

5. The Netherlands¹

I Legislation

1. Criminal Laws

a) Article 250a

The Netherlands has a specific criminal provision against trafficking in persons only when it relates to prostitution. Article 250a of the Penal Code was introduced on 1 October 2000 and replaced the older 'trafficking' articles 250ter and 250bis (ban on brothels) of the Penal Code. Article 250(1)(a) considers trafficking as "using force, threats of violence, abuse of authority or deception to induce another person to engage in prostitution". Under section 1(2) article 250a, the movement of persons to another country for the purpose of prostitution does not require force, deception or coercion; "The simple abduction and/or recruitment of people to a different country, in the knowledge that they will enter into prostitution there, is sufficient to make it a case of trafficking in humans, even if this takes place with the free will of the party who is taken or recruited".² However, in practice, prosecutions tend to focus on cases where force, coercion or deception are involved. This is in accordance with the intention expressed by legislators and the earlier 1994 trafficking article (250ter) which prosecuted cases of forced prostitution, and with the Prosecutor's Guidelines which aimed at prosecuting cases where force, coercion or deception were involved.

Since the Dutch law is restricted to trafficking for the sex industry, for the purposes of this chapter, references to 'trafficking' and 'trafficked persons' will refer to those trafficked into the sex industry under article 250a. Anti-Slavery International looked for cases of trafficking for other purposes, but local NGOs were unaware of prosecutions of exploitative employers that might fall within the international definition of 'traffickers'. The Netherlands is scheduled to change its trafficking article to include other purposes following ratification of the UN Trafficking Protocol. A draft law regarding other forms of socio-economic exploitation is currently being drafted.

b) Other related articles

According to STV, other relevant articles of the Penal Code used to prosecute traffickers are article 242 (sexual violence/rape), article 231 (forged travel

documents) article 140 (participation in a criminal organisation), article 282 and 283 (deprivation of freedom), article 284 (coercion), article 285a (threats/intimidation), article 300 (abuse), article 317 (extortion), article 326 (fraud). Article 274 regarding slave trading is used very rarely.³

2. Other laws and policies affecting trafficked persons

a) Residency status - B9 regulation

The Netherlands was the first country to adopt a specific policy providing temporary residency rights to persons trafficked into the sex industry. This is laid down in the circular for immigrants, regulation B9 (2000) (formerly B17 (1988)). The aim of the B9 regulation is both to facilitate the investigation and prosecution of trafficking cases and to offer support and protection to trafficked persons.⁴ The B9 consists basically of three parts. If there is a slight indication that the person involved might have been trafficked, they should be offered a period of three months to make an informed decision on whether they want to press charges.⁵ This is generally now referred to in Europe as a 'reflection delay'. If they file a report, they are entitled to a temporary permit to remain in the Netherlands during the period of criminal investigation and the criminal trial.⁶ Finally, if the case is dismissed or the criminal trial is completed, the person is entitled to apply for a permanent residence permit on humanitarian grounds.⁷

i) Reflection delay

This first phase of the B9 regulation enables those who may have been trafficked to recover from their ordeal and decide whether they wish to report their trafficker to the police. Police should inform any undocumented migrant working in the sex industry of this right.⁸ The law states that the reflection delay is granted because victims of sexual violence (non-consensual acts of a sexual nature) can often only describe their experiences after a period of recovery. This period is available only once to each individual and cannot be extended. During this period the person will be provided appropriate housing, medical assistance and legal assistance and counselling.⁹

The decision to grant the reflection delay is dependent upon a police officer or lawyer interviewing the individual concerned. However, the ultimate decision is made by the senior police officer. The police officer notifies the Immigration and Naturalisation Service (IND) and STV that the person has a suspension of deportation order for three months.¹⁰ The individual must

report to the IND office, and STV is responsible for co-ordinating 'reception and accommodation' for the person, as well as arranging a case manager for the case. This person ensures medical assistance and legal aid are available, and that the financial assistance, to which the victim is entitled, is paid. During the reflection delay a victim receives a monthly allowance through the Reception of Asylum Seekers Agency (COA), which provides for their cost of living, enables them to be housed in a shelter and pays insurance for medical costs.

ii) Temporary residence permit

If the victim presses charges against the trafficker by reporting them to the police before the expiry of the reflection delay, she or he is entitled to a temporary permit to stay during the criminal investigation and trial. This does not oblige the witness to stay in the Netherlands upon pressing charges.¹¹ There is a difference between law and practice. According to the text of B9, the moment the trafficked person presses charges, their report must also be considered as an application for a temporary residence permit. In principle, the IND must make a decision within 24 hours whether to grant the permit (as is the practice in neighbouring Belgium). This means that the issue of the temporary permit is not dependent on the prosecutor's decision to start a criminal investigation, although the permit can be withdrawn if the prosecutor decides not to instigate criminal proceedings.¹²

In practice, IND or police often consider the issue of the temporary permit to stay dependent on the decision of the prosecutor to initiate proceedings against the trafficker. As the Clara Wichmann Institute¹³ states, this is problematic for various reasons, because it contradicts the very essence and intention of the B9, which is to reduce obstacles to reporting traffickers and to make the victim feel safer to testify. It is essential that the individual can trust that if s/he presses charges against the trafficker, s/he will not be confronted with immediate deportation. The permit also needs to be issued as soon as possible, because it affects access to services such as housing and medical care.¹⁴

If trafficked persons are not willing to testify or when the case is completed, they are generally requested to leave the Netherlands unless they have applied for permanent residency on humanitarian grounds (see below). The request to leave is issued by the IND, dependent on information from the Prosecutor's Office. If the request is ignored and the trafficked person is

found in the Netherlands after the permit expires, s/he are deported as an undocumented migrant.

