

AWARENESS-RAISING OF JUDICIAL AUTHORITIES CONCERNING TRAFFICKING IN HUMAN BEINGS

COUNTRY REPORT

CZECH REPUBLIC

2005



IOM International Organization for Migration



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METHODOLOGY OF THE RESEARCH

The researcher conducting the research specified within the “Awareness-Raising of Judicial Authorities Concerning Trafficking in Human Beings“ Project has been, in the Czech Republic, the IOM Prague (International Organisation for Migration), which was given the support and co-operation of the Ministry of Justice of the Czech Republic.

The final report within the “Awareness-Raising of Judicial Authorities Concerning Trafficking in Human Beings” Project was prepared by Lucie Gladišová (Part 1), judge JUDr. Petr Vaněček (Part 2) and Vlastimil Vintr (Part 3).

During the research, District and Regional Courts were contacted in order to study judicial files from 1999 - 2004, which might relate to the prosecution of crimes connected to the trafficking in human beings in accordance with the so-called Palermo Protocol.

With regard to the selection of judicial files we defined a set of crimes which facts of a case, or parts of facts of a case are subject to the definition of the trafficking in human beings in accordance with the so-called Palermo Protocol, or the new definition of the facts of the crime of the trafficking in human beings pursuant to Section 232a Criminal Law (Act No. 140/1961 Coll. as subsequently amended, hereinafter the Criminal Law) which has implemented the above-mentioned definition in accordance with the so-called Palermo Protocol into the Czech Criminal Law.

With regard to the fact that the amendment (Act No. 537/2004 Coll.) to the Criminal Law which implemented the definition of the trafficking in human beings pursuant to the so-called Palermo Protocol into the Czech Criminal Law in the form Section 232a took effect on October 22, 2004. The above-mentioned step was necessary for learning about the judicial practice in the period under review (1999-2004) with regard to the punishment of the trafficking in human beings in a broader context in the period under review.

We particularly concentrated on cases which were, in the period under review (1999 – 2004), deemed to be crimes of the following:

- 1) Trafficking in human beings for the purpose of sexual exploitation pursuant to Section 246 of the Criminal Law applicable in the period under review¹,
- 2) Prosecuting and soliciting prostitution pursuant to Section 204 of the Criminal Law,
- 3) Restriction of personal freedom or deprivation of personal freedom pursuant to Sections 231 and 232 of the Criminal Law,

¹ Section 246 of the Criminal Law has been cancelled by an amendment to the Criminal Law, Act No. 37/2004 Coll. which made the facts of the crime of the trafficking with human beings for the purpose of sexual exploitation pursuant to the above-mentioned Section 246 a part of new Section 232a of the Criminal Law, which stipulates the facts of the trafficking in human beings in broader sense in comparison to the previous Section 246.

- 4) Blackmailing Section 235 of the Criminal Law and oppression pursuant to Section 237 of the Criminal Law
- 5) Endangering the moral development of juveniles pursuant to Section 217 of the Criminal Law and suborning to sexual intercourse pursuant to Section 217a of the Criminal Law,
- 6) Trafficking in children pursuant to 216a of the Criminal Law,
- 7) Kidnapping pursuant to Section 216 of the Criminal Law and abduction to a foreign country pursuant to Section 233 of the Criminal Law.

The sample we gathered consists of 20 judicial files, which primarily concern the crime of trafficking in human beings for the purpose of sexual exploitation pursuant to the previous Section 246 of the Criminal Law and the crime of procuring and soliciting prostitution pursuant to Section 204 of the Criminal Law.

In choosing relevant judicial files concerning the crime of procuring and soliciting prostitution we focused on those which unambiguously qualified as the crime of trafficking in human beings pursuant to Section 232a of the Criminal Law or which somewhat relate to the trafficking in human beings in accordance with the so-called Palermo Protocol, or Section 232a of the Criminal Law.

As for judicial files being a part of our sample which concern crimes of procuring and soliciting prostitution, there was a combination of the crime of procuring and soliciting prostitution with the crimes of the restriction of personal freedom (Section 231 of the Criminal Law) or deprivation of personal freedom (Section 232 of the Criminal Law) and blackmailing (Section 235 of the Criminal Law). In judicial files concerning profiting from prostitution of persons under the age of 18 (Section 204, Clause 3 of the Criminal Law) and profiting from prostitution of persons under the age of 15 (Section 204, Clause 4 of the Criminal Law) there was a combination with the crime of endangering the moral development of juveniles pursuant to Section 217 of the Criminal Law.

The above-mentioned judicial files are some of the material on the basis of which Parts 2 and 3 of the final report from the research were prepared within the “Awareness-Raising of Judicial Authorities Concerning Trafficking in Human Beings” Project.

Besides the above-mentioned study of relevant judicial files we conducted “controlled” interviews in accordance with the project specification with three policemen of the Organized Crime Investigation Unit of the Service of the Criminal Police and Investigation (“the UOOZ”) which specialises in the detection and investigation of organised crimes including the trafficking in human beings and organised prostitution and furthermore five prosecutors and two judges. The answers of the above-mentioned controlled interviews were some of the material for the preparation of Sections 2 and 3 of the final report of the research within the “Awareness-Raising of Judicial Authorities Concerning Trafficking in Human Beings” Project.

Parts 2.1. and 3.3. include the assessment of answers.

Other material used for the preparation of this final report includes commented issues of the applicable Criminal Code and Criminal Law, applicable versions of further legal regulations concerning special protection of the witness and other persons in connection with criminal proceedings, technical literature from the field of the theory of law and both public and internal documents relating to the “Model of Support and Protection of the Victim of the Crime of the Trafficking in Human Beings for the Purposes of Sexual Exploitation in the Czech Republic.”

1. APPLICABLE NATIONAL LEGISLATION

Legal Instruments Guiding the Field of Combating Trafficking in Human beings in Czech Republic

1.1 Description of relevant national legislation

International documents

Trafficking in human beings constitutes a serious violation of the victims' human rights. It affects human dignity, freedom of movement, the right for privacy and self-determination, and violates the principles outlined by all important international instruments concerning human rights. These include especially the **1948 Universal Declaration of Human Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1989 Convention on the Rights of the Child, and the 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and pornography**. For the above reasons and based on the above international instruments, all international organizations and institutions as well as many governments, including the government of Czech Republic, consider the issue of trafficking in human beings one of their greatest priorities.

In 1991, the Council of Europe organized the first seminar on trafficking in human beings in Strasbourg. In 1992 – 1993, it established a specialist group to combat trafficking in human beings, followed by the development of the Action Plan to Fight Trafficking in Women in 1996. In 2000, the Committee of Ministers adopted Recommendation 11 on action against trafficking in human beings, followed by Recommendation 16 on the protection of children against sexual exploitation in 2001. In 2002, the Council commissioned a survey on the impact of information technologies on trafficking in human beings. Just lately, the Council of Europe has decided to adopt a binding legal instrument, **the European Convention on Action against Trafficking in Human Beings**, which is trying to address the human and legal issues related to combating trafficking in human beings, as well as the gender aspects of this phenomenon.

In 1996, EU reacted to the alarming development of the trafficking in human beings by setting up a global, multi-disciplinary strategy of combating trafficking in human beings, focusing on helping the victims and on the involvement of all institutions and organizations concerned in the fight against this crime. In 1996, Europol has also expanded its powers to include trafficking in human beings, and launched the first STOP program, aiming at initiating, supporting, and strengthening cooperation between various bodies in the member countries, and organizing training in order to improve the professional skills of bodies involved in criminal proceedings. The program was terminated in December 2000, followed by the STOP II program. In February 1997, the Council of the European Union approved a joint strategy for combating trafficking in human beings and sexual exploitation of children, calling upon member countries to revise their criminal legislation, and to improve the court cooperation and victim protection during trial. In

1997, the DAPHNE initiative was launched to prevent violence toward children, youth and women, being transformed into a four-year DAPHNE program in December 2000. In April 1997, the Ministerial Conference, held under the auspices of the EU, adopted the **Hague Ministerial Declaration on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation**. The declaration addressed such issues as the appointment of a national reporter, and granting the permission of temporary residence for the victims of trafficking. In December 1998, the European Commission evaluated the achievements of all of the above initiatives, and set out a new plan, involving such activities as the improvement of cooperation between governmental and non-governmental institutions in the countries of origin, transit and destination, and endorsing a multi-disciplinary approach. The EC asked the candidate countries to combat trafficking in human beings on the national level and in cooperation with the EU within the framework of accession partnership.

In May 1999, EU clearly pronounced its stance toward combating trafficking in human beings in Chapter 6 of the **Amsterdam Treaty**, emphasizing the necessity of the cooperation between the police and courts. At the conference held in Tampere in October 1999, the European Council repeatedly appealed to the member countries to amend their legislation and impose unified punishments on the perpetrators of the trafficking in human beings. The PHARE program was utilized for combating trafficking in human beings in the years 1999 to 2001. In September 2001, 12 commitments concerning combating trafficking in human beings were adopted at a conference of ministers of justice and interior of both member and candidate countries held in Brussels. The European Parliament has always considered the active involvement in the fight against the trafficking in human beings as its priority.

The two most important recently adopted documents concerning trafficking in human beings have been the **Council Framework Decision of 19 July 2002 on combating trafficking in human beings**, and the **Legislative Proposal of the European Commission on the short-term residence permit issued to victims of trafficking in human beings** of 11 February 2002. The wording of the Framework Decision has been based on a very broad definition of what constitutes trafficking in human beings, and calls therefore for imposing criminal liability on legal entities, and the harmonization of penalties for trafficking in human beings, which should facilitate the cooperation of courts and police on the international level. The decision is binding for the EU member countries, which means that by 1 August 2004, they must amend their criminal legislation and harmonize it with the requirements stated therein. The above-mentioned Legislative Proposal calls for the establishment of a Council Directive on the short-term residence permit issued to victims of trafficking in human beings who are willing to cooperate with the competent authorities in exposing and prosecuting the perpetrators of trafficking.

In cooperation with the International Organization for Migration (IOM), the European Commission organized a conference on preventing and combating trafficking in human beings, held in Brussels in November 2002. The participants of the conference adopted the **Brussels Declaration**, aiming at becoming the primary policy instrument of the European parliament, the European Commission and Council.

Obviously, there are other international institutions which deal with the issue of trafficking in human beings. The Organization for Security and Co-operation in Europe (OSCE) has been actively involved in combating trafficking in human beings since 1991 (Moscow Document –

adopted in 1991; Charter for European Security – adopted in Istanbul 1999; creation of a Task Force for combating trafficking in human beings within the framework of the Stability Pact for South-Eastern Europe, adopted in Oslo in 1999; Resolution 1 of the Ministerial Council, adopted in Vienna in 2000; Permanent Council Resolution No. 426; and Resolution 6 of the Ministerial Council, adopted in Bucharest in 2001). The most recent important document has been the Declaration on Trafficking in Human Beings, adopted by the Ministerial Council of the OSCE in Porto in December 2002, followed up by an OSCE Action Plan Against Trafficking in Human Beings. The issue has also been addressed by the OSCE Economic Forum, taking place in Prague in May 2003.

In summer 2002, the UN Office of the High Commissioner for Human Rights presented their **Recommended Principles and Guidelines on the Human Rights and Human Trafficking**.

An important instrument of international importance is the **Trafficking Victims Protection Act, adopted in the USA in 2000**. The act addresses the issue of the residence of trafficking victims in the U.S. and their right to claim social benefits. It also evaluates the progress achieved in various countries of the world in combating trafficking in human beings. The evaluation is being periodically updated, and has become the means of exerting pressure on public institutions to pay due attention to the issue. The Czech Republic has been ranked twice in the first group of countries, which meet all the required criteria. Currently the Czech Republic is constantly ranked in the first group of countries, which meet all the required criteria.²

A true milestone in combating trafficking in human beings has been the international **Convention on Trans-national Organized Crime**, adopted in Palermo, Italy, on 13 December 2000. The convention was accompanied by the **UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children**, signed by the Czech Republic on 10 December 2002. In Czech Republic, both documents were already ratified. The protocol defines trafficking in persons as follows:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

"Child" shall mean any person under eighteen years of age.

² Trafficking in Persons Report, Department of State of The United States of America, June 2004 (<http://www.state.gov/g/tip/rls/tiprpt/2004/>)

The protocol has thus offered the first universally accepted definition of trafficking in persons, which takes into account all aspects of this type of crime. All international organizations now use this definition when adopting new instruments. However, a narrower understanding of trafficking as involving women only still persists, which has been recently demonstrated by the **Resolution on Traffic in Women and Girls**, adopted at the UN General Assembly on 18 December 2002 (No. A/RES/57/176).

The European institutions are aware of the necessity to continue in their efforts in this field. On one hand, the European Union has been calling for a unified approach of the criminal law toward trafficking in human beings in all member countries, enforcing effective, adequate and deterrent penalties for the crime of trafficking. On the other hand, however, voices have been raised, which stress that the Palermo Protocol, as well as the more recent Framework Decision on combating trafficking in human beings, focus primarily on the prosecution of the perpetrators. Therefore, European institutions demand that greater support and protection be provided to the victims of trafficking, agreeing that victims should be granted residence permit in the country they are staying in for the period of at least one month, so as to allow them to recover both physically and mentally to be able to decide freely on their future course of action.

In 1958, former Czechoslovakia acceded to the **Convention on suppression and elimination of trafficking in persons and exploitation of others for the purpose of prostitution**, signed on 2 December 1949. This document replaced all previously signed international conventions from years 1904³, 1910⁴, 1921⁵ and 1933⁶ and is still binding for Czech Republic. It obligates the signatories to pursue and punish those who organize or support trafficking in human beings (both men and women) for the purpose of prostitution, including attempt at this crime or its preparation. The states should also revoke all laws or other legal instruments according which the prostitutes must register or possess a special identity cards. States are also obliged to provide food and set up all other basic needs of the victims of trafficking that are without means for living till they are repatriated back to the countries of their origin.

1.1.1 Applicable legislation on trafficking in human beings

Current legislation in Czech Republic

a) Prevention

Article 9 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children obliges the state parties to adopt a number of measures aiming at the prevention and suppression of trafficking in human beings. Paragraph 2 of the article mentions in particular activities such as research, information and media campaigns, and social and economic measures.

³ *International convention on combating the trafficking in girls, 18. 5. 1904*

⁴ *International convention on combating the trafficking in girls, 4. 5. 1910*

⁵ *International convention on combating the trafficking in women and children, 30. 9. 1921*

⁶ *International convention on combating the trafficking in women, 11. 10. 1933*

b) Repressive Measures

Two international instruments are crucial for drafting the appropriate criminal law legislation:

- The UN Convention against Trans-national Organized Crime, including the accompanying Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (“the Protocol”). Article 5 of the Protocol obliges the state parties to prosecute trafficking in persons as a crime, as defined in Article 3 of the Protocol.
- Convention on suppression and elimination of trafficking in persons and exploitation of others for the purpose of prostitution, signed in New York on 2 December 1949 (the Convention was never included in the Collection of Acts, and came into effect in Czechoslovakia on 12 June 1958), and the Final Protocol to this Convention, signed in New York on 21 March 1950 (Czechoslovakia acceded to the Protocol on 14 March 1958).

The legislative instrument addressing trafficking in human beings in the Czech Republic is the Act No. 140/1961 Coll. (Criminal Law), as amended.

The amendment No. 134/2002 Coll., in effect since 1 July 2002, changed the wording of Section 246, formerly dealing with trafficking in women. The crime was defined as trafficking in human beings for the purpose of sexual exploitation, regardless of the sex or age of victim. The name of the crime was also changed to trafficking in human beings for the purpose of sexual exploitation⁷, and its definition was expanded so that it was considered a crime to seduce, hire or transport a person in order to use him for providing sexual intercourse, not only to but also from a foreign country.

