



Prevention of trafficking in persons in Central and Eastern Europe  
Prewencja handlu ludzmi w Europie Srodkowej i Wschodniej  
Предотвращение торговли людьми в Центральной и Восточной Европе  
Prevenca obchodu s lidmi ve Stredni a Vychodni Evropě  
Prevenција trgovine ljudima u Centralnoj i Istočnoj Evropi  
Запобігання торгівлі людьми в країнах Центральної та Східної Європи  
Prevenirea traficului de fiinte umane in Europa Centrala si de Vest  
Превенция на трафика на хора в Централна и Източна Европа  
Prevenција od trgovija so lufe vo Centralna i Istocna Europa  
Preventie van mensenhandel in Centraal en Oost Europa

## COMBATING TRAFFICKING BY PROTECTING MIGRANTS' HUMAN RIGHTS

La Strada statement on the occasion of the 2<sup>nd</sup> EU Anti-Trafficking Day, 18 October 2008

La Strada International, a network of nine independent human rights organisations active in the field of counter-trafficking in Europe, welcomes this second EU anti-trafficking day, which will again focus the public's and policy-makers' attention on this severe form of a human rights violation. Last year, the theme of the anti-trafficking day was 'time for action'. This year we think it is time for reflection.

Over the past few years, and after active lobbying by support groups and civil society organisations, there have been advances in the Member States' and the EU approach to trafficking towards a human rights-based approach. However, the movement towards a rights-based approach to the prevention of human trafficking and the protection of the rights of trafficked persons has unfortunately not been mirrored in the area of migration management as a whole. In particular, irregular migration and related undocumented forms of labour are still viewed, and consequently treated, as a crime issue, rather than the result of political, economic and social imbalances and insufficient human rights protection. Indeed, the proclaimed wish to combat trafficking is often used as an argument for increasing restrictive measures against migrants through a rigid visa policy, border control or obstruction of family reunification. However, restrictive policies contradict their proclaimed purpose, as they create situations in which human rights violations are most likely to occur: Both irregular migration and undocumented work create precarious working conditions that allow extreme forms of exploitation to take place, in turn creating the necessary conditions for trafficking.

### Migration - labour - trafficking nexus

The rise of economic inequality and increasing economic insecurity, as well as the consequences of political and armed conflict, have led to an increase in human movement for labour and to an increase in informal and unprotected work. Furthermore, the increasing informalisation of and competition within the global economy has led to more flexible labour markets and the demand for cheap labour, triggering migration and the gradual erosion of labour rights protection worldwide. While the Member States and the European Council and Commission now recognise the need for regulated international migration channels for (highly) skilled labour, they remain reluctant to publicly acknowledge their dependence on low-paid and informal forms of migrant labour.

It is generally accepted that state policies in promoting restrictive immigration controls and reducing opportunities for regular migration have created a market for irregular migration, often as serious organised crime, through human trafficking and smuggling. It has also been widely recorded that restrictive immigration laws and the criminalisation of (undocumented) migration have left a large number of migrants, and specifically migrant workers, vulnerable and open to varying degrees of exploitation and abuse by brokers, in particular traffickers, but also employers operating within the irregular market and private households. This is not only due to the barriers to legal migration channels, but also to a lack of adequate state monitoring of employers' adherence to the labour rights of undocumented migrants within these irregular labour markets.

## **La Strada's concern about recent developments**

La Strada International has identified several areas of concern with regard to recent developments in the EU's migration policy that are likely to impact negatively on the rights of trafficked persons, or even create conditions for persons to become trafficked.

### *Detention and return*

The new EU Returns Directive, approved by the European Parliament in June 2008, allows undocumented migrants to be detained for up to 18 months before deportation and introduces an entry-ban of up to five years for those subject to a return decision or removal order from an EU Member State. La Strada believes that undocumented migrants are not criminals and should therefore not be imprisoned at all, in particular in the light of the fact that victims of abuse and trafficking will be part of this group. La Strada therefore fully agrees with the independent human rights experts of the Special Procedures of the United Nations Human Rights Council in their assessment of the EU returns policy. They voice their concern regarding the possible length of entry bans of up to five years and its "potential impact, especially for vulnerable groups such as victims of human trafficking".<sup>1</sup> As for forced return, in the event of the failure to identify, or a possible late identification of trafficked persons, La Strada believes that any appeal against a decision related to return, including re-entry bans, should in all circumstances have suspensive effect, to avoid the violation of trafficked persons' rights and possible re-trafficking situations.

