Compilation of the main legal instruments and analytical reports dealing with trafficking in human beings at international, regional and national levels

VOLUME II

National texts
Trafficking in Human Beings

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VOLUME II

National texts

prepared for the Steering Committee for equality between women and men (CDEG) by
Ms G. Testolin
Consultant expert
The Council of Europe

The Council of Europe is a political organisation which was founded on 5 May 1949 by ten European countries in order to promote greater unity between its members. It now numbers 43 European states.¹

The main aims of the Organisation are to promote democracy, human rights and the rule of law, and to develop common responses to political, social, cultural and legal challenges in its member states. Since 1989 it has integrated most of the countries of central and eastern Europe and supported them in their efforts to implement and consolidate their political, legal and administrative reforms.

The Council of Europe has its permanent headquarters in Strasbourg (France). By Statute, it has two constituent organs: the Committee of Ministers, composed of the Ministers of Foreign Affairs of the 43 member states, and the Parliamentary Assembly, comprising delegations from the 43 national parliaments. The Congress of Local and Regional Authorities of Europe represents the entities of local and regional self-government within the member states.

The European Court of Human Rights is the judicial body competent to adjudicate complaints brought against a state by individuals, associations or other contracting states on grounds of violation of the European Convention on Human Rights.

The Council of Europe and equality between women and men

The consideration of equality between women and men, seen as a fundamental human right, is the responsibility of the Steering Committee for Equality between Women and Men (CDEG). The experts who form the Committee (one from each member State) are entrusted with the task of stimulating action at the national level, as well as within the Council of Europe, to achieve effective equality between women and men. To this end, the CDEG carries out analyses, studies and evaluations, defines strategies and political measures, and, where necessary, frames the appropriate legal instruments.

For further information on activities concerning equality between women and men, contact:

Division Equality between Women and Men
Directorate General of Human Rights
Council of Europe
67075 STRASBOURG CEDEX
Tel: +33 3 88 41 23 39
Fax: +33 3 88 41 27 05

¹ Albania, Andorra, Armenia, Azerbaijan, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom.
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Sweden  Penal Code, Chapter 6 (Sex Crimes), Sections 1 to 13.
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Ukraine  Law to amend the Criminal Code against trafficking in women, 24 March 1998, particularly Article 124.

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Article 113

Prostitution

Prostitution is sentenced by a fine or up to three years’ imprisonment.

Article 114

Indulging prostitution

Soliciting prostitution, mediating or gaining from it is sentenced by a fine or up to five years’ imprisonment.

When the same act is committed against a girl who is a minor, or by force, the sentence is five to ten years’ imprisonment.

Article 115

Use of premises for prostitution

Managing, utilising, financing, letting premises for the purposes of prostitution is sentenced by a fine or up to ten years’ imprisonment.
Trafficking in Women

Armenian law contains no specific provisions on trafficking in women. Most instances of trafficking violate the articles of the Criminal and Administrative Codes.

1.1.1 Administrative Code

Article 179 – *prostitution* prescribes a fine in the amount of 50 to 100% of the minimal salary for a prostitute if detained for the first time, or a fine in the amount of 100 to 200% of the minimal salary if the prostitute is detained for the second (or subsequent) time.

Article 119 – people who are reported to have or who actually do have obvious symptoms of *sexually transmitted diseases* have to undergo appropriate medical treatment. Those who refuse to do so face administrative fines, or up to six months’ forced labour. The law also demands that persons with a sexually transmitted disease (STD) disclose the names of their partners and their contact information. In the 1990’s, neither the police nor the STD treatment facilities enforced this policy though. There are only three testing centres for HIV/AIDS, all located in Yerevan, but a lack of experience in using the required laboratory equipment means that, in practice, HIV/AIDS testing is not available to the public at large.

Criminal Code

Article 226 – *prohibition of maintenance of brothels and pandering* punishes such activities with up to five years imprisonment. According to the Draft Criminal Code, maintaining dens of prostitution or pandering will be punished by a fine in the amount of 300-500 times the minimum salary, or with the restriction of freedom for a term of up to two years, or with detention for a term of three to six months, or with imprisonment for a term of up to five years.

Article 287 of the Draft Criminal Code provides the crime of “*Involvement in Prostitution*”: Forcing someone into prostitution, i.e. by violence or use of violence, abuse of dependent position, by blackmail, by threat to destroy or damage property, or dissemination of defamatory information about a person or his close relatives, or by deception. The crime is punished with a fine in the amount of 200-400 times the minimal salary, or with restriction of freedom for a term of up to two years, or with detention for a term of three to six months, or with imprisonment for a term of up to two years. The same actions committed by an organised group are punished with a fine in the amount of 300-500 times the minimal salary, or with restriction of freedom for a term of up to three years, or with imprisonment for a term of three to six years.

* A new Criminal Code is being drafted and is expected to be adopted within the next year. The new Code of Criminal Procedure was adopted in January 1999.
Prostitution

The legal competence for prostitution lies with the provinces. The matter is therefore governed in nine different provincial laws.

The *Viennese Act on Prostitution*, for example, defines prostitution as the acquiescence of sexual acts on the own body or the performance of sexual acts for profit. Prostitution must not be solicited or performed by minors or persons for whom there are objections by curatorship authorities. Persons who wish to engage in prostitution must be registered as such.

Trafficking in women

In Austria, trafficking in women is covered under the term “trafficking in human beings” (§ 217 Criminal Code):

> “Whoever brings a person to perform illicit prostitution, even if such person already commits prostitution, in another country than the one whose citizenship such person has or where such persons has his/her habitual place of residence, or procures such person for such purposes, shall be sentenced to imprisonment of six months to five years, and, if the crime is committed for profit, to imprisonment of one to ten years.

> Whoever induces by deception a person to commit prostitution in another country than the one whose citizenship such a person has or where such person has his/her habitual place of residence or coerces such person by violence or dangerous threat to move to another country or conveys such person to another country by violence or by exploitation of such person’s error shall be sentenced to imprisonment of one to ten years.”

In March 1997, “exploitative trafficking” was established in law as an act constituting a criminal offence. Anyone who “deceives persons about their opportunities as aliens of obtaining residence and legal gainful employment in a country and thus induces them to enter a country illegally and to pay or to undertake to pay for assistance in obtaining illegal entry”, can now be punished with imprisonment of up to 3 years.

As this provision was not very useful in the fight against trafficking in human beings it was replaced by a new article in the Austrians Aliens law which entered into force on the 1st of July 2000 and which shall protect trafficked, smuggled and other unlawful resident aliens from exploitation. Art. 105 (new, “exploitation of aliens“) states that people who exploit these aliens can be sentenced by court up to two years of imprisonment.

In combination with the provisions against human trafficking existing under criminal law, this provision is intended to enable effective action against criminal organisations and gangs which induce women, mostly under false pretences, to entrust themselves to these organisations and gangs.
The consistent battle against sexual exploitation of women has been given special attention in the past few years, particularly because of outside factors that result from Austria’s geographical situation and its function as a transit and target country for trafficking in women.

If a prostitute has no legal status in Austria (no residence permit) the authorities can grant her a residence permit for humanitarian reasons if she is a victim of trafficking in women. Such residence permits may be granted to trafficked individuals (art; 217 of the Criminal Code) who are prepared to testify in court as witnesses and thus assure the prosecution of the perpetrator(s) or who intend to raise civil law claims against the perpetrator(s), for the period required for such court proceedings.

In 1997 the Ministry of the Interior und the Ministry of Social Affairs and Generations established also an Intervention Centre for Victims of Trafficking in Women in Vienna that provides support to the women, especially to obtain a residence permit for humanitarian reasons. The Centre also provides emergency accommodation for the victims if law enforcement authorities apply lenient measures instead of pre-deportation detention.
BELGIUM

LAWS, DECREES, ORDERS AND REGULATIONS

13 April 1995

Law containing provisions to combat trafficking in human beings and child pornography

ALBERT II, King of Belgium,
To all, present and to come, Greetings.
The Chambers have adopted, and we have approved, the following:

CHAPTER I - Trafficking in human beings

An article, 77bis, worded as follows, is hereby inserted in the Law of 15 December 1980 on admittance to the territory and the residence, establishment and deportation of aliens:

"Art. 77bis

§1. Whoever shall, by whatever means, directly or through an intermediary, assist an alien in entering or residing in the Kingdom and, in so doing, shall:
1. subject the alien, directly or indirectly, to fraudulent practices, violence, threats or any form of coercion;
2. or take advantage of the particularly vulnerable position in which the alien is placed as a result of illegal or insecure administrative status, pregnancy, illness, infirmity or a physical or mental disability;
shall be punished by 1 to 5 years' imprisonment and a fine of 500-25,000 Francs.

§2. The offence referred to in §1 shall be punished by severe imprisonment and a fine of 500-25,000 Francs if it constitutes a habitual activity.

§3. The offence referred to in §2 shall be punished by 10 to 15 years' penal servitude and a fine of 1000-100,000 Francs if it constitutes an act of complicity in the principal or consequential activity of an association, whether or not the offender is a leader of such association.

Chamber of Representatives.
Report n° 1381-12 of 1 April 1995 by Ms T'Serclaes.
Senate.
§4. In addition, persons found guilty of the offences referred to in §2 and §3 shall be sentenced to loss of the rights specified in Article 31(1), (3), (4) and (5) of the Criminal Code.

§5. The special confiscation provided for in Article 42(1) of the Criminal Code may be applied, even where ownership of the objects in question does not lie with the convicted person."

Art. 2. Article 379 of the Criminal Code is hereby replaced by the following provision:

"Art. 379. Whoever shall have violated public decency by provoking, favouring or inciting sexual immorality, corruption or the prostitution of a minor of either sex, in order to gratify the passions of another, shall be punished by severe imprisonment and a fine of 500-25,000 Francs.

Such persons shall be sentenced to 10 to 15 years' penal servitude if the minor is aged under 16 years.

The sentence shall be 15 to 20 years' penal servitude and a fine of 1000-100,000 Francs if the minor is aged under 10 years.

Art. 3. Article 380bis of the same Code is hereby replaced by the following provision:

"Art. 380bis §1. A punishment of 1 to 5 years' imprisonment and a fine of 500-25,000 Francs shall be imposed on:

1. anyone who, to gratify the passions of another, shall have recruited, enticed, corrupted or held an adult for the purposes of sexual immorality or prostitution, even with the consent of that person (...);

2. anyone who shall have kept an establishment for sexual immorality or prostitution;

3. anyone who shall have sold, hired or made available rooms or any other premises for the purpose of prostitution with the aim of an unlawful profit;

4. anyone who shall have, by whatever means, exploited the sexual immorality or prostitution of another.

§2. An attempt to commit the offences referred to in §1 shall be punished by 6 months' to 3 years' imprisonment and a fine of 100-5000 Francs.

§3. Sentences of 10 to 15 years' penal servitude and a fine of 500-50,000 Francs shall be imposed for the offences referred to in §1, insofar as their perpetrator:

1. makes direct or indirect use of fraudulent practices, violence, threats or any form of coercion;

2. or takes advantage of the particularly vulnerable position in which an individual is placed as a result of illegal or insecure administrative status, pregnancy, illness, infirmity or physical or mental disability.
§4. A sentence of 10 to 15 years' penal servitude and a fine of 1000-100,000 Francs shall be imposed on:

1. anyone who, to gratify the passions of another, shall have recruited, enticed, corrupted or held, either directly or through an intermediary, a minor aged under 16 years, even with his or her consent, for the purpose of sexual immorality or prostitution;

2. anyone who, either directly or through an intermediary, shall have kept an establishment for sexual immorality or prostitution in which minors are involved in prostitution or sexual immorality;

3. anyone who shall have sold, rented or made available rooms or any other premises to a minor, directly or through an intermediary, for the purpose of sexual immorality or prostitution, with the aim of making undue profit;

4. anyone who, in whatever manner, shall have exploited the sexual immorality or prostitution of a minor aged under 16.

§5. The offences referred to in §4 shall be punished by 15 to 20 years' penal servitude and a fine of 1000-100,000 Francs if they are committed in respect of a minor aged under 10 years.

Art. 4. An article 381bis is hereby inserted in the same Code and worded as follows:

"Art. 381bis. The offences referred to in articles 379 and 380bis, §§3 and 4, shall be punished by 15 to 20 years' penal servitude and a fine of 1000-100,000 Francs if they constitute acts of complicity in the principal or consequential activity of an association, whether or not the offender is a leader of such association."

Art. 5. The following amendments are hereby made to Article 382 of the same Code:

1. in paragraph 1, the reference to articles 380, 380ter and 381 are deleted;

2. the following text is added to paragraph 2:

"Whatever the status of the user, landlord, tenant or manager, the court may order the closure of the establishment in which the offences were committed for a period of 1 month to 3 years from the date that the inter partes or in absentia judgment becomes irrevocable. Any violation of the judgment's provision or the decision ordering the closure of the establishment shall be punished by 6 months’ to 3 years' imprisonment, a fine of 1000-5000 Francs or both."

Art. 6. An article 382bis, worded as follows, is hereby inserted in the same Code:

"Art. 382bis. The special confiscation referred to in Article 42(1) may be enforced even if ownership of the objects in question does not lie with the convicted person."
CHAPTER II - Child pornography

Art. 7. An article 383bis, worded as follows, is hereby inserted in the same Code:

"Art. 383bis.

§ 1. Without prejudice to the implementation of articles 379 and 380bis, anyone who shall have exhibited, sold, rented, distributed or handed over symbols, objects, films, photographs, slides or other pictorial representations of pornographic sexual positions or acts involving or presenting minors aged under 16 years or who, for the purpose of trade or distribution, has fabricated, kept, imported or had imported such items, or handed them over to a transport or distribution agent, shall be punished by severe imprisonment and a fine of 500-10,000 Francs.

§ 2. Anyone who shall have knowingly been in possession of the symbols, objects, films, photos, slides or other pictorial representation referred to in §1, shall be punished by 1 month to 1 year's imprisonment and a fine of 100-1000 Francs.

§ 3. The offence referred to in §1 shall be punished by 10 to 15 years' penal servitude and a fine of 500-50,000 Francs if it constitutes an act of complicity in the principal or consequential activity of an association, whether or not the offender is a leader of such association.

§ 4. The special confiscation provided for in Article 42(1) may be enforced with regard to the offences referred to in §§ 1 and 2, even when ownership of the objects in question does not lie with the condemned person.

§ 5. Article 382 shall apply to the offences referred to in §§ 1 and 3."

CHAPTER III - Extra-territoriality

Art. 8. Article 10ter, worded as follows, is hereby inserted in the Introductory Part of the Code of Criminal Procedure:

"Art. 10ter. A Belgian, or alien found in Belgium, who shall have committed, outside the Kingdom's territory, one of the offences listed in Articles 372, 373, 375, 376 and 377 of the Criminal Code, where the act was committed in respect of a minor aged under 16, in Articles 379, 380bis, 381bis and 383bis, §1 and §3, of the same Code, in Article 77bis, §2 and §3, of the law of 15 December 1980, on admittance to the territory and the residence, establishment and deportation of aliens, and in Articles 10, 11, 12 and 13 of the Law of 9 March 1993 concerning regulation and control of the activities of marriage brokers may be prosecuted in Belgium even if the Belgian authorities have received no complaint or official notice from the foreign authority."

CHAPTER IV - Action to close premises

Art. 9. An action to close premises may be lodged with the president of the court of first instance by the competent ministers, if there is evidence of violation of welfare legislation in the premises and if there are reasonable grounds for supposing that the offences referred to in Articles 379 and 380bis of the Criminal Code or in Article 77bis of the law of 15 December
Art. 10. The action shall be brought and conducted under urgent proceedings.

It may be brought by petition. Such petition shall be filed in quadruplicate with the Registry of the court of first instance or posted to this Registry by registered letter.

The Registrar of this court shall inform the opposing party forthwith by judicial recorded delivery and summon them no earlier than three days and no later than eight days following dispatch of the judicial recorded delivery, to which an example of the submitted petition is attached.

To be valid, the petition shall include:

1. the date, month and year;
2. the applicant's name, first names, profession and address;
3. the name and address of the individual or legal entity against whom the petition is directed;
4. the subject of the petition and statement of evidence;
5. the lawyer's signature.

A decision shall be taken on the proceedings after the prosecution service has been heard, notwithstanding any proceedings being conducted with regard to the same facts before any criminal court.

The judgment shall be immediately enforceable, notwithstanding any appeal and without the need for a surety.

The Registrar shall inform the minister forthwith of appeals lodged against any judgment passed in application of Article 9.

CHAPTER V - Execution and monitoring of the law

Art. 11. §1. For the purpose of applying this chapter, trafficking in human beings shall be understood to mean:

1. the offences referred to in 77bis of the law of 15 December 1980 on admittance to the territory and the residence, establishment and deportation of aliens;
2. the offences referred to in articles 379 and 380bis, §1(1), §§ 2 and 3 of the Criminal Code.

§2. In accordance with his powers, the King shall decide on the regulations and specific measures that he deems appropriate to establish and adopt on behalf of victims of trafficking
in human beings, in order (...) to help them, particularly with regard to instituting judicial proceedings.

§3. Article 2 of the Law of 15 February 1993, establishing a Centre for Equal Opportunities and Action against Racism, shall be supplemented as follows: "The Centre shall also promote the fight against trafficking in human beings".

§4. In Article 3(5) of the same law, the words "to which implementation of the Law of 30 July 1981 to combat certain actions inspired by racism or xenophobia, could give rise " shall be replaced by the words "to which implementation of the Law of 30 July 1981 to combat certain actions inspired by racism or xenophobia, or implementation of the Law of ..., containing provisions to combat trafficking in human beings and child pornography, could give rise."

§5. Associations approved in this respect by the King, and charitable organisations, may take part in court proceedings concerning any disputes to which the present law may give rise.

Art. 12. The Government shall submit an annual report to Parliament on application of the present law and on the fight against trafficking in human beings in general. In particular, this report shall describe the situation with regard to court proceedings.

CHAPTER VI - Amending provisions

Indent 17, worded as follows, is hereby inserted in Article 90ter, §2, of the Code of Criminal Procedure:

"17. Article 77bis, §2 and §3, of the Law of 15 December 1980, on admittance to the territory, residence, establishment and deportation of aliens."