With the aim to harmonize the law with the EC Framework Decision of 19 July 2002 on combating trafficking in human beings, the Criminal Law has recently been amended again by Act No. 537/2004 Coll., taking effect on 22 October 2004. The Section 246 has been abrogated and new section was inserted Section 232a, with the title “trafficking in human beings”.

Section 232a expanded the definition of the victim of trafficking in compliance with the Protocol: whosoever by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, force, organize, recruit, seduce, transport, hide, hold or deliver a person to exploit him/her for the purpose of sexual exploitation or other forms of sexual harrassment or violation, slavery or servitude, forced labour or other forms of exploitation, shall be punished by 2 to 10 years of imprisonment.

Trafficking in children (persons under the age of 18) will be punished in all cases⁸ considering their vulnerability and defenceless by 2 to 10 years of imprisonment. In practice it means that from the Section 232a of the Criminal law related to the minors was omitted the part „by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of

⁷ §246, Trafficking in Human Beings for the purpose of Sexual Exploitation: *Whosoever seduces, hires or transports a person to or from foreign country in order to exploit them for providing sexual intercourse, shall be punished by one to five years of imprisonment.*

⁸ With the exception of trafficking in children for the purpose of adoptive transfer and other similar purpose.

deception, of the abuse of power or of a position of vulnerability“⁹, the rest remained same as quoted above⁹.

Circumstances justifying stricter sentence (5 to 12 years) include the intent of gaining substantial profit, exposing the person in danger of grievous bodily harm or death, commitment of the crime within an organized group or the intent to exploit other person particularly for prostitution (most of the cases of trafficking are for the purpose of prostitution). Up to 8 to 15 years of imprisonment will be sentenced those who caused the grievous bodily harm or death, death or other severally serious consequence, commit the crime with huge profit or within the organized group acting in more countries.

Contrary to the previous amendment No. 134/2002 Coll., there is not specifically mentioned the trafficking across the international borders now. It is given generally which enables to punish also the cases of so called internal trafficking.

Other crimes that may possibly classify as acts defined in articles 3 and 5 of the Protocol include the crime of unlawful restraint (Section 231 of the Criminal Law), imprisonment (Section 232), blackmail (Section 235) – especially if committed by a member of an organized group or by more than two persons, as defined in Clause 2, Letters a) and b), the crime of oppression pursuant to Section 237 of the Criminal Law, drag in abroad (Section 233) and especially Section 204 – procurement.

Smuggling or transporting persons to or from a foreign country may possibly classify as the illegal crossing of national borders, as defined in Section 171a of the Criminal Law, particularly the provisions of Clause 2, Letter a) – committed with the intent to cover up or facilitate another crime, or committed by a member of an organized group pursuant to Letter c) of the act. Organized crime may also be classified as felonious conspiracy pursuant to Section 89, Clause 17 of the Criminal Law. Section 163a of the Criminal Law defines the crime of setting up a felonious conspiracy, participation in such a conspiracy or the support of such.

In case the victim of trafficking is a child (persons under the age of 18), it is possible to apply the provisions of Section 216a of the Criminal Law on trafficking in children, provided that the purpose of trafficking is adoptive transfer or other similar purpose; but not any purpose like sexual exploitation or other forms of sexual harrassment or violation, slavery or servitude, forced labour or other forms of exploitation¹⁰, in these last mentioned cases the Section 232a is applied. A person who gives a child in charge of another for adoption, or other similar purpose, perpetrates the crime of trafficking in children. Circumstances justifying stricter sentence include commitment of the crime within an organized group; gaining of considerable profit; inflicting grievous bodily harm or causing the death of the victim. The Criminal law has been amended in accordance with the guidelines of the EU, changing the provisions of Section 216b to define the term “child” in accordance with the Protocol. A child is therefore a person under 18 years of age (the clause “unless having come of age earlier” has been omitted). Other crimes related to trafficking in human beings include the crime of kidnapping (Section 216 of the Criminal Law),

⁹ “Whosoever force, organize, recruit, seduce, transport, hide, hold or deliver a person to exploit him/her for the purpose of sexual intercourse or other forms of sexual harrassment or violation, slavery or servitude, forced labour or other forms of exploitation, shall be punished by 2 to 10 years of imprisonment.”

¹⁰ Šámal, Púry, Rizman – Criminal Law, comments, C.H.Beck, 6th issue, 2004, page No 1279, glosses 1, 4, 5.

or the willful corruption of the morals of youth pursuant to Section 217 of the Criminal Law (committed by “whosoever exposes a person under 18 years of age to the danger of moral dissoluteness by inducing him/her to lead an idle or immoral life, or seducing him/her to lead an idle or immoral life”).

Statistical data concerning trafficking in human beings for sexual exploitation pursuant to Section 246 of the Criminal Law (wording effective by October 2004) and data on criminal cases according Section 204 (procurement), for comparison:

Year	1991	1992	1993	1994	1995	1996	1997
§246	0	1	6	5	10	10	9
§204	1	9	44	60	66	58	74

Year	1998	1999	2000	2001	2002	2003	1 st half of 2004
§246	5	25	16	15	20	5	11
§204	131	123	94	85	83	80	52

c) Victim Support and Rehabilitation

Article 6 of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children obligates the state parties to help and protect victims of trafficking in human beings, by means of adopting appropriate measures for protecting the victims during criminal proceedings (Section 1 and 2), as well as providing mental and social support to them (Section 3). The Czech Republic signed the Protocol in 2002.

The primary legislative instrument related to trafficking in human beings for sexual exploitation is the Constitution of the Czech Republic, especially the Charter of Fundamental Rights and Freedoms, an inseparable part of the Czech constitutional order. Provisions relevant to trafficking in human beings are contained particularly in Chapter 2, Fundamental Human Rights and Freedoms, including, among other things, personal freedom; freedom of movement and residence; prohibition of torture or cruel and inhumane treatment; the right to maintain human dignity, etc.

During the criminal proceedings, victims of trafficking may either act as the injured party or as a witness. Current legislation allows to protect witness and other persons involved in the criminal proceedings pursuant to **Act No. 283/1991 Coll. on the Police of the Czech Republic**, as amended, **Act No. 141/1961 Coll. on judicial criminal proceedings (Rules of Criminal Procedure)**, as amended, and effective from 1 July 2003, also pursuant to **Act No. 137/2001 Coll. on special protection of witnesses and other persons involved in criminal proceedings**.

- Position of trafficking victims in criminal proceedings

Pursuant to Section 43, Clause 1 of the Rules of Criminal Procedure, an injured party is a person whose health has been damaged, or who has suffered material, moral or other damage in consequence of a crime committed. The Rules of Criminal Procedure acknowledge the injured persons as parties to criminal proceedings (Section 12, Clause 6). This allows the injured person to participate actively in the criminal proceedings, and make suggestions and contributions in order to discover the true nature of the crime committed and reach a just verdict.

The injured person has the right to make motions to complete the evidence procedure, inspect the files in the extent stipulated by Section 65 of the Rules of Criminal Procedure, attend the trial and the public appeal hearing, as well as make a statement on the case before the proceedings are closed. Apart from these rights, Clause 4 of Section 158 allows the victim to use the services of an attorney when providing explanation. The victim also has the right to be represented by proxy (Section 50). Section 51a of the Rules of Criminal Procedure states that if an injured person making a claim for compensation in accordance with the law proves that he/she does not have sufficient funds to cover the expenses connected with appointing a proxy, the presiding judge of the court of first instance decides during the preliminary proceedings whether the injured party has the right for legal assistance of a proxy provided free of charge or for a reduced fee. The bodies involved in criminal proceedings must instruct the injured person on his/her rights and give him/her the possibility to exert them.

A major advance in the regard for the injured person's rights was the amendment to the Rules of Criminal Procedure Act No. 265/2001 Coll. It works on the presumption that the successful investigation and proving of a crime depends largely on the attitude of the injured person. In case of trafficking in human beings for sexual exploitation, the injured persons are a very specific group of people, who often refuse to cooperate with the bodies involved in criminal proceedings due to their fear of the perpetrators and due to the mental and physical harm they have sustained.

So far, the only available remedial measures for which an injured person could apply included the right to file a complaint against case deferral (Section 159a, Clause 6); the right to appeal the verdict on compensation for damage (Section 246, Clause 1, Letter d); and the right to file a complaint against the decision on the conditional suspension of criminal prosecution (Section 172, Clause 2). The amendment of the Criminal Law Act No. 265/2001 introduced the possibility for the injured person to file a complaint against the decision to discontinue criminal prosecution (Section 172, Clause 3).

- **Victim / witness protection**

The issue of the protection of a witness's identity is addressed, among others, by the provisions of Sections 55, 101, 101a, 165, 183a, and 209 of the Rules of Criminal Procedure. This includes mainly the possibility to testify anonymously, and to testify by means of an audio-visual transmission device. In case the victim of trafficking in human beings is a child, it is possible to apply the provisions of Section 102 of the Rules of Criminal Procedure concerning witness interrogation, or the provisions concerning the exclusion of the public from trial, or on public hearing (Sections 200 and 238 of the Rules of Criminal Procedure).

A general legislative instrument related to trafficking in human beings is the recently adopted **Act No. 137/2001 Coll. on special protection of witnesses and other persons involved in criminal proceedings**, which may be applied to witnesses in the cases of trafficking in human beings for sexual exploitations, if there are serious reasons to believe that their safety might be endangered.

A special protection scheme has been set up for persons in danger, involving personal protection, the possibility to change residence within the Czech Republic or abroad, help in finding a job, social benefits and in the most serious cases, new identity as well. A special department has been established in the Special Operations Division of the Police Headquarters to implement the

scheme, and legal framework has been provided by several new internal regulations of the police president. So far, though, the scheme has never been used in connection with a trafficking in humans' case. This may be related to the method of exposing organized crime used by the Organized Crime Investigation Unit of the Service of the Criminal Police and Investigation ("the UOOZ"). Evidence against the accused is being built up on the results of thorough investigation of organized crime groups rather than on the victims' testimonies. It is possible, however, that the special witness protection scheme may be applied in cases of especially endangered victims of trafficking in human beings for sexual exploitation willing to testify against the perpetrators. Nonetheless, the prerequisites for being put in the program are rather strict and cause a radical change in the person's life. The special witness protection scheme is an extreme, non-standard solution, which should only be used if weaker methods of protection can no longer be used. The placement of a person in the special protection scheme is usually proposed by the police, judge or prosecuting attorney and must be approved by the Minister of Interior. If a person is in immediate danger, the protection scheme may be launched prior to the Minister's consent. A person in danger, or its close relatives, may be placed under a protection scheme if such a protection helps to close the case, in accordance with the provisions of the Rules of Criminal Procedure (see the police president's mandatory instruction No. 156/2001, specifying the methods to be used by the police to set up and provide special protection and help to witness and other persons involved in criminal proceedings).

A more useful instrument for protecting victims of trafficking in human beings seems to be the police president's mandatory instruction No. 159/2001, specifying the methods used for providing short-term protection by Czech police units. The short-term protection scheme is usually proposed by the relevant police unit, if it reaches the opinion that a person involved in a certain criminal proceedings is in a serious danger which may only be eliminated or alleviated by some form of short-term protection. A person may be placed under short-term protection for no more than sixty days, albeit the term may be extended repeatedly. The provision of a short-term protection must be approved by the regional police director, after he has evaluated the proposal submitted by the respective regional Service of Criminal Police and Investigation. Such proposals are handled as matters of high priority. The director of the police protection service may also be involved if necessary. In substantiated cases, short-term protection may not only be provided to a person who requested it or agreed to it, but also to his/her close relatives. The short-term protection program requires that the person protected actively participates in the protection scheme. The program may involve the following means of protection: physical protection; temporary change of residence; use of security technology; monitoring of persons and objects; or preventive measures and consultancy. The various means of short-term protection may be combined as required.

However, the victim of any crime, and therefore also of trafficking in human beings for sexual exploitations, is still entitled to appropriate protection by the state (see Section 2, Clause 2, Letter a) of the Police Act). The police has a duty to protect the safety of persons and property regardless of whether the person concerned is a Czech or foreign national. Therefore, even if a person is unwilling to cooperate in ensuring his/her own safety, the police should at least provide preventive consultancy to such persons in order to eliminate any further risks.

- Compensation for the victims' damage

During the criminal proceedings, an injured person may raise his/her claim against the accused for the compensation for damages, and make a motion that the court include in the sentence a Clause obligating the accused to compensate the injured person for the damage sustained (Section 43, Clause 3 of the Rules of Criminal Procedure).

The Rules of Criminal Procedure newly stipulate the possibility to award compensation in foreign currency (Section 228, Clause 3), under the following conditions: a claim has been raised by the injured person; the claim is substantiated by the circumstances of the case; the damage involved funds in foreign currency or items purchased for such funds; and the accused or the injured person is a foreign national.

If, for reasons stated in the provisions of Section 229, the court does not award the injured person a partial or full claim for compensation of damage, the court may advise the injured person to file a civil proceedings lawsuit. The injured person may then file a claim for compensation of damage pursuant to the provisions of Sections 444 and 449, section 1 of Act No. 40/1964 Coll., the Civil Code, as amended. The injured party may act on trial within the capacity (Section 20 of Act No. 99/1963 Coll., Rules of Civil Procedure) corresponding to his/her capacity to attain rights and take on responsibilities by his/her own acts.

The injured person may also choose to proceed in accordance with the provisions of Act No. 209/1997 Coll. on the provision of financial support to victims of crimes, as amended. Section 2, Clauses 1 and 2 state that a victim of crime is a physical person who has sustained an injury to his/her health in consequence of a crime, or a survivor of a person deceased in consequence of a crime, to which the deceased provided or was obligated to provide support. Such a person is provided a lump sum in order to help him/her overcome an impaired social situation in consequence of a crime (Clause 3). The maximum possible amount of financial support is CZK 150,000. However, the victim must prove the amount of earnings lost and the costs incurred by treatment, or the costs of a funeral and support. It is not possible, though, to obtain financial support from the state and claim compensation of damage from the perpetrator at the same time. Pursuant to act 209/1997 Coll. only Czech nationals are entitled to compensation of damage. Foreign nationals who have become victims of trafficking in human beings in the Czech Republic do not meet the terms of Section 3, Clause 1, stating that "help shall be provided to a Czech national or a person with no nationality who has been granted a permanent or short-term residence permit in the Czech Republic." In order for foreign nationals to be entitled to compensation of damage, the law would have to be amended to apply to foreign nationals as well. It would also be advisable to extend the definition of damage to include mental and moral harm as well, since the existing definition of damage as "an injury to health" (Section 2, Clause 1) allows narrow interpretation.

- Specific legislation on the status of victims of trafficking in human beings who are foreign nationals

A relevant legislative instrument for the status of foreign victims of trafficking in human beings is the **Act No. 326/1999 Coll. on the residence of foreign nationals in the Czech Republic (Foreigners Act)**, defining the terms of entry, stay and departure of foreign nationals to or from the territory of the Czech Republic. Although the Foreigners Act does not explicitly address the

status of foreign nationals who have become victims of trafficking in human beings in the Czech Republic and reside in the country illegally due to this fact, it is possible to legalize the residence status of such victims by applying the provisions of Section 35, Clause 1, Letter a), **granting of a visa for sufferance of residence**. The police may grant such a visa to a foreign national who is prevented from leaving the country by circumstances independent of his will. Pursuant to the provisions of Section 36 of the Foreigners Act, the visa shall be granted for a necessary period of time, but not longer than 365 days. In accordance with the provisions of Section 37 of the Foreigners Act, a foreign national granted a visa pursuant to the provisions of Section 35, Clause 1, Letter a) must prove, on request, that the circumstances preventing him/her from leaving the country still persist. If the circumstance preventing the foreign national from leaving the country is independent of his/her will, he/she may submit a declaration on word of honour instead of proof. The provisions of Section 38 of the Foreigners Act set forth all requisites a foreign national must submit in order to be granted a visa for sufferance of residence. These include a photograph, a travelling document (if he/she has one and if it is still valid); a notarised copy of a document proving the existence of a circumstance pursuant to Section 35, Clause 1, Letter a) of the Foreigners Act. In case the foreign national is not able to present such a document due to the fact that the circumstance is independent of his will, he/she may submit a declaration on word of honour instead. Section 39 of the Foreigners Act specified the conditions of cancelling the visa for sufferance of residence. Section 179, Clause 1 of the Foreigners Act lists the circumstances preventing a person from leaving the country. In theory, a victim of trafficking in human beings may also apply for **a permanent residence permit for humanitarian reasons**.