There are two other significant problems with the B9 regulation. The reflection period only covers those trafficked into prostitution in the Netherlands, and not those who may have first been trafficked to another country, then escaped their exploiter and fled to the Netherlands. According to TAMPEP,¹⁵ given the current system whereby trafficked women are moved frequently between different EU States, this seems to unnecessarily limit the B9 procedure.¹⁶ Secondly, those who have not actually been forced into prostitution yet, but are in the process of recruitment, can report their trafficker and obtain temporary residence under the B9 regulation, but are not entitled to the reflection delay.¹⁷

iii) Permanent Residency

When the B9 temporary residence permit expires, a trafficked person may apply for a permanent residence permit on humanitarian grounds. This is dependent upon the risk of reprisals, risk of prosecution in the country of origin for example for prostitution, and lack of possibility of reintegration into society in the country of origin.¹⁸ IND is responsible for deciding whether to issue a permanent residence permit. They are granted to trafficked persons very rarely, where circumstances have been exceptional.

II General analysis and comparison of cases

1. Investigation and prosecution of traffickers

According to the National Rapporteur Office,¹⁹ at least 756 police reports were filed in regard to trafficking at Prosecutors' Offices between 1995 and June 2000. Seventy one per cent of cases were summoned to court i.e. went to trial, and of these, 88 per cent resulted in convictions. In 85 per cent of cases the court imposed a prison sentence. The length of a criminal case varies between a few months and several years. According to the prosecutor interviewed, cases regarding article 250a are prioritised amongst other criminal cases and cases usually last approximately one year.²⁰ A police officer interviewed said that criminal investigations are usually suspended after two years if they are unsuccessful in apprehending the trafficker.²¹ However, STV reported several cases that were pending for more than two years.

According to the B9 regulation trafficking is a crime that can be prosecuted regardless of whether there is a complaint. Apart from victim or witness testimony, other evidence includes telephone taps, surveillance, eye-witness reports, investigation of money laundering activities and the financial status of the suspect. Dutch police rarely engage trafficked persons in their investigation process since it is felt to be too dangerous for the victim and may be regarded as entrapment by the defence.²² Whilst the law states that a victim's complaint is not necessary to prosecute trafficking, police, prosecutors and STV interviewed all agreed that cases lacking witness testimony tend not to be successful.

Katya and Anna

Two women, Katya and Anna from Eastern Europe were trafficked to the Netherlands and forced to work in prostitution. After several months, they were found in a police raid. Although the police offered them the reflection delay, they did not use it and reported the traffickers immediately. They were both very co-operative with the police and were ready to report the traffickers because they were angry that they had been deceived and forced into prostitution. They were provided with shelter and counselling co-ordinated through STV. They testified against their traffickers at the Prosecutor's Office and again during the trial in the presence of the defendant. Other victims of the same traffickers also testified. Most of their traffickers were convicted; one was charged under article 250ter and article 242 (rape) and sentenced to five years. The investigation was completed within two months, and the trial of the first traffickers took one year. The statements of Katya and Anna were crucial to the success of this case.

This illustrates how close co-operation between different police departments in the Netherlands resulted in a swift and successful prosecution of the traffickers. Interviews with various sources confirmed that co-operation between prosecutors, various police departments, immigration and NGOs is needed for efficient and successful investigation and prosecution. Co-operation between countries of origin, transit and destination is also necessary. One NGO criticised Dutch police as "often (publicly) criticized for their sluggish inquiries [...] and for their reluctance in collaborating internationally in the prosecution of traffickers."²³ Police and prosecutors themselves admit that co-operation with other countries, especially non-

European countries, is poor.²⁴ Co-operation between EU States is improving.