CHAPTER VII - Repealing provisions

The following are hereby repealed:

1. Articles 380, 380ter and 381 of the Criminal Code;

2. The reference to articles 380 and 380ter of the Criminal Code in Article 90ter, §2(5) of the Code of Criminal Procedure, as inserted by the Law of 30 June 1994 relating to the protection of privacy against phone-tapping, information gathering and recording of private communications and telecommunications;

3. The Law of 26 May 1914 to combat the white slave trade.

We promulgate the present law and order that it be sealed with the State seal and published in the Official Journal.

Done at Châteauneuf-de-Grasse, 13 April 1995

ALBERT
In the King’s name:
The Minister of Justice,
M. WATHELET
 Ministry of Justice

16 June 1995 - Royal decree on the role and powers of the Centre for Equal Opportunities and Action against Racism with respect to measures taken to combat international trafficking in human beings, and application of Article 11, § 5, of the Act of 13 April 1995 containing provisions for the suppression of human trafficking and child pornography.

ALBERT II, King of the Belgians,

To all present and to come, Greetings!

Having regard to the Act of 13 April 1995 containing provisions for the suppression of human trafficking and child pornography, and in particular Article 11, §§ 3 and 5,

Having regard to the opinion of the State Council,

On a proposal by the Minister for Justice,

We have decreed and now decree as follows:

Article 1. The policy for combating international trafficking shall be decided by the Interministerial Conference on Immigration Policy, for which the Centre for Equal Opportunities and Action against Racism shall provide the secretariat.

Article 2. The Centre for Equal Opportunities and Action against Racism shall be responsible for promoting, co-ordinating and monitoring the policy against international trafficking in human beings.

Article 3. The Centre for Equal Opportunities and Action against Racism shall draw up an annual, independent and public report assessing developments and results with respect to action taken to combat international trafficking in human beings and submit it to the government.

Article 4. An Interministerial Co-ordination Unit for Action against International Trafficking in Human Beings shall be set up. It shall be chaired by the Ministry of Justice. The Centre for Equal Opportunities and Action against Racism shall provide the secretariat and be responsible for co-ordination.

Article 5. The Interministerial Co-ordination Unit for Action against International Trafficking in Human Beings shall comprise the following members:

- a representative of the Ministry of Justice;
- a representative of the Ministry of the Interior;
- a representative of the Ministry of Foreign Affairs;
- a representative of the Ministry of Employment and Labour;
- a representative of the Ministry of Social Affairs;
- a representative of the Ministry for Social Integration;
- a representative of the Secretary of State for Development Co-operation;
- a representative of the bench of principal crown prosecutors or of the national council with responsibility for questions relating to international trafficking in human beings;
- a representative of the Department of Penal and Criminal Affairs of the Ministry of Justice;
- a representative of the Crime Policy Department of the Ministry of Justice;
- a representative of the National Gendarmerie Unit in charge of investigation policy co-ordination;
- a representative of the Immigration Office of the Ministry of the Interior;
- a representative of the Welfare Legislation Inspectorate of the Ministry of Employment and Labour;
- a representative of the Special Tax Inspectorate of the Ministry of Finance;
- a representative of the Welfare Inspectorate of the Ministry of Social Security;
- the Director and Deputy Director of the Centre for Equal Opportunities and Action against Racism responsible for co-ordinating action against human trafficking.

Article 6. Where necessary and for the purpose of co-operation, the Interministerial Co-ordination Unit for Action against International Trafficking in Human Beings may invite other experts and competent individuals or services to its meetings.

Article 7. The role of the Interministerial Co-ordination Unit for Action against International Trafficking in Human Beings shall be to:

1. enable the relevant ministries to operate a system of effective co-ordination through exchanges of necessary information, so as to ensure a sustained policy of action against international trafficking in human beings and with a view in particular to dismantling and eradicating the activities of traffickers and their networks;
2. make a critical assessment of the practical results of action taken against international trafficking in human beings;
3. pass on the information to the Centre for Equal Opportunities and Action against Racism via the Interministerial Conference on Immigration Policy;
4. help draw up proposals and recommendations for combating international trafficking in human beings;

Article 8. The Interministerial Co-ordination Unit for Action against International Trafficking in Human Beings may formulate proposals for the creation of permanent co-ordination bodies in judicial districts with a high incidence of international trafficking in human beings.

Article 9. Meetings of the Interministerial Co-ordination Unit for Action against International Trafficking in Human Beings shall be convened at least twice a year by the Centre for Equal Opportunities and Action against Racism. Each member of the Interministerial Unit may propose additional meetings.
Article 10. The Centre for Equal Opportunities and Action against Racism shall be responsible for co-ordination and for promoting co-operation between the different private services which specialise in the provision of help and support to victims of international trafficking in human beings.

Article 11.§ 1. Pursuant to Article 11, § 5 of the Act, associations may receive official approval if they meet the following conditions:

1. They must have legal personality;
2. Their purpose must be to promote action against human trafficking, to combat child pornography or to protect human rights;
3. They must genuinely and habitually engage in activities related to their social purpose.

Applications for official approval, enclosing the articles and statutes of the association, together with an activity report, must be sent by registered mail to the Penal and Criminal Affairs Department at the Ministry of Justice.

Applicants shall receive notification of the decision to grant or reject approval within six months of their application.

§2. Approval shall be withdrawn ipso jure where an association ceases to meet the conditions laid down in Article 11, §1, 1 and 2.

In the following cases approval may be suspended or withdrawn:

1. If the association no longer genuinely or habitually engages in activities related to its social purpose;
2. If a presumed victim of human trafficking or child pornography lodges a complaint alleging prejudice caused by the association.

If the suspension or withdrawal of official approval is envisaged the association shall be notified in the form of a letter sent by registered mail stating the reasons. It has thirty days in which to reply and has the right to be heard.

It shall be notified of the decision to suspend or withdraw approval.

Article 12. Responsibility for enforcing this decree rests with the Minister for Justice.

Done in Brussels, 16 June 1995
MINISTRY OF JUSTICE, MINISTRY OF THE INTERIOR, MINISTRY OF EMPLOYMENT AND MINISTRY OF SOCIAL AFFAIRS, HEALTH AND ENVIRONMENT

JANUARY 1997 - Instructions to the Foreigners Department (Office des Etrangers), the prosecuting authorities, the police and the social law inspection service and social inspection services concerning assistance to victims of human trafficking

These instructions are for the practical application of the circular regarding the issue of residence and work permits to foreign nationals who have been victims of human trafficking, published in the Moniteur Belge of 7 July 1994. The circular comes under the implementation of the act of 13 April 1995 (M.B. 24.04.1995) providing for the suppression of human trafficking and child pornography.

1. Definition of the concept of human trafficking

Human trafficking refers to a variety of situations in which people, including foreign nationals, are exploited in various sectors of activity. It consists primarily in exploiting a person or their work in various economic sectors. The sex industry poses a particular risk in this area.

Human trafficking is punishable under section 1, § 1 of the new act of 13 April 1995, as follows:

“whoever contributes, be it directly or through an intermediary, to allowing a foreign national to enter Belgium or reside there and, in so doing,

1. subjects the foreigner, either directly or indirectly, to acts of fraud, violence, threats or any form of coercion,

2. or takes advantage of the foreigner’s particularly vulnerable position, occasioned by illegal or provisional status or by pregnancy, illness, infirmity or physical or mental disability, shall be sentenced to a prison term of one to five years and fined between five hundred and twenty-five thousand francs.”

Harsher sentences may be imposed on persistent re-offenders or if the offence constitutes participation in the principal or auxiliary activities of a criminal gang (sections 1, § 2 and § 3).

A parallel provision relating to human trafficking has also been inserted into Article 380bis, § 3, of the Criminal Code on living off immoral earnings and prostituting a third party.

2. The fight against human trafficking

The parliament and the federal government, in collaboration with the communities and regions, have developed a policy aimed firstly at assisting victims of human trafficking and secondly at reinforcing action against traffickers and their networks. The victim support
policy covers both assisting and counselling victims in Belgium and helping them to return to their country of origin.

The provisions allowing victims to legally reside in the country for the duration of legal proceedings against the exploiters make it easier to carry out an in-depth judicial investigation and enable victims to act as witnesses in the trial.

3. Victim support centres

In order to ensure that victims of human trafficking receive appropriate support and counselling, the authorities have set up a victim support centre in each region: the “Payoke” Centre in Antwerp, Flanders, “Pag-asa” in the Brussels-Capital Region, and “Sūrya” in Liège, in the Walloon Region. All three centres are non-profit making organisations, which provide psychological and social counselling and offer legal aid to victims wishing to defend their interests in the court proceedings.

These three centres, like the social welfare organisations already mentioned in the circular of 7 July 1994, are empowered to request residence permits for victims of human trafficking.

A victim support centre may also be a local social service which has signed a co-operation agreement - approved by the relevant community or regional minister - with one of the three aforementioned centres.

4. Efficient collaboration between victim support centres, the police, the social inspection services, the Foreigners Department and the courts

Effective action against human trafficking depends on the development of active co-operation between the victim support centres and the police, the social inspection services and the prosecuting authorities.

Complementary action by all the parties involved can only be achieved if the victims or presumed victims of human trafficking are put in touch with the support centres.

The police or social inspection service must immediately contact the Foreigners Department about any person residing illegally in Belgium, or whose residence status arouses suspicion.

All victims or presumed victims, whether legally or illegally resident in Belgium, must be put in contact with a support centre.

When a support centre takes on the counselling of a victim or presumed victim, it becomes responsible for the administrative follow-up with the Foreigners Department. The police unit or social inspection service concerned must inform the Foreigners Department of the intervention of the victim support centre.

In the event of a support centre being unable to provide counselling, the police unit or social inspection service concerned must follow the Foreigners Department’s instructions, according to the usual procedure.
5. Organising contact with victim support centres

1. If the police or social inspection service has good reason to believe that they are dealing with a victim of human trafficking, they take the necessary measures to ensure that the person is taken in by a victim support centre, and they inform the Foreigners Department of the fact if he or she is an illegal or provisional resident.

2. If the police or social inspection service is not certain whether a person is a victim of human trafficking, the support centre must be given the opportunity to establish contact with this person. This can be done by, for example, inviting a staff member of the support centre to the police station, if the person in question agrees to this.

3. Finally, if there are indications that one or more persons detained are implicated in the organisation or pursuit of human trafficking, and are therefore not victims, they are not to be put in contact with a victim support centre.

Whenever the police or a social inspection service encounter a person who may be a victim of human trafficking, it is their duty to give him or a her the information leaflet about the support centres, which has been produced in different languages by the Centre for Equal Opportunities and Action Against Racism and is available from the organisations mentioned in this circular.

6. Joint supervision

Without upsetting the smooth running of the planned action, it will be advisable, when specific checks are carried out on foreign labour, in particular joint checks carried out by the district inspection units (co-operation agreement between social inspection services of 30 July 1993 and co-operation agreement between the federal government and the regional governments of 31 March 1995), to ask the victim support centres in advance to stand by with a view to taking in or making contact with any victims of human trafficking.

7. Assistance to victims by the police and the prosecuting authorities

As set out in section 46, paragraph 1, of the act of 5 August 1992 on the functions of the police, as well as in circular OOP15bis, it is the duty of the police to refer victims to the most appropriate support facility.

The police should also inform victims of the existence of the victim support units set up by the prosecuting authorities.

The prosecuting authorities can make a direct request for assistance from the victim support centres both during the investigation, when the victim will be taken in by the support centre, and during the preparation of legal proceedings.

8. Practical application of the circular of 7 July 1994

Residence and work permits are issued to victims of human trafficking in successive stages in parallel to the legal proceedings.
8.1 Stage 1: issue of an order to leave the country within 45 days

This 45-day period should allow the victim who is leaving a human trafficking environment and embarking upon counselling provided by the support centre to recover mental stability. During this period, victims can decide if they wish to make statements concerning the persons or human trafficking networks that exploited them or if they wish to prepare for a return to their native country.

Therefore, when the police or a social inspection service encounter a presumed victim of human trafficking, it is important that they establish immediate contact with a victim support centre, following the procedure set out in paragraph 5.

The police unit in question must also contact the Foreigners Department and, if appropriate, inform them that the presumed victim has been directed to a support centre.

If the victim immediately lodges a complaint or makes a statement, the support centre responsible for his or her counselling can request that the Foreigners Department move on to the second stage.

8.2 Stage 2: issue of a three-month residence permit

A victim who has lodged a complaint or made a statement within the 45-day period will receive a temporary residence permit valid for three months, in the form of a certificate of arrival.

During this period, counselling by a support centre is also compulsory. In stage 2, the victim may also be granted a temporary work permit.

The Foreigners Department will ask the Crown prosecutor immediately, or no later than a month before the expiry of the three-month period what action has been taken on the victim’s complaint or statement, and will indicate the deadline for a reply.

The prosecuting authorities must provide two items of information:

1. whether the case concerns human trafficking;

2. whether or not the case is still in progress.

At the same time, the Crown prosecutor will communicate this information to the victim.

If no reply is forthcoming from the prosecuting authorities, the request for information will be directed to the Principal Crown Prosecutor.

8.3 Stage 3: issue of a foreigner’s registration certificate

If the Crown prosecutor answers the two questions in the affirmative, the victim will receive a residence permit valid for longer than three months (usually six months) which may be renewed until the legal proceedings come to an end.
Throughout this period, counselling by a victim support centre remains compulsory. The victim may, from this stage, obtain work permit B.

Finally, in accordance with the report of the Parliamentary Commission of Inquiry, and in order to ensure the safety of victims, steps may be taken to obtain a residence permit of unlimited duration from the Foreigners Department. A request for such a permit may be made by a victim whose complaint or statement has resulted in a court summons, if the complaint or statement is considered of importance to the proceedings.

9. Social assistance for victims

From the time when a victim of human trafficking receives a temporary residence permit, ie from Stage 1, he or she is entitled to social assistance benefits from the CPAS or through a victim support centre (Royal Decree of 13 May 1994).

10. Useful addresses

10.1 Foreigners Department (Office des Etrangers):
Boulevard Emile Jacqmain, 152/1, 1000 Brussels
Tel: General enquiries: 02/ 205.54.11
    - Head office: 02/ 205.58.47
    - Duty office : 02/ 205.55.00

10.2 Victim support centres (open 24 hours)

10.2.1 Flemish Region – “Payoke” Centre
Zirkstraat 27, 2000, Antwerp
Tel: 03/ 232.24.40
Fax: 03/ 233.23.24

10.2.2 Brussels-Capital Region – “Pag-asa” Centre
Rue Saint-Christophe 38, 1000 Brussels
Tel: 02/ 511.64.64
Fax: 02/ 511.58.68

10.2.3 Walloon Region – “Sürya” Centre
Rue Hors-Château 28, 4000 Liège
Tel: 041/ 21.35.57
Fax: 041/ 23.66.28
10.3 Co-ordination and monitoring of the policy on action against human trafficking:
Centre for Equal Opportunities and Action against Racism, “Human Trafficking” Unit
Rue de la loi 155, 1040 Brussels
Tel: 02/ 233.06.11
Fax: 02/ 233.07.04

Minister for Justice,
S. DE CLERK

Minister for the Interior,
J. VANDE LANOTTE

Minister for Employment,
Ms M. SMET

Minister for Social Affairs,
Ms M. DE GALAN

* * *

Marriage Provisions Amendment Act, 4 May 1999

Extract

Article 12. An Article 146b shall be inserted into the [Civil] Code, with the following wording:
"Article 146b. There shall be no marriage if, despite the fact that formal consent has been
given to it on both sides, it becomes clear from a combination of circumstances that at least
one of the spouses is patently not intending to establish a lasting conjugal partnership but is
concerned solely with securing an advantage in terms of residence, connected with the status
of spouse."

* * *

29 April 1999 - Act amending Section 77, paragraph 2 of the Foreigners (Entry,
Residence, Establishment and Deportation) Act of 15 December 1980

[Opening formula: “Albert II, King of the Belgians, etc. ... The Chambers have adopted and
we hereby give our assent to the following:”]

Section 1. This Act provides for a matter specified in Article 78 of the Constitution.
Section 2. Section 77, paragraph 2 of the Foreigners (Entry, Residence, Establishment and Deportation) Act of 15 December 1980, inserted by virtue of the Act of 15 July 1996, shall be replaced by the following provision:

“The preceding paragraph shall not apply if the foreigner is offered aid or assistance for reasons that are chiefly humanitarian.”

We hereby promulgate this Act and order that the State seal be placed upon it and that it be published in the Moniteur belge.

Done at Brussels, 29 April 1999 [...]

* * *

9 June 1999 - Royal Decree implementing the Foreign Workers (Employment) Act of 30 April 1999

REPORT TO THE KING

Sire,

The purpose of the royal decree submitted for your signature is to implement the Foreign Workers (Employment) Act of 30 April 1999. It also fixes the date on which the Act shall come into force, namely 1 July 1999.

The royal decree is intended primarily to co-ordinate existing rules on the employment of foreign workers, a matter currently covered by a number of royal and ministerial decrees and a series of ministerial circulars.

The provisions on the employment of foreign workers contained in these various texts are neither clearly structured nor logical. This creates legal uncertainty for all those who have to refer to them.

The decree also seeks to update the current provisions. The existing texts date from the late 1960s and, until now, have undergone little or no adaptation to reflect various developments in the labour market with regard to the employment of foreign workers.

Article by article commentary:

Article 1

Paragraphs 3, 4 and 5 are definitions taken from the Act referred to in paragraph 2.

Paragraph 6 provides a definition of legal residence (replacing the notion of lawful residence ("séjour régulier"), which was not defined in the previous provisions). See the Act of 15 December 1980.
The definitions contained in paragraphs 7 (labour market) and 8 (performing artists) did not exist in the previous provisions; nor did that of “professional sportsperson” (see paragraph 11).

The definitions in paragraphs 9 and 10 (cabaret and cabaret employees) have, on the other hand, featured in the existing provisions since 1993.

Article 2

The first paragraph of this article lists the exceptions, under Section 7 of the Act, to the requirement to obtain a work permit.

Paragraph 3 is already included in the existing provisions.

At the end of paragraph 4, the words “for the performance of duties that confer entitlement to these documents” have been added. A similar wording has been inserted under paragraph 6 (ministers of religion) and the word “recognised” has also been added (with reference to religions).

Paragraph 5 introduces a new category of exemption for refugees.

Paragraph 7 is a provision that already exists - likewise paragraphs 8, 9, 10, 11, 13, 14 and 15.

