

AWARENESS-RAISING OF JUDICIAL AUTHORITIES CONCERNING TRAFFICKING IN HUMAN BEINGS

COUNTRY REPORT

HUNGARY

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1. APPLICABLE NATIONAL LEGISLATION ON TRAFFICKING IN HUMAN BEINGS

Hungary has a specific, geo-strategic position, which results a particular vulnerability to different crimes, like *human smuggling and trafficking*. As far as the trafficking in human being is concerned, Hungary is primarily a *transit country*, but is a smaller extent *source* and *destination* country as well.

1.1 Description of relevant national legislation

Human trafficking was for the first time regulated by the Hungarian Criminal Code (HCC) in 1998 among the crimes directed against “personal freedom and human dignity” by the Act. LXXXVII./1998, (entered into force on the 1 of March, 1999). Prior to its codification, trafficking in human beings was penalized according to various sections of the Code, depending on the facts of the case. For instance, if the victim was a minor, the crime could be penalized as the changing of family status, whereas if the victim was of age, the relevant crime could be the violation of personal freedom or procuring.

In 2002 the relevant section of the Criminal Code was modified, according to the definition of the Palermo Protocol.

The Hungarian legislation as well as legal policy paid a great attention and sharpened its focus on trafficking in human beings as a serious human right violation. The issues like ensuring victim’s rights, victim’s protection, assistance and support also contributed to the development of the situation of victim in the criminal proceeding.

The awareness raising campaigns of the IOM, train the trainers courses, edition of leaflets, brochures, posters and manuals, elaboration of a curricula, conducting researches, building good contact with the media, etc. all are important steps in the field of prevention and combat trafficking.

The activity of NGOs in the field of awareness raising, actions to eliminate violence against women, providing victims support services, were contributing to the development processes. Some of the NGOs dealing with victim support and providing high level of services, including the safe housing for endangered victims of trafficking were supported also from state funds. The recently established shelter for trafficked women is also co-financed by the State.

Prevention and combat trafficking in human beings is an important element of the national prevention programs and strategies. The Government of Hungary is making a significant effort to fully comply and undertook all obligations stipulated in various anti trafficking international Agreements/Conventions.

1.1.1 Applicable legislation on trafficking in human beings

On the 1st of April, 2002, several modifications to the Criminal Code entered into force - by the Act No. CXXI/2001, - among others including of the regulation on the trafficking in human beings and pornography. According to the amendment, the former definition of trafficking have *changed and harmonized to the international standards. The definition is following the wording of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.*

According to the new definition, “Any person

- who sells, purchases, conveys or receives another person,
- or exchanges a person for another person,
- also the person, who recruits, transports, houses, hides or appropriates people for such purposes for another party,

is guilty of felony, punishable by imprisonment not to exceed three years.”

The sanctions of crime are appropriate high (up to 3 years), in particular in the qualified cases.¹, where the punishment can be imprisonment from 1 to 5, from 2 to 8, from 5 to 10, and from 5 to 15 years or for life-long. The law sanctions also the person who makes *preparations* for trafficking in human beings, by imprisonment not to exceed two years.

According to the basic elements of the definition of the act of crime *the perpetrator does not need to use force, threat or coercion to commit the crime*, the criteria for the realization of the felony are fulfilled even in the case of having the victim’s consent. The Supreme Court of Hungary has stated in one of its decisions that “trafficking in human beings is a violation against the right to human dignity, personal freedom and self-determination. These basic rights are so fundamental to human existence that they are considered inalienable, and no person can validly waive them, therefore the trafficking of human beings is an illegal act even when the perpetrator has the victim’s consent. The consent of the victim bears no significance when assessing the question of criminality.”

“The protected legal object of the felony trafficking in human beings, is society’s interest in the personal freedom of the human being. Trafficking in human beings is prohibited by the Geneva Convention on the Prohibition of Slavery of September 25, 1926, which was ratified by Hungary and promulgated via Act No. III. of 1933. According to the definition of the Act, slavery is the state or status of a person, who is at the disposal of another person in a fashion characteristic of objects of property. Slave-trade includes all acts, which are committed with the purpose of

¹ The qualified circumstances are the next: *the unlawful use of the human body*, or in criminal conspiracy, in a pattern of *criminal profiteering*, or by force or by threat of force, by deception, by tormenting the injured person, for the purpose of making *illegal pornographic material*, against a person under twelve years of age, to the detriment of a person *under eighteen years of age*, to the detriment of a person kept *in captivity*, to subject the victim to *forced labour*, for the purpose of *fornication or sexual penetration*, against a person who is in the *care, custody, supervision or treatment* of the perpetrator.

casting a human being into slavery, such as the selling a human being into slavery or acquiring or offering a person in exchange for some kind of compensation. The Universal Declaration of Human Rights also proclaims that all human beings are born free, and that all human beings have equal dignity and equal rights. Article 55 Section 1 of the Hungarian Constitution guarantees the right to freedom and personal security as well. Article 175/B of the Criminal Code is in accordance with the above provisions when punishing trafficking in human beings.”²

“In accordance with the rules of international law and the Constitution Article 175/B of the Criminal Code punishes those acts, which simultaneously offend human dignity, personal freedom and self-determination and through which the human beings become objects, items for trade – independent of their will, in spite of their will, or as a result of their incapability or decreased ability to express their will.”³

An act of felony is committed by anyone who sells, procures, conveys or acquires for compensation a human being (for example to cancel a debt), or exchanges one person for another. Furthermore anyone who recruits, transports, houses, hides or appropriates a person for another party for such purposes is identically punishable.

