

brought to Germany, where an identity change can be executed.

Since the adoption of the anti-trafficking law in 2009, no court case against suspected traffickers has taken place. Finally, a law called “*Victimes d’Infractions Pénales*” (Victims of criminal offence), enacted in October 2009, provides for victim compensation from the perpetrators. A fund for victim compensation has also been established.

Prevention

Currently, no prevention activities are in place and no official information for potential and presumed victims of trafficking is available.

In general, the Luxembourgish population is not aware of the phenomenon of human trafficking existing in Luxembourg. Only recently, the policy makers have started to acknowledge the phenomenon of human trafficking and its complexity.

As far as training is concerned, few have been delivered for professionals working for anti-trafficking NGOs in the last years. The police, though, regularly participate in training programmes delivered by the State Office of Criminal Investigations in Germany (LKA).

Monitoring and evaluation system

The 2009 law about the assistance, protection and security of the victims of human trafficking provides for the establishment of a national coordination structure called “*Comité de suivi de la lutte contre la traite des êtres humains*”. One of the tasks of such committee should be the monitoring and evaluation of human trafficking related issues. The committee should be composed of representatives of public authorities (from the Ministry of Equal Opportunities) and anti-trafficking accredited NGOs. To date, though, the *Comité de suivi* has not been set up since the related grand ducal regulation is not completed yet.

Recommendations

- The grand ducal regulation must be enacted as soon as possible in order to establish the standard operating procedures for the identification and referral of trafficked persons that will be adopted by the relevant public and private accredited agencies;

- The grand ducal regulation must be enacted as soon as possible also to set up the “*Comité de suivi de la lutte contre la traite des êtres humains*” so that it can finally carry out the monitoring and evaluation as to the phenomenon, the legislation and the policies to fight human trafficking and protect the rights of trafficked persons;
- Prevention measures aimed at the potential victims and the population at large must be developed;
- Accommodation facilities for men need to be implemented in order to meet the needs of male victims trafficked to Luxembourg.

7.18 MALTA¹⁴⁶

The phenomenon

Trafficking in human beings is a relatively new issue on the Maltese policy agenda and has received little by way of public attention. Very often, it is confused with migrant smuggling or is restricted to the trafficking of young Eastern European women for the purpose of exploitation within the sex industry. Trafficking for other purposes is therefore sidelined or ignored.

The very number of trafficked persons identified in Malta makes the establishment of reliable trends impossible. However, so far, cases identified have all related to adult females exploited within the sex industry. Indications are that all cases investigated by law enforcement in Malta have dealt with Eastern European women. No cases of trafficking involving children or for labour exploitation or through the removal of organs have been reported. Moreover, despite the widespread belief that some persons within the asylum seeker community have been or are being trafficked, law enforcement agencies have not received any reports in this regard. If one had to consider only identified cases, then one would limit the phenomenon to trafficking of young (but not minor) Eastern European women for sexual exploitation. Malta is, in this context a country of destination. It is however often argued that Malta is also a country of transit and destination most notably with regards to African migrants.

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National anti-trafficking legislation and institutions

Malta's anti-trafficking legal framework is strong and fulfils the requirements of the Palermo Protocol (2000), the Council of Europe Convention (2005) and the EU Directive (2002), which have all been signed and ratified. The framework can be divided into two broad categories, namely the criminal law provisions and the immigration law provisions. The former are enshrined mainly within the Criminal Code¹⁴⁷ and provide for the criminalization of trafficking and related offences, whilst the latter have been promulgated by means of subsidiary legislation issued under the Immigration Act¹⁴⁸ and refer to the protection of trafficked persons.

The wording of the criminal code provisions indicates that there are three elements to the crime of trafficking, namely the action, the means and the purpose. The actions include: the recruitment, transportation or transfer of a person, including harbouring and subsequent reception and exchange of control over that person, and includes any behaviour that facilitates the entry into, transit through, residence in or exit from the territory of any country for any of the relevant purposes. In terms of means, these include: violence or threats, including abduction, deceit or fraud, misuse of authority, influence or pressure or the giving or receiving of payments or benefits to achieve the consent of the person having control over another person. The purpose must be exploitation. No general definition of exploitation is provided, however, in the context of labour exploitation, this is defined as including requiring a person to produce good and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety. The threshold is therefore low expanding the potential scope of the provision.

Trafficking offences are punishable by imprisonment, the duration of which is linked to the type of exploitation: 2-9 years in the case of labour and sexual exploitation and 4-12 years

for organ trafficking. "These prescribed penalties are sufficiently stringent and commensurate with punishments prescribed for other serious crimes, such as rape".¹⁴⁹ Trafficking of minors is criminalised irrespective of the means used.