Under paragraph 12, a reference to Article 9 of Royal Decree No. 118 of 23 December 1982, on the establishment of employment zones, has been added. This makes good an omission.

Paragraph 16 is virtually identical to the existing provision, with the sole addition of the words “and/or recognised”.

Under paragraph 17 the exemption already granted to performing artists of international standing is extended to their accompanying personnel, and, in the interests of consistency, the wording of the residence condition now mirrors that used in paragraphs 15 and 16 - “provided they do not stay in the country for longer than three consecutive months”.

Under paragraph 18, the word “higher”, used in connection with “educational establishment”, has been deleted. The aim is to avoid penalising young people of foreign origin legally resident in Belgium and enrolled in secondary education - all the more so because persons in this category are frequently disadvantaged.

Under paragraph 19 the words “legally resident” have been added.

Paragraphs 20 and 21 concern certain categories of trainee and constitute new provisions.

Under paragraph 22 (apprentices) the words “legally resident in Belgium” are replaced by “authorised or permitted to reside in Belgium for longer than three months”.

31
The final paragraph of Article 2 leaves the definition of the concept of “international standing” as used in paragraph 17 to the Minister’s discretion.

Article 3

This article stipulates the categories of work permit. By contrast with the existing legislation, the type-C permit, which had fallen into disuse, has been dropped.

In addition, the definition of the type-B permit has been somewhat amended: its maximum period of validity is fixed at 12 months and its scope restricted to occupations with a single employer (and no longer in a single sector).

Article 4

Paragraphs 1(1) and 1(2) are based on existing provisions. However, at the end of 1(2) the words “unless such an absence has not led to the loss of the right of residence or residence authorisation under Article 39(3) or 39(5) of the Royal Decree of 8 October 1981 on the Entry, Residence, Establishment and Deportation of Foreigners”. The aim is to avoid contradictions between the right to work and the right to residence.

Paragraphs 2(1) and 2(2) correspond to Article 1 of the Royal Decree of 6 November 1967. Paragraph 2(3) is a new provision included with a view to avoiding any inconsistency between the rules on foreigners’ residence in Belgium and those on their access to employment.

Article 5

This article sets out the exemptions to Section 4, paragraph 2(1) of the Act. It concerns those persons in respect of whom the labour market is not taken into account for the issue of a work permit.

Given that Section 4 paragraph 2(1) of the Act relates solely to authorisations of employment and not to temporary authorisations of employment (see Section 4 paragraph 4 of the Act and Article 4 paragraph 3 of this decree), no exemptions to Article 5 can be made.

Article 6

This article corresponds to Article 9 of the Royal Decree of 6 November 1967.

In order to facilitate monitoring, however, it shall no longer be possible to indicate special circumstances in a registered letter.

The words “if possible” are used because it is anticipated that work permits may in future be formatted differently (ie like identity cards).

Article 7

This article corresponds to Article 13 bis(1) of the Royal Decree of 6 November 1967. For practical reasons it was decided not to provide for sanctions.
Article 8

This fundamentally important provision is virtually identical to Article 5 of the Royal Decree of 6 November 1967. It should be noted, however, that there is now a reference to the “labour market” (see Article 1(7)) rather than the “national labour market”.

Article 9

This article corresponds to Article 1 of the Ministerial Decree of 15 July 1969, although it contains several changes.

It specifies the categories of foreign worker in respect of whom, under a derogation to Article 8, the labour market is not taken into account for the issue of an employment authorisation.

Note, in particular, that it was decided to drop housemaids and domestic servants from the list, and that, in the case of students, the limit of 20 hours’ work per week (already applied, though on the basis of circulars) has been confirmed. This is a logical restriction inasmuch as the main justification for the persons in question residing in Belgium is to attend courses of study.

This article has the further merit of covering all the cases in respect of which the labour market is not taken into account: previously some of these exemptions (for trainees, au pairs and specialist technicians, for example) were to be found scattered throughout the relevant provisions.

For clarity, the term “specialist technicians” has been used (in paragraph 9) in preference to “installation specialists” because in practice the work concerned is no longer confined to the installation of industrial plant.

Paragraphs 11, 12 and 13 (in respect of professional sportspeople and persons with managerial-type functions in an airline or tourist office of their country of origin) also confirm exemptions already covered by circulars.

The definitions of “researcher” and “guest teacher” in paragraphs 2 and 4 were drawn up following consultation with the Communities.

Article 10

This article corresponds to Article 6 of the Royal Decree of 6 November 1967.

Article 11

This article corresponds to Article 2 of the Ministerial Order of 15 July 1969. As it refers to Article 9, the comments on that article also apply here.

Article 12

The first paragraph of this article corresponds to Article 2 bis of the Royal Decree of 6 November 1967. Paragraphs 2-5 introduce the requirement that certain categories of people
(artists, trainees, au pairs and persons with temporary employment authorisations) must have a specific contract.

Article 13

This article corresponds to Article 3 bis of the Ministerial Decree of 15 July 1969. The comment under Article 11 is also relevant here.

In the case of trainees and au pairs there is a requirement that they have a specific contract.

Article 14

Part of this article corresponds to Article 2 of the Royal Decree of 6 November 1967. A provision has been added (in paragraph 3) stipulating the period of validity of a medical certificate, in order to prevent the submission of certificates that are out of date.

In the light of experience, paragraph 4 has also been added, requiring that, if necessary, medical certificates be translated into one of the languages of the Region responsible.

Article 15

In conjunction with Article 14 this article corresponds to Article 2 of the Royal Decree of 6 November 1967 (in respect of paragraph 1) and to Article 21 of the same decree (in respect of paragraph 2).

Article 16

This article stipulates the categories of foreigner entitled to type-A work permits and corresponds to Article 13 of the Royal Decree of 6 November 1967.

Paragraph 1 covers entitlement to a type-A permit on the basis of a number of years’ work under a type-B permit. The number of years has been reduced from five to four, although in practice this merely confirms the system already being applied under Article 10(2) of the Ministerial Decree of 15 July 1969.

The use of the term “legal residence” as defined in Article 1 (in place of “lawful residence”) should also be noted.

Paragraph 2 concerns the right to obtain a type-A permit on the basis of a period of “unbroken legal residence” (as opposed to “lawful” residence).

Paragraph 3 provides that the spouses of persons entitled to obtain a type-A permit under paragraphs 1 or 2 are entitled to the same type of permit. In the interests of consistency with the rules on residence, the additional requirement has been introduced that the spouse must be covered by a residence permit under the provisions of Article 10, paragraphs 1(1) or 1(4) of the Act of 15 December 1980.
The aim is to avoid the situation in which a person might obtain a type-A permit immediately, while in possession of a residence permit that was merely temporary and only due to be confirmed after a year of cohabitation.

Under paragraph 4, note should be taken not only of the introduction of the notion of residence, in accordance with Article 10 paragraphs 1(1) or 1(4) of the Act of 15 December 1980, but also of the fact that the term “children” is now used without any distinction between legitimate, illegitimate and adopted children.

The remaining provisions, apart from paragraphs 6 and 8, are not new. Paragraph 8 is also intended to harmonise the right to residence and the right to work. Pursuant to Section 19 paragraph 3 of the Act of 15 December 1980, the Royal Decree of 7 August 1995, stipulating the circumstances and conditions under which a foreigner may be authorised to return to Belgium after an absence of more than a year, is published in the Moniteur belge of 2 September 1995.

Article 17

The first paragraph of this article stipulates the cases in which the period of four years provided for in Article 16(1) may be reduced. It corresponds to Article 10(1) of the Ministerial Decree of 15 July 1969 and to the second paragraph of Article 13(1) of the Royal Decree of 6 November 1967.

Paragraph 2 corresponds to the last paragraph of Article 13 of the Royal Decree of 6 November 1967.

Article 18

Paragraph 1 of this article stipulates what may be deemed a period of work for the purposes of applying Articles 16(1) and 17(1). This provision corresponds to Article 13(1)(4) of the Royal Decree of 6 November 1967.

Article 18(2) describes the cases in which a period of residence may be deemed unbroken, and corresponds to Articles 13(1)(3) and 13(2)(2) of the Royal Decree of 6 November 1967. At the same time the scope of Article 18(2)a has been extended to cover Article 16(2).

Paragraphs 3 and 4 of Article 18 correspond respectively to Articles 13(1)(5) and 13(2)(3) of the Royal Decree of 6 November 1967.

Article 19

This article concerns quotas and corresponds to Article 13 of the Ministerial Decree of 15 July 1969.

The introduction of the requirement to consult the relevant joint committee should be noted.
Articles 20-23

These articles correspond to Article 17 paragraphs 1-4 of the Royal Decree of 6 November 1967 (as amended on 16 February 1998).

Paragraph 5 of that article, providing for possible exceptions with regard to the age of trainees and the duration of traineeships, has now been included in Article 38 paragraph 2.

Articles 24-29

These articles concern au pairs. They correspond to Article 18 of the Royal Decree of 6 November 1967 and significantly amend its provisions. However, they incorporate in their entirety the proposals contained in Opinion 97/1 of the Conseil consultatif de la main-d’oeuvre étrangère [Foreign Workers Consultative Council], which had not yet been adopted.

It should be noted that the specific purpose of Article 26(2) is to prevent au pairs being placed with families whose usual language is not one of the three national languages (Swedish or Japanese speaking families for example). Such a situation would not provide the desired language training for the au pair because the host family’s language would not be the language studied.

Article 30

This article covers cabaret employees. The definitions of “cabaret” and “cabaret employee” are set out in Articles 1(9) and 1(10). Article 30 corresponds to Article 4 of the Ministerial Decree of 15 July 1969 (version of 19 March 1993).

Article 31

The first paragraph of this article provides a definition of “renewal” not contained in the existing provisions. In particular it stipulates that renewal refers to the continued employment of a particular worker in a particular occupation (although not necessarily with the same employer).

Articles 31-33 correspond to Articles 5-9 of the Ministerial Decree of 15 July 1969.

The second paragraph of Article 31 introduces a minimum period within which the application for renewal must be made before the expiry of the current employment authorisation and work permit.

Article 32

This article stipulates that Articles 8-11 and the first paragraph of Article 12 shall apply to applications for renewal.

On the other hand, this implies that the condition concerning a medical certificate need no longer be met.
Article 33

This article provides - for social reasons - for a number of exemptions to Article 31(1), which already apply. However, the involuntarily unemployed are no longer included as an exempted category. In fact, it is illogical to authorise the renewal of permits for such persons in respect of a different occupation because, in principle, the only reason for issuing the initial permit was a shortage of labour in the occupation in respect of which it was issued.

Article 34

This article corresponds to Articles 7 and 8 of the Royal Decree of 6 November 1967. It opens, however, with a clearer wording: “the authorisation and work permit shall be refused”, in place of “... shall not be granted” or “may be refused”.

Paragraph 1 constitutes a new provision, under which an employment authorisation or work permit may be refused on the grounds that the application contained incomplete or inaccurate information.

Under paragraph 2 it will be possible to refuse authorisations and permits in cases where, for example, the conditions applying to regulated occupations have not been met.

Under paragraph 6, employment authorisations and work permits may no longer be refused because they relate to jobs that are not full-time; henceforth the only criterion for refusal shall be the fact that a job will not provide a sufficient income.

Article 35

This article provides for the withdrawal of employment authorisations and work permits (see paragraphs 1 and 2 respectively). It corresponds to Article 11 of the Royal Decree of 6 November 1967.

This paragraph, too, now opens with a clearer wording: “the employment authorisation (or work permit) shall be withdrawn”, in place of “... may be withdrawn”.

Article 36

This article corresponds to Article 29 of the Royal Decree of 6 November 1967.

Article 37

This article provides that victims of trafficking in human beings may be given a temporary employment authorisation. It thus creates a legal basis for the procedure previously provided for in ministerial circulars published in the Moniteur belge on 7 July 1994 and 21 February 1997.

Article 38

Under paragraph 1 the Minister, when making general rules in application of this decree, is required to consult the Foreign Workers Consultative Council set up under Section 19 of the Act.
If for reasons of urgency the opinion of the Council is not sought, the grounds for failing to consult it will be stated in accordance with the normal rules.

Paragraph 2 lists possible exceptions. The grounds for deciding to avail of such an exception must be stated. The term “authority responsible” denotes the regional Minister in charge of employment.

Article 39

This article lists the provisions that have been revoked.

Article 40

The current rules of procedure shall continue to apply until 31 December at the latest. This should allow a new procedure for issuing secure work permits to be developed.

Following the Council of State’s comments it was decided at this stage not to include paragraph 2 of the proposal concerning a circular on refugee applicants because this temporary provision had been added after the Council of Ministers had approved the proposal, and concerned matters that, under Articles 4(4) and 8(1) of the Act of 30 April 1999, had to be considered by the Council of Ministers.

Under Article 8(2) of the Act, the same does not apply in relation to Article 40(1).

In response to the Council of State’s opinion, a royal decree will be drawn up following discussion in the Council of Ministers in order to add the content of the above-mentioned circular to the provisions of the present decree.

Article 41

The Act and this decree shall enter into force on 1 July 1999.
1. The Penal Code contains the following provisions concerning trafficking in human beings:

Section IV
Kidnapping and Unlawful Deprivation of Liberty
Art. 142
(New-SG, No.50/1995)

(1) A person who kidnaps another person and unlawfully deprives him of liberty shall be punished by deprivation of liberty from one to six years.
(2) (As amended-SG, No. 62/1997) The punishment shall be deprivation of liberty from three to ten years if:
1. the perpetrator has been armed;
2. the act has been committed by 2 or more persons;
3. the kidnapped person has been a pregnant woman or under 18 years of age;
4. the kidnapped person has been entitled to international protection;
5. the act has been perpetrated with regard to two or more persons;
6. the act has been perpetrated by a person engaged in security business, by an employee of an organization carrying out security and insurance activities, by a person who acts on order of such an organization or presents himself as acting on such order, by a person on the staff of the Ministry of Interior or a person who presents himself as such;
7. the kidnapping has been carried out for the purpose of taking the person over the borders of this country;
8. the act has been perpetrated by a person who participates in an organization or a group under Article 321a, or who acts on orders of such an organisation or group.
(3) If as the result of the act under paragraphs (1) and (2) considerable harmful consequences have occurred, the punishment shall be deprivation of liberty for three to twelve years.
(4) If the act has been repeated or the kidnapped person has been treated with particular cruelty, the punishment shall be deprivation of liberty for five to fifteen years.

Section VIII
Debauchery
Art. 156

(1) (As amended-SG, Nos. 10/1993, 62/1997) A person who abducts a female for the purpose of her being placed at the disposal for acts of debauchery shall be punished by deprivation of liberty for up to ten years and by a fine of up to one million Bulgarian levs.
(2) (New-SG, No. 62/1997) The punishment shall be deprivation of liberty for three to twelve years, if:
1. the abducted person is under 18 years of age;
2. the abducted person has been placed at disposal for acts of debauchery, or
3. the abduction has been carried out for the purpose of placing the person at disposal for acts of debauchery beyond the borders of this country.

According to article 5 paragraph 4 of the Constitution, the international instruments to which Bulgaria is a party shall be considered part of domestic legislation.
The Republic of Bulgaria is a party to most international instruments on human rights, as well as to international conventions on the rights of women such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Political Rights of Women, the Convention on the Nationality of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Likewise, Bulgaria has acceded to a number of Council of Europe’s conventions in the field of human rights, including the European Convention on Human Rights and most of its Protocols.

A person who entrusts another person with the custody of a child in return for money or other compensation commits the crime traffic in children under Section 216a of the Criminal Code:

“(1) A person who, in return for a compensation, entrusts another person with the custody of a child for the purpose of adoption, exploitation of child labour or for any other purpose, shall be liable to imprisonment for a term not exceeding three years or to a financial punishment.

(2) The offender shall be liable to imprisonment for a term of two to eight years, a) if he commits the act defined in paragraph 1 as a member of an organized group, or b) if by such act he obtains substantial gain.

(3) The offender shall be liable to imprisonment for a term of three to ten year if by the act defined in paragraph 1 he causes grievous bodily harm, death or any other serious consequence.”
CROATIA

Extract from the Criminal Code

Establishment of Slavery and Transport of Slaves

Article 175

(1) Whoever, in violation of the rules of international law, places another in slavery or in a similar status or keeps him in such a status, buys, sells, hands over to another person or mediates in the purchase, sale or handing over of such a person or induces someone else to sell his freedom or the freedom of the person he provides for or takes care of shall be punished by imprisonment for one to ten years.

(2) Whoever, in violation of the rules of international laws, buys, sells, hands over to another person or mediates in the purchase, sale or handing over of a child or a minor for the purposes of adoption, transplantation of organs, exploitation by labour, minors, or for other illicit purposes shall be punished by imprisonment for not less than five years.

(3) Whoever, in violation of the rules of international law, transports persons who are in a position of slavery or in a similar status shall be punished by imprisonment for six months to five years.

Illegal Transfer of Persons Across the State Border

Article 177

(1) Whoever, for lucrative purposes, illicitly transfers across the state border a person or a number of persons shall be punished by a fine or by imprisonment not exceeding one year.

(2) Whoever organises the perpetration of the criminal offences referred to in paragraph 1 of this Article shall be punished by imprisonment for six months to five years.

(3) An attempt to commit the criminal offence referred to in paragraph 1 of this Article shall be punished.

International Prostitution

Article 178

(1) Whoever procures, entices or leads away another person to offer sexual services for profit within a state excluding the one in which such a person has residence or of which he is a citizen shall be punished by imprisonment for three months to three years.

(2) Whoever, by force or threat to use force or deceit, coerces or induces another person to go to the state in which he has no residence or of which he is not a citizen, for the purpose of offering sexual services upon payment, shall be punished by imprisonment for six months to five years.

(3) If the criminal offence referred to in paragraphs 1 and 2 of this Article is committed against a child or a minor, the perpetrator shall be punished by imprisonment for one to ten years.

(4) The fact whether the person procured, enticed, led away, forced or deceived into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offence.
CZECH REPUBLIC

The Criminal Code protects all children, irrespective of gender. For the purposes of the section 216a, the term “child” means a person under 18 years old (Section 216b).

Profiting from prostitution of women constitutes the criminal offence of pandering, prosecuted on the basis of Section 204 of the Criminal Code. Pandering is defined as an act of

"... engaging, forcing or enticing another person to carry out prostitution or profiting from prostitution carried out by another person."

