prosecuted for criminal activities (e.g. prostitution or the possession of false documents) and border offences of which he or she was forced or persuaded to commit. The UNODOC in a paper emphasized that “criminalization limits the trafficking victims’ access to justice and protection and decreases the likelihood that they will report their victimization to the authorities. Given the victims’ existing fears for their personal safety and of reprisals by the traffickers, the added fear of prosecution and punishment can only further prevent victims from seeking protection, assistance and justice.”¹²⁰

According to the Dutch regulations, child prostitution is by definition considered as forced prostitution therefore the child cannot be prosecuted. If the child applies for residence permit, the application of the B9 Regulation cannot be refused on the ground of possessing false documents (with reference to the public order exemption).¹²¹ The Hungarian Criminal Code sets the general conditions for non-punishment which ensures the non-criminalization of child victims of trafficking whether the crime was committed (i) by a minor under the age of 14 or

¹¹⁸ Trafficking in Persons Report 2014, Office to Monitor and Combat Trafficking in Persons, US Department of State, available at <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226738.htm> [last access on 26/11/2014]

¹¹⁹ Report of the Countering new forms of Roma children trafficking: Participatory approach (CONFRONT), Central European University, Manuscript, p. 24

¹²⁰ Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking, Background paper prepared by the Secretariat, UNODOC, CTOC/COP/WG.4/2010/4, 9 December 2009

¹²¹ FRA Thematic Study on Child Trafficking, Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman, Leiden, the Netherlands, July 2008, p. 23

(ii) by someone who was forced or threatened.¹²² Again, we are talking about children younger than 14. Obviously, the wrong interpretation of the definition of the child undermines the non-prosecution principle.

2.3. Participation of the child in all relevant legal procedures, child sensitive measures

Participation of the child in legal procedures include the right to get information about their procedural rights, the right to participate in the procedure and the right to be heard and provide evidence under appropriate circumstances. Clearly, the child's age and maturity shall be duly taken into account.

According to the Child Protection Laws of Hungary, the child has right to express their views, get information about their rights and how to enforce them. In case of serious breach of fundamental rights, the child is allowed to start procedure before court or any other relevant authorities. In child protection procedures, those child could be involved who has the power of judgement: the Child Protection Act defines them as a child who is "able to understand the essence of facts and decisions concerning his or her case in accordance with his or her age, mental and emotional development".

Under the Hungarian laws, the child is represented in the criminal procedure by their legal representative. In case of conflict of interests or in absence of legal guardian, the child welfare service appoints one in order to represent the rights of child victim.¹²³ Subpoena and notice is served on children under the age of 14 through their guardian, and when the child is older, the guardian is also notified and requested to ensure the attendance of the child.¹²⁴ The subpoena and the notice include an explanation understandable for the addressed child.¹²⁵

¹²² Article 16 & 19 of the Act C of 2012 on the Criminal Code

¹²³ Article 52 (2) of the Act XIX of 1998 on the Code of Criminal Procedure

¹²⁴ Ibid. Article 68 (2)

¹²⁵ Ibid. Article 67 (7)

As a general rule, the defendant has the right to cross-examine the witness, but if the child is under the age of 14 the confrontation can only take place if it does not generate fear in the child.¹²⁶ Generally, the confrontation might be set aside if it is necessary for the protection of the witness. This rule might prevail if the victim of trafficking is still a child but older than 14 years.¹²⁷ The court ex officio or upon request might decide to hold the hearings in-camera if it is necessary for the protection of the child participating in the procedure.¹²⁸ The hearing of the child victim over 14 or anyone who is victim of certain serious crimes (incl. trafficking) might be held through closed-circuit communication system upon the request of the prosecutor, legal representative or the guardian or applied ex officio.¹²⁹

The Dutch regulations provide the opportunity for minors who were traced as a possible victim of trafficking to participate in an informative interview before the child decides whether he or she want to report the case.¹³⁰ The child shall be informed about their rights before and during the procedure.¹³¹ While children – aged 12 and over or “children under twelve who are regarded as capable of making a reasonable assessment of their own interests”¹³² - have the right to present in court and make a statement, the public prosecutor may propose to do it without the participation of the suspect.¹³³ In these cases either only the judge hears them or a “tape with the incriminating statement of the victim/witness in front of the police”¹³⁴ presented in the hearing or the police officers who interviewed the minor may

¹²⁶ Ibid. Article 124 (3)

¹²⁷ Ibid. Article 124 (2)

¹²⁸ Ibid. Article 237 (3)b)

¹²⁹ Ibid. Article 207 (5)

¹³⁰ Aanwijzing mensenhandel [Instruction Trafficking in Human Beings], Chapter IV under 6., cited by FRA Thematic study on Child Trafficking [The Netherlands], Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman. Leiden, The Netherlands, 2008, p. 58

¹³¹ Aanwijzing mensenhandel [Instruction Trafficking in Human Beings], Annex 2 under 7., cited by FRA Thematic study on Child Trafficking [The Netherlands], Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman. Leiden, The Netherlands, 2008, p. 63

¹³² Committee on the Right of the Child, Consideration of reports submitted by States parties under article 44 of the Convention on the Rights of the Child, Fourth periodic reports of States parties due in 2012, The Netherlands, para. 431

¹³³ FRA Thematic Study on Child Trafficking, Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman, Leiden, the Netherlands, July 2008, p. 62

¹³⁴ Ibid.

be heard in court. Since 1 September 2012 the right to make a statement in court has been extended the right to speak to parents or guardians of victims under 18 who cannot speak for themselves.¹³⁵ “In the interests of minor children, in accordance with article 489 of the Code of Criminal Procedure, the parents or guardian are always invited to attend their court hearing”.¹³⁶

In addition to the practice of avoiding questioning child victims at public hearings, the minors are interviewed under special circumstances. First of all, the investigating officers who questions the child are specially trained; in case of victims between the age of 4 and 12 the interview might be conducted in a child-friendly interviewing studio where a behavioural expert is always present and ready to intervene when necessary. Then, “an audio and/or video recording must be made of the interview to prevent the victim from having to undergo questioning several times”.¹³⁷ The minor might have a lawyer or a confidential adviser present, but their parents are usually excluded in order to avoid intervention or influence.