In the case that the means are employed, then, the crime is considered as aggravated carrying an increase in punishment of 1 degree. The same increase in punishment applies to other aggravating circumstances, namely: if accompanied by grievous bodily harm, if it generates proceeds exceeding 11,646.87 Euros or when it involves a criminal organization.

The law also provides for corporate responsibility both in the case where the individuals concerned are in a position of control and when the individual is not in such position but the crime is made possible by inadequate supervision by those in control. If found guilty, corporate entities are liable to the payment of a fine. The value of the fine depends on the position of the individual and can range from 4,658.75 to 1,863,498.72 Euros.

Moreover, jurisdiction is extended to instances where only part of the action giving execution to the offence took place in Malta and where the offender is a Maltese national or a permanent resident in Malta. It is important to note that acts committed under compulsion are exempted from punishment (see 248(6)).

Malta has not yet adopted a National Action Plan against trafficking although at time of writing, the author is informed that such a plan is being drafted. Neither has a national referral mechanism been put in place. A taskforce bringing together its various ministries on the issue of trafficking has been set up. The exact scope and objectives of the taskforce are however not known and NGOs have thus far been excluded thereof. On an operational level, the institutional framework is still at an early stage of development. Within the Police Force¹⁵⁰ counter-trafficking is carried out by the vice squad, which also covers other issues including, *inter alia*, prostitution, sexual offences, child abuse and domestic violence.¹⁵¹

147. Chapter 9 of the Laws of Malta.

148. Chapter 217 of the Laws of Malta.

149. TiP Report 2010, p. 229

150. For more information about the force visit: www.police.gov.mt/

151. See the organigram of the Malta Police Force available at: www.cepol.europa.eu/fileadmin/website/-About_CEPOL/Police_Colleges/Malta/Malta_org.pdf

Indeed, human trafficking is not specifically mentioned as one of issues covered by the squad. The National Social Welfare Agency APPOGG¹⁵² has added trafficking as one of its service areas. The service was however only set up a few years ago and consists of only one staff member (the Service Manager), who is also responsible for a number of other services. It is therefore not a fully-fledged service. NGO involvement in the issue of trafficking is also very limited. NGO engagement with the issue is usually limited to the forwarding of presumed cases identified through work on other issues, most notably with asylum seekers. The People for Change Foundation (PFC) made trafficking one of its priority areas in 2009 but does not offer any direct services to victims. IOM has also looked into the issue of trafficking through, *inter alia*, the setting up of the national training team and the organization of training to various front-line officials. The training team is composed of representatives of APPOGG, the Police Force and PFC.

Malta does not have a national Rapporteur or an equivalent mechanism. The only regular assessment of the situation is that done by the US government through the annual TIP Report. An assessment of the situation regarding child trafficking was undertaken for the EU Agency for Fundamental Rights (FRA). This however focused solely on the legal situation.

Identification, protection of rights and referral

Malta does not have a set of indicators that are used to identify trafficked persons, instead, the relevant entities use various indicators proposed by bodies abroad. Identification remains a matter of concern, as the number remains remarkably low. Various sources consulted confirmed their awareness of instances where cases assessed as being presumed trafficking were referred to the police but the latter did not consider them as such and therefore did not investigate further. Furthermore, the failure to adopt a national referral mechanism is a matter of concern in this regard. No proactive measures have been undertaken to identify potential trafficked persons.

The 'Permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese Authorities Regulations'¹⁵³ provides for a reflection period for those considered to be cooperating with the authorities. Regulation 3(3) provides that the principal immigration officer (the Commissioner of Police) is to (shall) grant a reflection period for the third-country national to detach him/herself from the influence of the perpetrators enabling him/her to take an informed decision on co-operating. The reflection period is to be of no longer than 2 months and entitles the individual the right to stay¹⁵⁴ but not create a right to a residence permit. For the duration of the reflection period, the individual is to be provided with (due regard being had to his/her safety and protection needs and to whether he/she has sufficient resources):

- The standards of living capable of ensuring his/her subsistence;
 - Access to emergency medical care;
- And where applicable:
- Attention to the needs of the most vulnerable;
 - Psychological assistance;
 - Translation and interpretation services;
 - Free legal aid;
 - Access to free public education.

The law allows for the termination of the reflection period in the case that the beneficiary thereof voluntarily and actively re-establishes contact with the alleged trafficker or for reasons of public policy or national security.¹⁵⁵

The short-term assistance of trafficked persons is the responsibility of APPOGG under the provisions of a Memorandum of Understanding (MoU) signed between the Malta Police Force and the Ministry for Social Policy. Whilst the MoU has not been published, it appears to refer to the referral of trafficked persons for social work and psychological assistance by APPOGG. From its existing services, APPOGG can offer accommodation, social work intervention, as well as psychological services. The social workers involved would also collaborate with other entities for other ser-

152. For more information about the agency visit: www.appogg.gov.mt

153. Subsidiary Legislation 217.07 available at: <http://docs.justice.gov.mt/lom/Legislation/English/Sub-Leg/217/07.pdf>

154. Regulation 3(4).

155. Regulation 3(6).

vices as required, including medical and psychiatric services.