Perpetrators are punished by imprisonment for a term of one to five years.

Traffic in women is punished as a crime pursuant to Section 246 of the Criminal Code, which says that

"... whoever entices, hires or transports a woman abroad with the intent to have her used there for sexual intercourse with another person shall be punished by imprisonment for a term of one to five years. The perpetrator shall be punished by imprisonment for a term of three to eight years in case he commits such act as a member of an organized group, in case he commits such act on a woman younger than eighteen years or with the intent to have the woman used for prostitution.".
Law No. 3(1) of 2000
Providing for the special protection of persons being victims of sexual exploitation and for related matters

The House of Representatives enacts as follows:

1. **Short title**

This Law may be cited as the Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000.

2. **Interpretation**

In this Law unless the context otherwise requires:

"child" means a person who has not completed the eighteenth year of his age;

"Minister" means the Minister of Interior including any officer of his Ministry, authorised by the Minister for purposes of this Law;

"prescribed treaties" means the Treaty for Prevention and Eradication of White Slave-traffic and Prostitution of Others (Ratification) Law of 1983;

"pornography" means the visual or sound or audio-visual recording or depiction of any type or nature of sexual act on any person or with his participation, and the term "pornographic material" is accordingly interpreted;

"sexual exploitation of an adult" means the exploitation of an adult for prostitution;

"sexual exploitation of a child" means:

(a) the incitement or compelling of a child to participate in any sexual activity;

(b) the exploitation of a child for his prostitution or participation in other sexual practices;

(c) the exploitation of a child with his participation in pornographic shows and material, including the production, sale and distribution of other kinds of trading in similar material, as well the possession of such material;

"trafficking" means any act that facilitates the entry into, transit through, residence in, or exit from the Republic for purposes of sexual exploitation;

"victim" means any person who is the subject of exploitation or any act prohibited by this Law or other Law or prescribed treaty punishable under this Law;

3. **Sexual exploitation of persons**

(1) The following are prohibited:

(a) The sexual exploitation of adult persons for profit if:

(i) it is done by the use of force, violence or threats; or

(ii) there is fraud; or

(iii) it is done through abuse of power or other kind of pressure to such an extent so that the particular person would have no substantial and reasonable choice but to succumb to pressure or ill-treatment;

(b) the trafficking of adult persons for profit and for sexual exploitation purposes in the circumstances referred to in subsection (a) above;

(c) the sexual exploitation or the ill-treatment of adults;

(d) the trafficking of children for the purpose of their sexual exploitation or ill-treatment;
(2) For the purposes of this section, blood relationship or relationship by affinity up to the third degree with the victim and any other relation of the victim with the person, who by reason of his position exercises influence and authority over the victim and includes relations with guardian, educators, hostel administration, rehabilitation home, prisons or other similar institutions and other persons holding similar position or capacity that constitutes abuse of power or other kind of coercion
(a) a person acting contrary to the provisions of section 1(a) and (b) commits an offence and upon conviction is liable to imprisonment for fifteen years;
(b) a person acting contrary to the provisions of section (1)(c) and (d) commits an offence and upon conviction is liable to imprisonment for twenty years.

4. **Marketing of pornographic material**

(1) A person using children for purposes of trafficking, who produces, obtains, possesses, carries or in any way imports or exports or places into circulation documents, publications, books, drawings, pictures, paintings, symbols, photographs, movie-tapes or other indecent articles of whatsoever kind or uses any means of publicity in order to facilitate the circulation or the marketing of indecent articles, commits an offence and upon conviction is liable to imprisonment for ten years.

(2) For the purposes of this section indecent articles are considered to include manuscripts, publications, pictures and other articles, which are considered to offend the morality of the public; Provided that indecent articles are not considered as works of art or science and particularly those belonging to the cultural creation of humanity or contributing to the promotion of human knowledge.

5. **Trafficking of persons for purposes of sexual exploitation**

(1) A person trafficking any other person or persons, with or without their initial consent or knowledge for purposes of their eventual sexual exploitation contrary to sections 3 or 4 of this Law or any other law or any prescribed treaty prohibiting similar exploitation or who knowingly instigates, assists, suffers or allows, participates, or contributes to such trafficking of person, commits an offence and upon conviction is liable subject to the provisions of the subsection (2) to a fine of ten thousand pounds or imprisonment for ten years, or both.

(2) When the commission of an offence under subsection (1) has as a victim a child, the provision for the above offence sentence is increased to imprisonment for fifteen years or to a fine of fifteen thousand pounds or both.

(3) In criminal proceedings for any offence under this section, the intent for sexual exploitation by the offender is presumed in cases where the necessary entry or exit permit from the Republic of the traveller has been forged or has been secured by the competent authorities with fraud, deceit, forgery of documents or misrepresentations or declarations regarding any information which is needed for the issue of entry permit. It is provided that the aforementioned presumption may be rebutted if the offender shall satisfy the court that the above illegal acts had other than the presumed intent.
6. **Exclusion of some defences**

Unless it is otherwise expressly provided in this Law where an offence is committed under this Law the following do not constitute a defence for the accused:
(a) that he did not know or did not believe that the victim of the offence was younger than the specified age
(b) that the victim consented to the illegal action which constituted the offence or that he takes any financial or other reward for the act; or
(c) that the act has taken place in whole or in part in a country where the said act did not constitute an offence.

7. **State providence**

(1) The victims of exploitation contrary to this Law or any other Law or any prescribed treaty during their stay in the territory of the Republic are entitled as against the Republic and the Republic has the duty to provide them with any reasonable protection and support including, to the extent that this is feasible and reasonable, arrangements for maintenance, temporary shelter, medical care and psychiatric support until the victims are considered as having recovered from any traumatic experience.
(2) A person convicted for an offence relating to the exploitation of another person, the trial court may order in addition to any other sentence or measure, that the accused pays all or part of the expenses which the Republic has incurred, incurs or can reasonably anticipate to incurring during the discharge of the above duty.

8. **Suing for damages/course of action for compensation**

(1) Notwithstanding and without prejudice to any other legal right which is provided under any legal or other provision, the victims of exploitation according to the meaning of this Law have an additional right for damages against any person who is responsible for their exploitation, and is liable for damages, special and general.
(2) The above-mentioned general damages must be just and reasonable and in their assessment the Court may take into consideration the following:
   (a) the extent of the exploitation and the benefit the liable derived from such exploitation,
   (b) the future prospects of the victim and the extent to which such prospects were affected by the exploitation,
   (c) the culpability of the offender,
   (d) the relationship or the dominating position or influence of the offender with regard to the victim.
(3) The Court may award punitive damages when the degree of the exploitation or the degree of relationship or the dominating position of the offender with regard to the victim so require.
(4) The Court, in the award of special damages, takes into consideration every item of expense which resulted from exploitation including costs for repatriation in the case of foreigners.

9. **Employment of foreigner victims**

(1) Any foreigner who legally enters the Republic and forced to give up his employment on account of illegal exploitation within the meaning of this Law or cruel treatment by the
person who applied for his employment in Cyprus, may apply to the Minister for a permit to be employed by a different employer.

(2) In such cases, the Minister may allow his re-employment under such terms and conditions as the Minister may require including inter alia that the new employment:
(a) be for the same profession for which his original employment was applied for;
(b) be of the un-expired period for which the permit was granted;
(c) be subject to immediate revocation whenever the Minister considers appropriate to do so.

10. **Appointment of guardian**

(1) The Council of Ministers may, if this is recommended by the Minister, appoint a guardian of victims.
(2) The Council of Ministers may decide the remuneration that may be paid to the guardian as well as the period of his appointment.
(3) Until a guardian is appointed under subsection (1) above, the Council of Ministers may with the consent of the Minister concerned appoint by secondment an officer from his Ministry for the purpose of exercising the powers and functions of the guardian.

11 **Functions of guardian**

The guardian has the following functions:
(a) to advise, counsel and give guidance to victims of exploitation,
(b) to hear in the first instance complaints of exploitation or violation of the law and to take all steps for the full investigation of the said complaints by the appropriate bodies,
(c) to care through the appropriate authorities for the treatment and safe residence of the victims,
(d) to take steps through the appropriate agencies for the prosecution of persons responsible for exploitation or other contravention of the law,
(e) to take all measures aiming at the rehabilitation or re-employment or repatriation of the victims,
(f) to identify any weaknesses or deficiency of the Law or regulations and recommend to the Minister their amendment;


Offences committed contrary to the provisions of this Law shall be considered as predicate offences under the Prevention and Suppression of Money Laundering Activities Law and as having been included in the said Law.

13. **Extractable offences.** 97 of 1970

The offences committed under sections 3, 4 and 5 shall be deemed as having been included in the Schedule to the Extradition of Fugitives Law of 1970.

14. **Regulations**

The Council of Ministers may make regulations for the implementation of the Law which are laid before the House of Representatives for approval.

Notwithstanding the provisions of section 5 paragraph 1 of the Criminal Code, offences committed by any person in any country outside of the Republic, which if they were committed in the Republic should be considered offences under section 3, 4, 5 of this Law, shall be triable by an appropriate Court of the Republic exercising criminal jurisdiction.
Prostitution

The provisions relating to prostitution are placed in the Criminal Code’s chapter on crimes against public order.

A proprietor who gives another person the permission to engage in unlawful prostitution or other activities prohibited by law in his/her residential or non-residential premises is punishable with a fine, detention or up to 5 years of imprisonment.

A person who induces a minor to engage in prostitution, or exploitation of a minor in prostitution is sentenced to 2 to 5 years of imprisonment.

Pandering or pimping is punishable with up to 1 year of imprisonment.
A person who panders or pimp a person of 18 to 21 years of age is sentenced to 1 to 3 years of imprisonment.

Pandering or pimping is punishable with 3 to 7 years of imprisonment if it is committed by the use of violence or other enforcement measures, against a minor, against two or more persons or by a person who has a previous criminal record for the same act.

Trafficking in human beings

Estonia is a party of the International Agreement for the Suppression of the "White Slave Traffic" and International Convention for the Suppression of the Traffic in Women and Children. These international instruments are a constituent part of the Estonian legal system and have superior powers over the laws of the Republic of Estonia.

Estonian law does not deal with trafficking in women, except for the explicit provision of the Criminal Code on sale and purchase of children. Sale and purchase of children is punishable with up to 7 years of imprisonment.

Unlawful transportation of a person over the Estonian border is a crime against the state and is punishable with up to 3 years of imprisonment.

Unlawful deprivation of liberty is a crime against the person and is punishable with up to 5 years of imprisonment.

Forced prostitution is punishable under the articles concerning pandering or pimping of the Criminal Code.

The draft Criminal Code contains a chapter on crimes against individual liberty that contains articles on deprivation of liberty and enslavement.
The Estonian police have started to organise special units to deal with trafficking in women and to improve the co-operation between the Estonian police and Interpol and Europol. In 1998, a drug and prostitution division was established within the criminal police of Tallinn.

Estonia actively takes part in the European Union’s “STOP” programme. The objective of the programme is to analyse the causes of prostitution and examine problems connected with prostitution.
FINLAND

Criminal Code

CHAPTER 17
"OFFENCES AGAINST PUBLIC ORDER"

Section 7 - Border Offence (563/1998)

(1) A person who
(1) crosses the border of Finland without a valid passport or other travel documents, or otherwise than from a legal point of departure or to a legal point of arrival, or contrary to a statutory prohibition, or attempts the same,
(2) otherwise breaches the provisions on border crossing, or
(3) without permission stays, moves or undertakes prohibited measures in the border zone, as referred in the border Zone Act (403/1947) shall be sentenced for a border offence to a fine or to imprisonment for at most one year.

(2) A sentence for a border offence shall not be passed on a foreigner who is refused entry or deported because of an act referred to in paragraph (1), nor on a foreigner who as a refugee seeks asylum or a residence permit in Finland.

Section 8 - Arrangement of illegal immigration (563/1998)

(1) A person who
(1) brings or attempts to bring to Finland a foreigner without a valid passport, visa or residence permit,
(2) arranges or procures transport to Finland for a person referred to in paragraph (1), or
(3) gives to another person a passport, visa or residence permit that is false, falsified or issued to someone else, for use when entering the country, shall be sentenced for arrangements of illegal immigration to a fine or to imprisonment for at most two years.

(2) An act which, when taking into account the motives of the person committing it and the circumstances pertaining to the safety of the foreigner in his/her home country or country of permanent residence, and when assessed as a whole, is to be deemed committed under vindicating circumstances, does not constitute arrangements of illegal immigration.

CHAPTER 20
"SEX OFFENCES"

Section 8 - Buying sexual services from a young person (563/1998)

(1) A person who, by promising or giving remuneration, gets a person younger than eighteen years of age to have sexual intercourse or to perform another sexual act shall be sentenced for buying sexual services from a young person to a fine or to imprisonment for at most six months.

(2) An attempt is punishable.

Section 9 - Pandering (563/1998)
(1) A person who, in order to gain economic benefit to himself/herself or to someone else,
(1) keeps or other premises where sexual intercourse or other comparable sexual acts are offered for remuneration;
(2) otherwise takes advantage of the performance of such an act by someone else; or
(3) entices or intimidates another to such an act
shall be sentenced for pandering to s fine or to imprisonment for at most three years.
(2) An attempt is punishable.

CHAPTER 25
"OFFENCES AGAINST PERSONAL LIBERTY (5789/1995)"

Section 1 - Deprivation of personal liberty (578/1995)

A person who by confinement, bondage, transportation or otherwise unlawfully prevents another from moving or isolates him shall be sentenced for deprivation of personal liberty to a fine or to imprisonment for at most two years.

Section 2 - Aggravated deprivation of personal liberty (578/1995)

If in the deprivation of personal liberty
(1) the loss of personal liberty lasts for longer than 72 hours;
(2) a serious danger to the life or to the health of another is caused; or
(3) exceptional cruelty or the threat of severe violence is used and the deprivation of personal liberty is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated deprivation of personal liberty to imprisonment for at least four months and at most four years.

Section 3 - Kidnapping (578/1995)

(1) A person who
(1) by violence, threat or duplicity takes control of another person in order to subject him/her to degrading conditions or forced labour;
(2) by violence, threat or duplicity takes control over a child under fifteen years of age in order to subject him/her to the trade in human beings; or
(3) enslaves another or keeps a slave, transports slaves or trades in slaves shall be sentenced, if the act is aggravated when assessed as a whole, for kidnapping to imprisonment for at least two and at most ten years.
(2) An attempt is punishable.

Section 4 - Hostage taking (578/1995)

(1) A person who deprives another of his/her liberty in order to have a third person do, endure or omit to do something, under threat that the hostage will otherwise not be released or he/she will be killed or harmed, shall be sentenced, if the act is aggravated when assessed as a whole, for hostage taking to imprisonment for at least one and at most ten years.
(2) An attempt is punishable.

Section 5 - Abduction of a child (578/1995)

If the parent, foster parent or custodian of a child under sixteen years of age or a person close to the child, by self-help, takes custody of the child for himself/herself or another person
referred to above from the person in whose custody the child is, he/she shall be sentenced for abduction of a child to a fine or to imprisonment for at most six months.

Section 6 - Negligent deprivation of personal liberty (578/1995)

(1) A person who through negligence causes another to lose his/her liberty shall be sentenced, unless the act is of minor significance in view of the harm or injury caused, for negligent deprivation of personal liberty to a fine or to imprisonment foe at most six months.
(2) A person shall also be sentenced for negligent deprivation of personal liberty if he/she unlawfully deprives another of his/her liberty under the conviction that he/she has a right to the same, unless the act is of minor significance in view of the harm or injury caused.

Section 7 - Menace (578/1995)

A person who points a weapon at another or otherwise threatens another with an offence under such circumstances that the person so threatened has reason to believe that his/her personal safety or property or that of someone else is in serious danger shall be sentenced, unless a more severe penalty for the act is provided elsewhere in the law, for menace to a fine or to imprisonment.

Section 8 - Coercion (578/1995)

A person who unlawfully by violence or threat forces another to do, endure or omit to do something shall be sentenced, unless a more severe penalty for the act is provided elsewhere in the law, for coercion to a fine or to imprisonment for at most two years.