2.4. Access to justice: forms of legal assistance and the role of the legal guardian

According to the CRC all states shall provide special protection and assistance to children deprived of parental care either temporarily or permanently.¹³⁸ As the FRA report on child-trafficking concluded, the person of the legal guardian and their responsibilities differ from country to country as well as the question of who appoints them.¹³⁹ Another FRA study on guardianship for children deprived of parental care defines guardian as “an independent person who safeguards the child’s best interests and general well-being, and to this effect

¹³⁵ Committee on the Right of the Child, Consideration of reports submitted by States parties under article 44 of the Convention on the Rights of the Child, Fourth periodic reports of States parties due in 2012, The Netherlands, para. 481

¹³⁶ Ibid. para. 890

¹³⁷ Committee on the Right of the Child, Consideration of reports submitted by state parties under Article 12, Paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Initial reports of States parties due in 2007 THE NETHERLANDS, CRC/C/OPSC/NLD/1, 8 January 2008, p. 15

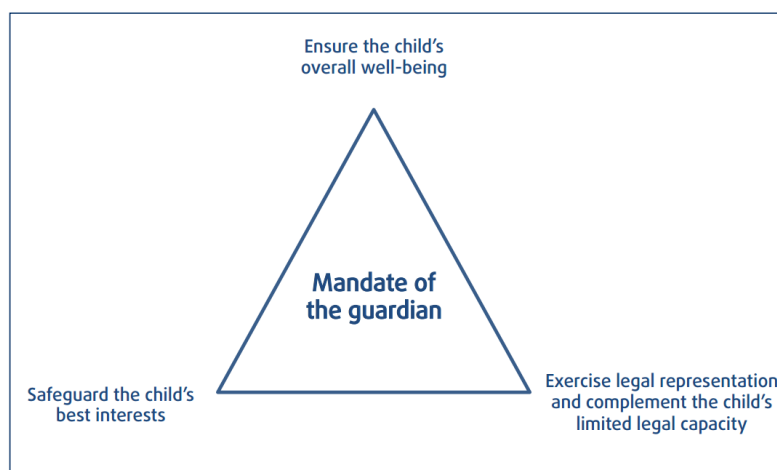
¹³⁸ Article 20 of the UN Convention on the Rights of the Child

¹³⁹ Guardianship for children deprived of parental care, European Union Agency for Fundamental Rights, Luxembourg, 2014, p. 76

complements the limited capacity of the child, when necessary, in the same way that parents do”.¹⁴⁰ It is important to emphasize that guardian differs from the qualified lawyer who provides legal assistance.

2.4.1. The guardianship institution

All national legislation regulating guardianship systems should apply six fundamental principles: non-discrimination, independence and impartiality, quality, accountability, sustainability and child’s participation.¹⁴¹



Source of the picture: Guardianship for children deprived of parental care, European Union Agency for Fundamental Rights, Luxembourg, 2014, p. 15

In cases of child trafficking there are two scenarios when the assignment of a guardian happens. First, the child is unaccompanied or separated from their parents, while in the second case the parents are precluded from ensuring the child’s best interest and the involvement of the guardian is needed as result of conflict of interest between them. Nevertheless, the separation might be the solution if it serves the best interests of the child. When conflict of interest occurs, the appointment of the member of the extended family as guardian should be

¹⁴⁰ Ibid. p. 14

¹⁴¹ Ibid. p. 25

preceded by risk assessment and followed by regular monitoring.¹⁴² The victims of child trafficking could be state nationals, EU citizens or third-country nationals; however the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 promotes the model of “comprehensive child-sensitive protection systems that ensure interagency and multidisciplinary coordination” which are “the key in catering to diverse needs of diverse groups of children, including victims of trafficking.”¹⁴³

The Hungarian Child Protection Act states that the legal guardian is appointed by the social welfare and guardianship office in order to represent the interest of the child and promote the practice of their rights, get familiar with the opinion of the child and they transfer it to the authorities, provide the legal representation of the child and start procedures under certain circumstances. Guardian is assigned in cases when the child is placed at the care of foster parents or children’s care homes and proceeding has been initiated to terminate parental rights; when the parents agreed to secret adoption, when the minor is an unaccompanied asylum-seeker, separated from their parents or removed from the family.

The Hungarian report for the FRA study on child trafficking summarizes the legislation by stating that “the tasks and duties of an appointed legal guardian are not bound by professional requirements, such as experience gained in a given area, minimum number of cases, abilities etc. There is no legal or professional protocol to ensure an appropriate timeframe or personal contact with children in order to prepare for proceedings.”¹⁴⁴ Furthermore, it acknowledges “based on a verbal statement of a representative of the Hungarian Bar Association[...] in practice minors and legal guardians meet each other for the first time right before the hearing,

¹⁴² Ibid. p. 37

¹⁴³ Article 4(1) of the 01/2007. (XI. 9.) Government Decree on the implementation of the Act of LXXX of 2007 on Refugee Law

¹⁴⁴ FRALEX Thematic Study on the Rights of the Child (Child Trafficking), Hungary, NEKI and ETC, August 2008, p. 15

which in general takes place within a couple of hours following the legal guardian's appointment".¹⁴⁵

If the minor applying for asylum or international protection is not accompanied by family member, the asylum office shall take all the necessary measures to find the guardian of the child except if it is clear that there is a conflict of interest between them or it does not serve the best interest of the child.¹⁴⁶ In case of lack of guardian, the asylum office –fulfilling the obligation confirmed by the new Civil Code - requests the social welfare to appoint a guardian for the minor.¹⁴⁷ For this appointment the general child protection measures shall apply.