“Among the qualifying circumstances of the felony the law considers certain specific subjects of the crime, as well as the modes and purposes of perpetration as factors enhancing the degree of danger to society and thus aggravating the legal consequences of the crime”⁴

The qualified forms of the crime carry stricter consequences between 1 to 5, 2 to 8, 5 to 10 and 10 to 15 years or life imprisonment according to the following criteria.

(2) The punishment shall be imprisonment between one to five years, if the criminal act is committed

- a) against a person under the age of eighteen,
- b) against a person deprived of personal freedom,
- c) for the purpose of forced labor,
- d) for the purpose of fornication or sexual intercourse,
- e) for the purpose of illegal use of human bodily parts,
- f) as part of a criminal conspiracy or in a business-like manner.

² Dr. Belovics Ervin - Dr. Molnár Gábor - Dr. Sinku Pál: Büntetőjog – Különös Rész [Criminal Law – Special Part], HVG-ORAC, Budapest, 2001. 142. o.

³ Ministerial Commentary to the Criminal Code

⁴ Ministerial Commentary to the Criminal Code (According to Hungarian law danger to society is an element of the criminal act.)

(3) The punishment shall be imprisonment between two to eight years, if the criminal act is committed

a) against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator or

b) for the purpose described in Section 2 Points c)-e)

1. by the use of physical force or threat,
2. by fraud,
3. by tormenting the injured party,

(4) The punishment shall be imprisonment between five to ten years, if the criminal act

a) involves acts against persons described in Section 2 Points a)-b) or Section 3 Point a) either for the purposes listed in Section 2 c)-e), or in a manner described in Section 3 Point b) subsections 1-3, or if the criminal act is committed

b) for the purpose of taking prohibited pornographic pictures.

(5) The punishment shall be imprisonment between ten to fifteen years or life imprisonment, if the criminal act is committed against a person under the age of 12

a) for the purposes of Section 2 Points c)-e),

b) in a manner described in Section 3 Point b) subsections 1-3 or

c) for the purpose of taking prohibited pornographic pictures.

(6) Any person making preparations to engage in trafficking in human beings commits a misdemeanor offense and shall be punishable with imprisonment of up to two years.

Comparing the facts of the crime with the definition of the Palermo Protocol, one observes that according to Hungarian law for the realization of the basic elements of the crime the perpetrator does not need to use physical force, threat, coercion, fraud, misrepresentation, or the abuse of official power. Nonetheless Hungarian law considers perpetration by the use of force, threat and fraud or the torment of the injured as qualified circumstances of perpetration and attaches more severe legal consequences to the acts committed.

Punishment can be as severe as life imprisonment if the crime is committed against a person under the age of 12 for the purposes nominated in the Act (forced labor, fornication or sexual intercourse, illegal use of human bodily parts, illegal pornography) or in a manner prescribed by the Act (force, threat, fraud, torment of the injured party).

It is quite important to note that according to Section 69 of the Act making preparations for trafficking in human beings is also punishable.

Violation of personal freedom, in connection of trafficking

Apart from the provisions on trafficking in human beings *Articles 175 Section 2 and 3 regulate the qualifying circumstances for the felony of “violation of personal freedom”:*

Any person “who acquires another person through trafficking in human beings and maintains the status of deprivation of the victim’s personal freedom, and forces such victim into forced labor, commits a felony offense.” The item of punishment for this felony is imprisonment between two to eight years. The punishment is increased to imprisonment between five to ten if the criminal act is committed via the qualifying circumstances enlisted in Section 3, that is the crime is

committed for a malicious motive or purpose, by feigning official action, by tormenting the aggrieved party, causing a significant injury of interests, against a person under the age of eighteen.

Smuggling of human beings

The criminal offense of “smuggling of human beings” shows some similarity with trafficking in human beings, but the protected legal object of this crime is different. human-smuggling is regulated by Article 218 of the Criminal Code in the chapter containing “Crimes Against the Purity of State Administration, the Administration of Justice and Public Life”.

The felony of *smuggling of human beings* is realized by any person, who acts as an accomplice in the crossing of state borders without legal authorization or in an unauthorized manner. For the realization of the basic elements of the crime the perpetrator does not need to commit the act for pecuniary gain, however this is the typical case and perpetration for pecuniary gain is listed among the qualifying circumstances.

The victims of trafficking have to be transported across the borders of the transit countries and the state of destination, if need be via *smuggling of human beings*. Smuggling meets trafficking, when criminal organizations use their connections with each other and with private persons to smuggle the victims of trafficking across the borders. In these cases smugglers receive their compensation not from the persons smuggled, but from the criminal organization. In such cases the smuggled victims are often kept in so called “places of repose”, in violation of their personal freedom and amidst inhuman conditions. The smuggler receives its compensation for transporting the victim across the border, that is for a single act, while the perpetrator of trafficking in human beings, acquires pecuniary gains through the sale or exploitation of the victim.

The protected legal object of the felony of smuggling of human beings is the security of state-borders, while that of trafficking, is the societal interest attached to personal freedom.

As a general matter, it must be laid down, that in the case of smuggling of humans, there is an element of support for the illegal crossing of state borders and for illegally entering a country. Thus, it always contains a supranational element, and in most cases the person’s relationship with the trafficker ends after she illegally crosses the state border.

The primary purpose of trafficking in human beings is to utilize and exploit the victim, and as opposed to smuggling of humans a longer-term exploitive and coercive relationship come it being. This has nothing to do with how the victim reached the scene of exploitation. If during the course of the trafficking in human beings the crossing of a state border takes place, this may occur by entering the destination country legally or illegally.

Illegal migration may be connected with trafficking in human beings, but in a wider sense this concept is more generally related to the illegal entry and illegal residence of individuals. Consequently, illegal migrants in the broader sense are not necessarily the victims of traffickers of human beings.