Section 9 - Right to bring charges (578/1995)

(1) The public prosecutor shall not bring charges for negligent deprivation of personal liberty, menace or coercion, unless the injured party reports the offence for the bringing of charges or unless a lethal instrument has been used to commit menace or coercion, or unless a very important public interest requires that charges be brought.
(2) The public prosecutor shall not bring charges for abduction of a child, if this would be contrary to the interests of the child. Before charges are brought, the public prosecutor shall hear the social welfare board of the municipality where the child resides or is staying, or which otherwise evidently has the best information concerning the child.
1. **Trafficking of human beings**

Decision of the *Conseil d'Etat*

Date: 16.3.66

Title: Decision No. 53-628

Decree of the President of the Republic not discussed in Cabinet, No. 60-1251

Date: 25.11.60

Title: Decree publishing the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly on 2 December 1949

Act No. 60-754

Date: 28.7.60

Title: Act authorising ratification of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly on 2 December 1949

Decree No. 58-1039

Date: 31.10.58

Title: Decree instituting a central office responsible for facilitating the fight against procuring, to be known as the Central Office for the suppression of the "trafficking of human beings" (General Directorate of national security, Directorate of police services)

Code of Criminal Procedure, Article D8-1

Status: Amended

Code of Criminal Procedure, Article D8-1

Status: In force

Act No. 60-754, of 28.7.60


Published under the heading "Legislation and Decrees" in the Official Gazette of 30 July 1960, page 7041

International agreement, protection of persons, women, children, prostitution, trafficking

Decree of the President of the Republic not discussed in Cabinet, No. 60-1251, of 25.11.60
Decree publishing the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly on 2 December 1949

Published under the heading "Legislation and Decrees" in the Official Gazette of 27 November 1960, page 10619

International agreement, protection of persons, women, children, prostitution, trafficking

Rect. 151260 P11225

Decision of the Conseil d'Etat of 16.3.66

Decision No. 53-628

Published in the Recueil Lebon, page 211

International agreement, protection of persons, women, children, prostitution, trafficking

"Moral and social action group" and "Civil and social union of women"

Annulment for abuse of authority of a corrigendum with addendum published in the Official Gazette of 15.12.60 to the decree of 25.11.60 (No. 60-1251) publishing the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly on 2 December 1949

Decree No. 58-1039, of 31.10.58

Decree instituting a central office responsible for facilitating the fight against procuring, to be known as the Central Office for the suppression of the "trafficking of human beings" (General Directorate of national security, Directorate of police services)

Published under the heading "Legislation and Decrees" in the Official Gazette of 4 November 1958, page 9986

Public administration, internal affairs, central administration

**Code of criminal procedure**

Article D8-1 (in force)

Entry into force: 28 March 1997

Book I : The execution of prosecution and judicial investigation
Part I : The authorities responsible for prosecution and judicial investigation
Chapter I : The police
Section I : General provisions

The central police offices which come under Article R 15-18 are:
1. Central Office for the suppression of the counterfeiting of money
2. Central Office for the suppression of the unlawful trafficking of narcotics
3. Central Office for the suppression of the "trafficking of human beings"
4. Central Office for the suppression of crime
5. Central Office for the combating of the trafficking of cultural goods
6. Central Office for the suppression of the trafficking of weapons, munitions, explosives and nuclear, biological and chemical substances
7. Central Office for the suppression of serious financial crime
8. Central Office for the suppression of illegal immigration and of the employment of foreigners without documents

**Development**

2. **Trafficking of women**

Decree No. 47-1299
Date: 10.7.47
Title: Decree promulgating the International Convention for the Suppression of the Traffic in Women of Full Age, signed in Geneva on 11 October 1933

Decree of the President of the Republic not discussed in Cabinet
Date: 3.12.26
Title: Decree promulgating the International Convention for the Suppression of the Traffic in Women and Children, signed in Geneva on 30 September 1921

Code of Criminal Procedure, Article D4
Status: Amended

3. **Procuring**

Ordinary Act No. 92-1336, Articles 10, 11, 12, 13, 14, 15, 16, 17
Date: 16.12.92
Title: Act on the entry into force of the new Penal Code and on the amendment of certain provisions of the criminal law and of penal procedure necessitated by that entry into force

Ordinary Act No. 92-1336, Articles 372, 373
Date: 16.12.92
Title: Act on the entry into force of the new Penal Code and on the amendment of certain provisions of the criminal law and of penal procedure necessitated by that entry into force

Ordinary Act No. 92-1336, Articles 77, 78
Date: 16.12.92
Title: Act on the entry into force of the new Penal Code and on the amendment of certain provisions of the criminal law and of penal procedure necessitated by that entry into force

Ordinary Act No. 88-828, Articles 29,30
Date: 20.7.88
Title: Act introducing an amnesty
Ordinary Act No. 81-82, Article 20  
Date: 2.2.81  
Title: Act reinforcing the safety, and protecting the freedom, of persons

Ordinary Act No. 81-82, Article 34  
Date: 2.2.81  
Title: Act reinforcing the safety, and protecting the freedom, of persons

Ordinary Act No. 81-82, Article 14  
Date: 2.2.81  
Title: Act reinforcing the safety, and protecting the freedom, of persons

Ordinary Act No. 75-624, Articles 1, 2, 3, 4, 5, 6, 7, 8, 9  
Date: 11.7.75  
Title: Act amending and supplementing certain provisions of the criminal law

Ordinary Act No. 75-229  
Date: 9.4.75  
Title: Act empowering associations set up to combat procuring to take civil action

Ordinary Act No. 46-685  
Date: 13.4.46  
Status: Text partly repealed Article 3, Articles 1 (partly) and 6 have been incorporated into the Public Health Code, Article 7  
Title: Known as the Marthe Richard Act on the closure of licensed brothels and the stepping up of the fight against procuring

Act  
Date: 2.3.43  
Status: Text partly repealed Articles 1 to 8  
Title: Act on the combating of procurers' activity

Ordinary Act No. 98-468, Article 13  
Date: 17.6.98  
Title: Act on the prevention and punishment of sexual offences and on the protection of minors

Ministry of the Interior

Decree No. 58-1039 of 31 October 1958 instituting a central office responsible for facilitating the fight against procuring

The President of the Cabinet,

On the basis of the report of the Minster for the Interior, the Minister for Justice (Garde des Sceaux), the Minister for Foreign Affairs, the Minister for the Armed Forces, the Minister for French Overseas Territories and the Minister for Public Health and Population,

Having regard to the decree of 19 February 1905 promulgating the International Agreement for the Suppression of the White Slave Trade, concluded in Paris on 18 May 1904,
Having regard to the decree of 23 August 1912 promulgating the International Convention for the Suppression of the White Slave Traffic, signed in Paris on 4 May 1910,

Having regard to the Decree of 3 December 1926 promulgating the International Convention for the Suppression of the Traffic in Women and Children, signed in Geneva on 30 September 1921,

Having regard to the Decree of 10 July 1947 promulgating the International Convention for the Suppression of the Traffic in Women of Full Age, signed in Geneva on 11 October 1933,

Decrees:

Article 1 - Within the Ministry of the Interior (General Directorate of national security, Directorate of police services, 11, rue des Saussaies, Paris 8e) is hereby set up a police department responsible for centralising all information which might facilitate the investigation of what is known as the "trafficking of human beings" and for co-ordinating all operations intended to suppress such trafficking.

This department, which shall be known as the Central Office for the suppression of the "trafficking of human beings", shall be in close contact with:

a. All national gendarmerie and all police departments which have a duty to report offences against Articles 334, 334 bis and 335 of the Penal Code or to carry out administrative checks at stations, airports and seaports;

b. All gendarmerie and all police departments based in overseas territories of the French Republic and in the territories and States in respect of which France bears responsibility for international relations;

c. The similar agencies of other countries.

Article 2 - The members of the gendarmerie and all police officers aware that any form of procuring is occurring shall directly and immediately notify the central office set up under Article 1, through a report setting out the facts noted or the information received, including all useful details, evidence or inferences.

Article 3 - In order to obtain full documentation relating to the persons engaged in procuring throughout the territory of the French Republic and in the territories and States in respect of which France bears responsibility for international relations, the following shall be prepared in the event of charge or arrest:

a. two fingerprint files,
b. two criminal record files,
c. a full individual description,
d. two sets of photographs in three poses: full-face, side-face and full-length.

If the officials who made the arrests are unable to prepare the files or take the photographs themselves, they shall, as a matter of urgency, notify the responsible regional
police department or the nearest identification department of the arrests, indicating the locations to which the offenders have been sent. These departments shall have the specified documents prepared and forward them directly to the Central Office.

Article 4 - The aforementioned Central Office shall, every two years, send to the Ministry of Foreign Affairs a general report on the suppression of the "traffic in persons" and on the exploitation of the prostitution of others, for transmission to the United Nations Organization in accordance with the decision taken by the UN General Assembly on 2 December 1949.

In order to enable the paragraph of this report relating to the judicial measures taken against any individual who has violated the provisions of Articles 334, 334 bis and 335 of the Penal Code to be written, the departments which noted an infringement of the relevant legislation shall attach to the case file a note which the prosecuting authorities shall send to the Central Office, after indicating the judicial action taken.

Article 5 - The Central Office set up at the Ministry of the Interior (General Directorate of national security, Directorate of police services) has the power to make contact, and directly to correspond, with other states' central offices, with the International Criminal Police Organization and with any other organisation having as one of its responsibilities the suppression of the "trafficking of human beings".

Article 6 - The Minister for the Interior, the Minister for Justice (Garde des Sceaux), the Minister for Foreign Affairs, the Minister for the Armed Forces, the Minister for French Overseas Territories and the Minister for Public Health and Population are hereby made responsible, each in his own sphere, for implementation of the present decree, which shall be published in the Official Gazette of the French Republic.

Done in Paris on 31 October 1958.

Charles de Gaulle (President of the Cabinet)

Emile Pelletier (Minister for the Interior)

Michel Debré (Minister for Justice, Garde des Sceaux)

Maurice Couve de Murville (Minister for Foreign Affairs)

Pierre Guillaumat (Minister for the Armed Forces)

Bernard Cornut-Gentille (Minister for French Overseas Territories)

Bernard Chenot (Minister for Public Health and Population)
4. **Prostitution**

Act No. 94-89, Articles 13, 14, 15, 16  
*Date:* 1.2.94  
*Title:* Act introducing a fixed penalty and relating to the new Penal Code and to certain provisions of criminal procedure

Ordinary Act No. 92-1336, Articles 273, 274, 275, 276, 277, 278  
*Date:* 16.12.92  
*Title:* Act on the entry into force of the new Penal Code and on the amendment of certain provisions of the criminal law and of criminal procedure necessitated by that entry into force

Ordinary Act No. 81-82, Article 20  
*Date:* 2.2.81  
*Title:* Act reinforcing the safety, and protecting the freedom, of persons

Ordinary Act No. 81-82, Article 34  
*Date:* 2.2.81  
*Title:* Act reinforcing the safety, and protecting the freedom, of persons

Ordinary Act No. 75-229  
*Date:* 9.4.75  
*Title:* Act empowering associations set up to combat procuring to take civil action

Decision of the *Conseil d'Etat*  
*Date:* 16.3.66  
*Title:* Decision No. 53-628

Ordinary Act No. 64-1271  
*Date:* 23.12.64  
*Title:* Act supplementing Article 335-4 of the Penal Code - powers of the investigating judge in the event of court proceedings in respect of offences concerning prostitution

Order No. 60-1245, Article 14  
*Date:* 25.11.60  
*Title:* Order on the combating of procuring

Circular  
*Date:* 25.11.60  
*Title:* Circular on the suppression of procuring

Decree No. 60-1248  
*Date:* 25.11.60  
*Title:* Decree rendering illegal certain offences against the provisions of Chapter I of Part II of Book III of the Public Health Code - the fight against prostitution

Decree of the President of the Republic not discussed in Cabinet, No. 60-1251  
*Date:* 25.11.60
Title: Decree publishing the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly on 2 December 1949

Decree No. 60-1247  
Date: 25.11.60  
Title: Decree amending certain provisions of the Penal Code (part 2, regulations, and decrees adopted after referral to the Conseil d'Etat)

Act No. 60-754  
Date: 28.7.60  
Title: Act authorising ratification of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly on 2 December 1949

Order No. 58-1297, Article 9  
Date: 23.12.58  
Title: Order amending certain penalties with a view to increasing the power of police courts

Order No. 58-1301, Article 5  
Date: 23.12.58  
Title: Order on the protection of children and young people in danger

Order No. 58-1301  
Date: 23.12.58  
Title: Order on the protection of children and young people in danger

Decision  
Date: 21.10.48  
Title: Decision on a health and social record in the context of prostitution

Simple decree No. 47-2253  
Date: 5.11.47  
Title: Decree on the application of Act No. 46-795, of 24 April 1946 (introduction of a health and social record in the context of prostitution)

Decree No. 47-1299  
Date: 10.7.47  
Title: Decree promulgating the International Convention for the Suppression of the Traffic in Women of Full Age, signed in Geneva on 11 October 1933

Act No. 46-854, Article 31  
Date: 27.4.46  
Title: Act granting and cancelling appropriations for the financial year 1946

Act No. 46-795  
Date: 24.4.46  
Status: Text completely repealed and incorporated into the Public Health Code  
Title: Act introducing a health and social record in the context of prostitution
Ordinary Act No. 46-685  
Date: 13.4.46  
Status: Text partly repealed Article 3, Articles 1 (partly) and 6 have been incorporated into the Public Health Code, Article 7  
Title: Known as the Marthe Richard Act on the closure of licensed brothels and the stepping up of the fight against procuring

Act  
Date: 20.7.40  
Title: Act amending the Act of 27.5.1885 on repeat offenders

Decree of the President of the Republic not discussed in Cabinet  
Date: 3.12.26  
Title: Decree promulgating the International Convention for the Suppression of the Traffic in Women and Children, signed in Geneva on 30 September 1921

Ordinary Act No. 98-657, Article 124  
Date: 29.7.98  
Title: General Principles Act on the combating of exclusion

Decree adopted after referral to the Conseil d'Etat, No. 99-1050  
Date: 14.12.99  
Title: Decree on the procedural steps to be taken by the public prosecutor's office in the event of prosecution in the case of offences punishable by the supplementary penalty of confiscation of goodwill

Penal Code, Articles 225-5, 225-6, 225-22, 225-10, 225-24  
Status: In force

Code of Criminal Procedure, Articles A 14 and 59  
Status: Amended

Family and Welfare Code, Article 185-1  
Status: Amended

Family and Welfare Code, Article 185-1  
Status: In force

Code of Criminal Procedure, Article 706-35  
Status: In force

Code of Criminal Procedure, Article 706-40  
Status: In force

Penal Code, Article 225-7  
Status: Amended

Penal Code, Article 225-7  
Status: In force
5.  Slavery

Simple decree No. 83-1003
Date: 23.11.83
Title: Decree on the commemoration of the abolition of slavery

Ordinary Act No. 83-550
Date: 30.6.83
Title: Act on the commemoration of the abolition of slavery by the French Republic and on that of the termination of all employment contracts concluded following that abolition through a public holiday in the Departments of Guadeloupe, Guyana, Martinique and Réunion and in the Collectivité Territoriale of Mayotte

Decree No. 65-462
Date: 15.6.65
Title: Decree publishing the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, of 7 September 1956

Act No. 63-811
Date: 6.8.63
Title: Act authorising ratification of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, signed on 7 September 1956

Decree
Date: 27.4.1848
Title: Decree on the abolition of slavery in the French colonies and possessions

Act
Date: 20.5.1802
Title: Act of 30 Floréal, Year X, on the trafficking of negroes and on the rules governing the colonies

Decree
Date: 4.2.1794
Title: Decree of 16 Pluviose, Year II, abolishing the enslavement of negroes in the colonies

Penal Code, Article 212-1
Status: In force

Labour Code applicable in the Collectivité Territoriale of Mayotte, Article L 222-1
Status: In force
Article 171, paragraph 1

Inveigling a minor into prostitution or other sexual lechery, or involving him/her in begging or other antisocial activities, shall be punished as follows: work for social utility: 70-240 hours, or correctional work - up to 2 years, or confinement - up to 3 months, or deprivation of liberty - up to 2 years.

Article 172, paragraph 2.3

Buying and selling a minor, or implementing any other illicit transactions regarding him/her … aimed at taking the minor abroad, or inveigling him/her into criminal or any other antisocial activities, shall be punished as follows: deprivation of liberty - up to 2 years.

Article 253, paragraph 1

Involving somebody into prostitution, inter alia by fraud, shall be punished as follows: imposing fine or deprivation of liberty - up to 2 years.

Action Plan on Combating violence against women (approved by Order of the President of Georgia #64, February 25, 2000)

Objective: prevention and elimination of trafficking in women for the purpose of sexual exploitation.

Strategy: to condemn trafficking for the purpose of sexual exploitation as an infringement of the basic principles of human rights; to define trafficking in all its elements and reinforce the sanctions accordingly; to collect data on trafficking for the purpose of sexual exploitation, work out programmes for the protection of its victims; to collaborate with law enforcement, immigration, social, legal and administrative bodies for elimination of trafficking in women.

Executors: The Ministry of Internal Affairs, the Procuracy of Georgia, the Ministry of Refugees and Displacement, the Parliament of Georgia, NGOs.

Duration: 2000 - 2002
Trafficking in human beings

180b Whoever intentionally influences another person for economic gain in order to direct this person in knowledge of a situation of force to commence or continue prostitution, will be punished by deprivation of liberty of up to five years or with a fine. Also will be punished anyone who influences another person for economic gain, while exploiting that person's helplessness due to the person's stay in a foreign country, in order to undertake sexual acts with or in front of or by a third person.

With deprivation of liberty from six months to ten years will be punished who intentionally influences
1. another person in knowledge of helplessness due to the person's stay in a foreign country
2. a person under 21 years of age

in order to direct the person to start or continue prostitution or who gets the person to commence or continue prostitution.

In case of para 2 the attempt is punishable.

181 Whoever
1. directs another person through force, or threats with a considerable abuse, or deception to commence or continue prostitution
2. recruits another person through deception or against his will with force, kidnaps a person through threats with a considerable abuse or deception, in order have the person, in knowledge of the person's helplessness due to the person's stay in a foreign country, undertake sexual acts with or in front of or by a third person, or
3. commercially recruits a person, in order to direct the person, in knowledge of the helplessness due to the person's stay in a foreign country, to commence or continue prostitution,

will be punished with deprivation of liberty from one to ten years.

In cases of lesser gravity, the deprivation of liberty is six months to five years.

The Criminal Law was amended in 1992 by the outlawing of trafficking in human beings. This amendment improves the protection against sexual exploitation, specifically against the dangers of forced prostitution and trafficking in human beings, that the law, in particular, provides for foreign girls and women.

Moreover, a law was passed for improving the combating of money laundering, which is intended, among other things, to expand the possibilities for confiscating the financial resources of organised traffickers in human beings. In addition, Article 180b of the German Penal code (trafficking in human beings) has been added to the catalogue of offences open to
accessory prosecution in art. 395 of the German code of Criminal Procedure, so that the victims can also appear as additional prosecutors with the corresponding rights in these proceedings.

The revised articles also apply to criminal acts committed abroad, independently of the law applicable where the offence was committed.

** Trafficking in Children **

The 6th amendment to the Penal Code (1998) introduced a provision against trafficking in children in order to allow more effective action to be taken against the sexual abuse of children.

** Action Plan of the Federal Government to Combat Violence against Women **

Trafficking in human beings is an especially heinous form of violence against women, since the vast majority of victims are women. Therefore, combating trafficking in women is one part of the Action Plan of the Federal Government to Combat Violence against Women which was decreed by the Federal Cabinet on Dec. 1st, 1999. This action plan constitutes a comprehensive overall plan to combat violence against women on all levels.

** Working Group on the Traffic in Women **

To better combat traffic in women, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has set up the nationwide working group "Traffic in Women" in which the various federal and Land ministries, the Federal Criminal Police Office as well as the specialised advisory services are involved. It is the task of this working group to:

- ensure the mutual exchange of information among its members concerning measures to combat traffic in women,
- analyse the problems which could stand in the way of effectively combating traffic in women,
- elaborating joint activities and proposals,
- preparing German statements in the context of international measures.

