

European Summer School 2011 – Essay for the Workshop no.2

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/2011, September 21

## **Trafficking in human beings for the purpose of sexual exploitation**

### **1. The phenomenon**

#### **Definition of trafficking in human beings (for the purpose of sexual exploitation)**

According to the *UNO Additional Protocol to the Convention against Transnational Organized Crime* (2001; cited by Müller, 2010, 27), the term of human trafficking means the recruitment, transportation, harbouring or receipt of persons by

- use or threat of force or other forms of coercion
- abduction, fraud, deception, abuse of power, exploitation of special helplessness
- granting or receipt of payments or benefits to achieve the consent of a person

for the purpose of exploitation.

Since 2006, the Swiss Criminal Code defines human trafficking in article 182 according to this Palermo Protocol (Müller, 2010, 27). This understanding includes exploitation for *sexual purposes, the abuse of work force and the organ harvesting*. Even if different actors (authorities, specified social services) agree on this definition, they interpret it very differently.

Specified social services, such as the Fachstelle Frauenhandel und Frauenmigration FIZ (counseling centre for trafficking in women and female migration) in Zurich, are talking about *trafficking in women*, if the following factors are present:

- a woman is agreeing to migration under false promises or deception
- she has to pay for liabilities, excessive arranging fees for agents or services
- force and pressure are used against her
- she is forced to work under exploitative conditions (cited by Bleisch, 2010, 7).

*Prostitution* is very often associated with human trafficking, but not all sex workers are victims of human trafficking. *Human smuggling* as a related term means the aid for illegal entry in another country against payment (normally with the agreement of the concerned person) (Müller, 2010, 27).

#### **Switzerland: country of transit, destination or origin?**

Switzerland is primarily a destination country of trafficking in women for sexual purposes. The following circumstances stimulate trafficking in women: bad economic conditions in the origin countries, a demand for commercial sex in the destination countries and the opportunity to make a high profit (while having low risks) on the

side of the traffickers and pimps (Heim, 2010, 12).

### **Spread of human trafficking for sexual purpose in Switzerland**

Reliable scientific data concerning the spread of human trafficking (for sexual purposes) in Switzerland are not available. In 2001, the Federal Office of Police estimated an annually figure of 1500 to 3000 victims of human trafficking (Winkler, 2010, 17).

Since many of the concerned women work and live under illegal circumstances in Switzerland, they are afraid to get in touch with the police and other authorities. They fear sanctions (including by their pimps) and/or to be sent back to their countries of origin. Therefore, it is not surprising that to date *convictions* for human trafficking are rare (8 to 12 convictions annually from 2005 until 2009 according to the Federal Office of Statistics<sup>1</sup>).

No case of organ harvesting is known and few cases of human trafficking for the exploitation of work force or of children are reported (Rüegger, 2010, 22).

FIZ in Zurich offers the only *specialized counseling service* for human trafficking in woman (called Makasi) in Switzerland. Between 2004 and 2009, its number of cases rose from 85 to 184. (Winkler, 2010, 17) Most known victims are adult and female. There are cantons (for example Zurich, Berne, Ticino, Geneva) with a bigger prostitution environment than others. In 2003-2005, a third of the victims seen by FIZ (Makasi) were illegal residents and sex workers. While the number of persons with annual permits was rising from 2003 to 2005, the number of short-term permits (3 months) and tourist status decreased. (FIZ annual reports 2003, 2004, 2005; cited by Moret, Efonayi-Mäder & Stants, 2007, 45-53)

### **Countries of origin of trafficked people for sexual purpose in Switzerland**

Experts report that most victims come from Asia (notably Thailand), followed by Latin America (particularly Brazil) and Caribbean, Eastern Europe (often Russia) and finally Africa (Maghreb and Cameroon). (ebd.)

## **2. Legal framework**

There are several national (and cantonal) legislations that concern human trafficking. Some selected information from the most relevant legislations is shown below.

### **Foreigners Act<sup>2</sup> and bilateral agreements: residence and labour permits**

Residence and labour permits for foreigners are regulated in the Foreigners Act (and in the corresponding decree) and in the Bilateral Agreements with the European Union (EU).

The migration law has a dual task concerning human trafficking and prostitution: limitation of immigration and protection of victims, especially for the duration of the criminal procedural, linked to a granted legal residence status for this period - or in certain circumstances even longer. This approval serves primarily for the criminal prosecution. (Bertschi, 2010, 24f)

The possibilities of legal stay and work differ according to the nationality of a person:

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<sup>1</sup> Weblink for statistical data reporting: [www.bfs.admin.ch](http://www.bfs.admin.ch)

<sup>2</sup> The Foreigners Act came into effect in 2008 (in German: Bundesgesetz über die Ausländerinnen und Ausländer)

Citizens from EU/EFTA receive a residence permit for up to five years, if they have an employment contract for one year or more. If they work less than three months, they do not need a permit.