The Dutch Civil Code states that "all minor children are subject to authority"¹⁴⁸ which is either parental authority – "exercised by the parents jointly or by one of them on his own" - or guardianship of minors – "exercised by another person than the minor's parent or parents".¹⁴⁹ "Authority over a minor covers the person of the minor, the administration of his property and his representation in performing acts on the field of civil law, both in and out of court".¹⁵⁰ The Civil Code prescribes two way of divesting parental rights: consensual (removal of parental responsibility) and non-consensual (deprivation of parental responsibility) way. Deprivation is possible on the ground of:

- "a. abuse of parental authority or a gross neglect in the care and upbringing of one or more children;
 - b. poor lifestyle;
 - c. an irrevocable conviction:
- 1°. for wilfully participating in a crime with a minor who is under his authority;

¹⁴⁵ Ibid. p.16

¹⁴⁶ Article 33(4) of the 01/2007. (XI. 9.) Government Decree on the implementation of the Act of LXXX of 2007 on Refugee Law

¹⁴⁷ Article 35(6) of the Act of LXXX of 2007 on Refugee Law

¹⁴⁸ Dutch Civil Code, Book 1 Law of Persons and Family Law Title 1.14 Authority over minor children Section 1.14.1 General provisions, Article 1:245

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

2°. for committing one of the criminal offences, described in Titles XIII-XV and XVIII-XX of the Second Book of the Penal Code, against the minor who is under his authority;

3°. to an imprisonment of two years or longer;

d. a serious disregard of the instructions of the Foundation meant in Article 1, under point (f), of the Youth Care Act or obstructing the minor's placement in care away from home under Article 1:261;

e. the existence of well-substantiated grounds to fear that the interests of the child will be neglected when the parent claims the child back or takes it back from other persons who have taken on the task of caring for and raising the child.”¹⁵¹

The Netherlands also struggled with problem that it took considerable time until a guardian was assigned to the unaccompanied minor arriving to the country. From 2001, the Nidos Foundation (Stichting Nidos) - subsidised by the Ministry of Justice – was appointed to serve as a national guardianship and family supervision for unaccompanied minor asylum-seekers and refugees.¹⁵² Therefore, upon entry in the Netherlands, the authorities inform Nidos regardless of the separated children's status or claim; then the Foundation arranges an interview with the child, requests the guardianship at the Court and places the child in a reception facility.¹⁵³

2.4.2. Legal aid

As it was mentioned before, legal professional providing free legal aid for children is distinct from the legal guardians. In the Netherlands minors can have access to free legal aid either at the Legal Aid and Advice Centres (available for anyone but working with professionals skilled in dealing with children) or at the Children's Law Centres (available for anyone under

¹⁵¹ Ibid. Article 1:269.

¹⁵² FRA Thematic study on Child Trafficking [The Netherlands], Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman. Leiden, The Netherlands, 2008, p. 50

¹⁵³ Closing a protection gap, Defence for Children International-ECPAT the Netherlands, Martine Goeman, Carla van Os, 2010, p. 17, available at <http://www.defenceforchildren.nl/images/20/1275.pdf> [last access on 26/11/2014]

the age of 18).¹⁵⁴ Since 1 January 2006, these Law Centres specialised in children can get funding from the local government whereas the subsidies from the Ministry of Justice were terminated “in part because initial and additional legal assistance are available to minors within the subsidised legal aid system”.¹⁵⁵

The Act CXXXV of 2005 on assisting victims of crime and mitigation of damage set up the system for victim protection in Hungary; the law does not differ between adult and children victims, however the since 1 January, anyone who is victim of trafficking in human being, irrespective of their nationality or status, may apply for victim support services.¹⁵⁶ “The victim support service provides victims with advice and information, emotional support, assertion of their interests, legal assistance, even a solicitor, if necessary, instant monetary aid in crisis situations (if applied for within 5 days after the crime was committed)”.¹⁵⁷ According to the Hungarian Report of the Fundamental Rights Agency about child trafficking “few victims of human trafficking request their services, so there is no formal or substantive cooperation with institutions that have regular contact with victims”.¹⁵⁸

However, we do not know how many children are among the few victims. Under the law, if the Service obtain information about a minor in danger it shall immediately inform the child protection service; if the life or integrity of the child is posed to threat, the victim support service initiate a guardianship procedure in parallel with signalling.¹⁵⁹

¹⁵⁴ Committee on the Right of the Child, Consideration of reports submitted by States parties under article 44 of the Convention on the Rights of the Child, Third periodic reports of States parties due in 2007, The Netherlands, para. 61

¹⁵⁵ Ibid.

¹⁵⁶ Article 1(1)e) of the Act CXXXV of 2005 on assisting victims of crime and mitigation of damage

¹⁵⁷ Information brochure of the Hungarian Victim Support Service available at http://kih.gov.hu/documents/10179/736661/Victim%20support%20leaflet_July%202013.pdf

¹⁵⁸ FRALEX Thematic Study on the Rights of the Child (Child Trafficking), Hungary, NEKI and ETC, August 2008, p. 23

¹⁵⁹ Article 43(2) of the Act CXXXV of 2005 on assisting victims of crime and mitigation of damage

2.5. Access to care and protection

It is essential how the minor victims of trafficking are treated, where they are placed, what kind of assistance and service they can receive when the state recognize their story and vulnerability. In this case there is a clear distinction between the treatment of state national and non-state national victims.

2.5.1. Care provided for state national minor victims

The Dutch Ministry of Health, Welfare and Sport is responsible for youth welfare policies and services. The Dutch youth care system has three tracks: universal services (basic care e.g. schools), preventive services (primary care e.g. child health care or general social work) and the specialised services (secondary care e.g. child protection services). The Dutch Parliament revised the whole youth care system lately and decided to reform it by decentralizing all the administrative and financial responsibilities.¹⁶⁰ The previous system was criticized on several points, among others because it lacks transparency, unmanageable and resulted in a situation where “the children and families may receive inadequate treatment: either too much or not enough”.¹⁶¹ The reform will definitely affect the minor victims of trafficking, as the National Rapporteur suggests that “possible benefit of this decentralization is that youth care organizations at the local and regional levels could play an effective role in the efforts undertaken to tackle the loverboy problem by the Security Coordination Houses”.¹⁶² According to the explanatory memorandum of the new law, they will re-organize the Youth Care Plus (which is the closed youth care) at a supra-regional level¹⁶³ therefore we can

¹⁶⁰ Nynke Bosscher, The decentralisation and transformation of the Dutch youth care system, Nederlands Jeugd Instituut, Update of June 2014, pp.5 available at <http://www.youthpolicy.nl/yp/downloadsyp/Publications-The-decentralisation-and-transformation-of-the-Dutch-youth-care-system.pdf>

¹⁶¹ Ibid. p. 4

¹⁶² Trafficking in Human Beings, Ninth report of the Dutch National Rapporteur, Bureau NRM, 2013, The Hague, p. 200

¹⁶³ Ibid. p. 200

assume that the victims will be placed outside of their region which is often necessary for their safety.