- Relevant legal regulations concerning social welfare Act No. 100/1988 Coll. (Social Security Act), as amended, guarantees social benefits to those who are not able to overcome a difficult situation in life without the help of society. The act states that citizens without permanent residence in the Czech Republic are not entitled to social benefits and services; however, the provision shall not apply if it is so determined by an international treaty to which the Czech Republic is a party. Therefore, in case of victims of trafficking in human beings without permanent residence in the Czech Republic, it is possible to exercise the option to relax the rigor applied in providing social welfare.

The Act No. 117/1995 Coll. on state welfare benefits, as amended, guarantees the satisfaction of the basic personal needs of children and families. Pursuant to the act, social welfare benefits may be provided, apart from citizens with permanent residence, to a foreign national residing in the Czech Republic for a period of more than 365 days. The act further specifies instances where permanent residence shall not be taken into consideration. It also grants the regional authorities the power to waive, in substantiated cases, the permanent residence requirement. Therefore, victims of trafficking may in certain cases receive social welfare benefits.

The Act No. 482/1991 Coll. on social need, as amended, stipulates the social benefits and services available to persons with permanent residence in the Czech Republic. Help may be, in a necessary extent, provided to a minor without permanent residence in the Czech Republic, under the condition that such a person may not be given help pursuant to special laws (such as the Act No. 325/1999 Coll. on asylum, as amended). However, the act cannot be applied in case of human trafficking victims of full legal age.

The Ministry of Labour and Social Affairs has stated that the regulations concerning employment, including the new Employment Act draft bill, grant any person with permanent residence in the Czech Republic access to the job market through the Labour Exchange Office. Employment is also available to foreign nationals who have been granted asylum in the Czech Republic. In 2004, Ministry of Labour and Social Affairs enabled also victims of trafficking protected by the „Model“¹¹ to access to the job market.

1.1.2 Applicable legislation on criminal cooperation

The Czech Police has set up a special department to combat trafficking in human beings – the department of human trafficking of the Organized Crime Investigation Unit of the Service of the Criminal Police and Investigation (“the UOOZ”). Based on the Police President’s mandatory instruction No. 17/1998, concerning the system of monitoring unsolved serious criminal acts, and the coordination of the activities of specialized police departments and the Criminal Police Service Directorate of the Police Headquarters in exposing these crimes and their perpetrators, UOOZ is responsible for exposing and monitoring the cases of trafficking in human beings and for the exposure of their perpetrators, and provides methodical and expert guidance. It deals primarily with cases involving organized crime groups and trans-national trafficking in human beings. Other police departments must notify UOOZ whenever they expose or suspect a crime of trafficking in human beings.

When combating trafficking in human beings, UOOZ actively cooperates with partner institutions in Germany, Austria, the Netherlands, the UK, Italy, Slovakia, Poland, and Hungary. In several cases, UOOZ also obtained help from U.S. institutions, such as the FBI or the US Immigration Service. This specialized police department is regionally structured, with headquarters and regional units covering the entire territory of the Czech Republic. Its detectives and investigators have superb qualifications and investigate the cases in great depth, using information obtained from other police departments. Their goal is to expose as many perpetrators as possible, getting all the way to the leaders or organized crime groups. Their work is extremely time-consuming and requires a lot of patience, since their larger efforts may easily be thwarted in the attempt to solve a minor crime. The department also struggles with the insufficient number of employees.

At the establishment of the Organized Crime Investigation Unit on 1 January 1995, the number of employees in the second department was settled at 9 + 1 policemen.¹² However, the issue of trafficking in human beings has considerably developed during the past 8 years. There has been a constant increase of cases involving international organized crime groups; the police have encountered more frequent cases of felonious conspiracy (as defined in Section 163a of the Criminal Law); profits from organizing prostitution and the dangerousness of crimes have grown considerably.

An analysis of the current situation was conducted in 2001 and led to the proposal to increase the staff of the department. Starting 1 February 2003, personnel planning was increased by 7 positions. However, considering that the department is responsible for dealing with the issues of

¹¹ This institute of support and protection of trafficking victims is detailed in part 3 of the report.

¹² By way of comparison, Belgium, which is roughly the size of the Czech Republic in population, has 31 operatives and 8 analysts and administrative officers working in the central police department specializing in trafficking in human beings.

trafficking in human beings, sexual and commercial exploitation of children and minors, and the illegal trading in human organs nationwide, the increase was still insufficient. Staffing was also increased in view of the fact that the amendment (Act No. 537/2004 Coll.) of the Criminal Law (classifying other forms of exploitation, such as forced labour, as “trafficking in human beings”) had been planned, as well as the implementation of the victim Support and Protection Program should burden the department staff even further.

Apart from the detectives from the UOOZ, virtually any police officer (members of the criminal police, patrolling police, foreign and border police) may encounter the victims of trafficking in human beings in various stages of the criminal proceedings. Police officers from local departments and municipal police officers come into contact with the victims when checking well-known prostitution sites, during planned police actions or operations carried out in conjunction with other public authorities (Trade License Office, Tax Office, Public Health Station, Fire Brigade, Building Department). Victims may also appear at police stations during identity check or when reporting a crime. The local unit police officer must, through his superior officers, notify a Service of the Criminal Police and Investigation or UOOZ specialist of any cases of trafficking in human beings. However, he/she may only do so if he/she is able to identify the victim. Police officers play a key role in approaching trafficking victims. For the victim, they often represent the first contact from the “outside world”, and their attitude determines whether they gain the victim’s trust or whether the victim refuses to communicate, whether he/she will tell the truth or lie.

1.2 Method of research

This part of the report was, in particular, prepared on the strength of facts included in below mentioned document “*National strategy of combating trafficking in human beings for the purpose of sexual exploitation in the Czech Republic*”, which was prepared for Czech Government by Ministry of Interior of the Czech Republic in 2003. Facts included in the document has been updated and further complemented on the strength of relevant judicial literature. In addition, wide experience of the author and the IOM mission in Prague has also contributed to.

Sources:

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2. PROSECUTION OF TRAFFICKING CASES

2.1 Current state of the awareness of the prosecution for trafficking cases

The detection of crimes connected with the trafficking in human beings and the subsequent conviction of perpetrators of these serious crimes is a difficult activity connected with many complications and practical problems. In particular it is necessary to cope with the great efforts of perpetrators to make their detection and subsequent conviction difficult. All this in connection with the often cross-border character of crimes, the migration of perpetrators and victims around the world and the need to co-operate in the “international scope“ makes the above-mentioned type of criminal proceedings the most difficult. The goal of this report is to point out the most frequent difficulties encountered when investigating these matters in criminal proceedings at court. Some problems are of a general character which are faced in all criminal proceedings under existing legislation, but a large part are specifically related to the trafficking in human beings.

The basis of the legal regulation of criminal proceedings in the Czech Republic is Act No. 141/1961 Coll. on Criminal Judicial Proceedings (Rules of Criminal Procedures). All its provisions concerning the collection and presentation of evidence shall have to be adhered to at all stages of criminal procedures and any deviation both in proceedings at court and in particularly in preparatory proceedings results in nullification and thus the impossibility to use the gathered evidence in proceedings so that the final decision on the case is postponed and often it is necessary to spend significant funds which could be used otherwise. I say nothing about the time demands and connected workload of participating persons. The most difficult are situations when with regard to time delay and previous mistakes in criminal proceedings it is impossible to punish the perpetrator.

First of all it is necessary to mention the character of crimes connected with the trafficking in human beings. It is often a planned and well thought out criminal activity committed toward foreigners while their problematic family, social or financial situation is misused, which generates the most substantial difficult situations that occur during or surrounding criminal proceedings.

The first often seen character is the existence of a group. Here it is necessary to mention that in connection with the seriousness of the crimes and the further typical character in the form of participation of foreigners as perpetrators of crimes, the institution of custody is used while proceedings are conducted. It is easy to imagine that all the reasons for taking someone into custody pursuant to the Rules of Criminal Procedures are “fulfilled“. The actual danger in the form of emigration (Section 67 Letter a) of the Rules of Criminal Procedures) is often justified by the frequent migration of the perpetrators, the existence of strong family and other relations to persons living in other countries and, last but not least, potential attempts to leave the Czech Republic. Collusive custody (Section 67 Letter b) of the Rules of Criminal Procedures) is subject to court decision at the moment of finding of concrete facts showing potential efforts of

perpetrators to influence witnesses in any form. In addition to threat of physical violence it may be intimidation, bribery or other forms of influence. The reason for positive decision on custody may be pro-active efforts to blur traces and evidence. The last reason for custody procedures is the actual fear that the perpetrators will continue to commit the previous crime both in the form of the so-called continuation i.e. constantly committing the same crime and in repeated form (recidivism) i.e. a new crime is committed again after conviction (Section 67 Letter c) of the Rules of Criminal Procedures). All types of custody procedure in the Czech Republic are subject to strict formal limitations which apply in particular to the maximum duration of limited personal liberty, duty of regular examination of custody both at the request of charged persons and according to formal duty and last but not least due to the gradual reduction of reasons for custody.

The legislation is certainly rational in order to enforce investigative, prosecuting and adjudicating bodies to speed up the prosecution of such types of persons and limit the time of charged persons who have not been found guilty upon final decision in custody. On the other hand it is necessary to point out that as regards some types of criminal activity, into which the trafficking in human beings undoubtedly falls, particularly with regard to the need for international co-operation and often also the scope of facts and the plurality of perpetrators, it is impossible to use all the advantages of custody procedure and due to the need to adhere to all rules of procedure often the advantages of custody are eliminated. I mean such cases when it is necessary to release persons from custody after the maximum period of custody has expired so that, for example, due to the complexity of the case, large international co-operation and often pro-active efforts of perpetrators to prolong criminal proceedings, the proceedings cannot be terminated by the respective deadlines. It is possible to fight against it for example by exclusion of, and separate discussion about particular facts which usually in connection to mutually connected activity and material of evidence is not suitable.

Much more complications exist in custody proceedings and hearings of criminal matters with the charged persons in custody after the judgement of Constitutional Court of the Czech Republic has been given File No. US 573/02, stipulating that judges are obliged to enable the charged person to have a hearing before a decision about custody is made. Such interpretation of the Agreement on Human Rights Protection (published in the Czech Republic under No. 209/1992 Coll.) is not supported by implementing provisions in the Criminal Code. In addition to the hearing of fact and the implementation of tasks oriented to the final settlement of the matter it is necessary in accordance with the judgement to hear the charged person and repeatedly formally decide on the duration of reasons for custody. In the opinion of judges (often repeated) the target of custody proceedings should be to speed up and make the work easier for bodies acting in criminal proceedings while the rights of charged persons are not affected and not vice versa.

Another frequent by-product of this type of criminal activity is the language barrier, generating the need to provide for translation of relevant documents and the interpretation of interrogations and judicial proceedings. Pursuant to Section 2 Clause 14 of the Rules of Criminal Procedures everybody who says he or she does not speak Czech is entitled to speak his mother tongue in front of criminal investigators or another language which he says he speaks. If it is necessary to interpret the context of a document, interrogation or another act of procedure or if the charged person uses his right to speak his mother tongue, an interpreter is engaged. Should the charged person not give the language which he speaks or should he give a language or a dialog which is

not the language of his nationality or the official language of the country of which he is a citizen and should there be no (relevant) person on the list of interpreters, the criminal investigators shall determine an interpreter of the language of his nationality or the official language of the country whose citizen he is. Should it be a person with no nationality, the country shall be that in which he permanently stays, or the country of his origin. It is necessary to translate for the charged person a resolution of commencement of prosecution, resolution of custody, action, petition for punishment, judgement, criminal order, decision on the reversal and conditional discontinuance of prosecution. Should such a decision apply to several charged persons, the charged person will be given only a part of the decision concerning him if it is possible to separate it from other statements, decision and justification. Probably the most important aspect of translation is the fact that if a period depends on the delivery of the respective document and a written translation of such a decision has to be delivered the decision shall be deemed to be delivered upon the delivery of the translated document. These complications are mitigated should the person speak Czech so well that they are able to communicate in it but they have to give up the right to a translator/interpreter by themselves. As regards current European languages the respective experts are available in a relatively short time but they may be difficulties with rarely used languages or those whose professional interpreters on the list of interpreters and translators are missing.

The most important and often sole incriminating evidence in these criminal cases are the testimonies of the injured parties. However, the presence of foreigners requires a speeded up and quality of expert finding. It particularly applies to witnesses – injured parties whose natural efforts are to go back home. Unless an examination or the whole criminal proceedings is executed in a short time before the injured person leaves it is justifiable to believe that gathering or completing evidence connected to the immediate presence of the injured party will be highly limited. Besides expert examination there is recognition of all kinds, investigations and reconstruction where the presence of the injured party is necessary. It is justifiably believed that if the intention of the injured to leave the country is proven the above-mentioned acts can be deemed to be urgent with the possibility of their use in subsequent stages of criminal proceedings. But all depends on concrete circumstances of particular cases.

In practice we can often see that the injured persons are interested in staying in the Czech Republic but with regard to the administrative measures, in particular the non-extension of visa or a previous sentence of banishment they are forced to leave the Czech Republic. Another reason for departure might be problems of a financial or social character. It is necessary to weigh whether in such cases the injured persons should not be given the possibility to have restrictive measures postponed in order to ensure their presence in criminal proceedings. There are often the sole and key witnesses and their testimonies cannot be replaced by anything else. It is far and away the best, as it is evident from practice, that personal testimony is always of higher informational value than any interrogation (executed as best as possible) which is only read at the hearing. In addition witnesses can react to the reservations of the defence, changes in the facts of a case or new evidence. New or additional investigation is not an exception.

Under circumstances when it is evident that injured parties cannot be “held“ for further proceedings it is necessary to draw the greatest attention to the quality and form of registration of their interrogation in preparatory proceedings so that evidentiary facts can be further utilised. Even if the interrogations of persons “interviewed“ in preparatory proceedings in the position of

witness are registered in the form of official records pursuant to Section 158 of the Rules of Criminal Procedure it is to be justifiably assumed that as for foreigners it is possible to proceed pursuant to Section 164 of the Rules of Criminal Procedure and make a statement with the witness. The difference is significant in the field of usability of interrogations made in the above-mentioned forms because the official record serves (with some exceptions applicable to less serious, particularly, proprietary crimes) only for making a decision as to whether the witness will be called to court and heard at trial. Any other facts, in particular of a factual character cannot be inferred from the record. It arises in particular from the fundamentally lower formal requirements for such an act which is usually promptly provided for and without the participation of the defence. On the contrary reports of witness interrogation may serve as evidence in the case (itself) and may be the basis, as the sole evidence in the case, for a decision on the guilt of the perpetrator. Nevertheless, it is necessary to adhere to all requirements to be met so that evidence is given correctly. One of the most essential requirements is to enable the party of the defence (the charged person or his counsel and cumulatively both) to participate in the interrogation and put questions to the witness. As for the delivery of a notification, general rules apply including the duty on the part of the police to prove that the party of the defence was informed properly and on time. In practice, files often do not include return receipts signed by counsels or charged persons that they have been informed about interrogation, which in principle makes the procedure pursuant to Section 211 Clause 3 Letter a) of the Rules of Criminal Procedure impossible to be applied.