The legal facts of trafficking in human beings, found in the XII. Chapter of the Criminal Code, on Crimes Against Person, Title III., Crimes Against Fundamental Rights of Freedom, and Human Dignity.

The statutory provision of the CC on the trafficking in human beings criminalizes those conducts by which human beings—independently from their will, against their will, or by taking advantage of their condition of being completely or partly unable to declare their will—are turned into objects and become part of commercial trade.

The crime, smuggling of humans is situated in Chapter XV on of the CC on “Crimes Against the Purity of State Administration, the Administration of Justice and Public Life” under Title II on ‘Policing Crimes’.

The crime has no object, since the imaginative line that separates the states does not have the characteristics of an object. The conducts defined as smuggling of humans, are criminalized, because they violate or endanger the all-inclusive enforcement of state sovereignty, and not because they violate the border as an imaginative line.

The state border constitutes the territorial sphere of state sovereignty, i.e. it delineates the area in which the state has unlimited and undivided power
According to the current legal provisions, the right to travel abroad, the right to return and the right to a passport are fundamental rights of the citizens of Hungary. This right is subject only to statutory limitations.

Exploitation of prostitution of others

Among activities exploiting and making profit of prostitution the Penal Code enshrines the crime of promotion of prostitution (Article 205), living on the earnings of prostitution (Article 206) and pandering (Article 207). The legislator defines the notion of prostitution among the Interpretative Provisions, in Article 210/A.

The person who makes available a building or another place for prostitution to *another person*, commits the crime of *promotion of prostitution*. (The crime is punishable with imprisonment of up to 3 years.)

The person who maintains, heads a brothel, or makes available financial means to the functioning thereof commits also the crime of promotion of prostitution. (This conduct is punishable with imprisonment of up to 5 years). If a person who has not yet completed his eighteenth year engages in prostitution in the brothel or prostitution is promoted as part of a criminal organization the activity constitutes an aggravated crime and shall be punishable with more serious penalty (with imprisonment from 2 years to 8 years).

The person who lives wholly or in part on the earnings of a person engaging in prostitution, commits a felony, and shall be punishable with imprisonment of up to three years. Banishment may also take place as a supplementary punishment in case of the crime of *living on the earnings of prostitution*. (Article 206).

The Criminal Code of the Republic of Hungary gives regulation for the crime of *pandering* among Crimes Against Sexual Morals as well (Article 207). "The person who solicits another person for sexual intercourse or fornication for somebody else in order to make profit, commits a felony, and shall be punishable with imprisonment of up to three years." If the pandering is committed in a business-like manner the punishment shall be imprisonment from one year to five years.

The penalty is even more serious, imprisonment from 2 years to 8 years, if the pandering is committed

"a) to the injury of a relative of the perpetrator or of a person under his/her education, supervision or care or who has not yet completed his/her eighteenth year of age,
 b) with deceit, violence or direct menace against life or limbs,
 c) as part of a criminal organization."

The legislator declares punishable the conduct of the person who agrees on the perpetration of pandering with imprisonment of up to three years.

CRIMINALSTATISTICS

Crimes	Years				
	1999	2000	2001	2002	2003
Promotion of prostitution (205 §)	99	77	59	51	45
Living on the earning of prostitution (206§)	93	59	80	67	69
Procuring (207 §)	198	94	116	99	97

Source: Unified Police, Prosecution, Judicial statistics (ERÜBS)

(Remark: the number of registered crimes in Hungary was the following: 1999: 505. 716, 2000: 450. 673, 2001:465.694, 2002: 420.782, 2003: 413.343).

The Hungarian legislation is responding to the requirement of the international standards. It must be underlined that in practice, it is very difficult to estimate the number of persons trafficked to, through and from Hungary. Recently, the Office of the National Council of Justice has developed a fundamental and comprehensive information-system. It started functioning – as a pilot project – on January 1, 2005 and will be fully operational by June.

According to the criminal statistics, the number of trafficking cases under prosecution, is not very high. In 1999 there were only 2, in 2000 it was registered 16, in 2001 there were 34 and in 2002 there were registered again 34, in 2003 there were 19 registered cases of trafficking in human beings. (The number of violation of personal freedom in connection with trafficking in human beings (Section 175 (2-3)) was 7 in 1999, 6 in 2000, 20 in 2001, 16 in 2002 and 11 in 2003.).

NUMBER OF REGISTERED CRIMES OF TRAFFICKING IN HUMAN BEINGS
(IN THE PREVIOUS 5 YEARS)

Crimes	Years				
	1999	2000	2001	2002	2003
THB (175/B. §)	2	16	34	34	19
Violation of personal freedom in connection of THB [175. § (2)-(3)]	7	6	20	16	11

The Witness Protection Programme in Hungary is available to victims and witnesses of trafficking in persons. The Programme however is relatively new to the Hungarian criminal procedure and police officers are not yet fully aware of the advantages of the system.

1.1.2 Applicable legislation on criminal cooperation

The Act, No. LIV. of 2002. on the international cooperation of law enforcement agencies, and the Act No. CXXX. of 2003 on criminal cooperation of the member states of the EU, are regulating the application of special measures, means and methods, aiming at the increase of efficiency of prosecution and law enforcement. Beside these, there are special bilateral and multilateral cooperation agreements in criminal matters with different countries, to increase the efficiency and facilitate police cooperation. Based on it, in the practice, there is an improving cooperation with foreign countries, to facilitate better police cooperation in combating organised crime and trafficking in human beings.