### *Employers' sanctions*

The criminalisation of undocumented forms of labour has recently been reaffirmed in the European Commission's Directive on sanctions against employers of 'illegally' resident third-country nationals. La Strada is concerned that sanctions to penalise employers for hiring undocumented workers can impact negatively on migrant workers themselves. Raids on workplaces often result in the deportation of undocumented and exploited workers, who might have been trafficked. Workplace controls, which are necessary to ensure the protection of labour rights, should therefore be uncoupled from immigration controls, as the conflation of the two renders the proclaimed objective of protecting migrant workers ineffective. We believe that the protective measures that are included in the proposal for a Directive should be part of a different, rights-based approach that does not start from migration control objectives but that gives priority to the enforcement of labour rights for all workers regardless their status, and addresses specific situations that make certain groups of workers particularly vulnerable. For instance, safe complaint procedures against employers should be instituted that allow for migrant workers to seek compensation and protection without jeopardising their residency. Furthermore, any measures on irregular employment should be monitored for their human rights impact, in particular their impact on trafficked persons.

### *Protecting women migrants*

As La Strada has already pointed out in its recent publication on women's rights and trafficking,<sup>2</sup> the feminisation of poverty and women's precarious position in the labour market continues, due to ongoing violations of women's rights. Both in the countries of origin and destination women are therefore found to be particularly vulnerable to trafficking. La Strada calls on EU Member States and the EU institutions to recognise the vulnerable position of undocumented migrant women, especially those working in the sex industry and other unregulated work sectors, such as domestic and care work.

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<sup>1</sup> United Nations Office at Geneva, Press release (18.7.2008) *United Nations Experts Express Concern About Proposed European Union Return Directive*.

<sup>2</sup> La Strada International, *Violation of women's rights. A cause and a consequence of trafficking in women*, Amsterdam, 2008.

### *Proposal to stop regularisation programmes*

Last but not least, La Strada opposes the recent call by the French EU presidency to end large-scale and collective regularisation programmes for undocumented migrants across Europe. Research has shown that the EU is not only in need of skilled but also low-skilled labour, and that a large number of undocumented migrant workers in Europe are subjected to different forms and levels of exploitation. Low-skilled or low-paid labour is often unregulated and there is a clear need to regulate in order to improve protection standards and prevent the creation of conditions for labour exploitation and consequently human trafficking.

For this reason, the Human Rights Commissioner of the Council of Europe has called on states to recognise the special vulnerability of irregular migrants who are stateless in law or in fact, and to regularise their immigration status.<sup>3</sup> La Strada believes that regularisation programmes are not only a humane and sensible response for these groups, but that regularisation is a precondition for the enforcement of adequate labour protection. Any attempt to end large-scale regularisation at EU level is therefore not only highly undesirable, but conflicts with this Council of Europe recommendation and the EU's obligation to enforce human rights protection on its territory.

### **Preventing trafficking by protecting migrants' human rights**

It is widely recognised that in order to effectively combat and prevent trafficking, a rights-based holistic approach that includes EU policies on development cooperation, human rights, children's rights, (migrant) workers' rights, equality, social affairs and social inclusion, anti-discrimination, migration, trafficking, and asylum should be implemented according to international human rights standards.

Therefore, on the second EU Anti-Trafficking Day, La Strada calls upon Member States, the European Council and the European Commission to:

- Monitor all immigration legislation for its impact on the human rights of (irregular) migrant workers and trafficked persons.
- Increase the opportunities for legal, gainful and non-exploitative labour migration for workers of all skill levels, and strengthen regulatory and supervisory mechanisms to protect the rights of migrant workers.
- Ratify and implement the UN Convention on the Rights of Migrant Workers and their Families, in order to protect the basic human rights of migrants, coupled with the implementation of gender-sensitive national programmes based on these international standards.
- Pay special attention to the vulnerable position of migrant women, and devise specific protective measures in all EU policies concerning migrants and trafficked persons.
- Examine the option of regularisation programmes to ensure human rights protection on its territory as one part of an overall policy strategy dealing with irregular migration.
- Focus more closely on the root causes of trafficking, such as poverty, gender discrimination, inequality and armed conflict, both in the international counter-trafficking debate and in research, action plans and policy measures.

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<sup>3</sup> See Conclusion no 12, CoE Commissioner for Human Rights (17.12.2007), *The Human Rights of Irregular Migrants in Europe*, Strasbourg, CommDH/IssuePaper.