“Victims of loverboys often suffer multiple traumas, may suffer from post-traumatic stress syndrome and also experience specific problems associated with their victimization.” Young victims of domestic human trafficking can receive shelter in the Asja centre, which is the only one specialized institution in the Netherlands, or in closed youth care; however the Dutch government is working on to set up a category-oriented shelters for minors and adults, too. The Asja shelter, situated in Leeuwarden, is part of a women’s shelter project, with 24 hours care and service, and provides accommodation for 10 young girl between the age of 16 and 23.

Asja’s care programme is designed to accomplish three interconnected goals within a period of six to twelve months: (1) to keep the girl safe and protect her from ‘her bad friends’ and the loverboy circuit or criminal network in which she found herself; (2) to enable the girl to function adequately for her age; and (3) to provide the girl with a sound, healthy basis for her physical, socio-emotional, psychological, cognitive and sexual development. The objective is to resolve problems, complaints and handicaps that prevent age-appropriate development or make them manageable. The programme focuses on normally gifted girls and young women aged between twelve and 23 who have ended up in prostitution or in a ‘grey’ prostitution circuit via loverboy constructions.¹⁶⁴

The Asja centre is clearly not enough to deal with the victims: more places are needed (based on the figures of trafficking cases), moreover, younger girl than 16 and boys are not eligible

¹⁶⁴ Ibid. p. 208

for shelter there neither. In the First NGO report submitted to the Committee on the Right of the Child, the Kinderrechtencollectief, the Dutch Collective of NGO's on Children's rights raised attention to the situation of young boys who "often end up at centres for the homeless or institutions juvenile delinquents".¹⁶⁵

If the child needs protection against themselves or against others, the juvenile court can issue an authorization for placement in closed youth care (Youth Care Plus); this solution is meant to replace the practice of accommodating such minors in youth juvenile institutions together with young delinquents. The Youth Care Plus institutions shall identify the minor's problems individually and offer them the most suitable treatment.¹⁶⁶ However, these programmes have been criticized by NGOs and the Dutch Rapporteur on Human Trafficking, the latter expressed her concerns: "General shelters do not appear to provide a safe and open environment for victims of loverboys. For example, victims in institutions where boys are also given shelter do not always feel safe, and do not always seem to be safe. Girls have also said that they are not inclined to tell the (full) story in a general institution/group for fear of acquiring the stigma of 'whore'. Finally, the study 'Loverboys and their victims' showed that youth workers do not always possess sufficient expertise, and victims consequently feel they are misunderstood and not believed."¹⁶⁷

In response to the criticism, three institutions (the youth care facility Horizon, Stichting Humanitas and the shelter organization Fier Fryslan started) started a 3 year long pilot project with categorical shelter and specialized treatment. The three institutions are developing a comprehensive programme of care by merging youth mental health services, remedial

¹⁶⁵ The First NGO report on the implementation of the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands, the Kinderrechtencollectief, p. 13

¹⁶⁶ Committee on the Right of the Child, Consideration of reports submitted by States parties under article 44 of the Convention on the Rights of the Child, Fourth periodic reports of States parties due in 2012, The Netherlands, para. 548

¹⁶⁷ Ninth report of the National Rapporteur on Trafficking in Human Beings (NRM), The Hague, 2013, p. 209

education and social shelters into one treatment programme.¹⁶⁸ The beds shall be available for minors between the age of 12 and 23, therefore after the victim reached the age of adulthood still can remain in the same facility as long as he or she needs assistance. The project started last year, so all the actors is looking forward to the evaluation and experience-sharing.

The shortcomings of the Hungarian child protection system were revealed by several reports made by NGOs and independent institutions. One of strongest opinion says “that child victim support is a totally ignored area by the state and at the same time there is not even one NGO specialised in child victims of trafficking.”¹⁶⁹

First of all, there is no shelter for minor victims of trafficking and special shelters for victims of trafficking does not accept children.¹⁷⁰ Contrary to the adult victims of trafficking who are offered to be placed in secret shelters, the children are placed within the framework of the child protection system which has to handle the young victims in need of special care and protection. It includes the provision of safety and protection from re-victimisation, in practice it means they should prevent the traffickers from finding and taking them. The CONFRONT project came to the same conclusion:

Child protection institutions abroad when they encounter Hungarian child victims and want to repatriate the child, they ask for guarantees that when the child is repatriated he/she gets proper assistance and will not get back to the same environment where he/she came from. The child protection authority issues a letter guaranteeing the child’s safe return and reintegration. In reality, there is no support staff trained to assist victims of child trafficking, so when

¹⁶⁸ Ibid. p. 211

¹⁶⁹ Report of the Countering new forms of Roma children trafficking: Participatory approach (CONFRONT), Central European University, Manuscript, p. 19

¹⁷⁰ Ibid. p. 21

they are returned they don't get proper care. Moreover, most of the time the child is returned to the same environment.

Furthermore, the staff of the child care institutions are not prepared nor trained to deal with cases like this. They are not aware of definition of child prostitution and trafficking, they do not know how to recognize the signs of victimisation and traumatisatio. Interviews conducted with professionals working with children, social workers, head of child care homes, police officers, and teachers – everyone who constitutes to the child protection signalling system here in Hungary – show the same. Nevertheless, awareness raisings and trainings about the topic would have a positive impact on the collaboration of different actors. Moreover these people do not receive appropriate supervision in order to be able to process the inputs they gain during their work.¹⁷¹

The Hungarian Commissioner for Fundamental Rights, as the guardian of children's rights examined the child protection system several times as result of complaints and conducted a large-scale investigations ex officio, too. He gave a comprehensive summary of the issue in a report in 2011.

The members of the signalling system have to give the necessary signals when they encounter a suspect for child prostitution in order to decrease the prolonged negligence, maltreatment and sexual exploitation of the child. It is the abuses and the problems to be handled that should come into the forefront. At the same time the exploration of problems is not adequate if the child protection system is unable to handle these problems. Therefore the professional support and the training of the staff of the child protection

¹⁷¹ Prostitúció és emberkereskedelem a szociális ellátásban és a gyermekvédelemben Magyarországon, Az áldozat-ellátás intézményrendszere, Kutatási részbeszámoló, „Az áldozatsegítő segítője” (TÁMOP – 5.6.1.C-11/1), Betlen Anna, 2013, p. 30

system is necessary, as well as the elaboration of a complex, interdisciplinary problem-solving system and the development of the tools for prevention.¹⁷²

It is important to mention a civil society initiative, the 18 months long project of the MONA Foundation entitled “Development of interdisciplinary in Hungary to support the fight against human trafficking and prostitution”. It was funded by the EEA/Norwegian Financial Mechanism and implemented in cooperation with other NGOs such as the NANE Women’s Rights Association, PATENT Association and the Association of Street Social Helpers. The aim of the project was to develop coherent legal framework which is appropriate to reduce prostitution and human trafficking. “It also sought to lay the foundations of a multi-layered institutional network based on interdisciplinary cooperation that can provide services for victims, ranging from prevention to long-term assistance services.”¹⁷³ Furthermore, they developed and implemented pilot trainings for Hungarian police officers.