The Trafficking Department - within the Directorate Against Organized Crime of the National Bureau of Investigation, National Police Headquarters - was set up on July 1, 2004. As a result of close cooperation with different foreign agencies, in particular the Norwegian, German and Italian partner agencies, the Department there were already arrested several suspected traffickers.

In 2004, there was established the Integrated Management Center, operated by the Border Guards. The Immigration and Naturalization Office, the Finance and Customs Authority, the Labor Authority and the Police participate in the Center. The main objective of the Center (with the participation of relevant law-enforcement authorities) is to enhance law-enforcement efforts against irregular migration and related activities. It will be able however to coordinate counter-trafficking activities as well.

As far as the crime prevention is concerned, it should be mentioned, that the Crime Prevention Committee - under the auspices of the Ministry of Justice - is updating the Crime Prevention National Strategy for the years 2005-2006. In the framework of this strategy, special attention will be given to victims of trafficking in persons and exploitation of prostitution.

The Ministry of Interior is currently elaborating the draft of a law-enforcement action plan against trafficking in persons, which is likely to be finalized in the spring of 2005.

2. PROSECUTION ON TRAFFICKING CASES

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

In Hungary, recently a dynamic development can be experienced, concerning awareness. It was recognised, that specialised knowledge, experience, expertise in this field is necessary, in the interest of more successful prosecution of the trafficking cases. This recognition was followed *on the one hand* by a series of specialised, targeted training for the professionals, exchange visits between different countries for sharing information, knowledge, experience, discussing problems and creating personal contacts which are - among others- helping the cooperation processes in investigation of cases of transnational forms of trafficking.

On the other hand, the establishment of a special unit for trafficking cases at the investigation authorities, where experiences can be collected and given a further impulse for the preventive efforts, the combat of trafficking and successful prosecution of cases, punishment of the offenders.

Thirdly, there was a necessary period during which the investigative authorities and the NGOs were built a good relationship, exchange of views, experiences in the interest of the preventive and victims protective, victim-support efforts. This is also a question but also a result of the greater awareness. The establishment of a shelter for trafficked victims, can be seen as a special sign of awareness, and mutual cooperation too.

Finally, the content of several international documents, international and national efforts in the field of prevention, protection of victims and prosecution of offenders were very helpful, in the improvement of the situation of victims in the criminal procedure, in general, by providing a series of procedural rights and by providing victim/witness protection and support before during and after the trial. It is well-known fact, that by more carefully taking into consideration the victims' rights and interests we can relevantly contribute to the success of the criminal procedure, too. This is especially true in the trafficking cases.

It should be noted however, that the general level of awareness in the society, as a whole, by the activity of IOM, the international organisations, the NGOs is relevantly higher now, as it was some years ago. It seems to be, that in the consequence of a series of efforts in international as well as in national fields in the last few years, there is a more emphasised political will, that not only the OC in general, but the trafficking in human beings as a special kind of OC, as a violation of human rights, should be combated more intensively and more effectively.

2.1.1 Facts and figures

Given both its geographical situations, at the external border of the European Union and its general economic conditions being relatively better in relation to other central and eastern European countries, Hungary functions as a country of origin, of transit, and of final destination for trafficking victims. Hungarian women and girls are trafficked to destinations in Western Europe, including France, Germany and Italy, as mentioned by police representatives in the interview. Some are promised summer jobs as waitresses, but are then usually transported with

false documents and then forced into prostitution. Its position along one of the most heavily used access trafficking routes into Europe, makes it an important transit country. Routes from Ukraine and Romania towards Western Europe. It must be highlighted that as Hungary considered as one of the main transit country and at this stage, the crime of trafficking in human beings is difficult to identify and investigate as usually the exploitation phase has not yet begun. That is the characteristic of a destination country. Women and girls are trafficked for sexual exploitation mostly from Romania, Ukraine, Moldova, to and through Hungary to Austria, Germany, Spain, the Netherlands, Italy, France, Switzerland...

TRAFFICKING IN PERSONS
(175/B)

Number of defendants in criminal cases of enforceable judgement by Hungarian criminal courts 2004			
No. Of defendants	No. Of convicted	No. Of acquitted defendants	No. Of dismissed
41	38	3	0

Source: ERÜBS

TRAFFICKING IN PERSONS

Statistics of the National Police Department 2004 No. of criminal offenses revealed 22

INJURED PARTIES (victims)	INVESTIGATION DATA
<u>Gender</u>	<u>Closed investigations</u>
male 1	refusal of accusation 2
female 21	termination of investigation 8
<u>Age</u>	indictment 21
juvenile 2	other 2
young matures 13	<u>Reasons for termination of inv.</u>
25-59 years old 7	no criminal offense 2
<u>Occupation</u>	criminal offense could not be established 6
private - commercial skilled worker 2	<u>Reasons for indictment</u>
private - commercial semi-skilled worker 1	bill of indictment 19
temporary worker 1	prosecution 1
unemployed 17	indictment of accused in absentia 1
wrong code 1	<u>Offenders</u>
<u>Nationality</u>	known offenders 23
Hungarian 22	<u>Nationality</u>
	Hungarian 23

Source: ERÜBS

It can be seen, that in the year 2004, the investigation data shows, that in 8 cases the investigation was terminated, partly because it was not a criminal offence (2cases) or the criminal offence could not be established (6cases) The number of trafficking cases revealed, was 22 committed by 23 known offenders, whose nationality was Hungarian. As far as the victim is concerned, the 22 cases had 22 victims, from which 21 was women and 1 man. It can be seen, that concerning the age of the victims, the young matures are highly represented (13). The high

number of unemployed (17) women among the victims shows the greater vulnerability of people in disadvantaged economic conditions and looking for occupation, earning a living.