One major obstacle to successful investigation is the fact that many trafficked persons are unwilling to make a statement to the police and do not want to press charges. The B9 procedure attempts to alleviate this difficulty. For prosecutors and police a lack of 'credibility' in the trafficked women's statements is a further difficulty for the investigation of a case: "Sometimes the women don't tell us the complete story. So during the trial the judge may have doubts because they tell only half of their story".²⁵

2. Procedures affecting trafficked persons and measures of protection

Natasha and Angelina

Natasha and Angelina from Ukraine were both trafficked into forced prostitution in the same club in the Netherlands. The police found them during a house search as part of a large-scale investigation. The police failed to inform them of their right to the reflection delay under the B9 regulation. Both women did not want to report the traffickers, fearing reprisals. They were particularly worried about the safety of their children in Ukraine. Natasha's first priority was to get home as fast as possible to be with her child. Five days after the police raid, both Natasha and Angelina individually gave information to the police that formed the basis of their criminal complaints against the trafficker. The police contacted STV as part of arranging the B9 procedure for the women. Natasha and Angelina were shocked to learn that telling parts of their stories to the police was considered making a sworn statement against her trafficker. Although they had been speaking to the police, it was not fully clear to the women what that meant. They were not given information about their rights and the reporting procedures. They both signed a paper (their statement) that they did not understand. Natasha did not want to stay in the Netherlands, however the police were not willing to let her return, as they wanted her testimony in court. Due to the intervention of STV and eventual police co-operation, Natasha was able to return to Ukraine the same week. She may have to return to the Netherlands to give evidence at the trial.

Masha

Masha, who comes from an ex- Soviet Union country, thought she was going to waitress in the Netherlands, but instead was forced to work in a sex club in debt bondage. After four months, Masha was found in a police raid. She was given the option of reporting her trafficker and obtaining temporary residence for the duration of criminal proceedings or returning home immediately. Masha was not informed of her right to a reflection delay. Masha was scared to return home because her family did not know what had happened to her and she was supposed to be saving money for them. If they knew she had been forced to work as a prostitute they would not accept her back into the family. Likewise, she still owed a large 'debt' to the trafficker and he knew where she lived in her own country, so she was scared he would find her and traffic her again. She spent a night at the police station severely traumatised and told her story to the police in this state. The next day some more people interviewed her from the Prosecutor's Office, however Masha did not understand at the time what this signified.

The police then contacted STV. STV was not told that she had been heard by the prosecutor. STV gave her social support and assistance and found her a lawyer to work on her claim for compensation. The lawyer was not able to get much information from the case, but was told it was pending. STV also attempted to obtain information about the status of the case but was unable to discover anything.

a) Residency rights**i) Temporary Residence**

The B9 residency permit is intended to provide some form of protection, but in reality is fraught with difficulties. STV estimate that the number of women who press charges at once without using the reflection delay is around 70 per cent. This raises the question as to whether the reflection delay is actually granted to trafficked persons in the Netherlands (as illustrated in Natasha, Angelina and Masha's cases). STV consider that many police are afraid that granting the three-month period will interfere with their investigation, so police rarely inform trafficked persons about the right to the three-month stay.²⁶

STV state that in most cases they deal with, the trafficked person is only given

the three-month reflection delay when their first point of contact is a lawyer or a service provider. STV estimate 50 per cent of cases of trafficking they deal with are reported by the police, 30 per cent through welfare organizations and service providers and 20 per cent through private persons, customers, other sex workers and brothel owners. This means that possibly only half of those trafficked are actually informed about the reflection delay. Conversely, a police officer interviewed stated they did offer the reflection delay in all cases.²⁷ Anti-Slavery International was unable to obtain any statistics regarding the number of trafficked persons using the reflection delay, receiving temporary residence permits under the B9 or the number of persons returning home, as it appears there is no central agency collecting such information. There is clear evidence of several cases in which trafficked persons either had not been offered the reflection delay, or had not understood the implications of the choice between the reflection delay and making a statement, such as Angelina.

There is also concern that the residency permit is being used to coerce trafficked persons to stay and give evidence in the Netherlands when actually they desire to return home. This is explicitly not permitted under section 4.3 of the B9 Regulation regarding the request for departure after report. As indicated in Natasha's case, the procedure is not always followed by police who are more eager to encourage the woman to testify at trial and secure a prosecution. This indicates the tension between law enforcement's objectives of securing prosecution of traffickers and the trafficked person's right to decide in her own best interests.

Masha

Four years later, Masha was still in the Netherlands on the legal entitlement of having applied for the B9 though she never actually received the permit. She changed immigration lawyers and discovered that the criminal case against her trafficker had been dismissed six months after it was filed, but she was never informed. Masha is now claiming permanent residency on grounds that she has been in the Netherlands for three years or more as a result of the failure of the Government, and thus has the right to permanent residence. The Government has argued against this for various reasons²⁸ and the case is still pending, now seven years after she filed her initial criminal complaint at the Immigration Court.

Katya and Anna

One trafficker that escaped prosecution allegedly started to threaten Katya's grandmother and Anna's daughter. Dutch police were unable to get local police in the country of origin to co-operate sufficiently to either address the threats or protect the grandmother and daughter's safety. Due to fear, Katya's grandmother and Anna's daughter fled to another country for six months. Both Katya and Anna were eventually granted a permanent residence permit for the Netherlands on humanitarian grounds, three years after their rescue.

ii) Permanent residence: 'humanitarian and compassionate factors'