2.5.2. Care provided for non-state national minor victims

In the Netherlands the “Protected Reception” project - funded by the European Refugee Fund – aims to provide immediate help and assistance and therefore prevent unaccompanied minors from disappearing or getting into exploitative situation again.¹⁷⁴ The project is based on the close cooperation of the Central Agency for the Reception of Asylum Seekers, the Jade Zorggroep Foundation as the implementing organisation and the Nidos Foundation as the guardianship agency. As soon as the unaccompanied minor reports to the Dutch authorities, the Nidos Foundation is engaged as it was discussed in the previous chapters about guardianship. The minors are placed in special, protected reception facilities – not in detention

¹⁷² Report of the Commissioner for Fundamental Rights, AJB 1472/2011 cited from: <http://childrentrafficking.eu/child-victims-assistance-and-reintegration/program-evaluation/hungary/3-analysis-and-evaluation/>

¹⁷³ Legislation, rights protection and assistance, MONA—Foundation for the Women of Hungary, 2010, p. 6

¹⁷⁴ EMN Focussed Study 2013: Identification of victims of trafficking in human beings in international protection and forced return procedures in the Netherlands, Doc 287, 5th August 2013, pp. 9

centres for adults - where they can take a standard rest and preparation period of three months¹⁷⁵ which is aimed to “deprogram” the unaccompanied minors “or to remove them from the control of traffickers in human beings”.¹⁷⁶ Children between 12 and 15 are placed in small-scale units, older children in large-scale shelters, while minors under the age of 12 stay with foster families.¹⁷⁷ The Nidos Foundation is responsible to decide whether protection reception is required: the highly trained staff members conduct interview with the minor and consider all the particularities and circumstances of the case. A field report showed that the executive staff members working in these facilities truly believe that the minors’ placement is prevalently based on firm grounds, while guardians, however, trust in the victimhood less than half of the cases.¹⁷⁸

As we concluded that in Hungary there is no special institution for minor victims of trafficking, the third-country nationals might be eligible for care as unaccompanied minor. If the child applies for asylum he or she is transferred to the Károlyi István Children’s Centre in Fót, which has a special unit for unaccompanied asylum seeker children. The Hungarian Commissioner for Fundamental Rights lately visited the institution during an investigation and did not find any human rights violation in connection with the accommodation and care provided for the children.¹⁷⁹ If the minor does not seek recognition he or she will be placed in a child care institution until the Immigration Office make a decision in the case.¹⁸⁰

It is worth to mention here again the Mario project which explored the situation of unaccompanied minors who did not apply for international protection in Hungary. Referring

¹⁷⁵ Ibid. p. 9

¹⁷⁶ Ibid.

¹⁷⁷ FRA Thematic study on Child Trafficking [The Netherlands], Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman. Leiden, The Netherlands, 2008, p. 7

¹⁷⁸ Ibid. p. 13

¹⁷⁹ Report of the Commissioner for Fundamental Rights, AJB-733/2012

¹⁸⁰ Mario project, Háttér tanulmány, Az úton lévő gyermekek helyzetelemzése: Magyarország gyermekvédelmi rendszerének kapacitása és alkalmassága az úton lévő gyermekek védelme szempontjából, Terre des Hommes, Budapest, 2013, p. 40

to interviews with social workers and other professional from child care institution, it was reported that often happens such situation where someone who identifies themselves as family member or guardian of the child shows up within 24 hours and take the child. The head of the institution cannot prevent it, not even cases when he or she presumes that the trafficker or the smuggler came for the child. For this purpose they do not allow separated children to use the phone.¹⁸¹

2.6. Special measures for third country national minor victims

The victims of child trafficking who bears the nationality of a third country, generally arrive as unaccompanied or separated minors therefore I am discussing regulations related to them. I do not take other possibilities into account within the framework of this paper.

As it was discussed above, the states are obliged to provide the enjoyment of all rights stipulated in the Convention for children in its territory. Since these minors need international protection based on humanitarian and refugee law the states have to comply with the principle of non- refoulement too, and look for long-term solutions.

In the Netherlands, there is two scenarios for victims of trafficking: the B9 scheme for those who cooperate in the criminal procedure while those “who are unable or who are afraid to cooperate in a criminal investigation, because they are under serious threat or are unable to do so for medical or psychological reasons”¹⁸² can be granted temporary residence permit on the basis of individual circumstances. Both of the residence permits are reassessed after one year; the B9 permit is granted for the duration of the prosecution (with the condition of cooperation with the relevant authorities) and other one could be considered as ground until the special

¹⁸¹ Ibid. p. 24

¹⁸² EMN Focussed Study 2013: Identification of victims of trafficking in human beings in international protection and forced return procedures in the Netherlands, Doc 287, 5th August 2013, pp. 4

circumstances are still in force. Between 2007 and 2011 the total number of minors granted B9 permit was 107.¹⁸³

A reflection period of 3 months is given for the victims “in case of the slightest indication of trafficking in human beings”¹⁸⁴ when they have time to decide whether they want to report the crime and cooperate with the law enforcement agencies. “The reflection period is terminated if: (a) the victim or witness has left with an unknown destination, (b) the victim or witness decides not to report the case or not to cooperate in the investigation and prosecution or (c) the victim or witness has applied for a residence permit on another basis than the B-9 Regulation”.¹⁸⁵ If a foreign national is stopped at external borders, the Royal Netherlands Marechaussee considers whether there is a suspicion of trafficking in human beings: if so, they could enter the country and follow all the steps discussed here; however, they are not entitled to the reflection period.¹⁸⁶

On the basis of the B9 Regulation, victims and witnesses of crimes of trafficking are eligible to apply for permanent residence permit (B16 Regulation). If the trafficking case resulted in conviction, it is assumed that the minor might be in danger if he or she is returned to their home country, therefore it serves as ground for the B16 residence permit application. If the criminal procedure has not concluded in conviction, but the minor has been legally residing in the Netherlands in the last three years on the basis of the B9 Regulation, he or she is also eligible to apply. If the case is still pending after 3 years it could be a reasonable ground to apply for permanent residence permit, too. Eventually, if the victim is not eligible according to any of the previous cases, he or she still can apply for permanent residence permit on humanitarian ground. The Dutch Rapporteur on Human Trafficking pointed out that “is not

¹⁸³ Ibid. p. 50

¹⁸⁴ Ibid. p. 4

¹⁸⁵ FRA Thematic study on Child Trafficking [The Netherlands], Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman. Leiden, The Netherlands, 2008, p. 40.