Overlooking the criminal statistics from 1999 to 2004 (see the table below), it can be seen, that from 1999 to 2001, it shows an increasing tendency. In 2002 there is stagnation, (same number like in 2001) and a relevant decrease in 2003. The cause of the small number of cases in 1999, can be argued by the new law on trafficking, entering into force in May.

Year	No of Criminal offences revealed
1999	2
2000	16
2001	34
2002	34
2003	19

As far as the number of crimes and offenders are concerned, it can be seen, that in 1999, the 2 cases were committed by 3 offenders, in 2000 the 16 cases were committed by 15 offenders, in 2001 the 34 cases committed by 39 offenders, in 2002 the 34 cases were committed by 19 offenders and in 2003 the 19 cases committed by 22 offenders.

There is only one year, namely the 2002, when the number of offences and offender are relevantly differ from each other.

Year	No of Defendant	No of Convictions
1999	3	3
2000	15	15
2001	39	39
2002	19	19
2003	22	22

2.1.2 Organisational conditions

From the organisational point of view, it must be highlighted that national rapporteur as such does not exist in Hungary. There is a Crime Prevention office within the Ministry of Interior but it is not dedicated primarily for trafficking issue.

On central level, the main responsible body is the The Trafficking Department –established on 1 July 2004 within the Directorate Against Organized Crime of the National Bureau of Investigation, National Police Headquarters. Presently 16 police officers are working on the department (see ref interview Gal) On a county level the respective County Police is responsible. There are 2-3 police officers specialised on trafficking cases in each County police. If the trafficking case overstretching more than on county the central coordinating body is the Trafficking department at the National Police HQ. The exchange of information within the various police units, departments easily managed, as they HAVE to share relevant information.

2.1.3 Conditions for successful prosecution

In order to implement successful investigation, various aspects have to be in place, willingness from VoT to give testimony, collection of relevant evidence mentioned that usually VoT is not willing to give testimony, because of threat from the traffickers, also it has been touched upon that the co-operation between the police –prosecution-judicial system is very weak. Therefore successful enforceable judgment is difficult to achieve, based on the interviews police officers.

The sensibilisation of authorities for the problems of the trafficked victim, the development of special interview techniques and the *gathering of other evidences beside the victims' testimony* should be further developed in the future.

Protection and support of victims, by providing continuous information, legal counselling, risk assessment, assistance and support, as well as *providing accomodation in safe places or shelters*, all are crucial questions from the point of view of successful prosecution, as in this case the victims want and are able to provide evidences without fear from the threat and pressure of the offenders. The NGOs (NANE, White Ring Public Benefit Association Hungary, ESTER Foundation, Escape Association, Baptist Aid are very active and helpful in this field. The *recently opened shelter however will further improve the situation in the future to achieve these goals.*

Cooperation in place amongst other organisations, such as labour authorities, Ministry of Foreign affairs (Dpt. Of Consular Affairs and Judicial Co-operation), Office of Immigration and Nationality of the Ministry of Interior, Border Guards, Customs Office. Also excellent co-operation exists between NGOs and IOs in the field of trafficking.

The further and more intensive cooperation between the Border Guards and the Police has great significance in this field, as frequently the Border Guards meet first with the smuggling cases, from which, some cases can be identified later as the first phase of a trafficking in human being case.

Confiscation of profits of Crime is relevantly a new impetus as it could partly compensate the Criminal procedure cost, what makes it difficult to implement is how to prove that personal property or realty been processed on wealth made out of trafficking business.

2.2 Method of research

This part of the report is based in particular on the existing law, and its interpretations as well as the official criminalstatistics, provided by the Statistical Office of the Ministry of Interior and the data provided by the OIT (National Law Enforcement Council). Furthermore, the report consists the general content of the interviews of professionals, in particular officials of the investigation authorities, policeman, prosecutors, judges, NGO representatives and researchers. Finally, it is based on the empirical research of the National Institute of Criminology, conducted in 2002 as well as the recent legal literature concerning the trafficking issues.

2.2.1 Written Sources

- Trafficking in Persons Report (ANNEX 3)
Source: US State Department, Global Trafficking in Persons Office (GTIP) 2004
- Organised Crime Situation Report, 2004 (ANNEX 4)
Source European Union
- Case studies of Hungarian Trafficked persons (ANNEX 5)

Source: Pedagogical Handbook, developed in the framework of the Hungarian Secondary School Education Programme against Trafficking in Human Beings, implemented by IOM Budapest 2001-2002

2.2.2 Interviews

Based on the findings of the interviews modus operandi regarding trafficking can be summarised as follows. Hungary is considered mainly as a transit country, but also a country of origin and destination. Traffickers use different techniques of manipulation during the recruitment process. For example a stranger may approach a woman at a bar offering to go abroad most commonly tempting advertisements for a job abroad as a dancer, waitress even marriage proposals. Recruitment followed by a movement stage. Traffickers often use common modes of transportation via transit country. Trafficked persons are exposed to danger, violence including rape, but usually the exploitation itself does not take place in the transit country. The destination stage is when a trafficked person is put to work and subjected to a combination of coercion, violence, forced labour or other forms of abuse. It has to be mentioned that internal trafficking does exist in Hungary. Trapping persons from mainly rural areas, little villages from the South part of Hungary for sexual exploitation in the capital city of Budapest and in border areas of high commercial transit.

3. ROLE OF THE VICTIM

3.1 Applicable national legislation on victim protection

Article 95 of the Code on Criminal Procedure provides that the witness shall be provided with protection in the interest of protecting her/his life, bodily integrity or personal liberty, and in the interest of ensuring that the witness fulfils the obligation to give testimony and can do so without fear.