Non-Europeans need to be professionally high qualified or in leading positions to get work and residence permits (often short-term or annual permit). Other options are family reunion or marriage to a Swiss citizen. Persons from some countries also need an entry visa (usually as tourists who are not allowed to work). (Bertschi, 2010, 25)

### **Swiss Criminal Code<sup>3</sup> and Criminal Procedure<sup>4</sup>**

The Swiss Criminal Code penalizes *human trafficking* (article 182) and *promotion of prostitution* (article 195) as criminal acts with (conditional) imprisonment or a fine.

Currently, the *prostitution* of over 16-years-old persons is legal, but political steps intend to allow it only for over 18-years-old. This intended change in law is resulting from the signing of the *Convention against human trafficking of the Council of Europe* in the 2008, in order to protect minors (see Eidgenössisches Justiz- und Polizeidepartement, 2010).

According to the new *Swiss Criminal Procedure*, since 2011 victims can be civil plaintiffs and are formally involved in the criminal proceedings. The *Convention of the Council of Europe*, which is not ratified by Switzerland yet, is providing 90 days of initial stay, regardless of the victim's willingness to cooperate with the investigating authorities. (Bertschi, 2010, 25f) The ratification process is currently taking place.

### **Victim Assistance Act<sup>5</sup>**

Everyone who was hurt in his/her sexual, physical or psychical integrity by a criminal offence, has recourse to this law. It is based on three pillars: counseling following the criminal offence, financial compensation and satisfaction, and finally the protection of the victims. Since 2011, the role of the victims in the criminal proceedings is regulated in the Swiss Criminal Procedure.

## **3. Identification: structural and personal challenges**

Prostitution is still an occupation with little acceptance in the population. Access to sex workers is difficult, as a considerable part of them live and work illegally in Switzerland.

According to Winkler (2010, 15), victims live in a multiple predicament as they were - through means of coercion - brought in exploitative situations, regardless of their self-determination. A lot of them have financial debts (to the traffickers) and poor living conditions and/or children in their origin country, so that they need to rely on their (often illegal) income. What complicates the identification is that the concerned sex workers often do not consider themselves victims of human trafficking.

These structural and personal circumstances (repressive legislation, illegal work and resident status, fear, shame, threats, debts) are a big obstacle to ask for professional help or get in touch with authorities or the police. Also, a lack of language skills and

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<sup>3</sup> The Criminal Code from 1937 was regularly updated (in German: Strafgesetzbuch).

<sup>4</sup> The Swiss Criminal Procedure is a new, national regimentation, come into effect in 2011 (in German: Schweizerische Strafprozessordnung)

<sup>5</sup> The old Victim Assistance Act came into effect in 1993; the completely revised new Victim Assistance Act came into effect in 2009. (in German: Opferhilfegesetz)

knowledge about the destination country with its helping system and its legislation may contribute to a difficult access. Getting in touch with sex workers and learning about such indicators, helping institutions and authorities have to take into account the possibility of human trafficking and victimization.

Requirements for identification and counseling are profound knowledge of the mechanisms of human trafficking (recruitment, arranging, exploitation), of traumatising, of the socioeconomic and cultural conditions in the origin country, and the aptitude to talk in the victim's mother tongue (Seytler, 2010, 51).

The raising sensitisation of the police in the last years helped to identify (potential) victims. In 2009, nearly 40 percent of the victims came to FIZ through the police, 22 percent via other counseling institutions, 19 percent through the work environment. Some came referred by a friend, a client, family members or medical services. (Winkler, 2010, 17)

#### **4. Intervention structures and measures after identification of victims**

##### **The variety of support structure (on a organizational level)**

There are different *legal support structures*<sup>6</sup>, but the dual function - defence and support - of *authorities* (such as the *Federal Migration Office*) and *police* (as investigators) respectively their legal basis can also have a repressive effect to trafficked people without legal status of residence and work.

On the other hand, there are *private and public providers of financial and social measures and counseling*, specialized on victims (for example *women shelters, victim assistance agencies*). One is dedicated to human trafficking in women (*FIZ Makasi* in Zurich). Services underlying the Victims Assistance Act are paid by the State or in parts by the offenders and/or their assurances. Other supporting organizations such as *NGOs* have other ways of financing themselves (donations etc.).

*Other relevant offices and actors* against human trafficking as for example

- *Offices for Gender Equality (municipal, cantonal)*
- *Koordinationsstelle gegen Menschenhandel und Menschenschmuggel KSMM* (federal coordination unit against human trafficking and smuggling)
- *ECPAT Switzerland<sup>7</sup>: specialized department of Kinderschutz Schweiz (Swiss association for child protection)*

act on a more political and/or structural level. Among other things, they contribute to the prevention of human trafficking by coordinating, networking and analyzing.

##### **Legal measures and access to justice**

###### **Residence and working permits:**

As explained above, the Foreigners Act (and the corresponding decree) describes the circumstances within an illegal foreign sex worker can legally "stay" in Switzerland. First, a non-European victim or witness of human trafficking can get a

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<sup>6</sup> See chapter two for the referred legislation.