¹⁸⁶ Ibid. 41

easy to substantiate this type of application, because in practice the burden of proof is largely imposed on the victim”.¹⁸⁷

The general asylum procedure applies to minors, however complemented with special safeguards (e.g. right to special care). It is important to look at the interaction between the B9 Regulation and the asylum procedure, because it is not obvious at the first sight which one the minor victim should choose. If the minor already applied for asylum but in the meantime he or she decide to report the trafficking and cooperate with the law enforcement agencies, they will change over the B9 procedure and reject the asylum claim without substantive review. If the minor refuses to change, the asylum procedure is maintained but the victim cannot invoke any of the rights provided for B9 residence permit holders. If the victim applies for B9 residence permit anytime later, this notice “will be ex officio considered to be an application for continued residence”.¹⁸⁸ The Amnesty International claims that asylum procedure should be opened also for victims of trafficking because “the B-9 Regulation provides better arrangements but also has more insecurities, such as the risk of a decision not to prosecute”.¹⁸⁹

Under Hungarian law, the health and social care service providers, educational institutions, police, labour offices, alien policing unit and the asylum office is obliged to conduct an interview with the purpose of identification if they presume that the Hungarian national or anyone with the right to free movement and residence fall victim of trafficking in human being. Obviously, it is unreasonable to restrict the subjects of the interview to Hungarian nationals or people with the right to free movement and residence, especially if the alien policing unit and the asylum office is also obliged to do that. It seems like a legislative

¹⁸⁷ Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM), The Hague, 2007, p. 63

¹⁸⁸ FRA Thematic study on Child Trafficking [The Netherlands], Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman. Leiden, The Netherlands, 2008, p. 45

¹⁸⁹ Ibid. p. 45

mistake but some argues that it explains the lack of trafficking cases with third country nationals in the statistics.¹⁹⁰

When an unaccompanied minor enters Hungary the alien police keeps in custody in the first 12 hours when the interview and age assessment take place. If it is not successful, the custody could be extended with 12 hours.¹⁹¹ If it is proved that irregular migrant is minor and applies for asylum he or she is transferred to Károlyi István Children's Centre in Fót. After the 24 hours passed, the police cannot withhold the separated minor, therefore takes care of the accommodation in the nearest child care institution and informs the child protection service in charge.¹⁹² It has been revealed that since the institutions are open, these children disappear within 48 hours.¹⁹³

If the authority identifies a victim promptly informs the victim support service and in case of minors initiate the necessary child protection procedures (accommodation of the child, appointment of legal guardian, criminal procedure). As we discussed among the provisions of the legal aid, the victim support service informs the victim about the reflection period and the available assistance and services. For the duration of reflection period (which is 1 month but can be extended) upon the initiative of the victim support he or she is provided with a temporary residence permit.¹⁹⁴ During the reflection period the deportation is possible only if the third country national poses a threat to the national security and safety, while unaccompanied minors could be deported if the family reunification and provision of adequate treatment and assistance are assured.¹⁹⁵

¹⁹⁰ Menekültek, kísérő nélküli kiskorúak, Haraszti Margit Katalin, Weinbrenner Ágnes In Pajzsuk a törvény, Rászoruló csoportok az ombudsmani jogvédelemben, Hajas Barnabás, Szabó Máté (editors), Alapvető Jogok Biztosának Hivatala, 2013, p. 400

¹⁹¹ Article 67(5) of Act of II of 2007 on the entry and residence of third country nationals

¹⁹² Mario project, Háttér tanulmány a Magyarországon menedékjogot nem kérő külföldi, kísérő nélküli kiskorúakról, Terre des Hommes, Budapest, 2013, p. 20.

¹⁹³ Ibid. p. 21; it was affirmed by the Report of the Commissioner for Fundamental Rights, 2431/2012 AJB

¹⁹⁴ Article 30(1) of Act of II of 2007 on the entry and residence of third country nationals

¹⁹⁵ Article 450(4)-(5) of Act of II of 2007 on the entry and residence of third country nationals

When the minor victim decides to report the crime and cooperate with the law enforcement agencies – immediately or during the reflection period - he or she is granted a temporary residence permit on humanitarian ground.¹⁹⁶ The residence permit is valid for 6 months but it could be eventually renewed for 6 months again. If the child does not report the trafficking and not identified as victim, may apply for asylum or subsidiary protection as well as residence permit on humanitarian ground as an unaccompanied minor.

Concerns were raised in connection with deportation of separated children as well. In the joint report of the Hungarian Police, the Hungarian Helsinki Committee and UNHCR three cases were detailed when alien police presumably violated the principle of non- refoulement and deported the minors to the transit country or home. The main issue is that authorities are not aware or do not pay attention to the fact that the regulations have more safeguards for children. We were told about cases when the police came within 48 hours to pick the unaccompanied minor from the child care institution for deportation which concerns whether they took all the necessary steps to find out whether the return of the child is safe.¹⁹⁷

¹⁹⁶ Article 29 e) of Act of II of 2007 on the entry and residence of third country nationals

¹⁹⁷ Mario project, Háttér tanulmány a Magyarországon menedékkjogot nem kérő külföldi, kísérő nélküli kiskorúakról, Terre des Hommes, Budapest, 2013, p. 26

Conclusions

The thesis looks for the answer how and to what extent children's rights are mainstreamed and enforced in national legislations dealing with the assistance provided for child victims of trafficking. In spite of the fact that the countries share the international obligations undertaken by the ratification of the relevant instruments and both of them are Member States of the European Union, they use different approaches and policies to promote and protect the right of child victims.

Concerning trafficking, Hungary is primarily a country of origin with a government reluctant to admit the country's involvement in the issue. While the Netherlands is a country of destination which has recognized the combat against human trafficking as a priority and has taken effective measures and introduced victim - centred approach.