A.) *Confidential processing of data*

Confidential processing of the witness's personal data – except her/his name – by isolating it from the other documents may be ordered at the request of the witness or the attorney acting on her/his behalf, or *ex officio* (CP Art. 96). In exceptional cases, even the witness's name may be processed in a confidential manner. In these cases, only the proceeding court, the public prosecutor and the investigating authority may have access to the witness's confidentially treated data.

According to paragraph 96(2) of the CP, “if the processing of the personal data of the witness has been ordered in a confidential manner, then from that moment on

- a) the proceeding court, public prosecutor and the investigating authority guarantee that the confidentially processed data of the witness shall not be able to be identified from the other data related to the procedure,
- b) the proceeding court, public prosecutor and the investigating authority shall establish the identity of the witness by looking at those documents which are appropriate for such identification,
- c) the termination of confidential processing can only occur with the agreement of the witness.”

”From the moment that the confidential processing of the witness's data is ordered the participants of the criminal procedure may only receive copies of the witness's personal documents which do not contain her/his personal information.”⁵

B.) *Specially protected witness*

The witness may be deemed to be a specially protected witness if

- a.) her/his testimony pertains to a significant circumstance of a particularly serious case;
- b.) the evidence supplied by her/his testimony may not be substituted by something else;
- c.) her/his identity, place of residence as well as the fact that the public prosecutor or the investigating authority wishes to use her/him as a witness is unknown to the defendant and the defence counsel;
- d.) in case her/his identity was disclosed, the life, bodily integrity or personal liberty of the witness or of her/his relatives would be severely threatened.

The investigating judge decides on the designation of an especially protected witness (at the proposal of the prosecutor) *before the submission of the indictment*, and it is this judge who holds a hearing with him.

⁵ CP paragraph 97(3)

After the completion of the investigation the prosecutor notes, in the indictment, that he wishes to use the testimony from an especially protected witness as evidence. He attaches the record prepared at the hearing to the basic documents comprising the indictment, omitting any information that could lead to the identification of the witness.

In this situation the court, at the same time as it receives the charge, communicates and makes it known to the accused and the defence that

- they may view a summary of the record containing the testimony of the especially protected witness,
- they may pose questions to the especially protected witness in writing,
- and that they may request the termination of the protected status.

Further hearings of the witness in response to questions, raised either at this point or at the trial phase is *again* effectuated by the investigating judge. *If, however, either the accused or his defence names, or otherwise definitively identifies the especially protected witness, then the court terminates his especially protected status.* In this case general rules are to be followed with regards to the summoning of the witness, however *a different form of witness protection can be requested* based on a motion or from the office of the president of the panel.

C.) Protection of participants in criminal proceedings

Article 98 of the Code of Criminal Procedure regulates personal protection for participants of criminal proceedings. According to this provision in exceptional cases the presiding judge of the proceeding panel, the public prosecutor or the investigating authority may initiate that the defendant, the defense counsel, the injured party and the representative of other interested parties, as well as the witness, the expert, the expert consultant, the interpreter, the official witness or another person in connection with the aforementioned persons should be provided protection specified by separate law [34/1999. (26 Feb.) Governmental decree].

D.) Protection Program

Article 98/A of the Code of Criminal Procedure contains provisions relating to *persons participating in witness protection programs.*

According to this provision

“The enumerated rights and obligations of those accused, injured parties and witnesses participating in the witness protection program as defined in a special law are not effected by participation in the program; with regards to the individual participating in the program, the provisions of this law must be applying according to the following deviations:

- a) notification and summons of a person participating in the program must be done through the unit responsible for the protection; official documents which are to be handed over to such a person must be handed over through the unit providing protection,
- b) the person participating in the program, during the criminal procedure, gives his or her original personal identification data, while instead of his or her residence he or she gives the address of the unit providing protection,
- c) copies of documents containing personal data of a person participating in the program, or any information relating to such a person, can only be given over to those (including official bodies as well) who have received permission from the unit providing protection,
- d) costs related to the appearance and the participation of a person participating in the program can not counted as costs of the criminal procedure

- e) the witness and the accused can deny giving testimony with regards to information which if known can lead to the identification of the new personal identity, the new permanent address or the place of residence.”

As a separate law, Act No. LXXXV of 2001 contains provisions related to “The Protection Program for those taking part in criminal procedures and assisting the administration of justice”. *According to this Act*, an agreement within the framework of a civil law legal relationship can be concluded *with the injured party participating in the protection program* (if s/he wishes to give testimony related to the key circumstances of a particularly serious crime, the structure of the criminal organization, his relationship to the criminal organization or to crimes planned or commissioned by the criminal organization and if this can significantly assist in the establishment of criminal responsibility and if there is a concern that her/his participation in the process could result in violence against her/his person or a crime resulting in public danger, and furthermore if his protection can not be secured according to the provisions of government decree No. 34/1999). This agreement is concluded between the potentially threatened individual and the police.

An agreement can also be reached with the relatives of the potentially threatened individual and, as an exceptional possibility, with others. Depending on which part of the procedure is being conducted, the investigating body or the prosecutor can initiate the conclusion of the agreement, or during the trial phase the president of the panel. The body responsible for the provision of the protection is a Service created within the police organization.

The aim of the Protection Program is “to provide protection to persons

- who take part in criminal proceedings,
- who actively assist in the administration of justice or to persons
- in direct connection with the former,
- who as a result may find themselves threatened and their personal safety calls for increased protection from the state.

The Program’s further *aim* is to facilitate the fight against crime (in particular, severe criminal acts committed primarily in an organized manner) and the effective enforcement of the interests of law enforcement and the administration of justice through the application of special measures relative to the degree of danger that threatens the person concerned.”