The fact that the victim, in this case, Masha, is not informed about the dismissal of the case also deprives her of the right to file a complaint against the decision to dismiss the case (article 12 Code of Criminal Procedure). No statistics are available on the number of permanent residence permits that have been issued. According to the National Rapporteur on Trafficking, approximately five per cent of applications for a permanent residence permit are successfully granted.²⁹ STV believe that approximately 15 to 20 out of 250 to 300 cases have been successful in gaining permanent residence since the B17 regulation was introduced in 1988.³⁰ The B9 Regulation lists humanitarian factors to be considered including risk of reprisals and lack of formal protection, risk of prosecution and possibility of reintegration in country of origin.³¹ However, these humanitarian factors are construed extremely narrowly, and the few cases that have succeeded were largely due to years of intensive lobbying by STV. STV believe that the mediation of an organisation like theirs is crucial to the success of an application. In Katya and Anna's case the application for permanent residence was further supported by the police who gave evidence regarding failed co-operation with police in the country of origin to protect the women and their relatives. Despite the full support of the Dutch police, it still took three years for the permanent residency permit to be granted to the two women. With a narrow opportunity for permanent residency under humanitarian grounds in the Netherlands, those who testify but who are unable to meet the test for humanitarian factors are usually forced to return home. Victim witnesses who are still too scared to return home may be forced to consider other illegal means to stay in the country, which again potentially places them in a situation where they are vulnerable to violence and abuse.

b) Protection from reprisals and police protection

The standard witness protection programme is available to trafficking cases dependent upon an assessment of 'urgent need' for protection made by the Prosecutor General's Office.³² This is regulated through the Code for Criminal Procedure and in instructions by the Prosecutor's Office.³³ This is rarely applied, and protection is largely through the residency procedure itself. In several cases in the Netherlands it has been possible for trafficked persons to bring their children to the Netherlands in order to protect them during the trial, and in some cases afterwards. In terms of post-trial protection from reprisals, the police officer and prosecutor interviewed admitted that it is difficult to follow up cases and evaluate the effectiveness of protection measures after the trial. In this respect, there is no institutionalised communication between police, prosecution and STV. If a former witness moves within the Netherlands there is little possibility of making a link between any reported case of retaliation by the trafficker. Police and prosecution also state that there is little co-operation with police in countries of origin due to a lack of trust of authorities, and the unwillingness of women for local police to be informed. There is no police witness protection programme as such. Police in Amsterdam state that due to a lack of resources it is not possible to provide physical police protection to trafficked persons. In some cases, where witnesses are important or there is an obvious risk, police will provide escorts to take trafficked persons to the trial.³⁴

c) In-court evidentiary protection

According to the Dutch legal system, a victim provides a written statement to the police. The witness may then testify at the pre-trial stage in front of an investigating magistrate. Once these two procedures are completed "it is unlikely that he [sic] will have to heard again in court... The victim's pre-trial statement is, as a rule, joined in writing to the file [against the defendant] and used as evidence in court".³⁵ If the witness is summoned to court, then they must appear in court and testify and this is usually in an open court.³⁶ According to STV, the trafficked woman is almost always asked to testify as a witness in court, "The prosecutor tries to use the written testimony, but if the defence wishes to, they can ask that she testify again, and of course he [the defendant] always wants to."³⁷ The witness's testimony in court generally also strengthens the prosecution's case thus securing a longer sentence. One prosecutor stated, "It's usually the best way to get a conviction if the trafficked woman is in court because she then can tell her story directly to the

judge. It is difficult for the victim, and we try to find another way if it's impossible for her, but it is easier if the statement is given in court."³⁸

Witnesses who leave the Netherlands can be asked to return to give testimony at trial, at the expense of the Dutch Government. Otherwise, where victim witnesses have returned home, an 'ad hoc' court may be installed where the judge and prosecutor go to the witness' country of origin to question the witness. STV know of at least one case where an ad hoc court hearing in the country of origin took place. These procedures do not happen often, since former trafficked persons tend to be untraceable once they return home. Testimony in the country of origin is not really recommended in trafficking cases, because of increased risk of retaliation by the trafficker and embarrassment/shame related to the stigma of prostitution if people find out what happened to the witness whilst she was abroad.

There are several possibilities for the trafficked person to give her statement under protective measures to ensure her safety and integrity. The Netherlands, like most countries has provisions enabling a variety of witness protection measures including confidentiality, anonymity, testimony 'in camera' to a closed courtroom, without the presence of the defendant or other persons considered a danger to the witness. These are rarely used in trafficking cases. Such measures may be used if there are other forms of evidence besides the witness testimony.³⁹ STV felt that other less-formal measures of witness protection such as police escorts and separate waiting rooms for defendants and victim-witnesses are also very important to protect

Rosa and others

Seven women from former Soviet States were trafficked into prostitution and found in a police raid. Police informed STV before the raid and STV were present to assist the women, and talked to the women before anyone else did. They informed the women about their choices. Four of the women decided to press charges against their traffickers without wishing to use the reflection delay, while the other two wished to and were able to return home immediately. There was good co-operation between the police and the women, mediated by STV. The women testified at the Prosecutor's Office and they all filed claims for compensation. No traffickers were arrested, though there was international co-operation to investigate and prosecute the traffickers. Eventually, there was a request for all trafficked persons who reported

the traffickers to testify in court in Germany where some traffickers had been arrested and charged.