In the Netherlands the most vulnerable children in this sense are the young, emotionally unstable girls and the unaccompanied foreign minors, while in Hungary the Roma children and minors in state care. One of the gravest violation is that the Hungarian authorities does not treat these children as victims, due to the misunderstanding of child prostitution in the society as well as to the lack of sufficient training for professionals. In contrary, in the practice of the Dutch officials the best interests of the child and the principle of non-punishment definitely prevail. Irony of fate that when Hungarian victims trafficked to the Netherlands would have the opportunity to escape and ask for help, they are afraid to approach the police because they expect the same attitude as in Hungary.

The best interest of the child should prevail throughout the criminal investigation and procedure including the assistance and support to child victims and all the measures necessary to protect them. Both of the countries pay particular attention to victim's participatory rights in the proceedings. In the Netherlands implementation of child-sensitive measures is a priority but in Hungary the international obligations transposed to national law are not properly

carried out in practice. The child-friendly interviewing studio is wasted if the judge does not wish to go there just because it is in the other part of the city. Although, good example is that the Netherlands introduced a new protocol to appoint guardian for unaccompanied minors as soon as they arrive to Schiphol airport. Delay in any procedure connected to children need to be reduced to the minimum.

As result of the examination of the care and protection provided for child victims several human rights violations has been revealed. As it was mentioned before, institutional care is one of the risk factor of child trafficking in Hungary - it seems like we just close a vicious circle when we send back the children to child care institutions. I think it is crucial to set up shelters categorized to accept minor victims of trafficking for several reasons. First, the victim need protection in sense of physical safety preferably in an unknown location. Second, the traumatized children need special assistance which presumes professionals with sufficient knowledge. Third, it has been proved that the risk of re-victimisation is much higher if the child is located in general child care institutions. The Netherlands is one step ahead of Hungary by running a pilot project of a shelter emerging comprehensive rehabilitation and integration of child victims.

The situation of unaccompanied foreign minors has been discussed in both of the countries. It is difficult to provide tailor made assistance and protection for these children who trust nobody. Although, I think it causes more harms that the Hungarian authorities avoid to talk about or deal with foreign children who do not seek recognition while everyone knows that they do exist. Concerning the special measures for third country nationals we have seen that the Netherlands has a distinct procedure which applies to cases of trafficking in human beings and has numerous safeguards for children.

Finally, my view is that appropriate protection and assistance could be provided for child victims right after the people's attitudes have been changed. In order to promote the best

interests of the child in any situation we have to treat them as children under any circumstances. It only ends when they turn eighteen, not earlier. Furthermore, I consider an important mission to eliminate the victim-blaming approach as well as the ignorance towards compelling issues from the Hungarians' way of thinking. Greater vigilance on the part of the government with respect to victim assistance is required too.

Bibliography

International instruments:

Explanatory Report to the Convention on Action Against Trafficking in Human Beings, Warsaw 2005

UN Convention on the Rights of the Child New York 1989

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography New York 2000

Committee on the Right of the Child in Comment No. 6 on Treatment of unaccompanied and separated children outside their country of origin, 2005

Commission on Human Rights Resolution 1990/68

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Palermo 2000

ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Geneva 1999

Council of Europe Convention on Action against Trafficking in Human Beings Warsaw 2005

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse Lanzarote 2007

EU instruments:

Treaty of the European Union

Charter of the Fundamental Rights of the European Union

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 Council Framework Decision 2002/629/JHA.

Directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography

THE STOCKHOLM PROGRAMME — AN OPEN AND SECURE EUROPE SERVING AND PROTECTING CITIZEN, EUROPEAN COUNCIL (2010/C 115/01)

Communication from the Commission - Towards an EU strategy on the rights of the child /* COM/2006/0367 final */

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS An EU Agenda for the Rights of the Child /* COM/2011/0060 final */

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 /*COM(2012) 286 final*/

National legislation:

Aanwijzing mensenhandel [Instruction Trafficking in Human Beings]

ANNEX VI Data on registered criminal actions, plaintiffs and perpetrators according to the Unified System of Criminal Statistics of the Investigative Authorities and Public Prosecution. Decree of the Hungarian Government 1351/2013. (VI. 19.) on the National Strategy against Trafficking in Human Beings (2013-2016)

Act C of 2012 on the Criminal Code

Explanatory Memorandum to the Act C of 2012 on the Criminal Code, available at <http://www.parlament.hu/irom39/06958/06958.pdf>

Act XIX of 1998 on the Code of Criminal Procedure

the Act of LXXX of 2007 on Refugee Law

the Act CXXXV of 2005 on assisting victims of crime and mitigation of damage

Act of II of 2007 on the entry and residence of third country nationals

01/2007. (XI. 9.) Government Decree on the implementation of the Act of LXXX of 2007 on Refugee Law

Dutch Civil Code

Wetboek van Strafrecht, 2 March 1881

Caselaw:

Den Bosch Court of Appeal 17 September 2010, LJN: BN7215 (Chinese restaurant)

Report of the Commissioner for Fundamental Rights, AJB 1472/2011

Report of the Commissioner for Fundamental Rights, AJB-733/2012

Report of the Commissioner for Fundamental Rights, 2431/2012 AJB

Reports, articles, books:

Angelique Crisafis, 'Loveboys' Child Prostitution Scandal Back in Dutch Spotlight, THE GUARDIAN (Aug. 17, 2009, available at <http://www.theguardian.com/world/2009/aug/18/loverboy-child-prostitution-netherlands>)

Betlen Anna, Prostitúció és emberkereskedelem a szociális ellátásban és a gyermekvédelemben Magyarországon, Az áldozat-ellátás intézményrendszere, Kutatási részbeszámoló, „Az áldozatsegítő segítője” (TÁMOP – 5.6.1.C-11/1), 2013

Breaking the silence, European Roma Rights Centre, Budapest, 2011

Closing a protection gap, Defence for Children International-ECPAT the Netherlands, Martine Goeman, Carla van Os, 2010

Committee on the Right of the Child, Consideration of reports submitted by States parties under article 44 of the Convention on the Rights of the Child, Third periodic reports of States parties due in 2007, The Netherlands

Committee on the Right of the Child, Consideration of reports submitted by States parties under article 44 of the Convention on the Rights of the Child, Fourth periodic reports of States parties due in 2012, The Netherlands

Committee on the Right of the Child, Consideration of reports submitted by state parties under Article 12, Paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Initial reports of States parties due in 2007 THE NETHERLANDS, CRC/C/OPSC/NLD/1, 8 January 2008

Család, Gyermek, Ifjúság Egyesület (Publisher). The Alternative (NGO) Report on the Implementation of the UN Convention on the Rights of the Child in Hungary (2006-2012). Budapest, Hungary. 2013.