<sup>7</sup> ECPAT Switzerland is the national representative of ECPAT International (End Child Prostitution, child pornography and Trafficking of children for sexual purposes), which is a global network comprising 300 organisations, groups and individual members from 61 countries (see Kinderschutz Schweiz, n.d.).

period of reflection (30 days) within which she/he has to decide on cooperation with authorities. If cooperation is accepted, the authorities can give a short-term residence permit. This permit is linked to the period of criminal proceedings. In cases of hardship, a residence permit can be granted for longer periods. (see Bertschi, 2010) Without a (short-term) residence permit, the non-European has to return to the country of origin. Since April 2010, Switzerland offers to exploited Cabaret dancers and victims or witnesses of human trafficking a repatriation assistance<sup>8</sup> (see Mazel & Potaux, 2010).

#### Financial support:

Apart from the *repatriation assistance*, the financial support is regulated in the Victims Assistance Act. In addition, you can try to get financial compensation through civil claims.

In the *Victims Assistance Act*, there are the following categories of financial support: short-term and longer-term aid, compensation, and satisfaction. Within the short-term assistance for example, some hours of therapy, legal advice and other services can be paid.

Being part in *civil lawsuit*, victims can claim for indemnification, compensation and have pay claims. They can make these civil claims in principle without initiating a criminal procedure. (Bertschi, 2010, 25)

#### Protection measures:

The Criminal Code, the Swiss Criminal Procedure, the Police Acts from the cantons and the Victims Assistance Act provide different protection measures for victims.<sup>9</sup> On the other hand, the criminal legislation regulates the prosecution of offenders. According to Heim (2010, 12f), the focus of the police and authorities is stronger on repression and prosecution than on victims' protection.

#### Social Measures: counseling

Social measures of institutions (such as women shelter, victim assistance agencies, NGOs) put much weight on counseling, triage, information, networking and organizing legal advice, financial aid or therapy. They want to protect and stabilize the victims in their stressful situation. In detail, their tasks depend much on their mandate.

## **5. What are the instruments in the combat against trafficking in human beings?**

### **Networking and cooperation between authorities and social services**

Networked collaboration is the key to combating human trafficking. It has to become standardized and further developed (Winkler, 2010, 17).

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<sup>8</sup> This federal repatriation assistance is for asylum seekers and some groups of people underlying the Foreigners Act. It involves country programs, structural aid, return advice and payments, prevention projects against irregular migration and so on. An intergovernmental organization called International Organization for Migration (IOM) is charged with the repatriation assistance of victims of human trafficking. (Mazel & Potaux, 2010, 63)

<sup>9</sup> In this small essay, it is not possible to explain the different protection measures.

The KSMM is the *national coordination platform* for human trafficking and smuggling. The cooperation structure and procedures vary from canton to canton. Some cantons have installed *round tables*, while in others, there seems to be a remarkable lack of cooperation. That may also be due to the fact that human trafficking is spread differently. In the last ten years, in general, cooperation was improving.

Heim (2010, 13) mentions that the own implicit values and stereotypes can complicate the necessary cooperation between members of authorities and specialised social services or Non-Governmental Organizations.

*Example of a round table: Canton of Zurich (Heim, 2010, 11f)*

*Composition/members:* prosecuting attorney, victims advocate, municipal and cantonal police, Migration Office, cantonal Victims Assistance Office, cantonal Welfare Office, municipal and cantonal Offices for Gender Equality, KSMM.

*Aim:* understanding of the mechanisms of trafficking in women for the purpose of sexual exploitation in Zurich and agreement on reasonable strategies of combating it.

*Result:* agreement on the general aims: better protections of victims, higher efficiency in prosecuting offenders - > *cooperation agreement* between authorities and FIZ concerning the procedure in individual cases.

*Benefits:* mutual respect, acknowledgement of FIZ as specialized service, training and sensitisation of police and authorities, specialized prosecuting attorney.

*Limits:* no agreement on necessary political changes and changes in legal framework (Foreigners Act).

***Other measures: prevention, education, training, campaigning and awareness raising***

Without having a reliable source of information about the spread of these measures in Switzerland, the following general impression is resulting from the literature:

- Until now, few efforts are put on the sensitisation of clients of sex workers (see Heim, 2010).
- Different instructions, trainings and sensitisation of police and authorities take place in Zurich (ebd.).
- National network congresses and conferences related to the problem of human trafficking are sometimes organized.
- No national campaigning against human trafficking has taken place so far (see Moret et al., 2007).

***Conclusions***

- Further *systematic information* about human trafficking has to be collected, spread and scientifically evaluated so as to have representative data.
- The *sensitisation* and *standardized cooperation* of the police, involved authorities and social counseling services, medical professionals and relevant others are necessary and have to be intensified for better identification and protection of victims.

- It could be worth, to put an effort on *prevention measures with (potential) clients*.
- The protection and the access to the helping system could eventually be reinforced by *further legalization of the resident and work status* from non-European victims of human trafficking (similarly to the cabaret dancers) (see Winkler, 2010, 20).

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