STV accompanied three victim-witnesses to the court in Germany, and sat with them as they gave evidence. The translator did not speak the women's native language and so used Russian, which they had not spoken for many years. In this case, one representative from STV waited with the women, whilst the other accompanied whoever would be at the witness stand giving testimony. Although STV had been informed by the prosecutor and the judge that the courtroom would be closed and the defendants not present, in actual fact the courtroom was not closed, the defendants were present, members of the public and allegedly members of the traffickers' families.

STV stated, "We appeared in court and the witness just fell on the floor. When she recovered, she wanted to continue with the testimony and the judge asked her: 'Is this the man who raped you? Would you please look him in the eyes?' She said 'no, no' and he said 'Would you please, please?' She had of course an emotional shock, and so I stood up, took her to the hallway and we left. Although this had happened, the woman still wanted to testify. We spoke to the judge and it was agreed the three would give testimony in court at the same time together, the defendant's family would be removed from the courtroom though the defendants would be present, The women were interrogated by the prosecutor, the judge and defence lawyer. The women were not informed about the possibility of giving evidence by video, although it is possible to do this in Germany."⁴¹ One of the women received strange threatening telephone calls after the trial. The effects of testifying had a negative impact on the women, the women were emotionally broken down and their trust in the system in the Netherlands as well as in Germany had diminished. We realised that in between the hearings the women seemed to be disoriented and they couldn't pursue their lives as they had done before testifying. They had seen the defendant and he had seen them, now they were afraid."⁴²

witnesses.⁴⁰

d) Right to information on court proceedings

There are various bureaucratic delays and difficulties under the B9 regulation,

with some trafficked persons not informed about their residency status at all. One regional case manager reported that information stays at the top, and it is difficult to access information about procedures.⁴³ According to STV, this happens particularly with cases that take a long time and where there is poor communication between police, prosecutors and IND. It appears the right of the individual to information is denied, where there is a greater interest of the State in controlling crime.

Rosa and others

After two years had passed from the women filing the criminal report, STV could not find any information on the process of the case though the permit was renewed. One woman returned home. Another year later, suddenly the German court contacted STV. STV then did not receive further information from the case until months later when there was another invitation to testify. Two women testified again in Germany and at the trial of another of the traffickers and were provided a police escort. They were not able to give their evidence from the Netherlands or by video link. Since then, two years have passed and STV have not been informed about the outcome of the case. They have received more invitations to testify against others in the trafficking network but declined on the grounds of the damage it does to the women. The case is still pending due to its complexity with more than 70 suspects. The women remain in the Netherlands.

Masha and Rosa's cases again indicate a violation of the victim's right to information about legal proceedings, as laid down in the Protocol. Both police and prosecutors in the Netherlands have duties to keep the victim informed of the case, if the trafficked persons requests it.⁴⁴ In Rosa's case, we do not know if German authorities informed Dutch authorities about the outcome of the case, but certainly STV was not informed. Prosecutors must give a letter/form to victims to be completed and returned to the prosecutor if they wish to stay informed of the case.⁴⁵ In practice, STV stated that the form is in Dutch and complex, so many trafficked persons do not understand what it is for, unless the support coordinator is present and able to explain it to them.⁴⁶ STV state that witnesses; "In general are not well informed about the progress of the criminal cases." If a victim files a compensation claim, she should automatically be provided with information on the progress of the criminal case. Not informing the victim of the progress of the criminal case

also means effectively depriving her of the right to complain against the prosecutor's decision to dismiss the case under article 12 Code of Criminal Procedure.

3. Support and assistance to trafficked persons

a) Right to lawyer/legal advocate in criminal proceedings

It is possible for the victim to 'join' a civil action for compensation to the criminal case. 'Joining' a compensation claim, means the civil claimant then has various additional rights, as they effectively become a party to the criminal case as an 'injured party'. For example, victims who join civil claims have the right to inspect the legal file (subject to certain restrictions) and to be legally represented, though their lawyer can only interject on issues relating to the compensation.⁴⁷ The civil claimant may also ask the prosecutor to summon witnesses and experts on their behalf, though there is no obligation on the prosecutor to do so.⁴⁸ The victim's claim for compensation has a subsidiary position within criminal proceedings.⁴⁹ It is clearly a means through which the victim's interest may be represented in the criminal case. Unfortunately in trafficking cases the victim's application to join a civil claim is usually denied by the judge on the grounds of complicating the prosecutor's case, thus denying them legal representation in criminal proceedings.

b) Right to recovery (assistance measures)

Appropriate measures for assistance and support are available once the trafficked person is granted a permit to stay under the B9 procedure. The assistance and services available are the same under the reflection delay. The main problems arise if there is a delay in processing the person's immigration status that delays her financial assistance and thus her access to a shelter or other housing, free legal assistance and non-emergency medical care. STV organises appropriate housing facilities for the trafficked person in one of the various shelters throughout the Netherlands or trafficked women may arrange their own accommodation, for example, with a friend or partner. Trafficked persons are placed in various shelters or housing that suit their needs; there is no specific shelter specialised for trafficked women. It is STV's view that such a specific shelter would put trafficked women and staff at too much risk of reprisals from traffickers, and that it would interfere with their ability to recover from their experience and move on with their lives if they are constantly confronted with people who have suffered similar abuse.