One of the working group's achievements has been the elaboration of proposals concerning the administrative regulations with respect to the Aliens Act, which were adopted on Oct. 9th, 2000 and grant victims of trafficking a grace period of at least 28 days, in order to give them time to prepare their return to their country of origin and to decide whether they want to co-operate with the German authorities as a witness for the prosecution. Another achievement is the development of a co-operation concept for the protection of victim-witnesses in trials having to do with the traffic in human beings which is currently being discussed in the Conference of Ministers Responsible for Internal Affairs. This special witness protection concept builds on institutionalised co-operation between the police and the specialised advisory services and is therefore an additional example of this type of co-operation.
Furthermore, the Working Group on Traffic in Women has been responsible for deciding on the content of the information material destined for distribution in the main countries of origin (the pamphlets were translated, printed and distributed with the financial assistance of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth) and has discussed the contents of a campaign against traffic in women. On the agenda for the future are topics such as:

- the implementation of the already elaborated witness protection concept, clarification of funding issues,
- the question of job opportunities or training for women who remain in Germany for several years to serve as witnesses,
- the planned law to improve the siphoning-off of extra profits,
- the United Nation's additional protocol on traffic in human beings, especially women and children, which is currently being drawn up,
- issues concerning the new media and the Internet.

In addition, co-ordinated co-operation between the authorities and specialised advisory services at home and abroad is of assistance in ensuring the safe return of foreign women to their home countries.
Trafficking in human beings as a criminal offence was incorporated into Criminal Code (Section 175/B) in 1998 and came into force on 1st March 1999. According to this new section any person who sells, purchases, gives or takes over someone else for payment as well as who swaps or for this purpose gets someone for another person, commits a crime punishable with imprisonment of up to three years.

Extracts from the Criminal Code

Section 175/B - Trafficking in Human Beings

(1) Any person who sells, purchases, conveys or receives another person or exchanges a person for another person, or appropriates one for such purpose for another party commits a felony and shall be punishable with imprisonment up to three years.

(2) The punishment shall be imprisonment from one to five years if the criminal act is committed:
   (a) against a person deprived of personal freedom,
   (b) against a person under the age of eighteen,
   (c) for the purpose of forced labour,
   (d) for the purpose of sodomy or sexual intercourse or to involuntarily engage in such with another person.

(3) The punishment shall be imprisonment from two to eight years if the criminal act involves two of the aggravating circumstances described in Subsection (2),
   (a) is committed as part of a criminal organisation,
   (b) is committed against a person under the education, guardianship, supervision or medical treatment of the perpetrator.

(4) The punishment shall be imprisonment from five to ten years if the criminal act involves three of the aggravating circumstances described in Subsection (2),
   (a) is committed against a person deprived of personal freedom, as part of a criminal organisation,
   (b) is committed against a person under the education, guardianship, supervision or medical treatment of the perpetrator, and deprived of personal freedom.

(5) The punishment shall be imprisonment from ten to fifteen years or for life if the criminal act is committed for the purpose of forced labour and sodomy or sexual intercourse, or to involuntarily engage in such with another person:
   (a) against a person deprived of personal freedom, as part of a criminal organisation,
   (b) against a person under the education guardianship, supervision or medical treatment of the perpetrator, and deprived of personal freedom.

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

Section 204 of the Criminal Code penalising prostitution was abrogated in 1993. The exploitation of prostitution of others, however, remained a crime. Therefore it was necessary to give a definition of prostitution.
Section 210/A - Prostitution

(1) Prostitution is pursued by the person who has sexual intercourse or fornicates striving to make regular profit.
(2) For the purposes of this Title, fornication is: any gravely indecent act with the exception of sexual intercourse, which serves the stimulation or satisfaction of sexual desire.

Section 205 - Promotion of prostitution

(1) The person who makes available a building or any other place for prostitution to another person commits a felony and shall be punishable with imprisonment up to three years.
(2) The person who maintains, heads a brothel or makes available financial means to the functioning thereof commits a felony and shall be punishable with imprisonment up to five years.
(3) The punishment shall be imprisonment from two to eight years if
   (a) any person who has not yet completed his/her eighteenth year of age engages in prostitution in the brothel,
   (b) prostitution is promoted as part of a criminal organisation.
(4) The person who persuades another person to engage in prostitution shall be punished in accordance with subsection (1).

Section 206 - Living on Earnings of Prostitution

The person who lives wholly or in part on the earnings of a person engaged in prostitution commits a felony and shall be punishable with imprisonment for up to three years. Banishment may also take place as a supplementary punishment.

Section 207 - Pandering

(1) The person who solicits another person for sexual intercourse or fornication for somebody else in order to make a profit commits a felony and shall be punishable with imprisonment up to three years.
(2) The punishment shall be imprisonment from two to five years if the pandering is business like.
(3) The punishment shall be imprisonment from two to eight years if the pandering is committed:
   (a) To the injury of a relative of the perpetrator or of a person under his 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 organisation.
(4) The person who agrees on the perpetration of pandering defined in subsection (2) commits a felony and shall be punishable with imprisonment up to three years.

Act LXIX of 1999 on "Violation of Administrative Rules" contains 3 sections related to prostitution as follows:
Section 143 - Prohibited soliciting

(1) If the prostitute violates provisions of prohibitions determined in Acts or Decrees of the local government by authorisation of Act, fine up to the amount of HUF 50,000 shall be imposed on him/her.

(2) Prostitutes shall be fined up to HUF 100,000 if
   (a) the person invited by the prostitute is a minor under the age of 14, or invitation from a minor to engage in such activity has been accepted,
   (b) the invitation to engage in act of prostitution is offensive,
   (c) the prostitute does not have a medical certificate defined by separate provisions.

(3) In case defined in Paragraphs (1) and (2) the person who committed such violation of administrative rules may be subject to expulsion.

(4) Condemning proceedings for violation of administrative rules defined in Paragraphs (1) and (2) shall fall under the competence of the Police.

Section 144 - Prohibition of invitation to engage in act of prostitution

(1) Any person who invites another person to engage, for payment, in an act of prostitution or accept such invitation from another person within the territory of a protected zone determined in separate provisions shall be fined up to the amount of HUF 50,000.

(2) Conducting proceedings for violation of administrative rules defined in Paragraphs (1) shall fall under the competence of the police.

Section 145 - Prohibition of offering and advertising sexual services

(1) Any person who offers, advertises sexual services in written form, or through video, audio or other devices as well as who contribute thereto shall be fined up to the amount of HUF 50,000.

(2) Conducting proceedings for violation of administrative rules defined in Paragraph (1) shall fall under the competence of the Police.

In recent years, continuous efforts have been made to elaborate a system, which is able to prevent and control prostitution without violating the rules of the 1949 Convention on the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others.

The result was a new law (Act LXXV of 1999 on "The modification of regulation on the fight against organised crime and related offences") based on a so-called limited abolitionist concept. According to this, there are zones of prohibition where prostitution is not allowed, and zones of tolerance to be created by the local governments in cases when prostitution massively appears. The assignment of such locations cannot be neglected, if prostitution permanently appears in public places and the settlement has more than 50,000 inhabitants.

Prostitutes as well as clients are prohibited from offering or accepting sexual services in the protected zones. Furthermore, the offering of sexual services to persons of less than 18 years, the accepting of offers of such a person and offering services in a way offending other people
is forbidden. Violations by prostitutes are sanctioned with fines up to HUF 100,000, by clients up to HUF 50,000. The advertisement of sexual services (and taking part therein) by written form, audio-visual or other means in protected zones is forbidden and sanctioned by fine up to HUF 50,000.

All of the above mentioned violations of law are in contravention and belong to police competence.

In case of illegal prostitution, the offender of the contravention can be expelled.

**Health control** of prostitutes is regulated in the **order No. 41/1999 (IX. 8.) of the Minister of Health Affairs.** According to this, a prostitute can offer sexual services only if she possesses the prescribed medical certificate, which is valid together with her identity card. The prostitute herself should initiate the medical examination. It is not free of charge and should be repeated every month or once every three months, depending on the kind of examination.

From September until the end of November 1999, only 12 prostitutes initiated the medical examination.
Entitled

AN ACT TO PROHIBIT TRAFFICKING IN ILLEGAL IMMIGRANTS 
AND TO AMEND THE REFUGEE ACT, 1996 
AND TO PROVIDE FOR RELATED MATTERS

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1. (1) In this Act except where the context otherwise requires
"illegal immigrant" means a non-national who enters or seeks to enter or has entered
the state unlawfully;

"Minister" means the Minister for Justice, Equality and Law Reform;

"Vehicle" includes any ship, boat, aircraft or mechanically propelled vehicle within the

(2) In this act:

(a) a reference to a section is a reference to a section of this Act, unless it is indicated
that reference to some other provision is intended;
(b) a reference to a paragraph or subparagraph is a reference to a paragraph or sub-
paragraph of the provision in which the reference occurs, unless it is indicated that
reference to some other provision is intended, and
(c) a reference to any enactment shall be construed as a reference to that enactment as
amended, adapted or extended by or any subsequent enactment.

2. (1) A person who organises or knowingly facilitates the entry into the State of a person
whom he or she knows or has reasonable cause to believe to be an illegal immigrant or
a person who intends to seek asylum shall be guilty of an offence and shall be liable
(a) on summary conviction, to a fine no exceeding £1,500 or to imprisonment for a
term not exceeding 12 months or to both,
(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding
10 years or to both.

(2) Subsection (1) shall not apply -
(a) to anything done by a person otherwise than for gain, or
(b) to anything done to assist a person seeking asylum by a person in the course of his
or her employment by a bona fide organisation if the purposes of that organisation
include giving assistance to persons seeking asylum.

(3) Subsection (1) shall apply to acts done or omissions made outside, as well as to
acts done or omissions made, in the State.
Section 3 Power to detain certain vehicles

(1) Where a member of the Garda Siochana arrests a person for an offence under section 2 and a vehicle is suspended of having been used by the person for the purpose of committing or facilitating the commission of the offence, the member may detain the vehicle with its equipment, fittings and furnishings for a period not exceeding 48 hours.

(2) At any time before the expiry of the period referred to in subsection (1), on application to it in that behalf by a member of the Garda Siochana, the Court, if it is satisfied
(a) that the person referred to in subsection (1) has been or is about to be charged with an offence under section 2,
(b) that there are reasonable grounds for believing that the vehicle is one which could on conviction on indictment of the person of that offence, and having regard to subsection (6) of section 4, be the subject of a forfeiture order under section 4, and
(c) that there are reasonable grounds for believing that the vehicle would be removed from the State or sold or otherwise disposed of before the determination of the proceedings for that offence.
May make an order authorising the further detention of the vehicle by the Garda Siochana for such period, not exceeding 3 months, as may be specified in the order.

(3) The Court may from time to time, if it is satisfied in relation to the matters referred to in paragraphs (a), (b) and (c) of subsection (2), on application to it in that behalf by a member of the Garda Siochana before the expiration of the period specified in an order under this section, make an order authorising the detention of the vehicle by the Garda Sioncana for such further period not exceeding 3 months as may be specified in the order.

(4) A vehicle shall not be detained under this section for periods exceeding in total 2 years and the detention of a vehicle under this section shall cease if the proceedings concerned are summary or are discontinued or if the person concerned is acquitted of the charge concerned.

(5) At any time while a vehicle is being detained by virtue of this section, a person specified in paragraph (a), (b) or (c) of section 4(2) may apply to the Court for its release and the Court may
(a) order the release of the vehicle unconditionally if it is satisfied that the matters referred to in subsection (2) no longer apply,
(b) on such security being given as it considers satisfactory, release the vehicle subject to the condition that it will be delivered up to the Garda Siochana if
(i) the person concerned is convicted of the offence charged, and
(ii) an order for its forfeiture is made under section 4,
(c) order the release of the vehicle subject to such other conditions as it considers appropriate, including a condition that the vehicle is not removed from the State, sold or otherwise disposed of, pending the determination of the proceedings for the offence, or
(d) if the vehicle has been detained under this section and subsequently released on the giving of security under paragraph (b) and has been sold, destroyed or otherwise disposed of without the leave of the Court, order the forfeiture of the security.

(6) In this section "Court" means
(a) if the person concerned has not been charged with an offence under section 2 or if he or she has been so charged and proceedings for the offence have not commenced, the District Court, or
(b) if he or she has been so charged and the proceedings concerned have commenced, the court hearing the proceedings;
Section 4  Forfeiture of ship, aircraft, or other vehicle

(1) Where a person is convicted on indictment of an offence under section 2 and a vehicle was used by the person for the purpose of committing or facilitating the commission of the offence, the court concerned may, in addition to or instead of any penalty that it may impose under section 2, order the vehicle with its equipment, fittings and furnishings, or the appropriate share thereof, to be forfeited to the State and may make such other orders as it considers necessary or expedient for the purpose of giving effect to the forfeiture.

(2) Subsection (1) shall not apply to a person unless the person convicted is
   (a) the owner of, or of a share in, the vehicle concerned, or
   (b) a director or manager of a company which is the owner of, or of a share in, the vehicle concerned, or
   (c) subject to subsection (3), the captain, driver or other person in charge of the vehicle concerned.

(3) In a case where the person convicted is the captain, driver, or other person in charge of the vehicle concerned, subsection (1) shall not apply unless the persons referred to in paragraph (a) or (b) knew or could with reasonable diligence have discovered that the vehicle was being used for the purpose of the commission of an offence under section 2.

(4) Whenever an order is made under this section, a member of the Garda Síochána, for the purpose of giving effect thereto
   (a) seize and detain the vehicle concerned, and
   (c) do such other things as are authorised by the order or are necessary for the purpose aforementioned.

(5) A court shall not order a vehicle to be forfeited under this section in a case where a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to the person to show cause why the order should not be made.

(6) In considering whether to make an order under this section a court shall have regard
   (a) to the value of the property, and
   (b) to the likely financial and other effects on the person whose property it is proposed to forfeit of the making of the order (taken together with any other order that the court contemplates making).

(7) A Court may, in making an order under this section, include such provisions in that order, or, as the case may require, may make an order supplemental to that order that contains such provisions, as appear to it to be necessary to protect any interest in the property, the subject of the order, of a person other than the person in respect of whom subsection (1) applies.

(8) An order under this section shall not take effect until the ordinary time for instituting an appeal against the order or the conviction concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

Section 5  Judicial Review

(1) A person shall not question the validity of
   (a) a notification under section 3(3)(a) of the Immigration Act, 1999,
   (b) a notification under section 3(3)(b)(ii) of the Immigration Act, 1999,
   (c) a deportation order under section 3(1) of the Immigration Act 1999,
(d) a refusal under Article 5 of the Aliens (Amendment) (no.2) Order, 1999 (S.I. no.24 of 1999),

(e) an exclusion order under section 4 of the Immigration Act, 1999,

(f) a decision by or o behalf of the minister to refuse an application for refugee status or a recommendation of an Appeal Authority referred to in paragraph 13 of the document entitled "Procedures for Processing Asylum claims in Ireland" which, as mentioned, was laid by the minister for Justice, Equality and Law Reform before the Houses of the Oireachtas in March 1998,

(g) a recommendation under section 12 (as mentioned by section 11(1)(h) of the Immigrant Act, 1999) of the refugee Act, 1996,

(h) a recommendation of the Refugee Applications Commissioner under section 13 (as amended by section 11(1)(l) of the Immigrant Act, 1999) of the Refugee Act, 1996,

(i) a decision of the refugee Appeals Tribunal under section 16 (as amended by section 11(1)(k) of the immigrant Act, 1999) of the refugee Act, 1996,

(j) a determination of the Commissioner or a decision of the Refugee Appeals Tribunal under section 22 (as amended by section 11(1)(p) of the Immigration Act, 1999) of the Refugee Act, 1996,

(k) a refusal under section 17 (as amended by section 11(1)(l) of the Immigration Act, 1999) of the Refugee Act, 1996

(l) a determination of the officer appointed under section 22(4)(a) of the Refugee act, 1996,

(m) a decision of an officer appointed under section 22(4)(b) of the Refugee act, 1996,

(n) a decision under section 21 (as amended by section 11(1)(o) of the Immigration Act, 1999) of the Refugee act, 1996,

otherwise than by way of an application for judicial review under order 84 of the rules of the Superior Courts (S.I. No.15 of 1986)(hereafter in this section referred as "the Order");

(2) An application for leave to apply for judicial review under the Order in respect of any of the matters referred to in subsection (1) shall

(a) be made within the period of 14 days commencing on the date on which the person was notified the decision, determination, recommendation, refusal or making of the order concerned unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made, and

(b) be made by motion on notice (grounded in the manner specified in the order in respect of an ex parte motion for leave) to the minister and any other person specified for the purpose by order of the High Court is satisfied that there are substantial grounds for contending that the decision, determination, recommendation or refusal or order is invalid or ought to be quashed.

(3)(a) The determination of the High Court of an application for leave to apply for judicial review as aforesaid or of an application for such judicial review shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(b) This subsection shall not apply to a determination of the high Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(4) The High Court shall give such priority as it reasonably can, having regard to all the circumstances, to the disposal of proceedings in that Court under this section.

(5) The superior Court Rules Committee may make rules to facilitate the giving of effect to subsection (4).
(6) References in this section to the Order shall be constructed as including references to the Order as amended or re-enacted (with or without modification) by rules of Court.

Section 6 Amendment of section 8 of Criminal Law Act, 1976

Section 8 of Criminal Law Act, 1976, is hereby amended in subsection (1) by the substitution of the following paragraphs for paragraphs (I) to (k):
(i) an offence under this Act,
(j) an offence under section 12(1) of the Firearms and offensive Weapons Act, 1990,
(k) an offence under section 112(2) of the Road Traffic Act, 1961 (substituted by section 3(7) of the Road Traffic (Amendment) Act, 1984),

Section 7 Entry, Search and Seizure

(1) Where, on the sworn information of a member of the Garda Siochana not below the rank of sergeant, a judge of the District court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under section 2 is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and may persons found at that place.
(2) A warrant issued under this section shall authorise a named member of the Garda Siochana, alone or accompanied by such other members of the Garda Siochana and such other persons as may be necessary
(a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,
(b) to search it and any persons found there, and
(c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of a relating to an offence under section 2
(3) A member of the Garda Siochana acting in accordance with a warrant issued under this section may require any person found at the place where the search is carried out to give the member his or her name and address
(4) Any person who
(a) obstruct or attempts to obstruct any member of the Garda Siochana acting in accordance with a warrant issued under subsection (1),
(b) fails or refuses to comply with a requirement under this section or
(c) gives a name or address which is false or misleading, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both.
(5) A member of the Garda Siochana may arrest without warrant any person whom the member suspects of having committed an offence under subsection (4).
(6) In this section "place" includes any dwelling, any building or part of a building and any vehicle, vessel, structure or container used or intended to be used for the carriage of goods by road.