The police may have difficulties with the interrogation of a person under the age of 15 as witnesses without the participation of all persons who have to be present at the interrogation. Pursuant to Section 102 of the Rules of Criminal Procedure persons under the age of 15 shall be interrogated in the presence of a teacher or a person experienced in teaching them. Should a teacher not be present the interrogation shall not be used in further proceedings and it is necessary (if possible) to do it again. On the other hand, the participation of parents is not necessary, it will depend on a particular situation whether they will be allowed to be present.

As for the character of victims, the Czech Republic is both a “source country“ in relation to injured persons i.e. the Czech Republic is left by persons or they are sold against their will particularly to Germany and other European countries (Austria, Spain, Italy, England, Belgium, USA) and the target country in particular for populations of other, frequently Balkan (Bulgaria, Romania), Asian (Korea, Vietnam, China) or ex-soviet (Ukraine, Russia, Belarus) countries. The second variant, when the injured (persons) and the most important witnesses are persons coming from other countries is, pursuant to the Rules of Criminal Procedure, more important for criminal proceedings.

The Institute for Criminology and Prevention based in Prague has given a statistical review in order to provide a general total view of the functions of the justice system in the field of trafficking in women in the Czech Republic. The tables show basic relevant information about the facts which illustrate the phenomenon of criminal activities with women. They are closely related to another criminal activity, procuring and soliciting prostitution, because most victims of trading are forced into prostitution. With regard to the fact that the respective law has been changed (the definition of the criminal trafficking in women to the trafficking in human beings i.e. also with men and minors) the tables are terminated in 2001 for comparability reasons. The

source of data for this part of the report was the Statistical Yearbook of Crimes issued by the Ministry of Justice of the Czech Republic.

The crime of trafficking in women (Section 246) is not often seen at court because of the difficult evidentiary requirements and the several times above-mentioned concerns of victims to testify. In the Czech Republic there are some 10 to 20 crimes pursuant to Section 246 for which approximately the same number of perpetrators are convicted. The largest number of investigated (64), charged (56) and convicted (25) persons was in 1999; in this year the number of convictions (29) was the highest.

TABLE 1
TRAFFICKING IN WOMEN
(Section 246 of the Rules of Criminal Procedure)

Year	Persons investigated	Persons charged	Total persons convicted	Of which women convicted	Crimes
1996	37	34	10	3	10
1997	26	21	9	2	12
1998	27	25	5	1	9
1999	64	56	25	4	29
2000	35	31	16	2	16
2001	34	33	15	3	17

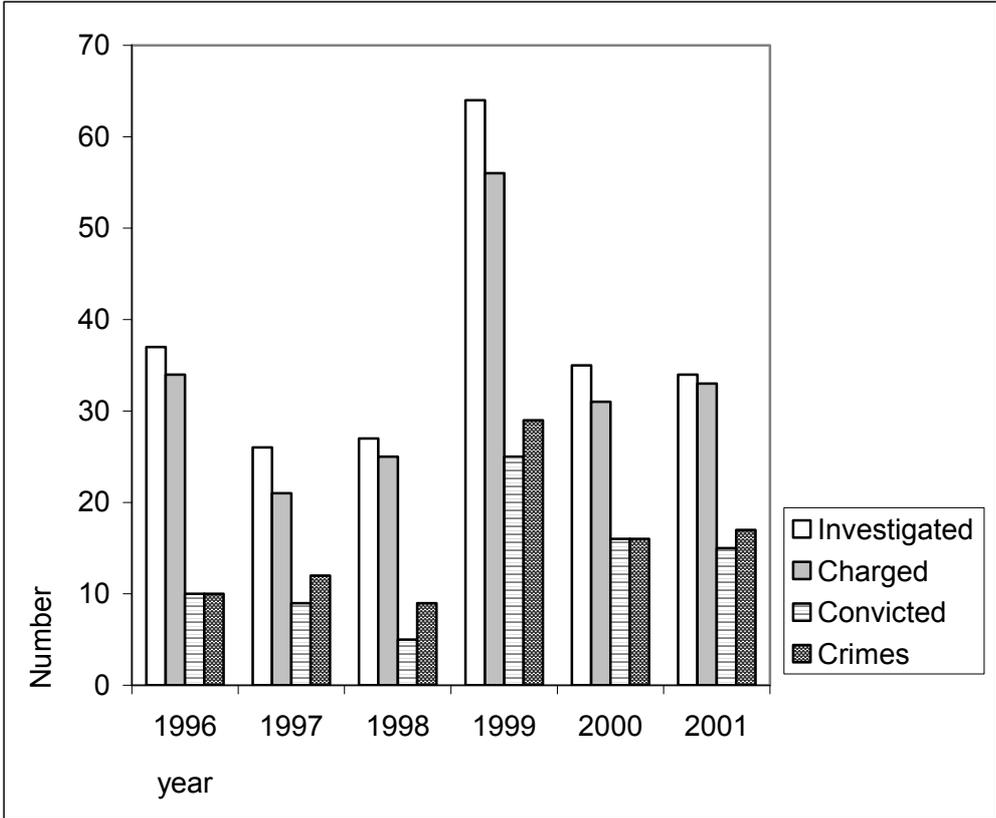
The perpetrators of the crimes range mostly in age of 30-39, or 25-29 years old. Rarely are they 20-24 years old. Gradually (in the period under review: 1996-2001) the age of perpetrators is increasing; in the peak year of 1999 there were perpetrators in the age from 40-49 years.

TABLE 2
TRAFFICKING IN WOMEN
(Section 246 of the Rules of Criminal Procedure- Perpetrator's Age)

Year \ Age	15-17	18-19	20-24	25-29	30-39	40-49	50 and higher
1996	0	0	5	3	1	1	0
1997	1	0	1	3	3	0	1
1998	0	0	0	2	3	0	0
1999	0	1	2	8	8	5	1
2000	0	1	3	2	7	2	1
2001	0	0	4	4	4	2	1

In 1999 investigative, prosecuting and adjudicating bodies significantly increased their activities in pursuing trafficking. See Graph 1 to see the fluctuation.

GRAPH 1
TRAFFICKING IN WOMEN
(Section 246 of the Rules of Criminal Procedure)



The often-connected activity, procuring and soliciting prostitution (Section 204) showed a similar peak in 1999; however, it applied only to the number of convicted crimes (11). The number of investigated persons was decreasing in the whole period as well as the number of charged person. However, the police are certainly more successful in proving crimes: since 1996 to 1999 we had seen an increased share of persons convicted in the number of persons charged from procuring and soliciting prostitution.

TABLE 3
 PROCURING AND SOLICITING PROSTITUTION
 (Section 204 of the Rules of Criminal Procedure)

Year	Persons investigated	Persons charged	Total persons convicted	Of which women convicted	Crimes
1996	247	203	58	19	76
1997	220	181	74	24	96
1998	202	152	131	38	159
1999	211	156	123	38	139
2000	187	152	94	26	118
2001	181	151	85	25	105

Age structure of perpetrators of procuring and soliciting prostitution is similar to that of perpetrators of trading: most perpetrators are in the age from 30-39, further in the age of 25-29 years, or 20-24 as the case may be. Shocking information is the number of minors in the age group 18-19 and even the age group 15-17 years. Also their number rose in 1998 and 1999.

TABLE 4
 PROCURING AND SOLICITING PROSTITUTION
 (Section 204 of the Rules of Criminal Procedure-Perpetrator's Age)

Year\ Age	15-17	18-19	20-24	25-29	30-39	40-49	50 and higher
1996	2	4	12	5	22	12	1
1997	3	4	11	19	18	16	3
1998	2	12	25	33	38	16	5
1999	12	10	23	36	28	11	3
2000	3	2	19	21	28	15	6
2001	9	8	13	11	27	16	1

Matters connected with crimes of trafficking in women (human beings) and procuring and soliciting are monitored from the statistical viewpoint also by the Police of the Czech Republic. The source of the following tables is the Police Presidium of the Czech Republic. They are statistics of the victims of the crime of *trafficking in women* including the age structure of victims; foreigners are excluded from the total number of victims. The number of perpetrators investigated by the Police of the crime of trafficking in women is monitored as well as their nationality. Also statistical data about procuring and soliciting prostitution are oriented toward the perpetrator; data about victims of procuring and soliciting prostitution is neither monitored nor recorded.

TABLE 5
TRAFFICKING IN WOMEN
(Section 246 of the Rules of Criminal Procedure)

VICTIMS IN TOTAL

Year/ Para.	Para. 1	Para. 2, a)	Para. 2, b)	Para. 2, c)	Total persons
1996	36	2	16	15	49
1997	11	1	1	10	25
1998	31	3	15	19	64
1999	22	3	10	18	60
2000	12	4	4	12	41
2001	27	5	8	26	67
Total	139	18	54	100	x x x

Pursuant to Section 246, Clause 1, delivery or enticing another person to a foreign country or from a foreign country in order to be used for sexual exploitation: in the period 1996-2001 the police found 139 persons in total, most in 1996 (36 persons) and 1998 (31 persons). Pursuant to Section 246, Clause 2. Letter a) – the perpetrator acts as a member of an organised group – the smallest number of victims was identified; on contrary the largest number pursuant to Section 246, Clause 2, Letter c) – crime committed on a person under the age of 18. Pursuant to Section 246, Clause 2, Letter b) – the crime was committed for the purpose of significant benefit – in total 54 victims were identified in the period under review, most of them in 1996 (16 persons) and 1998 (15 persons).

TABLE 6
TRAFFICKING IN WOMEN
(Section 246 of the Rules of Criminal Procedure)

FOREIGNERS AS VICTIMS

Year/Para.	Para. 1	Para. a)	Para. 2, b)	Para. 2, c)	Persons in total
1996	0	0	0	0	0
1997	0	0	0	0	0
1998	3	0	1	2	3
1999	0	0	0	0	0
2000	0	0	0	0	0
2001	1	0	1	1	1
Total	4	0	2	3	x x x

Cases of trafficking in victims-foreigners investigated by the police: There were 2 while the number of victims was 4. Investigations were conducted in 1998 and 2001.

TABLE 7
TRAFFICKING IN WOMEN
(Section 246 of the Rules of Criminal Procedure)

Year \ Age	0-14	15-17	18-21	22-30	31 and more	Group of victims (more than 2 persons)	Total victims
1996	0	8	12	10	2	17	49
1997	0	3	5	0	0	17	25
1998	2	3	8	8	1	42	64
1999	0	5	4	2	0	49	60
2000	0	5	0	1	0	35	41
2001	0	4	6	4	1	52	67
Total	2	28	35	25	4	212	306

Note: The total number of victims is the smallest actual number of victims because a group is shown if there are two or more victims.

Table 7 shows that most victims are at the age 18-21, furthermore minors from 15-17 and victims at the age 22-30 years old.

TABLE 8
TRAFFICKING IN WOMEN
(Section 246 of the Rules of Criminal Procedure)

INVESTIGATED PERSONS AND NATIONALITY

Year	Investigated men	Investigated women	Total investigated persons	Nationality	Number of persons
1996	21	4	25	Czech Republic	23
				Slovakia	1
				Austria	1
1997	11	3	14	Czech Republic	12
				Slovakia	1
				Turkey	1
1998	35	12	47	Czech Republic	42
				Slovakia	4
				Austria	1
1999	24	6	30	Czech Republic	28
				Slovakia	1
				Ukraine	1
2000	14	6	20	Czech Republic	16
				Slovakia	2
				Russia	1
2001	18	8	26	Czech Republic	23
				Germany	2
				Greece	1

In the period from 1996-2001, the police investigated in total 162 persons of the crime of trafficking in women, most of them in 1998 (47). As for the nationality of investigated persons they were mostly Czechs/Czech Republic (in total 144 persons), followed by Slovaks (9 persons). Some investigated perpetrators were Austrians (3) and German (2), rarely were perpetrators of another nationality investigated (1 Turkish, 1 Greek, 1 Ukrainian and 1 Russian).

TABLE 9
PROCURING AND SOLICITING PROSTITUTION
(Section 204 of the Rules of Criminal Procedure)

FACTS AND INVESTIGATED PERSONS

Year	Total facts	Of which pursuant to Para 3.b)	Investigated men	Of which pursuant to Para 3.b)	Investigated women	Of which pursuant to Para 3.b)	Total investigated persons
1996	162	2	131	6	54	0	185
1997	124	3	85	4	42	2	127
1998	355	2	86	2	43	0	129
1999	235	2	79	0	39	0	118
2000	136	10	122	17	44	9	166
2001	154	8	100	6	34	3	134

There are more instances regarding the procuring and soliciting prostitution than those regarding the crime of trafficking in women (human beings); in the period under review there were 1,166 instances for which 859 persons were investigated. In 1998 and 1999 the number of investigated instances was the highest. Among investigated persons the number of men is unambiguously dominant. In 2000 and 2001 the number of instances qualified as the crime of procuring and soliciting prostitution committed by a member of an organised group substantially increased (from 2-3 p.a. to 10-8); 17 men and 9 women were investigated of this crime.

Table 10 monitors person investigated for committing the crime of procuring and soliciting prostitution from the viewpoint of nationality. There are mostly Czechs (769 persons of the total of 859 persons). The second largest group (with a significant distance) is made up of Slovaks (31), followed by Ukrainians (17) and Bulgarians (8). Rarely are persons with other nationality investigated (Vietnam, Germany, Macedonia, Bosnia and Herzegovina, Turkey).

TABLE 10
 PROCURING AND SOLICITING PROSTITUTION
 (Section 204 of the Rules of Criminal Procedure)

INVESTIGATED PERSONS AND NATIONALITY

Year	Investigated men	Investigated women	Total investigated persons	Nationality	Number of persons
1996	131	54	185	Czech Republic	170
				Slovakia	12
				Ukraine	2
				Austria	1
1997	85	42	127	Czech Republic	117
				Slovakia	4
				Ukraine	1
				Bulgaria	2
				Germany	1
				Austria	1
				Turkey	1
1998	86	43	129	Czech Republic	111
				Slovakia	6
				Russia	3
				Ukraine	1
				Bulgaria	1
				Latvia	1
				Macedonia	3
				Vietnam	1
				Germany	1
				N/A	1
1999	79	39	118	Czech Republic	113
				Slovakia	2
				Bulgaria	3
2000	122	44	166	Czech Republic	148
				Slovakia	3
				Ukraine	11
				Romania	1
				Macedonia	1
				Germany	1
				Turkey	1
2001	100	34	134	Czech Republic	110
				Vietnam	6
				Germany	5
				Slovakia	4
				Bosnia and Herzegovina	4
				Herzegovina	2
				Ukraine	2
				Bulgaria	1
				Ex-Yugoslavia and Macedonia	1

In many cases, the victims are applicants for asylum who do not know the local situation, do not have money enough and have problems due to the language barrier. Organisers usually seek persons of the same nationality as they are.

The most frequently revealed and investigated crimes are sales of women for the purposes of sexual exploitation. Victims are usually young girls who are offered such work as dancer, barmaid, singer and also shop worker, hotel employee, person in the kitchen or agriculture. The basic motivation is monetary which significantly exceeds the usual income in the country of the

victim's origin. In fact, they are misused for the above-mentioned purposes. They find out no earlier than on the spot in a foreign country that they are expected to be prostitutes.

There is a problem in practice because the injured persons are not willing to co-operate. The victims feel ashamed for a situation in which they find themselves (partially they are to blame for it due to their carelessness, thoughtlessness or otherwise). The victims know that they have violated legal regulations applicable to business, gainful employment in the Czech Republic, or their passports are not as required. They do not wish to draw attention to themselves and sometimes the victims even want to continue in this activity.