No specific shelters exist for trafficked persons, however, the understanding is that domestic violence shelters would be utilized should the need arise. APPOGG's shelter has a maximum capacity of 16 places, both for children and adults. No formal establishment of how many places would be allocated to trafficked persons has yet been made; however, this would probably be one or two places.

Regulation 5 allows¹⁵⁶ the Principle Immigration Officer to recommend to the Director for Citizenship and Expatriate Affairs¹⁵⁷ the issuance of a residence permit to the trafficked person when it is clear that:

- Such permission may present an opportunity for the investigations and judicial proceedings;
- There exists the intention on the part of the trafficked person to collaborate;
- All relations with the suspected perpetrators have been severed.

This residence permit is valid for 6 months renewable for as long as the above criteria continue to subsist and provided that the prosecutions are still ongoing.¹⁵⁸ This raises concerns in terms of the long-term protection needs of trafficked persons. During the duration of the residence permit, the same set of rights and entitlements as set out for persons under a reflection period apply.

In terms of medical care, however, the law provides that, in this context, the entitlement is to all necessary medical care or other assistance when s/he does not have sufficient resources and has special needs, such as in the case of pregnant women, disabled persons, victims of violence and minors.¹⁵⁹ The law allows the discretion to the relevant authorities¹⁶⁰ to allow access to the labour market for the duration of the residence permit and, especially, when the

individual is a minor, access to vocational training and education.¹⁶¹ Moreover, the law provides for access to programmes and schemes¹⁶² aimed at the recovery of a normal social life, including, where appropriate, courses designed to improve professional skills or preparation of his/her assisted return to the country of origin.¹⁶³

The law provides also for the withdrawal of the residence permit in the case that:

- The holder actively, voluntarily and of his/her own accord, renewed contact with the suspected traffickers;
- If the principal immigration officer believes that the complaint or cooperation are fraudulent;
- For reasons of public policy and national security;
- The individual ceases to collaborate;
- The principal immigration officer decides to discontinue the proceedings.¹⁶⁴

No specific provision is made regarding the long-term assistance and social integration of trafficked persons, as the understanding is that their residence ends upon the termination of the proceedings.

No specific assisted voluntary return programmes have been put in place to address the needs of trafficked persons; however, it is understood that *ad hoc* arrangements would be made, in collaboration with IOM should the need arise.

Access to justice

The above quoted regulations oblige the principal immigration officer, when it appears to him/her that the third-country national is co-operating with him/her in the fight against trafficking, to inform him/her about the possibilities offered under the regulations (namely the right to a reflection period and to the residence permit in the case of collaboration).¹⁶⁵ It allows the principal immigration officer to

156. This is without prejudice to any restrictions arising from public policy or national security.

157. Within the Ministry for Foreign Affairs. For more information visit: foreign.gov.mt/default.aspx?mdis=522

158. Regulation 6 Provides that 'upon the recommendation

159. Regulation 5(3).

160. The PIO and the Employment and Training Corporation.

161. Regulation 5(4).

162. Provided by government, NGOs or associations having a specific agreement with government.

163. Regulation 5(5).

164. Regulation 6.

165. Regulation 3(1).

invite NGOs or another relevant association to give such information to the third country nationals.¹⁶⁶ It is unclear whether these provisions have ever been applied in practice; however, no specific information leaflets or other materials have been prepared in this context, neither have any NGOs been approached to carry out this task.

The latest Trafficking In Persons Report commends Malta for allowing trafficked persons to provide testimony against the trafficker through video conferencing. Such measures, which are often used within the context of sexual offences are used also within the context of trafficking, allowing the victims to feel more at ease when providing their testimony. Moreover, if the need arises, the Police Act¹⁶⁷ provides for the possibility of a witness protection programme whereby an individual may be resettled to another country and even given a new identity if required.¹⁶⁸ The regulations discussed earlier also provide that due regard is to be had to the safety and protection needs of those collaborating with the authorities.¹⁶⁹

Criminal and civil proceedings in Malta often take long to complete and this is not an issue linked specifically to human trafficking.

There are no specific provisions relating to compensation to trafficked persons; however, the general rules applicable to all victims of crime apply. The Criminal Injuries Regulations¹⁷⁰ provide for the application for compensation by victims of crime. This is though restricted to EU nationals and the injuries must have been sustained after January 2006. The maximum possible compensation is of just under 23,294 Euros. A victim is also entitled to sue, through a civil suit, his/her perpetrator for damages. In Malta, the notion of moral damages is relatively new and damages within the context of tort would appear to be restricted to press offences, promise of marriage and consumer affairs.