Angelina

Angelina decided to stay in the Netherlands under the B9 because it was pointless to try to withdraw her statement or to return home. The support centre helped her find a place to live. There was some delay in getting her financial assistance and certification that would enable her to receive medical care, so she had difficulties in receiving immediate medical care. Angelina was not provided with psychological care due to language difficulties and more basic immediate problems. She is completely dependent upon the financial benefits paid to her and is not allowed to work under the B9 nor receive any professional training or education.

Once the residence permit is issued the person is eligible for benefits in accordance with the law relating to general social support,⁵⁰ and the file is transferred to the Reception of Asylum Seekers Agency (COA) where the trafficked person lives. In practice the first payment is sometimes delayed by up to six weeks. This has implications for access to various services. If the victim decides not to submit a report, the IND notifies the COA and financial assistance will no longer be given. In emergencies, a doctor is obliged to help a patient. However, in some cases, such as Angelina's, STV has had to intervene and ask for urgent medical problems to be attended to when a trafficked person still has not received her social security benefits and guarantee of medical insurance.⁵¹ Both Rosa's and Angelina's cases illustrate the problems with provision of translators. It is sometimes difficult to find translators who can assist in the trafficked person's social assistance. Angelina failed to receive proper medical treatment when she went to a doctor because she was not able to communicate her health problems.

While legal assistance may be provided by the Immigration Office, by lawyers through a victim support organisation or STV, in many cases trafficked persons appear unaware of the possibility of obtaining legal advice. Angelina's case clearly illustrates the lack of information provided to trafficked persons, as she initially did not understand that she was making a formal statement. There is also a lack of information about the right to join a civil claim to the criminal proceedings. Psychological assistance or counselling is provided by STV and by social workers at the women's shelters depending on the needs of the trafficked person. In some cases trafficked

persons do not wish to be counselled, particularly where they are more concerned about solving more immediate (practical) problems.⁵² Under the B9 regulation, trafficked persons are neither allowed to work nor to take up education or training opportunities. Different shelters sometimes organise language courses or volunteer work for the women to do.

Masha

Masha was able to get some informal training. She was able to attend some voluntary computer skills courses. She is not allowed to work, but she uses what she learned in the courses, and does some volunteer work in information technology.

Masha may seem 'lucky', but, as STV state, "These seven years have been hell for her, away from her family and everything she knows and loves. She has no security and safety in this country and her possibility to develop a social network of friends that she can rely on is very difficult as well". STV regards Masha's case as exceptional. She was able to get training because of her own tenacity in finding something to do, and because various individuals and agencies involved in her case engaged actively to ensure her rights. STV comments: "Otherwise what else is there for women to do in the shelter? Sitting, sleeping, thinking about what they've been through? It's not the best way for most women to recover from their ordeal".⁵³ The ability to communicate with family members back home is usually at the trafficked person's own cost, unless there are threats or reprisals against the family. In such cases, the police will assist the person in contacting her family. Since trafficked persons are reliant purely upon social security benefits, this limits their ability to communicate with their families. In Angelina's case she contacts her family in eastern Europe when she has any money left from the financial benefits to post a letter or make a telephone call.

4. Legal redress and compensation**Katya and Anna**

The prosecution filed a compensation claim together with the criminal case. Both women were awarded and paid 100,000 Dutch Guilders⁵⁴ as compensation from one of the traffickers.

In the Netherlands there are three ways for trafficked persons to claim compensation. Firstly, as stated earlier, claims for compensation may be joined as a civil action to the criminal proceedings under the Victim Act Terwee 1995. This is called a '*schadevergoedingsmaatregel*', and is on the judge's initiative or on the initiative of the prosecutor. Any compensation paid will come directly from the trafficker's assets. However, there is judicial discretion regarding joining the claim for compensation: the claim must be clear and simple, otherwise the complicated aspect of the claim must go to a civil court.⁵⁵ According to a lawyer in Rotterdam, in trafficking cases compensation claims joined to the criminal procedure are rarely successful because judges regard the calculation of damages in such cases as difficult and a complicating factor.⁵⁶ It is the responsibility of the State to enforce such orders, which is much more favourable for the victim.

The second way is as a separate civil action against the trafficker. The civil procedure is time-consuming, usually taking several years. Even if it is won, given the type of crime, there is a real problem of actually getting the money. If a civil claim is granted, the victim still has to enforce the court order herself. The court would usually order the seizure of the person's salary, but since traffickers do not often have a declared regular income this does not help.⁵⁷ Thirdly, it is possible to claim money from the Government from the State Fund for Victims of Violent Crime. This possibility is independent of assets of the trafficker, or making a civil claim. Any victim of a violent crime can submit a claim to the State Fund. This is the most successful way of getting at least some compensation for trafficked persons.