Another problem is the frequent change of place, non-existence of permanent address for correspondence and migration of persons among several countries. As for international legal co-operation it is necessary to point out generally valid rules for evidence in a foreign country when for the purposes of further usability in proceedings rights have to be fully observed, in particular the rights of the defence. It concerns the delivery of information about the date of an action executed abroad to the charged person or his defender well in prior, the provision for their participation including pro-active questions which might be laid, and last, but not least, the respective dispatch of a request abroad.

A separate "chapter" is the potential and actual intimidation of injured persons, which is a serious act aiming to prevent the respective body from finding the facts of a case and thus obstructing justice. Pursuant to the Rules of Criminal Procedure and the subsequent regulations there are corresponding possibilities to provide for the safety and security of the witness including hiding his identity. It is necessary to appeal to timely assessment of the situation and hiding witness' identity already at the beginning of the investigation, i.e. at the stage of police interrogation. The successful execution of the act of hiding personal data and identity in particular of the injured persons and also other witnesses is usually supported by technical equipment which is available in most court buildings. It concerns the connection of "secret" rooms via audio-visual channel equipped by voice modulation. Positive information is that the above-mentioned possibility is used in practice with success.

On the contrary it is necessary in this connection to refer to the statement of the European Court for Human Rights in accordance to which the condemnation of a crime cannot be based exclusively or mostly on testimony of a person whose identity was hidden. The right of the charged person to be given information about the person who provides proof that he committed a crime takes precedence over the right of the injured party for quiet and undisturbed course of criminal proceedings and his further safety and security. It is necessary to weigh whether it is suitable to reach unification of practice and provide for better safety and security of persons whose testimony is highly appreciated evidence in these criminal cases.

Should witnesses be intimidated or otherwise influenced by charged persons or those related to them it is necessary to make a decision on potentially taking the charged persons into custody. When other than charged persons act with the aim to intimidate or influence witnesses it is necessary to weigh a fast prosecution and also taking them into custody. The injured persons shall have to be informed about the practical procedures upon first signs of such conduct in order to prevent potential irreparable losses for further proceedings, in particular leaving the republic (in case of intimidated witnesses).

There is a system of protection of victims and witnesses in the Czech Republic as stipulated in the Act on Special Protection of the Witness and Other Persons in Connection with Criminal Proceedings No. 137/2001 Coll. and Instruction of Police President No. 81/2002 concerning the protection of witnesses and other persons participating in criminal proceedings. Furthermore, witnesses can be protected pursuant to Act No. 283/1991 Coll. on Police of the Czech Republic, and the Rules of Criminal Procedure. The basis is to provide witnesses and other persons who are evidently threatened by damage to health or other serious dangers with protection and help. The protection is ensured by the following measures: 1) short-term protection of the person so that policemen are close to him, his residence or permanent or periodical monitoring the person or environment; 2) moving the protected person including members of his household and help in social incorporation into a new environment; 3) hiding the actual identity of the threatened person and producing a legend about another personal existence. The police are authorised to decide on the provision of protection to state representatives or judges. Such a decision has not been made.

In order to verify the reliability of interrogations of injured persons (regardless of their nationality and sex) expert opinions are prepared by experts from the field of school system and culture and psychology. Particularly the thinking, intellect, total maturity, reliability and ability to reproduce the experienced event as it was are characterised. Also possibility and reasons for potential false accusation of charged persons by the injured persons is assessed, mostly due to revenge, blackmailing or otherwise. The expert usually comments the influence of injured persons by the crime and potential threat to their psycho-social life. The experts estimate whether damage to personality will be for all the life or temporary, how long it will take and how the injured person will be able to cope with it.

An example is the criminal case of the charged minors Marek K. and Ingrid G. for the crimes of procuring and soliciting prostitution pursuant to Section 204, Clauses 1, 2, 3 Letter c) of the Rules of Criminal Procedure and blackmailing pursuant to Section 235, Clauses 1, 2 Letter e) of the Rules of Criminal Procedure to which the expert made the characteristics of injured Angelika V. as following: below average intellect, less flexible thinking but common sense sufficient to understand current life and customs of social world. Capacity of Angelika's memory was sufficient for inscription of events in her memory and subsequent corresponding reproduction, even later. Her personality was assessed as less mature while it was stated that she had not had adequate terms and conditions for quality development of her personality.

The expert prepares an expert opinion for the police in preparatory proceedings but is often interviewed to comment the described conclusions in proceedings at court and gives his opinion on potential changes in interrogations or other evidence. He may also be present in hearings of the charged or injured persons thus having better possibility to learn, describe and assess the reliability and spontaneity of interrogations.

An expert opinion may be prepared both on the injured persons and charged persons and also on any other persons whose interrogations are decisive for the final decision and whose interrogations become suspicious of being distorted for any other reasons.

We can see cases in practice when the charged person pleads guilty in preparatory proceedings or refuses to talk, the accusation is justified by interrogations of the injured persons and due to

smooth procedure or conviction of the state plaintiff about sufficient and quality evidentiary materials no expert opinion is prepared. The charged person often not earlier than in proceedings at court (both from own initiative or after consulting his counsel) starts to object against credibility of the injured persons and other witnesses. Should the mentioned person not be in the Czech Republic any more the court or the party of defence as a person who is responsible for proving the case for which criminal proceedings are conducted has difficulties to get such evidence serving to rebut objections of the defence.

Besides testimonies decisive evidence in criminal cases of trafficking in human beings is report of inspection of place of a crime, i.e. home and “shop” of perpetrators, furthermore medical reports on health condition and potential injuries of witnesses and the above-mentioned expert opinions to prove or rebut the reliability of witnesses. A separate “chapter” in the field of evidentiary means is the use of technical devices in the form of getting evidence from phone tapping and records of telecommunication operation pursuant to Section 88 of the Rules of Criminal Procedure, or only statements of telecommunication operation pursuant to Section 88a of the Rules of Criminal Procedure. In the last few years crimes are, besides telephone calls, also proven by fax messages and particularly e-mail messages between charged persons. Decisive evidence is also data saved on PC discs or diskettes, or CDs. In the field of primary grounds for illegal activities and also subsequent identification of property of charged persons acquired in connection with criminal activities a significant part is monitoring bank accounts of charged persons. Co-operation with the police means hidden monitoring of charged persons and victims and getting evidence for a long time in co-operation with the police of other, often neighbouring countries.

In trial at court of the first instance there are some institutes of procedure which complicate the proceedings and give the charged persons possibility to extend prosecution and try to obstruct smooth course of proceedings. In particular in cases of serious crimes for which the upper limit of duration of sentence exceeds five years it is necessary for the trial that charged persons are present. Except for some exceptions the proceedings cannot take place without charged person(s) being present. Should charged persons stay abroad and should there be no other possibility to provide for their participation at court an order to arrest pursuant to Section 384 of the Rules of Criminal Procedure, or European order to arrest pursuant to Section 404 of the Rules of Criminal Procedure is issued.

A circumstance which significantly influences the period of the whole criminal proceedings is the need to provide for participation of persons at the trial. Most difficulties are with charged persons who in particular due to fear of ongoing proceedings intentionally obstruct co-operation with investigative, prosecuting and adjudicating bodies, not receive correspondence, not react to demands and summons and that is why they often stay at places in the Czech Republic about which the court does not know and for the same reason leave the CR for a foreign country.

A separate chapter is a possibility to use the institute pursuant to Section 302 and the subsequent Rules of Criminal Procedure i.e. proceedings against a refugee. In the situation when the charged person avoids criminal proceedings by staying abroad or hiding (at unknown place) a criminal prosecution against him as the refugee may be started. The criminal prosecution starts by the delivery of the resolution on beginning of a criminal prosecution to the charged person’s counsel. Should the counsel not be chosen by any of authorised persons (in particular by relatives) it is

necessary to appoint him. Should the reason for proceedings against the refugee occur after the resolution on beginning of criminal prosecution against the charged person before an action is brought, the prosecutor shall make a record showing from which date proceedings take place against the refugee; the record shall be delivered to the counsel. The charged person shall always have a counsel in proceedings against the refugee. He has the same rights as the charged person. It is the responsibility of the court to decide on proceedings against a refugee before an action is brought to court in accordance with a motion of the prosecutor or without such a motion. The motion may be made by the prosecutor already in formal accusation. All documents/papers intended for the charged person are delivered only to the counsel. Summons for the trial or public session is made public in a suitable manner. The trial, or public session will take place without the charged person being present regardless the fact whether he has learnt about it or not.

Should reasons for proceedings against the refugee be past the criminal proceedings will continue pursuant to general provisions. Should the charged person require evidence proven in previous judicial proceedings to be proven at court again, if it is possible with respect to its nature or repetition is not hindered by another serious fact; otherwise report of evidence will be read and the charged person will be allowed to give his opinion. Should the proceedings against the refugee be terminated by final and conclusive judgement and subsequently the reasons for proceedings conducted against the refugee be past, upon the motion of the convicted person filed within eight days following the delivery of the judgement the court of the first instant will cancel such a judgement and will conduct the trial in the scope as stipulated in Clause 1. The convicted person shall have to be informed about his right to propose the cancellation of the final and conclusive judgement. The court proceeds adequately should the international contract by which the Czech Republic is bound stipulate. In the new proceedings the judgement cannot be changed to the charged person's disadvantage. Just this fact providing for potential renewal of criminal proceedings originally conducted against the refugee is one of the most serious facts which causes that this institute is less used. It is necessary to weigh in the future whether for some crimes the possibility to re-negotiate the case (proceedings), originally conducted against the refugee, should be reduced or fully excluded.

As regards sentencing it is evident that with regard to the type and importance of crimes unconditional sentences of imprisonment are often imposed. However, imposing other sentences is not excluded so that provisions of Sections 23 and 31 of the Rules of Criminal Procedure are adhere to. Upon weighing of the particular degree of social danger, persons of perpetrators, consequence, duration of illegal act, attitude of the charged person to the criminal activity and criminal proceedings also release on suspended sentence or other types of sentences not connected with imprisonment can be imposed. Community service or various fines are with respect to high profits made by the perpetrators rarely imposed. A suitable sentence to be imposed on foreigners is banishment both for a fixed period of time (from 1 to 10 years) or for an indefinite period of time. The possibility to impose such a sentence on charged persons - foreigners should make investigative, prosecuting and adjudicating bodies find already at the beginning i.e. at the stage of first interrogation for the case that the next proceeding is conducted in absence of charged persons, if legal terms and conditions for imposing such sentence are fulfilled or not. In particular cases it concerns the fact whether the person is a Czech national or a person with the status of refugee. Furthermore, it is necessary to find whether the perpetrator has been given asylum, whether he has a permit for long-term stay in the Czech Republic, what is his work and social background or whether potential banishment would be in discrepancy with the

interest of integrating families. The last serious reason for non-imposing such a sentence is the threat that the perpetrator will be in the country to which he should be deported pursued because of the race, nationality, membership in a certain social group, political or religious opinion or should the banishment cause torture and other inhuman and cruel treatment or punishment.

The sentence of forfeiture of property is not imposed often because rarely certain property is an accompanying phenomenon. However, more frequently may occur blockage of motor vehicles or real property as items which are used in committing crimes. The largest portion is represented by funds deposited in accounts of charged persons, or securities and precious metal.

In the pre-trial proceedings the police co-operate with specialised departments such as the Organized Crime Investigation Unit of the Service of the Criminal Police and Investigation (“the UOOZ”). A Department for Trafficking in Human Beings represented by 6 UOOZ agencies in the whole Czech Republic has been established. There is an Illegal Migration (Sub) Department along with the above-mentioned Department. The detection and investigation is also the responsibility of Alien and Border Police Service should the immigrant be seized in illegal crossing of a state border.

As for specialisation of judges or prosecutors in the field of criminal proceedings it is necessary to say that no particular persons are usually determined for this type of criminal activity. In most cases these matters are handled within usual work schedule as ordinary delinquency. Exceptions are situations when the charged persons (not injured persons) are foreigners. Subsequently the case/matter is handled by the judge or an indictment is submitted by the prosecutor who deals with crimes committed by foreigners in general. In order to provide for comprehensive information it is necessary to mention that cases may be “allocated” to the specialised senate provided any of several charged persons meets the above-mentioned criterion.

It is evident from the above-mentioned text that in the field of prosecution of serious crimes there are problematic aspects which often make evidence and just punishment of perpetrators difficult. The largest problem is usually international legal assistance, in particular with regard to a long period for which it is necessary to co-operate, which significantly affects custody proceedings in the Czech Republic. Another problem is also providing for good and expert interpreters and translators or conduct and impacts of criminal proceedings against the charged person who has escaped.

2.2 Method of research

This part of the report was, in particular, prepared on the strength of relevant judicial files study and draws from the wide experience of the judge JUDr. Petr Vaněček, who elaborated this part of the report.

The IOM Prague gathered sample, consists of 20 the most relevant judicial files, which primarily concern the crime of trafficking in human beings for the purpose of sexual exploitation pursuant to the previous Section 246 of the Criminal Law and the crime of procuring and soliciting prostitution pursuant to Section 204 of the Criminal Law. For the purpose of gathering the above mentioned sample, IOM Prague appealed to selected district courts and all superior region courts.

Besides the above-mentioned study of relevant judicial files, “controlled“ interviews, in accordance with the project specification with three policemen of the Organized Crime Investigation Unit of the Service of the Criminal Police and Investigation (“the UOOZ”) which specialises in the detection and investigation of organised crimes including the trafficking in human beings and organised prostitution and furthermore five prosecutors and two judges, was another important source of this part of the report.

Furthermore, the relevant, below mentioned, legal literature was used.

Sources:

Šámal, Púry, Rizman – Criminal Law, comments, C.H.Beck, 5th issue, 2003

Šámal, Král, Baxa, Púry – Rules of Criminal Procedure, comments, C.H.Beck, 4th issue, 2002

Statistical Attachment Reaction of the Criminal Justice System to Trafficking in Women in the Czech Republic, Institute for Criminology and Prevention, Prague

Questionnaire prepared by the IOM for judges, prosecutors and police experts

Prepared by:

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3. THE ROLE OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN CRIMINAL PROCEEDINGS AND FORMS OF ITS SUPPORT AND PROTECTION IN THE CZECH REPUBLIC

3.1. Applicable national legislation

3.1.1 Attitude to the protection of victims from the perspective of the Rules of Criminal Procedure

In this chapter we will discuss the possibilities provided by criminal proceedings to the victims of trafficking in human beings for promoting their own private interests against the wrong-doers who committed human trafficking crimes. The possibilities mentioned above are generally governed by the Criminal Procedure Code (Act No. 141/1961 Coll. as amended - hereinafter "the Rules of Criminal Procedure "). Here we will discuss in more detail the possibility of participation for the victims of trafficking in human beings in criminal proceedings in the role of the injured since this possibility is explicitly included in one of the basic institutes of support and protection for victims of trafficking in human beings¹³ existing in the Czech Republic, which is discussed in more detail in Chapter 3.2.

Within the Czech legislative framework two separate concepts are differentiated – „the injured“ and „victim“. The concept of „the injured“ is a Rules of Criminal Procedure concept and as such is defined in Section 43, Clause 1 of the Rules of Criminal Procedure¹⁴. The concept of „the injured“ is a more general concept than that of victim, which is used in a special Act regulating the provision of monetary assistance to the victims of criminal acts (Act No. 209/1997 Coll. as amended). A victim, according to Section 2, Clauses 1 and 2 of this Act (No. 209/1997 Coll.), is understood to only be a natural person who has suffered bodily harm as a consequence of a crime committed, or a descendant of a person who died as a consequence of a crime committed if the person provided maintenance or was obliged to provide maintenance to such descendant.

On the contrary, the general concept of „the injured“ is a concept of the Rules of Criminal Procedure and is superior to the special concept of „victim“ according to Act No. 209/1997 Coll.