“The Protection Program is a structural form established for the protection of witnesses, injured parties, defendants, and the relatives of these parties, furthermore of other persons threatened with regard to the parties concerned, whose protection is not ensured in the framework of personal protection, and

- a.) it is executed by the police – in the frame of a civil law relationship – according to the agreement concluded with the person threatened, and
- b.) in the course of which special measures are applied (Article 16) and to facilitate the social integration of the person concerned enhanced, mental, social, economic, human and legal support is necessitated (Article 1 Point 1).

The Protection Program may be implemented during or after the criminal procedure. An agreement may be concluded with the witness, victim or defendant who cooperates with the authorities and takes part in a criminal procedure related to a very serious crime, given that the criteria set forth by law are fulfilled. Very serious crimes are particular crimes where the characteristics of organized crime are apparent, or the object of which is related to terrorism, blackmailing, money laundering, drug or weapon trade, prostitution, pedophilia, or crimes against life or bodily integrity committed in connection with the aforementioned acts.

The Service may apply the following special protection measures in the interest of preventing unlawful acts against the person's life, bodily integrity, and personal liberty:

- a) placing (moving) the person concerned to a safe place by changing her/his place of residence or stay, or transferring the detainee involved in the Program to a penitentiary institution different from her/his present place of detention⁶
- b) use of personal protection,
- c) ordering the confidential treatment of her/his data in registries, or requiring notification in case of requests for data registered;⁷
- d) change of name;⁸
- e) change of personal identity;⁹
- f) participation in international cooperation.¹⁰

The law declares when the program is to be terminated (the conditions for the protection are no longer present or the effected person declines the protection or the Service terminates the agreement).

E.) The Use Of Audiovisual Tools

International documents – including the Brussels Declaration¹¹ - as well – emphasize the need, to serve the provision of evidence in some cases, for the hearing of the injured party by making use of audiovisual tools or for the hearing to occur in a way which keeps the injured party and the accused person separated. (The need for this is also, in some respects, noted by the 2001 EU framework decision on the legal position of the injured party in the criminal procedure.)

The above mentioned conditions are already found in Hungarian law. Sections 244/A to D of the Hungarian Code of Criminal Procedure provide for the opportunity, conditions of and guarantee of hearings to take place through the use of closed circuit telecommunications networks. With regards to reasons for ordering a hearing with the use of closed circuit telecommunications the commentary to the law notes: „The reasons belong, primarily, within the scope of witness protection, including here those cases when the age of the witness is the reason for preventing a face to face meeting with the accused, or when the hearing making use of closed circuit telecommunications network occurs with respect to the injured parties of certain acts defined by the law.

The law also makes the use of this institution possible even when witness protection does not legitimize it but the appearance of the witness at the hearing would cause disproportional hardship, for health or other reasons.

⁶ or transferring the custodian participating in the Program from their present penal institution to another penal institution

⁷ At the Service the body handling the data denies the disclosure of the effected person's data within the context of its services, i.e. personal data, address, travel documents etc, registry.

⁸ The effected person can, through Service, request from the Ministry of Interior the changing of his own or his child's family or given name.

⁹ This applies to all the personal data of the effected person. A new document with new identification data, (which can not be identical with the personal data of anyone else) takes the place of the original.

¹⁰ If the protection of the effected person can not be guaranteed within Hungary, there is an opportunity to move abroad.

¹¹ Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 18-20. September, 2002. Police and Judicial Cooperation, point 16. Legislative Recommendations), „National legislation should also provide the possibility for the victim witness to give evidence in a place other than that in which the person being prosecuted is situated through the use of audiovisual methods or other facilities within a court. Specific attention should be given to the particularly vulnerable position of children in judicial proceedings.”

Both with respect to the witness and the accused the opportunity to have the hearing conducted with the use of closed circuit telecommunications network exists if the above individuals participate in the witness protection program defined in a special law – Act LXXXV of 2001 on the Protection Program for those participating in the criminal procedure and those assisting in the administration of justice – or independently of this if their personal protection legitimates it.

The increasing brutality of crime and the growth of organized crime make it a possibility that the person in custody could be attempted to be freed at the hearing itself. For this reason the Act, at paragraph (2) point e), makes the use of the institution possible from the other perspective, namely if the appearance of the witness or the accused who is held in custody at the hearing would be a danger to public security.”

According to Section 244/a (1)

”The president of the counsel, at the request of the prosecutor, the accused, the defence, the lawyer representing the interests of witness, the guardian or legal representative of a minor witness, or on his own authority, can order a hearing to take place through the use of a closed circuit telecommunications network. During the hearing conducted with the use of closed circuit telecommunications network an apparatus which transmits video image and sound simultaneously guarantees that there is a direct link between the location of the hearing and the location of the person being heard.”

According to paragraph (2) of the same Section:

- *The president of the counsel can order a hearing to take place through the use of a closed circuit telecommunications network*
 - a.) for a witness, who has not reached the age of 14,
 - b.) for that witness who suffered an injury as a result of crime within the scope of crimes against life, bodily integrity and health (Criminal Code Chapter XII. Title I) or a crime against marriage, family, youth and sexual morals (Criminal Code Chapter XIV.) or other crimes of aggression against individuals,
 - c.) for that witness whose appearance at the hearing would cause disproportional hardship, for health or other reasons,
 - d.) for that witness or accused who participates in the witness protection program as defined in a special law, or whose protection otherwise legitimates it,
 - e.) for that accused or witness who is in custody whose appearance at the hearing would be danger to public security.

Other provisions of the Act as well as paragraphs 244/B, C and D, contain further rules on the details, location, participants, guarantees etc. regarding hearings taking place through the use of a closed circuit telecommunications network.