Dr. Fehér Lenke, Az emberkereskedelem viktimológiai aspektusa, in Prostitúció, prostitúcióra kényszerítés, emberkereskedelem, dr. Fehér Lenke – dr. Forrai Judit, Nőképviseleti társaság, 1999, Budapest

dr. Forrai Judit, Szex, prostitúció, erőszak, 2009, Budapest

EMN Focussed Study 2013: Identification of victims of trafficking in human beings in international protection and forced return procedures in the Netherlands, Doc 287, 5th August 2013

European Union Agency for Fundamental Rights. Child Trafficking in the European Union Challenges, perspectives and good practices. Luxembourg: Office for Official Publications of the European Communities, 2009

FRA Thematic Study on Child Trafficking, Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman, Leiden, the Netherlands, July 2008

FRALEX Thematic Study on the Rights of the Child (Child Trafficking), Hungary, NEKI and ETC, August 2008

Guardianship for children deprived of parental care, European Union Agency for Fundamental Rights, Luxembourg, 2014

Gyurkó Szilvia, Virág György (editors), Emberpiac, A Magyarországot érintő nemzetközi emberkereskedelem társadalmi, kriminológiai jellemzői, Eszter Foundation, Budapest, 2009

Haraszi Margit Katalin, Weinbrenner Ágnes, Menekültek, kísérő nélküli kiskorúak, In Pajzsuk a törvény, Rászoruló csoportok az ombudsmani jogvédelemben, Hajas Barnabás, Szabó Máté (editors), Alapvető Jogok Biztosának Hivatala, 2013

Hollán Miklós: Emberkereskedelem, HVG-ORAC, Budapest, 2012

Legislation, rights protection and assistance, MONA—Foundation for the Women of Hungary, 2010

Mario project, Háttér tanulmány, Az úton lévő gyermekek helyzetelemzése: Magyarország gyermekvédelmi rendszerének kapacitása és alkalmassága az úton lévő gyermekek védelme szempontjából, Terre des Hommes, Budapest, 2013

Mario project, Háttér tanulmány a Magyarországon menedékkjogot nem kérő külföldi, kísérő nélküli kiskorúakról, Terre des Hommes, Budapest, 2013

Muireann O'Briain, Anke van den Borne, Theo Noten. Joint east west research on trafficking in children for sexual purposes in Europe: the sending countries. ECPAT Europe Law Enforcement Group. Amsterdam 2004

National 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. 2012.

National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children. First report of the Dutch Rapporteur on Trafficking in Human Beings, the Netherlands, the Hague, 2002

National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children. Fifth report of the Dutch Rapporteur on Trafficking in Human Beings, the Netherlands, the Hague, 2007

National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children. Ninth report of the Dutch Rapporteur on Trafficking in Human Beings, the Netherlands, the Hague, 2013

National Rapporteur on Trafficking in Human Beings (2012). Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis. The Hague: BNRM

Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking, Background paper prepared by the Secretariat, UNODOC, CTOC/COP/WG.4/2010/4, 9 December 2009

Office of 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, 2012.

Paulo Sérgio Pinheiro, World Report on Violence against Children, United Nations, Geneva, 2006

Report of the Countering new forms of Roma children trafficking: Participatory approach (CONFRONT), Central European University, Manuscript, 2014

Rick Lawson, Tom Barkhuysen, Janneke Gerards, Maarten den Heijer, Rikki Holtmaat and Nelleke Koffeman. FRA Thematic study on Child Trafficking [The Netherlands]. Leiden, The Netherlands, 2008.

Stalford Helen, Schuurman Mieke, Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda. International Journal of Children's Rights. Nov2011, Vol. 19 Issue 3

The First NGO report on the implementation of the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands, the Kinderrechtencollectief, 2008

United Nations Office on Drugs and Crime, Anti-human trafficking manual for criminal justice practitioners, Module 9, New York, 2009

Websites:

CONFRONT project.

<http://cps.ceu.hu/research/confront>

European Commission. Together against Trafficking in Human Beings. Hungary

<http://ec.europa.eu/anti-trafficking/NIP/Hungary;jsessionid=2xqLSGtc1lZLw7H7HI72H2L1ylgbXtsjpp0w1mTmYS2lrQ5QH5Jj!760991597>

European Commission. Together against Trafficking in Human Beings. The Netherlands.

<http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Netherlands>

Dutch Coordination Centre on Trafficking in Human Beings, Comensha.

www.comensha.nl

Gyermekkereskedelem Magyarországon. Az áldozat nem tesz feljelentést, Székely Ilona, 168 óra, 2014.10.28.

<http://www.168ora.hu/itthon/prostitutcio-gyermek-gyermekkereskedelem-kizsakmanyolas-eroszak-enz-131382.html#sthash.Ub2AJTiX.dpuf>

Information brochure of the Hungarian Victim Support Service

http://kih.gov.hu/documents/10179/736661/Victim%20support%20leaflet_July%202013.pdf

Interview with Zsuzsanna Vidrai, researcher of the CONFRONT project,

<http://archive.ceu.hu/node/38018>

Landelijk Expertisepunt Jeugdprostitutie [National Expertise Centre on Youth Prostitution].

www.jeugdprostitutie.nu

National Expertise Centre on Youth and Prostitution (Expertisepunt Jeugdprostitutie).

<http://www.jeugdprostitutie.nu/engels>

Nynke Bosscher, The decentralisation and transformation of the Dutch youth care system,

Nederlands Jeugd Insititut, Update of June 2014

<http://www.youthpolicy.nl/yp/downloadsyp/Publications-The-decentralisation-and-transformation-of-the-Dutch-youth-care-system.pdf>

Trafficking in Persons Report 2014, Office to Monitor and Combat Trafficking in Persons,

US Department of State

<http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226738.htm>

Website of the European Commission – Together against trafficking in human beings

<http://ec.europa.eu/anti-trafficking/About/Coordinator>