As a consequence of that we will use the general concept, "the injured", to designate the victims of trafficking in human beings within criminal proceedings in this part of the Report. Only in cases where the topic discussed is associated exclusively with the victims of trafficking in human beings will we use the concept "victim of trafficking in human beings".

¹³ The so-called. „Model of support and protection of victims of trafficking in human beings for the purpose of providing sexual exploitation in the Czech Republic“, now transformed into a more general "Programme of support and protection of victims of trafficking in human beings in the Czech Republic".

¹⁴ The injured is understood, according to Section 43, Clause 1, to mean: „The person who has suffered bodily injury, property damage, moral damage or other damage (the injured) has the right to propose additional evidence, inspect the files (see Section 65 of the Rules of Criminal Procedure), participate in the trial and public hearing to decide upon appeals and to present his/her case prior to the end of proceedings.“

The rights of the injured within criminal proceedings

Generally, it is possible to state that the purpose of criminal proceedings is not only to justly punish the person who has committed a crime but also, in a broader sense of the word, to achieve a certain satisfaction¹⁵ on behalf of the injured (in our case the victim of human trafficking crimes), who has suffered bodily injury or other damage as a result of a crime committed. Criminal proceedings have, therefore, besides a certain mental satisfaction awarded to the injured person, significance regarding the issue of the injured person's (namely, a victim of trafficking in human beings) claim to compensation for the damage incurred by the crime.¹⁶

The Czech Rules of Criminal Procedure (Act No. 141/1961 Coll. as amended) only awards rights to act to a state institution in the position of public prosecutor - today, the prosecuting attorney. From the perspective of his/her position in the criminal proceedings (according to Section 12 Clause 6 of the Rules of Criminal Procedure) the injured, as with the prosecuting attorney, is in the position of a party. With respect to the fact that the claims of the injured and those of the prosecuting attorney differ from the perspective of criminal proceedings, the injured is an actual party to the process that is only interested in individual reparations of a various nature.

According to Section 43 Clause 1 of the Rules of Criminal Procedure, the injured is a person who suffered bodily injury, property damage, moral damage or other damage as a result of a crime committed.

As a party to the criminal proceedings, according to the provisions of the Rules of Criminal Procedure, the injured has the right¹⁷:

- a) To file a motion for additional evidence from as early on as during the course of evidence proceedings in the pre-trial and also during the trial or during the public hearing of appeals (see Section 215 Clause 4, Section 235 Clause 2 and Section 263 Clauses 5 and 7 of the Rules of Criminal Procedure)
- b) To inspect the files (with the exception of the voting protocol) and to make notes and comments, make photocopies of the files and parts of them at his/her own expense (see Section 65 of the Rules of Criminal Procedure)
- c) To participate in the trial of which the injured must be notified of the trial ensuring a minimum three-day period for preparations is maintained (see Section 198 Clause 1 and 2 of the Rules of Criminal Procedure)¹⁸. The injured must also receive the indictment (see Section 196 Clause 1 of the Rules of Criminal Procedure). During the course of the trial the injured may, with the consent of the sole judge or of the President of the Senate¹⁹, ask

¹⁵ The scope of such reparations includes both the mental satisfaction resulting from a feeling of the just punishment of the person who committed the crime and a material satisfaction resulting from the perpetrator's obligation to compensate for damage incurred as a direct consequence of the particular crime committed to the injured as awarded by the Court.

¹⁶ Císařová, Fenyk, Kloučková, Mandák, Matula, Půry, Repík, Růžek – Procedural Criminal Law, Linde Prague, Inc., 3rd edition, 2004 – page 191

¹⁷ Šámal, Král, Baxa, Půry - Rules of Criminal Procedure, comments, C.H.Beck, 4th edition, 2002 - page 237

¹⁸ In the text of the notification of trial adjudicated by the court that is delivered, the injured must be notified of the fact that if s/he does not appear before court in trial his/her claim for compensation for damages will be decided upon based on his/her proposal if such proposals are already contained in the files or if they are delivered to the court before evidence proceedings have commenced.

¹⁹ Sole judge in the case of trials held at district courts, the President of the Senate of the Court in the case of trials held at regional courts.

individuals under examination questions (see Section 215 Clause 4 of the Rules of Criminal Procedure).

- d) To participate in the public hearing of appeals and therefore be notified of it ensuring a minimum three-day period for preparation is maintained (see Section 233 Clause 1 and 3 of the Rules of Criminal Procedure). As a participant of the public hearing of appeals the injured has similar rights as in the trial (see item c).
- e) To express his/her opinion prior to the end of the proceedings, during the trial the right to present the final speech (see Section 216 Clause 2 of the Rules of Criminal Procedure) and during the public hearing of appeals the right to express his/her opinion of the matter prior to the end of the public hearing (Section 238 and 235 Clause 3 of the Rules of Criminal Procedure).

With the exception of the aforementioned rights, the injured has, according to Section 50 Clause 1 of the Rules of Criminal Procedure, the right to be represented by a representative.

Based on the amendment to the Rules of Criminal Procedure by Act No.292/1993 Coll. and Act No. 265/2001 Coll. the injured, or his/her representative, has the right to appeal against a resolution to postpone the issue, appeal against the resolution of the prosecuting attorney to transfer the case to another authority (according to Section 171 Clause 1 of the Rules of Criminal Procedure), and appeal against the prosecuting attorney's resolution to stop criminal prosecution (according to Section 172 Clause 1 and 2 with respect to actions of the investigative, prosecuting and adjudicating bodies during the pre-trial.²⁰ In the stage when the case is heard before court the injured no longer has the right to appeal against the transfer of the case to another authority and appeal concerning the termination of prosecution.

Last but not least, the injured has the right to ask the prosecuting attorney, at any time during the pre-trial proceedings, to dispense with any delays in the proceedings or faults in the procedures of the Police, and, analogically, to ask for delays in the proceedings or faults in the procedures of the prosecuting attorney to be dispensed with²¹.

The investigative, prosecuting and adjudicating bodies are then obliged to notify the injured of his/her rights and give him/her a full opportunity to exercise those rights (see Section 46 of the Rules of Criminal Procedure). This obligation of the investigative, prosecuting and adjudicating bodies relates, generally, to each injured person even when the injured does not have the right to compensation for damages. In the pre-trial proceedings this obligation is performed by a police representative or the prosecuting attorney, in the trial itself by either the sole judge or the President of the Senate.

The injured person's claim for compensation for damage

Generally, the occurrence of damage as such, and consequently the existence of an injured person, i.e. a natural or artificial legal person that has suffered damage resulting from the actions of another, does not imply that the actions that directly resulted in the aforementioned damage

²⁰ Šámal, Král, Baxa, Púry - Rules of Criminal Procedure, comments, C.H.Beck, 4th edition, 2002 - page 238

²¹ In this case the application is processed and the steps of the prosecuting attorney are inspected by the prosecuting attorney of the immediately higher prosecuting attorney's office.

are such actions that are directed against the interest of the state as protected by a special law - Act No. 140/1961 Coll. as amended – hereinafter the Criminal Law).

This means that the occurrence of damage and, as a consequence, the existence of an injured person, does not assert the fact that a crime has been committed.

On the contrary, the occurrence of damage as a direct consequence of a crime committed is a specific case of attack against a private interest within the framework of private relations between natural and artificial legal persons that are, within the Czech legal order, protected by legal regulations other than the Criminal Code. These are, generally, the civil law regulations out of which, in particular, the Civil Code and other Acts that relate, as *lex species*, to the Civil Code as a general legal regulation of civil relationships - particularly and primarily the Commercial Code and the Labour Code.²²

It ensues from this fact that the injured may, within criminal proceedings, only lodge a claim for compensation for damage that is generally allowed to be lodged and awarded within civil proceedings. All types of damage other than proprietary that can be lodged within civil proceedings, however, that may not be lodged within criminal proceedings, form an exception.²³

The part of criminal proceedings in which the injured person's claim for compensation for damage is heard is called the "collateral proceedings". Collateral proceedings are a part of the criminal proceedings (see Section 12 Clause 10 of the Rules of Criminal Procedure) and become one with it particularly as concerns evidence proceedings. Collateral proceedings do not form any independent part that would be formally or temporally divided from the criminal proceedings. In collateral proceedings, the court makes a decision regarding the recovery of damages according to substantive law of other than a criminal nature (the Civil Code, the Commercial Code, the Labour Code), however, in the form of criminal proceedings - that means exclusively according to the Rules of Criminal Procedure (not according to the Civil Procedure Code or its analogies).

A necessary prerequisite for the possibility of claiming compensation for damage by an injured person - its admission by the court to the hearing in collateral proceedings - is the causal link (nexus) of the claimed damage with the crime that is being heard. That means that the claimed damage must have occurred as a direct, not a mediated, consequence of the crime that is being

²² According to the authorized interpretation in the annotated edition of the Rules of Criminal Procedure, pages 239 and 240 (Šámal, Král, Baxa, Púry - Rules of Criminal Procedure, comments, C.H.Beck, 4th edition, 2002), this applies to the lodging of a motion for compensation for damage within criminal proceedings: it is possible to claim for damage resulting from the heard crime as a wrongful act in the sense of the relevant substantive legal regulation (e.g. the Civil Code, the Commercial Code, the Labour Code).

²³ Šámal, Král, Baxa, Púry - Rules of Criminal Procedure, C.H.Beck, 4th edition, 2002 – pages 1477 and 1478. Within criminal proceedings it is impossible to claim the following types of other than proprietary damage: according to Sections 13 and 19b Clause 2 of the Civil Code, according to Section 53 of the Commercial Code, according to Section 7 Clauses 4 and 5 of the Labour Code, according to Section 40, Clause 1, Letter e) of Act No. 121/2000 Coll. (the Copyright Act), according to Section 75 Clause 1 of Act No. 527/1990 Coll. on inventions and innovative improvement proposals, or according to Section 15 Clause 3 of Act No. 137/1995 Coll. on trade marks. It is neither possible to claim compensation of other than proprietary damage according to Section 23 of Act No. 101/2000 Coll. on protection of personal information, within criminal proceedings. Apart from other than proprietary damage it is not possible to decide upon the delivery of unjust enrichment (Section 451, and following, of the Civil Code) within criminal proceedings even though it resulted from a crime directly.

heard as that of a wrongful act in the sense of the relevant substantive legal regulation²⁴. The evidence proceedings must then surely prove that there is an objective causal link between the crime committed by the wrongdoer (the defendant) and the damage claimed as its consequence.

In the case of crimes there must be, together with the condition of the causal link between the damage claimed and the crime committed, the condition of fault.²⁵

The person who feels injured by a crime morally or otherwise, in which the damage has not been caused by the wrongdoer's fault or the occurrence of the damage is not connected by a causal link with the crime (see Section 43 Clause 2 of the Rules of Criminal Procedure), is not considered an injured person. If such a person claims compensation for damage within criminal proceedings (the occurrence of the damage is not in causal link with the act that is stated in the statement of claim and for which the defendant is prosecuted), the court decides by resolution according to Section 206 Clause 3 that the person will not be admitted to the proceedings as the injured.²⁶

For this reason it is a prerequisite for a court deciding upon compensation for damage within criminal proceedings that the injured joins the criminal proceedings with his/her particular claims in the form of a statement, a part of which is a qualified motion to assert their right to damages. Within criminal proceedings, damage may only be asserted against an individual.

According to Section 43 Clause 1 of the Rules of Criminal Procedure, damage is understood to mean:

- 1) Damage to property – damage that represents a decrease or reduction in the injured person's property value and can be expressed in terms of money
- 2) Damage to health – damage that is understood to mean a loss of earnings, pain and diminishing social position as well as the payment of costs associated with medical treatment or, in the event of death, with a funeral
- 3) Other damage – for example damage to reputation, good name with consequences for the activities of a company
- 4) Moral damage – damage that might occur in association with the commission of crimes that act against public order (this possibility concerns, in particular, Sections 153 to Section 177 of the Criminal Law - and this category includes the crime of human smuggling, Section 171a), offences against social cohesion (in particular Sections 196 to 209 – including the crime of procuring and soliciting prostitution, Section 204) or crimes against freedom and human dignity (in particular Sections 241 to 245 and, at the same time, Section 232a – trafficking in human beings - of the Criminal Code).²⁷

²⁴ As has already been mentioned above and in the previous note - e.g. the Civil Code, the Labour Code, the Commercial Code.

²⁵ However, since the causal link is an objective relation and, as such, independent of the subjective consciousness and volition of the perpetrator (the defendant), or generally, of the offender, it is necessary to distinguish between the causal link as mentioned above and the fault.

²⁶ Šámal, Král, Baxa, Půry - Rules of Criminal Procedure, comments, C.H.Beck, 4th edition, 2002 - page 236

²⁷ Čísařová, Fenyk, Kloučková, Mandák, Matula, Půry, Repík, Růžek – Procedural Criminal Law, Linde Prague, Inc., 3rd edition, 2004 – page 192

According to Section 43 Clause 3 of the Rules of Criminal Procedure, the injured may seek compensation for damages and propose that the court impose a compensation order upon the defendant following a judgement of conviction. As has been stated above, the declaration of taking part in the criminal proceedings must be made at court by the injured during the trial, at the latest prior to the commencement of evidence proceedings - Section 43 Clause 3 (the sole judge or the President of the Senate asks the injured after the indictment has been read whether the injured suggests that the obligation is imposed upon the defendant to compensate him/her for damages resulting from the crime and to what extent - see Section 206 Clause 2 of the Rules of Criminal Procedure). The injured has, besides generally stipulated rights according to the provisions of Section 43 Clause 1 of the Rules of Criminal Procedure, the right to assert his/her claims directly during criminal proceedings, that means, the she/he has the right to be a participant of the part of the criminal proceedings in which the court decides upon the claims of the injured, as mentioned above, for compensation for damages.²⁸

A condition for the court to be able to decide upon the case of compensation for damages is a qualified character of the claim, that means the formulation and calculation of the requested damages to ensure that they meet the obligatory criteria of the Rules of Criminal Procedure.²⁹ This means that the injured must be able to formulate his/her claim for damages and support it with evidence to ensure that it is possible to decide upon damages within the trial of the criminal proceedings without the decision requiring special evidence that is not associated with the evidence used to assert the existence of the crime.

This means that the claimed damages must have been caused by the crime (i.e. must possess a causal link with the act that is stated in the statement of claim as recited by the prosecuting attorney), for which the defendant is prosecuted.³⁰ At the same time, the damage must be generally property damage that can be accurately specified in monetary terms. To assert the scope of the damages being claimed it is sufficient to present such data that reveals the value of the claim even without a more detailed specification of the damages (e.g. value of the pain compensation in points, together with presentation of the relevant document).³¹

To evaluate the claimed damages the injured person may submit to the court an expert opinion or professional statement.

²⁸ The part of the criminal proceedings during which the court assesses the injured person's claims to damages and decides upon them, is called the collateral proceedings.

²⁹ The primary purpose of the criminal proceedings is the explanation of a crime and just punishment of the perpetrator with respect to the fact that the imposed punishment has a maximum effect towards re-habilitation and re-socialisation of the proven and convicted perpetrator. With respect to the maximalisation of the re-habilitation and re-socialisation effect of the punishment it is necessary that the punishment is imposed within the shortest time possible after the crime has been committed. Therefore the court, while deciding upon damages, takes into consideration the time requirements of the evidence necessary, specifically with respect to the formal fitness of the qualified motion for damages as submitted by the injured. If the motion for damages does not meet the formal requirements stipulated by the Czech Rules of Criminal Procedure (that respect the necessity for a rapid development of the collateral proceedings which is a part of the criminal proceedings) – without the qualification, the criminal court advises the injured to make the claim for damages via civil law proceedings (to civil courts).