Prevention

There is very little prevention activities carried out on Malta on the issue of trafficking. Agenzija APPOGG¹⁷¹ produced a leaflet on the issue as part of a campaign run in collaboration with Body Shop. Moreover, another leaflet, prepared by the same Agency in collaboration with the Ministry for Social Policy and the Ministry for Justice and Home Affairs, was distributed at various key locations including local councils, local entertainment hubs, hospitals and health centres. No further awareness raising campaigns were undertaken in Malta. Neither was specific information provided to potential and presumed victims of trafficking, such as members of the asylum seeker community. Awareness raising by NGOs has been largely missing as have been campaigns addressing the demand side of trafficking. Indeed, a project intended to include such an information campaign did not receive the required EU funding.

A number of training initiatives have been organized over the past years targeting mainly front line officials who may be involved in the country's counter-trafficking initiatives. Through IOM¹⁷² AGIS IV project, a national training team was formally set up, composed of a representative of the Malta Police Force, a representative of APPOGG and a representative of The People for Change Foundation. The team was trained by a foreign expert and then provided two one-day intensive training sessions for various officials. Over 80 persons were trained over the two days. The team also provided training to volunteers of the helpline 179.

Whilst the legislation provides for access to programmes aimed at the recovery of the individual¹⁷³, no such programmes have yet been put in place.

Beyond this E-Notes report, there has been very little research carried out on the issue of human trafficking in Malta. One report was

166. Regulation 3(2).

167. Chapter 164 of the Laws of Malta.

168. Article 75 et seq.

169. Regulation 3(5).

170. S.L. 9.12 available at: <http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/09/12.pdf>

171. A government entity offering social welfare services.

172. IOM.

173. See above.

published in 2009 regarding child trafficking, prepared by the Organization for the Promotion of Human Rights for FRA. Other research has been confined to the realm of investigation carried out by students, most of which addressed the international scenario rather than the local situation.

Moreover, no research has been done to identify trends in human trafficking beyond the number of identified cases. This implies that the situation of trafficking in Malta remains largely unexplored and particular trends and situations are not being identified and addressed.

Monitoring and evaluation system

No systems have been put in place to monitor and evaluate the counter-trafficking operations in Malta. The only evaluation is therefore that carried out by the U.S. Government through the annual Trafficking in Persons Report. In its last report, Malta was placed in Tier Two Watch List. Considering that Malta has yet to adopt an action plan and a national referral mechanism (or equivalent) it is not surprising that no monitoring and evaluation mechanisms have been put in place.

Recommendations

- A National Referral Mechanism should be developed in close collaboration with all concerned actors and based on best practices from other European countries and the guidelines provided by the OSCE. The mechanism ought to include detailed standard operating procedures as well as a monitoring and reporting mechanism to oversee the NRM implementation.
- Malta should adopt without delay a national action plan, covering prevention, prosecution, protection and redress for trafficked persons.
- A common and shared set of indicators for identification of victims should be developed and shared between all relevant entities, including those not traditionally considered to be part of the counter-trafficking teams.
- Further training and capacity building should be provided to all relevant entities at various levels, including police, social welfare providers and NGOs.

7.19 NETHERLANDS¹⁷⁴

The phenomenon

The Netherlands is a source, transit and destination country for men, women and children trafficked for the purposes of exploitation in the sex industry and forced labour and services. The dominant nationalities of trafficked persons who were registered in 2009 were Dutch, Nigerian, Romanian, Chinese and Bulgarian. The percentage of Dutch victims has increased over the years up to 39% in 2008. The statistics indicate that the majority of victims of human trafficking within the Netherlands are women, between the ages of 18 and 30, trafficked into the sex industry. With the broadening of national legislation in 2005 to encompass a wider definition of human trafficking, it is likely that statistics for trafficking men will further increase. The enhanced attention to labour exploitation in other industries, such as agriculture and domestic labour will probably lead to increasing statistics. The national police, government and NGOs are trying to raise awareness on trafficking outside the sex industry, but misconceptions remain as society has struggled to associate human trafficking with occupations other than forced prostitution.

National anti-trafficking legislation and institutions

In Dutch law, forcibly recruiting, transporting, moving, accommodating or sheltering another person with the intention of exploiting her/him is punishable as trafficking of human beings. All forms of trafficking were criminalized in the Netherlands in 1911 under article 250a of the Dutch Criminal Code; in 2005 this extended under Article 273f to align national law with the United Nations Trafficking Protocol and other international tools. With effect from January 2008, the punitive measures for human trafficking were increased. The maximum fine that can be imposed for a case of human trafficking is now 74,000 Euros. From July 2009, the maximum term of imprisonment for all aggravated forms of human trafficking is 12 years and for unqualified forms of human trafficking is eight years. When the offence is committed

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