Police are obliged to inform trafficked persons as victims of crime to their right to compensation, but due to complicated bureaucratic procedures few compensation claims are lodged. The prosecutor told Anti-Slavery International that she knew of only one criminal case where a trafficked woman claimed compensation and actually received it. The immigration lawyer interviewed commented that all compensation claims she was aware of had been unsuccessful.⁵⁸ Even when compensation claims against traffickers are successful, in practice it is difficult to actually obtain the money, since traffickers rarely have recorded regular income and confiscated assets seized in trafficking cases are minimal in the Netherlands. At present, it may be possible for trafficked persons to claim damages for lost wages, since prostitution has been decriminalised in the Netherlands; however, the problem remains of actually obtaining the money. Another problem with

pursuing civil actions is payment of costs if the trafficked person loses the case. She can be required to pay the costs of the procedure, possibly even including the costs of the other party.⁵⁹

III Conclusions and recommendations

The most positive aspect of the Netherlands victim protection measures is the three-month reflection delay under the B9 regulation which enables trafficked persons to recover somewhat from their trauma, whether they press charges or not. However, there are difficulties with this procedure in practice, with tension between applying protection measures for trafficked persons, and the perception of the authorities of what is required for a speedy and effective investigation and prosecution. The further measures that provide a right to remain in the Netherlands continue to limit protection afforded to persons trafficked into the sex industry to those who are willing to testify, and who risk reprisals against themselves and their families in doing so. The extremely narrow grounds for permanent residency mean most victim witnesses are indeed only protected for the purposes of the trial and not in the long-term.

Recommendations to the Dutch Government

- Develop a guideline, which sets out how police and others should inform trafficked persons about their entitlements to the reflection delay.
- Develop mechanisms to ensure that a temporary residence permit is effectively issued within 24 hours of pressing charges.
- Expand B9 so temporary residence is available to those trafficked for other purposes.
- Widen grounds for temporary residency beyond participation in criminal proceedings to take into account the level of abuse suffered in the Netherlands, or potential harm upon returning home.
- Provide the right to seek work, and education and training opportunities under the temporary residence permit.
- Widen the application of permanent residency so existing humanitarian factors are applied more generously and also take into account the degree to which a trafficked person has already integrated in the Netherlands.
- Improve mechanisms for providing trafficked people with information about the status of the criminal case, including an obligation to

- inform the victim of a decision not to prosecute/ or to dismiss the case.
- Increase witness protection mechanisms in court, so trafficked persons have more choice and information about what type of protection is available.
- Improve procedures to ensure swift access to benefits and services.
- Develop procedures to speed up prosecutions and trials of suspected traffickers.
- Ensure there is a standard mechanism for co-ordination between police, immigration, STV and the prosecution.
- Provide more specialised training of police, immigration, lawyers and judges to deal with specific issues pertinent to trafficking cases.
- Ensure there is a coordinator within each of these departments - police, prosecution and immigration - on trafficking so that inquiries can be directed to the right specialist. The specialist would not be involved in investigating or prosecuting the specific cases.
- Improve procedures for seizing assets and ensure that assets are used firstly for compensation for the trafficked person.
- Provide training and guidelines for the judiciary and lawyers on evaluating compensation claims.
- Increase legal representation of trafficked persons in criminal cases, through the mechanism of joining civil claims for damages to the criminal case.

Endnotes

¹ In the Netherlands, Anti-Slavery International relied upon much information provided by Stichting Tegen Vrouwenhandel 'Foundation against Trafficking in Women' (STV). STV is the co-ordinating non-governmental organisation (NGO) on trafficking in the Netherlands and is officially designated to provide support services to trafficked women. STV deals with approximately 300 cases of trafficked women per year (2001). All case studies were provided by STV, and Anti-Slavery International thanks STV for their willing co-operation with this chapter of the report. As the Netherlands was the first country in which Anti-Slavery International conducted field research, interview opportunities were more limited. Anti-Slavery International also spoke with representatives from the National Rapporteur's Office, a police officer, prosecutor, immigration lawyer, compensation lawyer and various other NGOs. Two support coordinators also completed the guide questions related to victim protection and support. Anti-Slavery International would like to recognise the input of Marjan Wijers who provided detailed comments on the draft text.

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² *Handboek Lokaal Prostitutiebeleid*, Deel IV, Instrumenten, Ed. de Savourin Lohman, P., Remme, H. and Hillenaar, W., VNG Uitgeverij, Den Haag, 1999 (*Local Prostitution Policy Handbook*, Section IV), (Non-official English Translation), p.7.

³ Office of the Dutch Rapporteur on *Trafficking in Human Beings, Policy Approach on Human Trafficking and Prostitution in the Netherlands*, The Hague, 2002, p.1.

⁴ B9 *Slachtoffers en Getuige-Aangevers Van Mensenhandel, Sdu Uitgevers* vc 2000 (april 2001, aanvulling 0) at 2, Anti-Slavery International non-official English translation, *Victims and eye witness declarants of trafficking in persons*, Section 1. (Hereafter referred to as B9 Regulation).