³⁰ Šámal, Král, Baxa, Púry - Rules of Criminal Procedure, comments, C.H.Beck, 4th edition, 2002

³¹ RIII/1967 - Šámal, Král, Baxa, Púry - Rules of Criminal Procedure, comments, C.H.Beck, 4th edition, 2002 – page 246

If the injured lodges a claim for damages within the criminal proceedings, with respect to the aforementioned prerequisites for such a claim³² as stipulated by the Rules of Criminal Procedure, the prosecuting attorney or the judge may secure the property of the perpetrator (the defendant) that could be used to pay for the compensation as claimed by the injured. The prosecuting attorney or the judge will secure the property of the perpetrator (the defendant) if there is justified concern that the perpetrator (the defendant) will obstruct or hamper the satisfaction of the injured person's claim for damages caused by the crime (see Section 47 Section 1 of the Rules of Criminal Procedure).

Generally, the court, upon a motion from the prosecuting attorney or the injured person, decides upon securing the perpetrator's (the defendant's) property. During the pre-trial, the same may be done by the prosecuting attorney following a motion from the injured. During the pre-trial the aforementioned claim of the injured may be secured by the prosecuting attorney even without a motion from the injured in the event that the protection of the rights of the injured require such a step, particularly if there is a danger of delay (see Section 47 Clause 2). The injured has the right to state individual parts of personal as well as real property of the perpetrator (the defendant) that should be secured by the court or by the prosecuting attorney in the motion for securing the perpetrator's (the defendant's) property.

If all the aforementioned prerequisites for the court to decide upon the injured person's claim for damages within criminal proceedings (the motion must be filed in time, the damages must have been incurred through a causal link with the heard crime, the damage must be of such a nature that allows assertion within civil law proceedings, the motion must include a specification of the damage³³ and during the course of the collateral proceedings the injured person's claim for damages to the stipulated value must have been asserted³⁴) are fulfilled, the criminal court must, within the judgment, also decide upon the imposition of the obligation to compensate the injured for the damages to the convicted perpetrator³⁵ in the sense of Section 228 of the Rules of Criminal Procedure.

³² Because it is impossible to secure a claim that cannot be claimed within criminal proceedings. At the same time, items that cannot be effected via the enforcement of a judgement (see Section 47 Clause 5 of the Rules of Criminal Procedure) within civil law regulations may not be used to secure the claim of the injured.

³³The motion does not have to include the entire damages, in particular if the injured does not know the precise value of the damage in the time period during which s/he has to lodge the claim for damages however at least the minimum amount required by the injured must be stated. The injured can specify the damage later during the course of the trial before the court (see RII/1962 - Šámal, Král, Baxa, Púry - Rules of Criminal Procedure, comments, C.H.Beck, 4th edition, 2002 – page 246)

³⁴ Whether by evidentiary accounting documents or by an evaluation of damage in the form of an expert opinion or professional statement.

³⁵ R34/1963: „If the injured duly claimed damages in the collateral proceedings the court is obliged, if all conditions are fulfilled, to decide upon the obligation of the convicted to compensate for damages incurred together with the judgement of conviction and not to refer the injured to civil proceedings.“ (Šámal, Král, Baxa, Púry - Rules of Criminal Procedure, comments, C.H.Beck, 4th edition, 2002 – page 246)

If all the aforementioned prerequisites for the acceptance of the injured person's motion for damages by the court within criminal proceedings have not been satisfied, the court may, in the judgement of conviction, refer the injured person with his/her claim for damages to civil proceedings, or to proceedings before another competent body according to Section 229 of the Rules of Criminal Procedure only in the event:

- 1) According to the results of evidence proceedings, that there is no evidence to declare regarding the obligation to compensate for damages or further evidence that exceeds the requirements of criminal proceedings and would extend the duration of the proceedings that would be necessary to decide upon damages. Then the court refers the injured to civil proceedings (Section 229 Clause 1 of the Rules of Criminal Procedure)
- 2) That there is an outstanding claim if the claim has been awarded, for any reason, only partially (Section 229 Clause 2 of the Rules of Criminal Procedure)
- 3) That the court acquits the defendant of the indictment. Section 229 Clause 3 of the Rules of Criminal Procedure)

If the injured has reservations concerning the court's decision upon the injured person's claim for damages as stated in the relevant part of the judgement, according to the Rules of Criminal Procedure, the injured has the right to appeal this part of the judgement to the court of next instance (see Section 246 Clause 1 of the Rules of Criminal Procedure).

3.1.2 Court practice so far

The court practice so far (up to the end of 2004) has shown it to be common for the persons affected by the crime of human trafficking for the purpose of sexual exploitation (Section 246 of the Criminal Law – effective from 1961 to October 22, 2004) to appear before court only in the role of witnesses. This role of the human trafficking victims and the possible procedural mistakes of the investigative, prosecuting and adjudicating bodies is discussed in more detail in the second part of this report³⁶. We will therefore discuss the criminal proceedings practices so far with respect to the fact that human trafficking victims can act as a party in criminal proceedings (as the injured).

With respect to the fact that the participation of the injured as a party to the criminal proceedings and assertion of the party's claim for damages usually presents higher demands on the injured person's legal awareness, it is suitable, for the success of the defence of the injured person's rights, to employ the possibility of them being represented by an attorney who has the professional prerequisites to efficiently represent the injured within criminal proceedings. In the case of a larger number of injured persons representation by an attorney is required by the provisions of the (see Section 44 Clause 2 of the Rules of Criminal Procedure).

The Rules of Criminal Procedure also caters for the situation that the injured does not have sufficient financial resources to pay the costs of having an attorney. In such a case, if the injured lodges a petition for an attorney to be allocated and proves that she/he does not have sufficient financial resources, the court assigns, in accordance with Section 51a Clause 1 and 3 of the Rules of Criminal Procedure, a lawyer as the injured person's attorney. In such a case the costs of representation of the injured are borne by the state.

³⁶ Part of this Report No 2.1. Current state of the awareness of the prosecution for trafficking cases.

Based upon the study of court files that we have made during investigations on this project we have to state that the victims of the crime of trafficking in human beings for the purposes of sexual exploitation (previous Section 246 of the Criminal Law), as well as the victims of the crime of procuring and soliciting prostitution³⁷ (Section 204 of the Criminal Law), false imprisonment and confinement (Sections 231 and 232 of the Criminal Law) or blackmail (Section 235 of the Criminal Law) have not used the possibility to appear before court as a party to the proceedings, as the injured. On their part, then, the right to defend one's own private interests within criminal proceedings to the extent arranged for by the Czech Rules of Criminal Procedure was not used and nor was the right to claim possible damages within criminal proceedings. Neither have we found the use of the institute of the injured person's attorney, even in cases in which defendants profiting on prostitution of persons under the age of 15 (Section 204 Clause 4) were prosecuted.

In our opinion, this fact reflects the insufficient legal awareness of the injured³⁸, who are informed of the possibility to take part in the criminal proceedings and of the possibility to claim damages within the criminal proceedings by the sole judge or the President of the Senate during the trial prior to the evidence proceedings. The injured, however, do not have an idea of what such a step involves. At the same time, if the damage suffered is not damage to property in a narrow sense³⁹, they do not have a clear idea of what type of damages that may be claimed within criminal proceedings could have occurred in direct association with the crime against them, or how they could be calculated.

Particularly in cases of persons injured by crimes of human trafficking, (Section 232a of the Criminal Law), procuring and soliciting prostitution (Section 204 of the Criminal Law) or human smuggling (Section 171a of the Criminal Law), proving qualified damage is potentially very complicated with respect to the fact that, in many cases, the damage incurred (particularly in the form of defrauded financial resources or money collected as profit of the perpetrator)⁴⁰ can only be proved with the testimony of the injured witnesses. It is difficult to obtain an objective scale from which to evaluate the damage. To make the damage incurred by the aforementioned crimes more objective, with respect to the increasing awareness of it as well as the growing body of information concerning the usual practices in the commission of such crimes within specialised bodies of the Police (namely the Organized Crime Investigation Unit of the Service of the Criminal Police and Investigation - "the UOOZ"), however, it would be generally possible to make use of expert opinions given by these specialised police, or to institutionalise them as forensic experts.

³⁷ Including those who could be assessed as the victims of trafficking in human beings today, according to the effective wording of the Criminal Code (Section 232a effective from October 22, 2004).

³⁸ What we mean is the fact that the general layperson's legal awareness is insufficient without the assistance of a person who is legally professionally capable (a qualified attorney) for the purposes of efficient assertion of the claim for damages, particularly in cases when the injured has not suffered an explicit damage to personal or real property.

³⁹ A type of explicit abridgement on personal property (in monetary value or as objects), or on real property.

⁴⁰ With respect to the intention of profiting from human trafficking, prostitution or human smuggling, this may not involve unjust enrichment (Section 451, and following, of the Civil Code) that cannot be claimed within criminal proceedings (viz. Šámal, Král, Baxa, Púry - Rules of Criminal Procedure, comments, C.H.Beck, 4th edition, 2002 – pages 1477 and 1478)

For this reason, the use of the institute of legally and professionally capable attorneys of the injured person or persons (victims of human trafficking) appears necessary to allow them to participate in the criminal proceedings as a party asserting a claim for damages.

In this regard, there are significant gaps in the current practice of criminal sanctions for acts fulfilling the facts of the crime of trafficking in human beings. However, the existing institutes for providing protection and social support to the victims of human trafficking in the Czech Republic⁴¹ offer a platform for a potentially possible application of professional legal assistance with respect to an assessment of each individual case to efficiently assert justified claims of the victims of trafficking in human beings through criminal proceedings.

3.2 Institutes applicable for the purposes of protection and support of the victims of trafficking in human beings

From the point of view of providing safety and support for the persons injured by crimes committed, the participation of whom in the criminal proceedings is necessary to solve and sanction crimes, there are two platforms in the Czech Republic at present that are applicable to the victims of trafficking in human beings according to Section 232a of the Criminal Code:

- 1) Act No.137/2001 Coll. on the specific protection of witnesses and other persons in association with criminal proceedings. This is a general legal regulation relating to the provision of various-level protection to witnesses, legal representatives of witnesses, forensic experts and interpreters in case they are endangered in association with their participation in criminal proceedings.
- 2) The “Model of support and protection of victims of trafficking in human beings in the Czech Republic”. This is a specific, institutionalised, platform for co-operation between selected central administration bodies, inter-governmental and non-governmental organisations. The purpose is to provide the victims of human trade social support, ensure protection of their human rights and dignity, to extract them from high-risk environments and also to motivate the victims of trafficking in human beings to co-operate with the investigative, prosecuting and adjudicating bodies, to give testimony that will facilitate the discovery, prosecution, conviction and punishment of the perpetrators of crimes associated with trafficking in human beings.

In both cases it is necessary for the inclusion of the victims of trafficking in human beings into a regime of protection and support as per Act No. 137/2001 Coll. or in the “Model of support and protection of victims of trafficking in human beings in the Czech Republic” that the victim assists in achieving the purpose of the criminal proceedings, that means actively and efficiently co-operates with the investigative, prosecuting and adjudicating bodies.

3.2.1 Act no. 137/2001 Sb. on special protection of witnesses and other persons in association with criminal proceedings

Victims of the crime of trafficking in human beings, and associated crimes, who decide to testify during criminal proceedings can decide to use the institute of secret witness according to Section 55 Clause2 of the Rules of Criminal Procedure, if there is danger associated with their participation in the criminal proceedings in the role of witness. In the event of such danger being

⁴¹ Those discussed in Chapter 3.1.2.

especially significant (primarily in association with the investigation of organised crime) the Police bodies proceed with the protection of secret witnesses according to the special Act No. 137/2001 Coll. on special protection of witnesses and other persons in association with criminal proceedings.

The basic institutes of protection according to this Act include the personal protection of the endangered person - witness, relocation of the protected person and assistance for the protected person to find a social position in the new environment. Also the suppression of the real identity of the protected person.⁴²

This special protection and assistance may be provided to an endangered person if the person agrees with the manner and conditions of the provision of special protection and assistance, including the use of the person's personal data, and if the Minister of Interior has approved the proposal by the Czech Police, judge or prosecuting attorney to provide the special protection and assistance to the endangered person.⁴³

For cases in which a temporary deterioration in health condition does not allow the endangered person to give permission with the conditions for the provision of the special protection this Act allows the Czech Police to provide temporary protection for such an endangered person without the person's consent.⁴⁴

3.2.2 Model of support and protection of victims of trafficking in human beings

The “Model of protection and support of victims of trafficking in human beings represents a legislatively unsettled institute of care for the victims of trafficking in human beings in the Czech Republic. The institutionalised and methodically managed co-operation⁴⁵ of the selected central administration bodies, the inter-governmental organisation International Organisation for Migration - IOM and selected non-governmental organisations for the purposes of protecting and providing social support to victims of trafficking in human beings in the Czech Republic was established in 2003, based on the resolution of the Government of the Czech Republic No. 849/2003, dated September 3, 2003.

Until the end of 2004 the implementation of the “Model” and the ensuing co-operation between the Ministry of Interior of the Czech Republic, the inter-governmental organisation IOM and selected non-governmental organisations – La Strada Czech Republic and Archdiocese Charity Prague. Initially this institute of support and protection only concerned the trafficked women and girls for the purpose of sexual exploitation. In late 2004 and early 2005, in association with the implementation of the broader definition of trafficking in human beings according to the so-called Palermo Protocol into the Czech Criminal Law in the form of Section 232a, preparations began for the Model to be applied to victims of other types of trafficking in human beings (forced labour, slavery, etc) rather than only providing prostitution services. At the time the Model had already proved its workability.

⁴² Section 3 Clause 1 of Act No. 137/2001 Coll.

⁴³ Section 4 Clause1 of Act No. 137/2001 Coll.

⁴⁴ Section 4 Clause3 of Act No. 137/2001 Coll.

⁴⁵ With the objective of achieving maximum efficiency in the work of the players concerned in the field of assisting the victims of trafficking in human beings

In this context an intense co-operation bloomed between the Ministry of Interior and IOM Prague, in late 2004 and early 2005, to map the existing state of the aforementioned forms of human trafficking in the Czech Republic, schemes for the identification of the victims of these forms of trafficking in human beings and tracing them. At the same time, the possibilities to use the victims of other forms of trafficking in human beings for the purposes of prosecuting the perpetrators of crimes of trafficking in human beings according the aforementioned Section 232a and associated crimes, have been mapped and analysed. In particular the mapping and analysis concerned the possibilities of using the victims of trafficking in human beings (in the form of forced labour, slavery, forced marriages and trade with human organs) as witnesses and injured parties in criminal proceedings.

At present the transformation of the Model for the protection of victims of human trafficking for the purposes of sexual exploitation in the Czech Republic is going on, changing the Model into a broader, more stabilised and long-term Program of support and protection for victims of trafficking in human beings in the Czech Republic⁴⁶, which is applied to the new conditions. For this purpose the Ministry of Interior's instruction to form a national co-ordination mechanism in the area of support and protection for victims of trafficking in human beings, and also the methodological instruction of the First Deputy Minister of Interior of the Czech Republic concerning the work of the programme of support and protection of the victims of trafficking in human beings in the Czech Republic and its institutional backing.

The aforementioned Ministry of Interior's instruction establishes an inter-disciplinary working group to co-ordinate the support and protection of victims of trafficking in human beings in the Czech Republic. The Ministry of Interior instruction appoints the members of the working group - the department heads of the Ministry of Interior and directors of the specialised Police forces whose departments and forces have a close connection with the issues of mapping, analysis and investigation of cases of trafficking in human beings, and the director of the Alien and Border Police Service of the Czech Republic. The aforementioned instruction also appoints representatives of other selected central administration bodies (Ministry of Foreign Affairs, Ministry of Labour and Social Affairs, Ministry of Health Care and Ministry of Education), the director of the IOM mission in Prague and representatives of non-governmental organisations participating in the Program of support and protection of victims of trafficking in human beings (La Strada Czech Republic, Archdiocese Charity Prague and Enjoyment Without Risk) as members of the said working group. **The national co-ordinator of the Program of support and protection of the victims of trafficking in human beings is the First Deputy Minister of Interior of the Czech Republic.**

Funding for the Programme of support and protection for the victims of human trafficking is provided from the state budget of the Czech Republic from the chapter General Cash Management.