F.) Point 4 of 4/1999 of the order of the Minister of the Interior on victim protection declares the following in connection with the protection of privacy:

“When transmitting criminal press announcements and reports, the privacy, human dignity and piety of the victim must not be infringed. The publication of the injured party’s personal data shall be adequately limited. In case of minor injured parties, victims of crimes of sexual nature and in the case of people blackmailed and intimidated in organized criminal cases special attention shall be paid to the protection of privacy and personality rights.”

G.) Article 15 Section (1) Point c) of Act No. XXXIX of 2001 on foreign individuals' entry to and residence in Hungary vests in the Alien Police Authority the opportunity to grant in the absence of conditions set forth by the law – on humanitarian grounds – a residence permit to those foreign citizens who co-operate with the authorities of criminal justice by significantly facilitating the discovery of criminal offenders. The issuing of the residence permit is based on the proposal of the crime prosecution authorities.

In summary it can be concluded that several procedural and administrative law institutions are available for the protection of the injured party (victim), which provide an adequate background and legal basis to serve the interests of the victim directly, and those of the judiciary indirectly, thus allowing for the development of a fair and adequate victim protection practice.

3.2 Method of research

This part of the report is based on the law in force, like the Criminal Procedural Code, the Act on Protection Program, Act on entry and residence, ministerial decree, order and alike.

ANNEX 1 - TRAFFICKING IN PERSONS REPORT, 2004

Source: US. State Department Trafficking in Persons Report 2004 HUNGARY (TIER 2)

Hungary is primarily a transit, and secondarily a source and destination country, for women and children trafficked from Russia, Romania, Ukraine, Moldova, Bulgaria, and the Balkans to Western Europe and the United States for sexual exploitation. Men from Iraq, Pakistan, Bangladesh, and Afghanistan reportedly are also trafficked through Hungary to Europe and the United States for forced labor. The Hungarian Government estimates that as many as 150,000 victims transit Hungary each year.

The Government of Hungary does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. While the government has sharpened its focus on trafficking issues, in practice, victim assistance remains weak. The country lacks a formal process for enforcement officials to identify victims, refer them to NGOs, and ensure they receive adequate services. The government should train border officials to better distinguish trafficking from smuggling, and to interview victims more effectively. Additionally, the Hungarian Government should improve trafficking data collection efforts.

Prosecution

Trafficking is criminalized in Hungary with sufficiently severe penalties. In 2003, Hungarian authorities arrested nine suspected traffickers. The Hungarian Prosecutor's Office prosecuted 22 individuals under the trafficking in persons law; 18 of the 22 were convicted. Of the 18 convicted, authorities sentenced 12 to prison; the others were given suspended sentences. Additionally, the Interior Ministry in 2003 investigated 22 new trafficking cases. Trafficking-related corruption remains a problem. The government established the International Center for Cooperation in Criminal Affairs to better facilitate cooperation with foreign law enforcement agencies. It is also working to revise bilateral cooperative agreements on combating organized crime, coordinating with Europol via a liaison officer and, participating in organizations such as the Southeastern Cooperative Initiative (SECI), the Stability Pact, and the Council of Europe.

Protection

The Government of Hungary provides limited assistance to trafficking victims. Victims who cooperate with police and prosecutors are entitled to assistance such as temporary residency status, short-term relief from deportation, and access to shelter. In practice, services are limited and not generally provided to victims. Border guards often fail to distinguish between trafficking in persons and migrant smuggling. Trafficking victims are often detained, deported, or prosecuted for the violation of other laws, such as those relating to prostitution or illegal immigration. The Victim Protection Office—established by the Ministry of Interior—operates in 46 localities, but assisted only six trafficking victims in 2003. Hungarian consular officials are provided training in counter-trafficking. Repatriated victims have rights to the range of social services available to all Hungarians, but no specialized assistance or support is provided.

Prevention

The government provides modest funding for prevention programs. With the assistance of the IOM, the Education Ministry continued to implement a national prevention program in secondary schools, but no statistics indicate the number of schools that use the anti-trafficking materials. The National Crime Prevention Center established a task force in June 2003 to collect and analyze trafficking data. The Government of Hungary has not yet adopted a national strategy on combating trafficking in persons.

ANNEX 2 - ORGANISED CRIME SITUATION REPORT, 2004

Source: European Union, Organised Crime Situation Report 2004

Drug crime is a major activity of Hungarian OC groups. Marijuana is the most common drug, mainly produced in Hungary while the rest comes from The Netherlands and former Yugoslavian states. In synthetic drugs there are two new trends: the appearance of Kosovo Albanians (formerly active along the 'Balkan route') as coordinators and the growing role of Dutch citizens resident in Hungary and associated with drug producers and distributors in other European countries. Albanian 'procurement groups' mainly purchase heroin from Turkish wholesale traders who use Hungary more and more to establish heroin storage facilities, just as they do in Bulgaria and Romania. Certain Arab groupings also take part in the distribution of heroin in Hungary and there is a growing presence of Bulgarians, Romanians and Nigerians. Other important crime areas are trafficking of illegal immigrants, where detection rates decrease due to the use of better quality forged documents and economic crime. The same applies to trafficking of human beings. As far as counterfeited or illegally transported genuine cigarettes are concerned, these are firstly stored in Hungary, and then transported to illegal storage facilities in Austria and Germany and from there into the UK where they are sold. The cross border activities are mostly aimed at Austria, Germany, Slovakia, Ukraine and Italy. The nationalities involved in OC in Hungary are mainly Hungarian, Bulgarian, Chinese and Serbian and Montenegrin.