Section 8 Amendment of Schedule to Bail Act, 1997

The Schedule to the Bail Act, 1997, is hereby amended by the insertion of the following paragraph after paragraph 27"27A. Any offence under section 2 of the Illegal Immigrants (Trafficking) Act, 2000".
Section 9 Amendment of Refugees Act, 1996

The Refugee Act, 1996, is hereby amended
(a) in section 13(3)(c)(inserted by the Immigration Act, 1999) by the substitution of "15 working days" for "21 days",
(b) in section 16(3), by the substitution of "13(3)(b)" for "13(2)(b)",
(c) in the Second Schedule (inserted by the Immigration Act, 1999), by
   (i) the substitution in paragraph 1 of "5 years" for "10 years" and
   (ii) the substitution of the following paragraph for paragraph 2
     "2.(a) The members of the Tribunal shall be appointed by the Minister.
     (c) A person shall not be appointed to be the chairperson unless the Civil Service
         Commissioners, within the meaning of the Civil Service Commissioners Act, 1956,
         after holding a competition under section 29 of the Act, have selected him or her for
         appointment to the position".

Section 10 Offences by Bodies Corporate

(1) Where an offence under this Act has been committed by a body corporate and is proved to
    have been committed with the consent or connivance of or to be attributable to any
    neglect on the part of a person being a director, manager, secretary or other officer of the
    body corporate, or a person who was purporting to act in any such capacity, that person as
    well as the body corporate shall be guilty of an offence and be liable to be proceeded
    against and punished as if he or she were guilty of the first-mentioned offence.
(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall
    apply in relation to the acts and defaults of a member in connection with his or her
    functions of management as if he or she were a director or manager of the body corporate.

Section 11 Expenses

The expenses incurred by the Minister in the administration of this Act shall, to such extent as
may be sanctioned by the minister for Finance, be paid out of moneys provided by the
Oireachtas.

Section 12 Short title and commencement

(1) This Act may be cited as the Illegal Immigrants (Trafficking) Act, 2000.
    This Act shall come into operation on such day or days as, by order or orders made by the
    Minister, may be fixed therefore either generally or with reference to any particular purpose
    or provision and different days may be so fixed for different purposes and different
    provisions.
Child Trafficking and Pornography Act, 1998

AN ACT TO PROHIBIT TRAFFICKING IN, OR THE USE OF, CHILDREN FOR THE PURPOSES OF THEIR SEXUAL EXPLOITATION AND THE PRODUCTION, DISSEMINATION, HANDLING OR POSSESSION OF CHILD PORNGRAPHY, AND TO PROVIDE FOR RELATED MATTERS

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1. (1) This Act may be cited as the Child Trafficking and Pornography Act, 1998.
(2) This Act shall come into operation one month after the date of its passing.

2. (1) In this Act, except where the context otherwise requires - "audio representation" includes -
(a) any such representation by means of tape, computer disk or other thing from which such a representation can be produced and
(b) any tape, computer disk or other thing on which any such representation is recorded;

"child" means a person under the age of 17 years;

"child pornography" means -

(a) any visual representation -
(i) that shows, or in the case of a document, relates to a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in explicit sexual activity;
(ii) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person or persons, or
(iii) whose dominant characteristic is the depiction, for a sexual purpose, of the genital or anal region of a child,

(b) any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity

(c) any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or

(d) any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of section 3,

irrespective of how or through what medium the representation, description or information has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation, description or information produced by or from computer-graphics or by any other electronic or mechanical means but does not include:
(I) any book or periodical publication which has been examined by the Censorship of Publications Board and in respect of which a prohibition order under the Censorship of Publications Acts, 1929 to 1967, is not for the time being in force,

(II) any film in respect of which a general certification or a limited certificate under the Censorship of Films Acts, 1923 to 1992, is in force, or

(III) any video work in respect of which a supply certificate under the Video Recordings Acts, 1989 and 1992, is in force;

"document" includes -

(a) any book, periodical or pamphlet, and
(b) where appropriate, any tape, computer disk or other thing on which data capable of conversion into any such document is stored;

"photographic representation" includes the negative as well as the positive version;

"visual representation" includes -

(a) any photographic, film or video representation, any accompanying sound or any document,
(b) any copy of any such representation or document, and
(c) any tape, computer disk or other thing on which the visual representation and any accompanying sound are recorded.

(2) The reference in paragraph (a) of the definition of child pornography to a person shall be construed as including a reference to a figure resembling a person that has been generated or modified by computer-graphics or otherwise, and in such a case the fact, if it is a fact, that some of the principal characteristics shown are those of an adult shall be disregarded if the predominant impression conveyed is that the figure shown is a child.

(3) In any proceedings for an offence under section 3, 4, 5 or 6 a person shall be deemed, unless the contrary is proved, to be or have been a child, or to be or have been depicted or represented as a child, at any time if the person appears to the court to be or have been a child, or to be or have been so depicted or represented, at that time.

(4) For the purposes of this Act, except where the context otherwise requires -
(a) a reference to a section is to a section of this Act,
(b) a reference to a sub-section or paragraph is the sub-section or paragraph of the provision in which the reference occurs,
(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended, whether before or after the passing of this Act, by or under any subsequent enactment.

3. (1) Any person who organises or knowingly facilitates -

(a) the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation, or
(b) the provision of accommodation for a child for such a purpose while in the State, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

(2) Any person who -
(a) takes, detains or restricts the personal liberty of, a child for the purpose of his or her sexual exploitation,
(b) uses a child for such a purpose or
(c) organises or knowingly facilitates such taking, detaining, restricting or use,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(3) In this section "sexual exploitation" means
(a) inducing or coercing the child to engage in prostitution or the production of child pornography
(b) using the child for prostitution or the production of child pornography
(c) inducing or coercing the child to participate in any sexual activity which is an offence under any enactment, or
(d) the commission of any such offence against the child.

4. (1) Without prejudice to section 3, any person who, having the custody, charge or care of a child, allows the child to be used for the production of child pornography shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £25,000 or to imprisonment for a term not exceeding 14 years or both.

(2) For the purposes of this section -

(a) any person who is the parent or guardian of a child or who is liable to maintain a child shall be presumed to have the custody of the child and, as between parents, one parent shall not be deemed to have ceased to have the custody of the child by reason only that he or she has deserted, or does not reside with, the other parent and child,
(b) any person to whose charge a child is committed by any person who has the custody of the child shall be presumed to have charge of the child, and
(c) any person exercising authority over or having actual control of a child shall be presumed to have care of the child.

5. (1) Subject to sections 6(2) and 6(3), any person who
(a) knowingly produces, distributes, prints or publishes any child pornography;
(b) knowingly imports, experts, sells or shows any child pornography;
(c) knowingly publishes or distributes any advertisement likely to be understood as conveying that the advertiser or any other person produces, distributes, prints, publishes, imports, exports, sells or shows any child pornography;
(d) encourages or knowingly causes or facilitates any activity mentioned in paragraph (a), (b) or (c), or
(e) knowingly possesses any child pornography for the purpose of distributing, publishing, exporting, selling or showing it,

shall be guilty of an offence and shall be liable -
(i) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or
(ii) on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years or both.

(2) In this section, "distributes", in relation to child pornography, includes parting with possession of it to, or exposing or offering it for acquisition by, another person, and the reference to "distributing" in that context shall be construed accordingly.

6. (1) Without prejudice to section 5(1) (e) and subject to subsections (2) and (3), any person who knowingly possesses any child pornography shall be guilty of an offence and shall be liable -
   (a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or
   (b) on conviction on indictment to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 5 years or both

(2) Section 5 (1) and subsection (1) shall not apply to a person who possesses child pornography -
   (a) in the exercise of functions under the Censorship of Films Acts, 1923 to 1992, the Censorship of Publications Acts, 1929 to 1967, or the Video Recordings Acts, 1989 and 1992, or
   (b) for the purpose of the prevention, investigation or prosecution of offences under this Act.

(3) Without prejudice to subsection (2), it shall be a defence in a prosecution for an offence under section 5 (1) or subsection (1) for the accused to prove that he or she possessed the child pornography concerned for the purposes of bona fide research.

Section 7 Entry, search and seizure

(1) Where, on the sworn information of a member of the Garda Siochana not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under section 3, 4, 5 or 6 is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place.

(2) A warrant issued under this section shall authorise a named member of the Garda Siochana, alone or accompanied by such other members of the Garda Siochana and such other persons as may be necessary
   (a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,
   (b) to search it and any persons found there, and
   (c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under section 3, 4, 5 or 6.

(3) A member of the Garda Siochana acting in accordance with a warrant issued under this section may require any person found at the place where the search is carried out to give the member his or her name and address.

(4) Any person who
   (a) obstruct or attempts to obstruct any member of the Garda Siochana acting in accordance with a warrant issued under subsection (1),
   (b) fails or refuses to comply with requirement under this section or
(c) gives a name or address which is false or misleading shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £ 1,500 or to imprisonment for a term not exceeding 12 months or both.

(5) A member of the Garda Siochana may arrest without warrant any person whom the member suspects of having committed an offence under subsection (4).

(6) In this section "place" includes any dwelling, any building or part of a building and any vehicle, vessel, structure.

Section 8 Forfeiture

(1) The court by or before which a person is convicted of an offence under section 3, 4, 5 or 6 may order
(a) anything seized pursuant to section 7, or
(b) anything shown to the satisfaction of the court to relate to the offence, to be forfeited and either destroyed or otherwise disposed of in such manner as the court may determine.
(2) A court shall not order anything to be forfeited under this section if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless the opportunity has been given to him or her to show cause why the order should not be made.

(3) An order under this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

Section 9 Offences by bodies corporate
Where an offence under section 3, 4, 5 or 6 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person, being a director, manager, secretary or other similar officer of such body or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member of that body in connection with the member's functions of management as if he or she were director or manager of it.

Section 10 Amendment of Criminal Evidence Act, 1992

The Criminal Evidence Act, 1992, is hereby amended in section 12
(a) by the deletion of "or" in paragraph (a) or(b) or "for" paragraph (a) or(b) in paragraph (c), and
(b) by the insertion of the following paragraph after paragraph (c)
"(d) an offence under section 3,4, 5 or 6 of the Child Trafficking and Pornography Act, 1998"

Section 11 Amendment of the sexual offences (jurisdiction) Act, 1996

The sexual offences (jurisdiction) Act, 1996, is hereby amended in the Schedule thereto by the insertion of the following paragraphs after paragraph 9
11. Section 4 of the Child Trafficking and Pornography Act, 1998.".
Section 12 Amendment of the Bail Act, 1997

12. The Bail Act, 1997 is hereby amended in the Schedule thereto by the insertion of the following paragraph 12
12.A. Any offence under the following provisions of the Child Trafficking and Pornography Act, 1998
(a) section 3 (child trafficking and taking… child for sexual exploitation)
(b) section 5 (producing, distributing… child pornography)."
ITALY

MEMORANDUM ON TRAFFIC IN HUMAN BEINGS

The Italian legislation on the trade of human beings contains provisions aimed to protect victims and to integrate them into society as well as provisions which impose criminal penalties on the people responsible for and the perpetrators of the traffic in human beings.

As regards the first type of law rules, according to **art. 18 of the Consolidation Act of the provisions concerning the regulation of immigration and law rules on the condition of foreigners (Legislative Decree of 25 July 1998, n. 286)**, a special six-month residence permit (renewable for 1 year) is to be issued to foreigners who are victims of the trafficking in human beings if there is proof that they are subject to violence or are living in a situation of severe exploitation.

**Law 3/10/1998 n. 269** “Rules against the exploitation, the pornography, sexual tourism with detriment of minors, as new form of reduction to slavery, which among other things, introduces special rules for prostitution and trafficking of minors”.

**The residence permit for the purpose of social protection** is granted on grounds that the foreigner is in a situation of danger as a result of his/her attempts to free him/herself from the conditioning and the violence of the criminal organisation that exploits him/her and to allow him/her to have access to assistance and social integration programmes, for which 10 billion are earmarked every year.

The special permit makes it possible to have access to assistance services and to education, as well as to be registered in the employment lists and to work for an employer.

Articles 25 and 26 of the **Rules for the implementation of the Consolidation Act (Presidential Decree of 31 August 1999, n. 394)** sets out the procedures and bodies in charge of allocating the funds for the implementation of the assistance and social integration programmes. The latter are carried out by local bodies or by private entities which have arrangements with the local bodies and are financed 30% with resources of the local bodies and 70% with state funds allocated by the Department for Equal Opportunities, following an assessment of the programmes developed by the municipalities or by the private entities involved.

The assessment is performed by an interministerial Commission comprised of representatives of the Ministers of Equal Opportunities, of Social Solidarity, of the Interior and of Justice. **Interministerial Decree dated 23 November 1999** sets out the criteria and the methods for selecting the programmes.

To date, the Department for Equal Opportunities has financed 49 programmes.

As regards the **criminal penalties** envisaged for the people responsible for trafficking in human beings, one has to refer to various law provisions:

- **Art. 12 of Consolidation Act n. 286/98** which represses clandestine immigration;
• **Art. 3, n. 6 and 7 of law n. 75 dated 1958** (Abolition of the regulation of prostitution and fight against the exploitation of prostitution) which applies sanctions specifically against the trade of human beings to be exploited for prostitution even where use is not made of violence, coercion or abuse.

• **Art. 600 of the Criminal Code** which applies sanctions against the crime of “reducing to slavery” (which the Court of Cassation has considered applicable to the trade of human beings, but which in actual fact is enforced only in cases where the victim is a minor, due to the difficulty of proving a condition of subjugation analogous to slavery when the person maintains a certain degree of self-determination).

• **Art. 416 and 416 bis** of the Criminal Code which apply sanctions against the crimes of “criminal association” and “mafia-like association” and come into play when the trafficking in human beings is carried out in an organised way.

• Lastly, **Bill 5839 of the current year** which, introducing art. 602 bis of the Criminal Code, punishes the specific crime of “trafficking in human beings” where use is made of violence, threat or deceit for the purpose of sexual exploitation or other forms of exploitation such as to reduce the victims to slavery.
Prostitution

Latvian Criminal Law provides criminal responsibility for a person who violates the regulations of the Cabinet “On prostitution restriction”, i.e. forcing somebody to practice prostitution, and pimping.

Prostitution as such is not prohibited in Latvia, except for under age children, incapable persons, and prostitutes without a medical card.

Regulations of the Cabinet set the following rules for persons who practice prostitution:

- It is prohibited to offer and provide the service in other venues but these appointed by municipality, or in apartments or houses which are not under the title or hired by a prostitute or a client;
- It is prohibited to provide sexual services if any under aged child is in the same apartment or room;
- It is prohibited for prostitutes to get organised in groups for providing sexual services or to take orders for sexual services, except for cases when the client is the same person;
- Thorough health control and supervision is carried out by medical doctors, Centre for Sexually- transmitted diseases, AIDS Centre, and the police.

Repeated violation of the regulations on prostitution restriction is sentenced with forced labour, fine or imprisonment.

A person who forces another person to practise prostitution is sentenced to a fine or up to 3 years of imprisonment. Force to practise prostitution by breaching the person’s confidence or by deceit or using the victim’s dependency of the perpetrator or the helpless state of the victim is punished with a fine or up to five years of imprisonment. A person who forces or induces an under age person to practise prostitution is sentenced to up to six years of imprisonment.

Pimping is defined as abuse of a prostitute with the intent to benefit. This criminal offence is sentenced with up to four years of imprisonment. If the pimps are acting in group, or a souteneur abuses an under age prostitute, the sentence is up to eight years of imprisonment and the seizure of the belongings.

Trafficking in human beings

Latvian legislation does not provide specific measures for trafficking in women. Several articles of the Criminal Law include elements of trafficking in women (forced prostitution, pimping and incapacitation of a person’s freedom, etc.)

The regulations of the Cabinet of Ministers “On Restriction of Prostitution” provides that it is prohibited to organise persons to provide sexual services abroad, as well as organise for this purpose persons to arrive from abroad.
Prostitution

Prostitution is punished with 2 years of imprisonment. To benefit from somebody else’s prostitution leads to 5 years of imprisonment.

 Trafficking in Human Beings

It can lead to up to 10 years of imprisonment to actively encourage someone, woman or man, for the purpose of prostitution.
**LITHUANIA**

**Prostitution**
Any behaviour that meets the usual indications of prostitution is not punishable under the laws of the Republic of Lithuania. Prostitution is, however, an offence and is punished by a fine of up to 500 litas, or in the case of repeated occurrence, up to 1,000 litas, or up to 30 days of administrative arrest (art. 182(1), 1§ of the Administrative Offences Code).

**Trafficking in Women**
Due to economic and social circumstances in recent years, the problem of prostitution has become more urgent in Lithuania. The Ministry of the Interior prepared, and the Government approved the long-term, comprehensive *Programme for Combating Organised Crime and Corruption*, which, among other measures, provided for the drafting the *Programme for the Control and Prevention of Prostitution and Women Trafficking* in 1999.

In June 1998, the Service of Organised Crime Investigation, the Service of Criminal Offences Investigation and the Municipal Police, made an assessment of the situation regarding the fight against trafficking in human beings. They submitted recommendations concerning the future programme for combating trafficking in human beings and prostitution.

In recent years, Lithuania has adopted quite a few laws regulating coercive prostitution and trafficking in human beings. On 2 July 1998, article 131 (3) of the *Penal Code* was amended. This article provides criminal liability for trafficking in human beings. During 5 months in 1998, no prosecution was brought to court under this article. The reason was that 90 percent of the women deported from foreign countries, made a written statement that they knew in advance what kind of work they would have to do. Therefore, this cannot be considered trafficking in human being in a literal sense. One case for trafficking in human beings was brought to court in 1999.

The same law sets forth a stricter liability for procuring. Procuring is punishable under article 239 of the Penal Code, which stipulates a sentence of up to 5 years of imprisonment. Under this article, 57 prosecutions were brought to court in 1998.

The drafting of the *Programme for Control and Prevention of Prostitution and Trafficking in Human Beings* is envisaged for 1999. The Ministries of Interior, Education and Science, Social Security and Labour, Health Care, Justice, the General Prosecutor’s Office, as well as the Lithuanian Centre for Crime Prevention are responsible for the preparation of the programme.