⁴⁶ This concerns both women and men who have become the victims of any of the forms of trafficking in human beings as defined in the so-called Palermo Protocol or Section 232a of the Czech Criminal Law.

Victims of trafficking are, according to Art. 2 of the Methodological instruction of the First Deputy Minister of Interior of the Czech Republic, considered to be:

- 1) Foreigners who declare, with reasonable cause, that they have become victims of trafficking in human beings in the Czech Republic or have been transported into the country for the purpose
- 2) Czech nationals who declare, with reasonable cause, that they have become victims of trafficking in human beings either domestically or abroad

The inclusion of such defined victims of trafficking in human beings into the Programme of protection and support of victims of trafficking in human beings has a condition of the victim being proactive and interested in being included in the programme⁴⁷, agreeing to stay in an asylum apartment and severing contacts with the criminal environment. Their inclusion in the Programme is decided upon by the national co-ordinator upon request from the Czech Police or the relevant non-governmental organisation (La Strada Czech Republic, Archdiocese Charity Prague or Enjoyment Without Risk)

When including the victims of trafficking in human beings into the programme of support and protection of victims of trafficking in human beings all participating institutes pay increased attention to the protection of, and increased care when dealing with, the victims' personal data.

“The programme of support and protection of victims of trafficking in human beings” offers the victims:

- 1) Immediate liberation from the criminal environment,
- 2) Legalisation of stay in the Czech Republic in the case of the victims - foreigners, assistance with voluntary return to the Czech Republic in the case of victims who are Czech nationals and have become the victims of trafficking in human beings abroad,
- 3) Asylum accommodation,
- 4) Monthly crisis intervention,
- 5) Financial aid,
- 6) Accompanying social work,
- 7) Psycho-social advice,
- 8) Mental therapy services,
- 9) Legal advice,
- 10) Interpreting,
- 11) In the case of victims - foreigners, assistance with voluntary return to their country of origin and mediating subsequent social assistance in the country of origin,
- 12) Health care,
- 13) Re-training courses,
- 14) Long-term social integration,
- 15) The possibility of inclusion into the programme of special protection of witnesses according to Act No. 137/2001 Coll.,
- 16) And for victims - foreigners, the possibility to obtain permanent residency in the Czech Republic for humanitarian reasons.

⁴⁷ Which is confirmed by filling in the initial declaration.

Crisis social intervention is provided to the victim of trafficking in human beings within the Programme for the duration of 30 days by the organisations La Strada Czech Republic and Archdiocese Charity Prague. This period may be extended in substantiated cases. During this time, the victim of trafficking in human beings has an opportunity to decide whether s/he is going to voluntarily co-operate with the investigating, prosecuting and adjudicating bodies. In the event that the victim of trafficking in human beings decides to voluntarily co-operate with the investigating, prosecuting and adjudicating bodies all the possibilities for services and benefits provided within the Programme of support and protection of victims of trafficking in human beings (items 5 - 16) are open to her/him. In the opposite event the victim - foreigner is offered a dignified return to their country of origin with assistance from IOM Prague.

In association with the provision of subsequent social care, offer of re-training and access to the labour market for the victims of trafficking in human beings who have decided to co-operate with the investigating, prosecuting and adjudicating bodies and have become the beneficiaries of the Programme of support and protection of victims of trafficking in human beings, the legislative formulation of assistance for such victims, their inclusion in a legal standard regulating the issues of material need and social exclusion is being prepared by the Ministry of Labour and Social Affairs in accordance with Government Resolution No. 849/2003. At the same time, the mechanisms for including such victims in the labour market are being prepared. Practical performance of the programme of accompanying social services is provided under the supervision of the organisations La Strada Czech Republic and Archdiocese Charity Prague.

The offer of the “Programme of support and protection of victims of trafficking in human beings“ on issues associated with legalising the stay of victims - foreigners in the Czech Republic already counts on the new institutes of long-term stays as they are incorporated in the prepared amendment to the Act on the residence of foreign nationals in the Czech Republic (Foreigners Act)⁴⁸ (Act No. 326/1999 Coll. as amended as amended) and as soon as this Act has been adopted this offer will extend the possibilities available to the Alien and border police service of the Czech Republic in administrative decision-making regarding the forms of legal status of victims - foreigners who are involved in the aforementioned programme. This means, in particular, the possibility to apply the institute of the so-called long-term stay. In such cases the Service of foreign and border police can grant a victim - foreigner (who acts as a witness or injured party in a criminal case and whose participation in the criminal proceedings is necessary) a visa to stay for longer than 90 days for the purpose of sufferance (Section 33 Clause 1 Letter c of draft bill of Act No. 326/1999 Coll. as amended) and subsequently, upon request of the foreigner - victim, grant a visa for long-term residency for the purpose of sufferance (Section 43 of draft bill of Act No. 326/1999 Coll. as amended) with validity of up to 2 years (Section 44 Clause 4 Letter h) of draft bill of Act No. 326/1999 Coll. as amended).

The Ministry of Interior can, then, grant a visa for permanent residency for the period necessary to achieve the purpose of the stay, at least for 6 months⁴⁹ (Section 44 Clause 5 of draft bill of Act No. 326/1999 Coll. as amended) to protect the victim.

⁴⁸ Draft amendment of Act no. 326/1999 Coll. on the residence of foreign nationals in the Czech Republic (Foreigners Act) was approved by the Government on March 9, 2005 and discussed by the Chamber of Deputies of the Parliament on March 22, 2005 in its first reading (Parliament press No. 916).

⁴⁹ The upper limit of validity of the visa for long-term stay for the purpose of protection is not set by the Act and should depend on the individual assessment of each case by the Ministry of Internal Affairs.

The draft of amendment for bill of Act No. 326/1999 Coll. on the residence of foreign nationals in the Czech Republic (Foreigners Act) will incorporate the aforementioned institutes of long-term stay for the purpose of sufferance and long-term stay for the purpose of protection into the Act. The institutes have been included in the amendment on the basis of experience with the “Model of support and protection of victims of trafficking in human beings for the purposes of sexual exploitation in the Czech Republic” at the end of 2003 and during 2004.

The aforementioned institutes of the amended Act No. 326/1999 Coll. will facilitate, through the offer of a clearer perspective of staying in a safe environment in the Czech Republic, stronger motivation for the foreigners - victims of trafficking in human beings to co-operate with the investigating, prosecuting and adjudicating bodies and to participate in criminal proceedings in the role of witness or injured party. At the same time, the victim - foreigner will be motivated to participate in the programmes of social integration and re-training that form a part of the Programme of support and protection of victims of trafficking in human beings.

This concept of the institute of support and protection of victims of trafficking in human beings represents an important element in combating trafficking in human beings in the Czech Republic. Firstly, it is an important step towards making the prosecution of criminals who have committed the crime of trafficking in human beings in the Czech Republic more efficient, because it gives the victims a possibility to stay in safe and dignified conditions in the Czech Republic in order to co-operate with the investigating, prosecuting and adjudicating bodies in the role of a witness and afterwards, to participate in criminal proceedings in the role of the injured. This allows the hearing of the victim - witness before a court of law and the evidence provided by the examination of the victim can become a solid and procedurally incontestable piece of evidence that will contribute in an important manner towards proving the facts of the crime and convicting the criminals during evidence proceedings in trial before a court.

This will significantly reduce the risk of failure or disproportionate length⁵⁰ of the criminal proceedings dealing with the crime of human trafficking based on the fact that the victim - witness cannot be heard during the trial because the person has been returned to their country of origin and the court must, in some cases, rely on procedurally or factually insufficiently performed acts from pre-trial or find such acts null and void for reasons of material procedural mistakes.⁵¹

Besides increasing the possibilities for prosecuting the crimes of trafficking in human beings directly in the Czech Republic, the Programme of protection and support of victims of trafficking in human beings also substantially opens access to the testimony of such victims within the framework of prosecuting international organised crime focused on trafficking in human beings, in particular with regards co-operation and information sharing between the specialised security forces of EU countries.

The implementation of the broader definition of trafficking in human beings into the Criminal Code (Section 232a of the Criminal Law) and the inclusion of the crime of trafficking in human beings defined as such (Section 232a Clauses 3 and 4) amongst the exhaustively listed grave

⁵⁰ In a broader sense this does not benefit the defendants.

⁵¹ See part 2.1. of this Report.

crimes (Section 62 of the Criminal Law), that do not allow extraordinary reduction of punishment below the lower limit of the severity of sentence (Section 40 Clause 5) of the Criminal Law), as well as the successful performance of the “Programme of support and protection of victims of trafficking in human beings declare” that the Czech Republic perceives trafficking in human beings as a grave anti-social phenomenon and at the same time is making an effort to contribute towards combating the danger to the maximum degree possible.

3.3 Awareness of the trafficking victims protection and support (On the strength of evaluation of supervised interviews)

Based upon the responses we have received from specialised police (the Organized Crime Investigation Unit of the Service of the Criminal Police and Investigation - “the UOOZ”), prosecuting attorneys and judges we can state that the specialised police have relatively broad knowledge (the best of the target group of the Research) of the issues relating to the protection of witnesses according to Act no. 137/2001 and of the institutionalised “Model of support and protection of victims of trafficking in human beings in the Czech Republic”. The police come into immediate contact with the human trade victims and are the first to assess their merit on behalf of the investigative, prosecuting and adjudicating bodies as well as to submit proposals to include the victims in the procedure of special protection for witnesses (according to Act No. 137/2001 Coll.) or in the “Model of support and protection of victims of trafficking in human beings in the Czech Republic” or, upon request from the national co-ordinator (First Deputy Minister of Interior of the Czech Republic), to provide a position concerning the request to include the victim of trafficking in human beings in the "Model".

Such awareness most importantly means that they know which institutes for the protection of witnesses and institutes for the support and protection for victims of human trade function within the Czech Republic. As concerns more detailed information such as "How many people were included in the aforementioned institutionalised protection and support programmes?", or "How many people are using the programmes at the moment?", the enquired policemen are not familiar with that which results from the nature of the information flow. The information is unnecessary for them to perform their work duties.⁵²

Prosecuting attorneys and judges only come into contact with the institute for the special protection of witnesses according to Act No. 137/2001 Coll., however, that is only used exceptionally.

With respect to criminal proceedings, the use of the aforementioned mechanisms has a positive impact on the possibility of securing the participation of the victim of trafficking in human beings as the injured-witness before court in trial where the evidence proceedings for the facts of the crime take place. Generally, it applies that the injured person's testimony is crucial for a successful conviction of criminals having committed crimes of human trade. The injured are often the only witnesses who can incriminate the criminals having committed crimes of human

⁵² Inclusion of persons in the programme for the protection of witnesses according to Act No. 137/2001 Coll. or in the institutionalised “Model of support and protection for victims of trafficking in human beings” is decided upon by the Minister of Interior of the Czech Republic, who has delegated the aforementioned decision-making to the First Deputy Minister – national coordinator.

trafficking. The aforementioned institutes give the possibility to secure the participation of such injured persons-witnesses in court during trial.

In the event of securing the participation of the injured person-witness in trial⁵³ the court does not only have to rely upon the recording of the testimony of the injured person-witness, as compiled by the Czech Police during the pre-trial. This eliminates the possibility of the irrelevance of the recording for reasons of procedural mistakes⁵⁴ and, at the same time, the injured-witness can be asked additional questions, both by the prosecuting attorney and the defendant's lawyer and the defendant himself. It is possible to create a confrontation of the allegations of the injured-witness against the allegations of the defendant, regardless of the possibilities described in Chapter 3.1.1. given by the Czech Rules of Criminal Procedure to the injured to defend his/her private interests within criminal proceedings.⁵⁵

3.4 Method of research

This part of the report was, in particular, prepared on the strength of relevant legal literature, internal documents related to Model of support and protection of victims of trafficking in human beings in the Czech Republic.

As another relevant source has been used judicial files study and also supervised interviews according to IOM questionnaire.

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⁵³ Through the aforementioned institutes for the special protection of the witness or the “Model of support and protection for victims of trafficking in human beings that give foreigners the legal possibility to stay in the Czech Republic for the length of time necessary for the criminal proceedings, including such foreigners who have stayed in the Czech Republic illegally before.

⁵⁴ Problems associated with procedural mistakes of the investigative, prosecuting and adjudicating bodies are analysed in more detail in the second part of this Report.

⁵⁵ Regardless of the fact whether the injured is a Czech citizen or a foreigner.

The Methodological instruction of the Deputy Minister of Internal Affairs of the Czech Republic on the functioning of the Programme of support and protection of victims of human trafficking in the Czech Republic and its institutional backing, under preparation

Act No. 326/1999 Coll. on the residence of foreign nationals in the Czech Republic and its prepared amendment (Parliament press No. 916)

Questionnaire prepared by the IOM for judges, prosecutors and police experts

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ANNEX 1 - ABROGATED SECTION 246 OF THE CRIMINAL LAW

The facts of the crime of trafficking in human beings for the purpose of sexual exploitation that formed a part of the wording of the Criminal Law (Act no. 140/1961 Coll. as amended) from 1961 until October 22, 2004.

Section 246 Trafficking in human beings for the purpose of sexual exploitation

- 1) One who entices, hires or transports another person abroad or from abroad with the intention of exploiting the person for sexual intercourse will be punished with imprisonment of from one to five years.
- 2) The wrongdoer will be punished with from three to eight years' imprisonment,
 - a) if s/he commits the act stated in paragraph 1 as a member of an organised group,
 - b) if s/he commits such an act with the intention of obtaining significant gains
 - c) if s/he commits such an act against a person under the age of eighteen, or
 - d) if s/he commits such an act with the intention of exploiting the other person for prostitution.
- 3) The wrongdoer will be punished with from five to twelve years' imprisonment,
 - a) if s/he causes, by the act stated in paragraph 1, serious health injury, death or another particularly grave consequence, or
 - b) if s/he commits such an act with the intention of obtaining large-scale gains.

ANNEX 2 - CURRENT SECTION 232a OF THE CRIMINAL LAW

The facts of the crime of human trafficking according to Section 232a of the Criminal Law, as it is part of the effective wording of the Criminal Law from October 22, 2004.

Section 232a Trafficking in human beings

- 1) One who makes, organises, hires, entices, hides, keeps or delivers another person under the age of eighteen to be exploited for
 - a) sexual intercourse or other forms of sexual harassment or abuse,
 - b) slavery or servitude, or
 - c) forced labour or other forms of exploitation,will be punished with imprisonment of from two to ten years.

- 2) One who makes, organises, hires, entices, hides, keeps or delivers another person with the use of force, threatened force or trick or abuse of the person's mistake, duress or dependence to be exploited for
 - a) sexual intercourse or other forms of sexual harassment or abuse,
 - b) slavery or servitude, or
 - c) forced labour or other forms of exploitation,will be punished identically.

- 3) The wrongdoer will be punished with from five to twelve years' imprisonment,
 - a) if s/he commits the act stated in paragraph 1 or 2 as a member of an organised group,
 - b) if s/he places another person in danger of serious bodily injury or death by such an act,
 - b) if s/he commits such an act with the intention of obtaining significant gains
 - c) if s/he commits such an act against a person under the age of eighteen, or
 - d) if s/he commits such an act with the intention of exploiting the other person for prostitution.

- 4) The wrongdoer will be punished with from eight to fifteen years' imprisonment,
 - a) if s/he causes, by the act stated in paragraph 1 or 2, serious bodily injury, death or another particularly grave consequence, or
 - c) if s/he commits such an act with the intention of obtaining large-scale gains, or
 - d) if s/he commits such an act in association with an organised group operating in other countries.