⁵ Section 3 B9 Regulation.

⁶ Section 4.1.b.

⁷ Section 4.6.

⁸ Section 3.1.

⁹ Section 3.3 and section 3.4.

Section 4.3.

¹⁰ Section 3.1

¹¹ Section 4.3.

¹² The victim has the right to start a complaint procedure at the Court of Appeal against the decision of the prosecutor not to prosecute (Article 12 Code of Criminal Procedure). During this procedure the victim is entitled to stay in the Netherlands, which means that the temporary permit must be renewed as long as the article 12 procedure is pending or, if she has not yet been issued a temporary permit of stay she must be given a stay of deportation.

¹³ A Dutch NGO focusing on law and women's human rights.

¹⁴ Wijers, M., email communication to Anti-Slavery International, 12 June 2002.

¹⁵ Transnational AIDS/STD Prevention Among Migrant Prostitutes in Europe Project. TAMPEP is an international network operating in 22 European countries aiming to assist migrant sex workers in Europe.

¹⁶ Anti-Slavery International interview, TAMPEP, Amsterdam, 4 October 2001.

¹⁷ Section 2 B9 Regulation.

¹⁸ Section 4.6.

¹⁹ Office of the Dutch Rapporteur on Trafficking in Human Beings, The Hague, email correspondence 16 August 2002.

²⁰ Anti-Slavery International interview, prosecutor, Haarlem, 4 October 2001.

²¹ *Ibid.*

²² *Ibid.*

²³ Mongard, H., *Legislation in the Netherlands Concerning Prostitution and Trafficking in Women. Development of Professional Strategies to Combat the Trafficking in Women*. International Conference Commemorating the International Day of Action against Violence against Women. European Strategies to Prevent and Combat Trafficking in Women, Berlin, 25-26 November 1998, p. 38.

²⁴ Anti-Slavery International interview, police officer and prosecutor, Haarlem, 4 October 2001.

²⁵ *Ibid.*

²⁶ Anti-Slavery International interview, STV, Utrecht, 3 October 2001.

²⁷ Anti-Slavery International interview, police, Haarlem, 4 October 2001.

²⁸ Three grounds: 1) That this rule is only applicable where the original grounds to stay are still valid and in this case they are not (because the criminal case against the trafficker ended four years ago) 2) She knew the initial permit to stay was temporary, the duration of her stay (i.e. four years) is irrelevant to the rule

granting permanent stay upon failure of the Government 3) No real humanitarian factors raised. Anti-Slavery International interview with STV, 5 October 2001.

²⁹ Anti-Slavery International interview, Dutch Rapporteur on Trafficking in Human Beings, The Hague, 5 October 2001.

³⁰ Anti-Slavery International interview, STV, Utrecht, 5 October 2001.

³¹ Section 4.6 B9 Regulation.

³² Office of the Dutch Rapporteur on Trafficking in Human Beings, p.3.

³³ College van Procureurs-Generaal; Instructie getuigenbescherming 2001.

³⁴ STV, response of regional case manager of Amsterdam, Drenthe (north east of Netherlands) and Friesland (north of the Netherlands), 23 January 2002.

³⁵ Brienen, M. and Hoegen, E., Victims of Crime in 22 European Criminal Justice Systems: The Implementation of Recommendation (85) 11 of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure, Nijmegen, Wolf Legal Productions, 2000, Chapter 17.

³⁶ *Ibid.*

³⁷ Anti-Slavery International interview, STV, Utrecht, 5 October 2001.

³⁸ Anti-Slavery International interview, prosecutor, Haarlem, 4 October 2001.

³⁹ *Ibid.*

⁴⁰ Anti-Slavery International interview, STV, Utrecht, 3 October 2001.

⁴¹ *Ibid.*

⁴² Anti-Slavery International interview, STV, Utrecht, 3 October 2001.

⁴³ STV, Response of regional case manager of Brabant Zuid Oost (in the South of the Netherlands), 23 January 2002.

⁴⁴ Directive Victim Assistance (Aanwijzing) of the Procurators General of 27 July 1999, GAZETTER 1999, no.141 (formerly Guideline Terwee) Police and Prosecutors, see Brienen, M. and Hoegen, E. Chapter 17.

⁴⁵ *Ibid* p. 62.

⁴⁶ Anti-Slavery International interview, STV, Utrecht 3 October 2001.

⁴⁷ Brienen, M. and Hoegen, E. Chapter 17.

⁴⁸ *Ibid.*

⁴⁹ *Ibid* p. 44.

⁵⁰ Section 3.3 B9 regulation,.

⁵¹ STV, questionnaire response of Regional Case Manager of Utrecht, 23 January 2002.

⁵² *Ibid.*

⁵³ Anti-Slavery International interview, STV, Utrecht, 5 October 2001.

⁵⁴ € 45,378.02

⁵⁵ Brienen, M. and Hoegen, E. Chapter 17.

⁵⁶ Anti-Slavery International interview, lawyer, Rotterdam, 9 November 2001.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Wijers M, email communication to Anti-Slavery International, 12 June 2002.