Crimes related to prostitution and trafficking in human beings will be covered in the new *Draft of the Penal Code*. Procuring for prostitution will be emphasised (art. 313). Stricter sentences are provided for procurers for prostitution in Lithuania or outside the country, for people organising and managing prostitution, and for traffickers of human beings to Lithuania. Art. 317 of the Draft Penal Code give a definition of procurement. The Draft includes some new articles, art. 314 providing sentences for the establishment and keeping of brothels; art. 315 stipulates liability for public demonstration or advertisement of pornographic items, Art. 316 lays down liability for using children under the age of 15 years for the purpose of pornography, etc.
Chapter VI: Prostitution, exploitation of and trafficking in human beings (as amended by the Law of 31 May 1999 reinforcing measures against trafficking in human beings and sexual exploitation of children, amending the Criminal Code and the Code of Criminal Procedure)

Art. 379 - The following offences shall be punishable by one to five years’ imprisonment and a fine of 10,001 to 2,000,000 francs:

1. Inciting, facilitating or fostering immorality in, or the corruption or prostitution of, minors under 18 years of age in order to satisfy the desires of others.

2. Exploiting a minor under 18 years of age for the purposes of prostitution or the production of entertainment or material of a pornographic nature.

3. Facilitating the entry into, transit through, presence in or exit from the territory of a minor under 18 years of age for any of the purposes mentioned in (1) and (2) above.

Attempts to commit any of the above offences shall be punishable by six months’ to three years’ imprisonment.

The above offences shall be punishable by two to five years’ imprisonment when committed against a minor under 14 years of age and five to ten years’ imprisonment when committed against a minor under 11 years of age.

Attempts to commit any of the above offences against minors shall be punishable by six months’ to four years’ imprisonment if the minor is under 14 years of age and six months’ to five years’ imprisonment if the minor is under 11 years of age.

Art. 379bis - The following offences shall be punishable by six months’ to three years’ imprisonment and a fine of 10,001 to 2,000,000 francs:

1. Employing, inciting or abducting any person, even with their consent, for the purpose of prostitution or immoral activities, in the Grand Duchy of Luxembourg or abroad, in order to satisfy the desires of others.

If the victim is employed, incited or abducted by fraud or using violence, threats, abuse of authority or any other form of constraint, and effectively engages in prostitution or immoral activities, or if the offender takes advantage of the particularly vulnerable situation of the victim, such as their illegal or precarious administrative situation, pregnancy, ill health or an infirmity or physical or mental disability, the sentence shall be one to five years.

The offence shall be punishable by five to ten years’ imprisonment if committed in two of the aforesaid circumstances.
2. Facilitating entry into, transit through, presence in or exit from the territory for the purposes mentioned in (1) above.
   The increase in sentence provided for in the second and third paragraphs of (1) above shall also apply, subject to the same criteria.

3. Owning, directly or through a third party, managing, directing or running a brothel or similar establishment.

4. Knowingly allowing all or part of a hotel, guest house, night club or any other premises of which one is the owner or landlord to be used for the prostitution of others.

5. Procuring.
   A procurer is any person, male or female, who:
   a. in any manner knowingly aids, abets or protects the prostitution of others or soliciting with a view to prostitution;
   b. in any manner shares in the proceeds of the prostitution of others or receives financial assistance from a person engaging in prostitution;
   c. employs, incites or supports another person, even an adult and even with their consent, for the purpose of prostitution or gives them over to prostitution or immoral activities;
   d. acts as intermediary, in any way whatsoever, between persons engaging in prostitution or immoral activities and those who exploit them or pay for their services;
   e. by threat, pressure, deceit or any other means obstructs the prevention, inspection, assistance or rehabilitation work performed by the relevant bodies on behalf of persons engaging in prostitution.

   Attempts to commit the offences referred to in (1), (2) and (5) above shall be punishable by three months’ to two years’ imprisonment.

   The offences referred to in (1), (3), (4) and (5) above shall be punishable by one to five years’ imprisonment and a fine of 10,001 to 2,000,000 francs if committed against a minor under 18 years of age, from two to five years’ imprisonment if committed against a minor under 14 years of age, and from five to ten years’ imprisonment if committed against a minor under 11 years of age.

   Attempts to commit the offences shall be punishable by six months’ to three years’ imprisonment if a minor under 18 years of age is involved, six months’ to four years’ imprisonment if the minor is under 14 years of age and six months’ to five years’ imprisonment if the minor is under 11 years of age.

Art. 379ter - (Law of 10 November 1984) After opening an investigation the investigating judge may, upon order of the State Prosecutor, order the provisional closure for up to three months of any premises or establishment open to the public or used by the public if there is good reason to believe that any of the offences referred to in Article 379bis have been
committed by a person accused of having participated, as the offender or an accomplice, in any way whatsoever, in the management, running or financing of the establishment.

Whatever the initial duration, the closure may be extended, by the same means, for further three-month periods.

1. The temporary closure of an establishment which may be ordered by a judge following the opening of an investigation concerning an offence under Article 379bis of the Criminal Code concerns the enterprise where the offence was committed, irrespective of ownership. It is a police security measure with no bearing on the criminal or civil liability of the owner. C.E. 7 April 1987, p. 27, 42.

2. Accordingly, a refusal to issue a licence to open an establishment serving alcoholic beverages on the grounds that the investigating judge ordered the temporary closure of the premises concerned in the context of an investigation of a violation of Article 379bis of the Criminal Code is justified, even if the order to close the establishment was not issued against the owner who applied for the licence. C.E. 7 April 1987, p. 27, 42.

3. Provision for the closure of the establishment was not intended to modify the licensing laws, which remain unchanged. C.E. 7 April 1987, p. 27, 42.

Art. 379quater - (Law of 10 November 1984) The lifting of the closure order may be requested by the accused or by the public prosecutor’s office by:

1. application to judge’s chambers during the investigation period;
2. implicit cancellation (Law of 17 July 1987);
3. application to the criminal court sitting in chambers if the case has been sent before it;
4. application to the criminal division of the Court of Appeal sitting in chambers if an appeal is lodged on the merits or on points of law;
5. application to the criminal division of the district court.


Art. 397quinquies - (Law of 10 November 1984) The application shall be lodged with the registry of the court responsible for passing judgment. The court’s decision shall be handed down promptly, within three days of receipt of the application, the public prosecutor and the accused or his/her counsel being heard or duly notified.

The accused or his/her counsel shall be notified by the registrar of the court of the place, date and time of the hearing.

Without prejudice to the rights of the Principal State Prosecutor and the State Prosecutor, the decisions of the court in chambers may also be challenged by the accused in accordance with the provisions of Article 119 of the Code of Criminal Procedure.
Art. 379sexies - (Law of 10 November 1984) When application is made after the close of the investigation to a trial court, the closure of an establishment ordered by the investigating judge may be renewed for further periods of up to three months by decision of:

1. the criminal court sitting in chambers if the case is sent before it;

2. the criminal division of the Court of Appeal sitting in chambers, if an appeal is lodged on the merits or on points of law;

3. the criminal division of the district court.

In such cases application may be made to the court responsible for the renewal decision to cancel the order to close the establishment. The court shall rule in accordance with the provisions of the first two paragraphs of Article 379quinquies.

- See Law of 17 June 1987 on the abolition of the Assize Court, Mem. 1987, A, 744, particularly Section XI.

Art. 379septies - (Law of 10 November 1984) The judge shall be empowered to order the temporary or permanent closure of any establishment or premises open to or used by the public in which any of the offences referred to in Article 379bis was committed by a person accused of participating, as the offender or an accomplice, in any way whatsoever, in the management, running or financing of the establishment.

In the event that the principal penalty is a fine, the period of closure shall begin on the day on which the conviction, inter partes or in absentia, becomes irrevocable.

Where a prison sentence is pronounced, the period of closure shall begin on the day on which the offender completes his/her sentence or it becomes time-barred or, if he/she is released on parole, on the day of release.

In the case referred to in the preceding paragraph, the decision to close the establishment shall take effect on the day on which the conviction, inter partes or in absentia, becomes irrevocable.

Art. 380 - (Law of 1 April 1968) The minimum sentences incurred under Articles 379 and 379bis shall be increased in keeping with Article 266 if the offenders are:

- ascendants of the person prostituted or corrupted;

- people in a position of authority over them;

- teachers or paid servants of the person concerned or servants of the above people;

- public servants or clergymen.
In the cases provided for in Articles 379 and 379bis the sentences shall be pronounced even if the various deeds that together constitute the offence were perpetrated in different countries.

- See Code of Criminal Procedure, Article 5 para 7.

Art. 381 - (Law of 1 April 1968) In the cases provided for in Articles 379 and 379bis the offenders shall also be sentenced to fines of 10,001 to 600,000 francs and deprived of the rights specified in paragraphs 1, 2, 3, 4, 5 and 7 of Article 11.

The courts may ban offenders sentenced to at least one month’s imprisonment, for a period of one to ten years, from owning, managing or being employed in any capacity in an hotel, a guest house or an employment agency. Any violation of this ban shall be punishable by eight days’ to one month’s imprisonment and/or a fine of 10,001 to 200,000 francs.

In the cases referred to in the first paragraph of this article, if the offence is committed by the father or mother, he or she shall be deprived of his or her rights and privileges concerning the child and his/her belongings under the Civil Code, Book 1, Section IX on “parental authority”.

Art. 382 - (Law of 1 April 1968) Whosoever by gesture, spoken or written word or any other means publicly solicits a person of either sex for immoral purposes shall be punished by eight days’ to six months’ imprisonment and/or a fine of 10,001 to 200,000 francs.

Chapter VII - Immoral publications and public offences against morality

Art. 383 - (Law of 31 May 1999) The following offences shall be punishable by eight days’ to three years’ imprisonment and a fine of 10,001 to 2,000,000 francs:

1. making or possessing written or printed matter, pictures, photographs, films or other objects of a pornographic nature with a view to their sale, distribution or public display;

2. importing, transporting or exporting written or printed matter, pictures, photographs, films or other objects of a pornographic nature or having them imported, transported or exported for the above purposes, or circulating them in any way whatsoever;

3. publicly or privately trading in such material or dealing with it in any way, distributing, publicly displaying or renting it out;

4. advertising or in any way publicising the fact, with a view to fostering the circulation of or trafficking in such prohibited material, that a person is engaging in any of the punishable activities listed above, or advertising or publicising how and through whom such written or printed matter, pictures, photographs, films or other objects of a pornographic nature may be secured directly or indirectly.

The offences referred to in paragraphs 1, 2, 3 and 4 above shall be punishable by one to five years’ imprisonment and a fine of 10,001 to 2,000,000 francs if they involve or present minors under 18 years of age or persons in a particularly vulnerable position, for example because of their illegal or precarious administrative situation, pregnancy, ill health or an infirmity or physical or mental disability.
1. Under Section 3 of the Law of 13 June 1922 concerning the supervision of public cinemas and screenings, the Government, not the Ministry of Justice, is empowered to order the total or partial censorship of or to ban any film which causes a scandal or is likely to create a breach of the peace. On the other hand, it is for the justice system rather than the Government to take action under Article 383 of the Criminal Code and confiscate any obscene film. Appeal Court (Indictments Chamber), 24 January 1972, p. 22, 111.

2. The following shall be considered obscene for the purposes of Article 383 of the Criminal Code: any writings or pictures likely to cause sexual arousal and to offend an average person who happens to read or look at them without seeking sexual arousal.

The indecent writings or pictures the sale, display or distribution of which are prohibited under Article 385bis need not be likely to cause sexual arousal in children under sixteen years of age, but rather to give them ideas or notions they should not have.

The term “display” used in the second paragraph of Article 385bis of the Criminal Code includes both public display and display with a view to sale. It follows that indecent writings or pictures which are not displayed directly in view of minors shall be considered on public display if they are available for sale to those who wish to purchase them.

To commit the various offences provided for in Article 383 it is sufficient for the offender to be aware of the obscene nature of the writings or pictures, without necessarily intending to offend. Court, 11 December 1972, p. 22, 225.

Art. 384 - (Law of 31 May 1999) Any person who knowingly has in his/her possession written or printed matter, pictures, photographs, films or other objects of a pornographic nature involving or featuring minors under 18 years of age shall be sentenced to one month’s to two years’ imprisonment and a fine of 10,001 to 500,000 francs. The objects concerned shall be confiscated in the event of a conviction, even if they do not belong to the offender or if the sentence is pronounced by a court of summary jurisdiction with the admission of mitigating circumstances.

Art. 385 - (Law of 31 May 1999) Any person who publicly offends against morality or decency shall be sentenced to eight days’ to three years’ imprisonment and a fine of 10,001 to 1,000,000 francs.

1. A public offence against morality is considered to exist even if the offender had no intention to offend, when the indecent act was performed in circumstances such that others were able to observe it, either because of the location or type of the place concerned or because insufficient precautions were taken to hide the act from others.

An obscene act committed in one’s own home with the window open, or even closed but without net curtains, and therefore easy to see from a building opposite is of a sufficiently public nature to be considered as a public offence against morality. Court, 16 July 1898, p. 4, 539.
2. No public offence against morality shall be considered to have been committed when an immoral act is performed in a public place to which access has been rendered impossible, so that the act can be observed only by determined effort, by scaling walls, for example, by someone driven by morbid curiosity.

The same applies to immoral acts performed in the privacy of one’s home, out of sight of others unless they actually enter the premises uninvited with the intention of prying. Court, 27 February 1904, p. 7, 95.

3. The offence provided for and punished under Article 385 of the Criminal Code does not require any intent to offend on the part of the offender. The notion of intent is irrelevant in the eyes of the law where a public offence against morality is concerned.

The act becomes an offence through simple failure on the part of the offender to take the necessary precautions to conceal it from public view.

This applies in particular to cases of indecent exposure where a person stands naked in his/her garden or open doorway where they can be seen by people on the other side of the fence or hedge, even if they are under the impression that there is nobody in sight. Court, 20 July 1912, p. 9, 50.

4. The “public” aspect of the indecent act simply means that it occurs in a place where it can be seen, even accidentally, by one or more persons.

This applies particularly to indecent acts performed in vehicles parked on a public highway accessible to all. Condensation misting up the windows of the vehicle is irrelevant as it may make them less transparent but it does not make them opaque. Court of Cassation, 24 June 1971, p. 21, 495.

Art. 385bis - (Law of 31 May 1999) Any person who sells, displays or distributes to children under sixteen years of age written or printed matter, pictures, figures or objects which are indecent or likely to disturb them shall be fined 10,001 to 1,000,000 francs.

The same fine shall be applied to any person who publicly displays or exhibits in the vicinity of schools or teaching establishments attended by children under sixteen years of age written or printed matter, pictures, figures or objects which are indecent or likely to disturb them.

The indecent written or printed matter, pictures, figures or objects displayed, offered for sale or distributed shall be confiscated in the event of a conviction, even if they do not belong to the offender or if the sentence is pronounced by a court of summary jurisdiction with the admission of mitigating circumstances.

- See Criminal Code, Article 386.

Art. 386 - In the cases referred to in this chapter the offenders may also be deprived of the rights referred to in Article 11 paragraphs 1, 3, 4, 5 and 7.

Sections 1 to 7 of the Law of 31 May 1999 gave rise to the excerpts from the Criminal Code reproduced above:

Section 1 amended the Heading of Chapter VI.

Section 2 amended Article 379 of the Criminal Code.

Section 3 amended Article 379bis.

Section 4 amended Article 383.

Section 5 added Article 384.

Section 6 amended Article 385.

Section 7 amended Article 385bis.)

Section 8 - Article 5, para. 2 of the Code of Criminal procedure reads as follows:

Any Luxembourg national who commits an offence under the laws of Luxembourg outside the Grand Duchy may be prosecuted and tried in the Grand Duchy of Luxembourg if the offence is punished under the laws of the country where it was committed.

Section 9 - Article 5 para. 7 of the Code of Criminal Procedure is deleted.

Section 10 - The following Article 5-1 is added to the Code of Criminal Procedure:

Art. 5-1 - Any Luxembourg national and any foreigner found in the Grand Duchy of Luxembourg who, in another country, committed one of the offences covered by Articles 198, 199, 199bis and 368 to 382 of the Criminal Code may be prosecuted and tried in the Grand Duchy even though the offence is not punished under the laws of the country where it was committed and the Luxembourg authorities have received no complaint from the offended party or the authorities of the country where the offence was committed.

Section 11 - The following Article 48-1 is added to the Code of Criminal Procedure:

Art. 48-1 - Audio or audio-visual recordings may be made of hearings of minors or witnesses, subject to the authorisation of the State Prosecutor.

The recordings shall be made once the consent of the witness or minor has been obtained or, if the minor is unable to give informed consent, that of the minor’s legal representative. Where there is a duly established risk of conflicting interests between the minor and his/her legal representative, the recording may be made only with the express, duly reasoned authorisation of the State Prosecutor.
The recordings may be used as evidence. The original recordings shall be kept under official seal.

Copies shall be numbered and filed as evidence.

The recordings may be viewed or listened to, but not removed, by the parties and an expert, with the authorisation of the State Prosecutor, at a place designated by the latter.

Section 12 - The following Article 79-1 is added to the Code of Criminal Procedure:

Art. 79-1 - The investigating judge may make or have made an audio or audio-visual recording of the hearing of a minor or a witness.

The recording shall be made once the consent of the witness or minor has been obtained or, if the minor is unable to give informed consent, that of the minor’s legal representative. Where there is a duly established risk of conflicting interests between the minor and his/her legal representative, the recording may be made only with the express, duly reasoned authorisation of the investigating judge.

The recordings may be used as evidence. The original recordings shall be kept under official seal.

Copies shall be numbered and filed as evidence.

The recordings may be viewed or listened to, but not removed, by the parties, under the conditions stipulated in Article 85, and by an expert, with the authorisation of the investigating judge, at a place designated by the latter.

Section 13 - The following paragraph (4) is added to Article 158-1 of the Code of Criminal Procedure:

If the statement of a witness or a minor is recorded as provided for in Articles 48-1 or 79-1, it may be played back at the hearing. No further hearing of the witness or minor concerned may take place without the express authorisation of the court.
CHAPTER 63
WHITE SLAVE TRAFFIC
(SUPPRESSION) ORDINANCE

To repeal and to re-enact with amendments the law relating to the suppression of the White Slave Traffic.

(1st August, 1930)*


1. This Ordinance may be cited as the White Slave Traffic (Suppression) Ordinance.

2. (1) Whoever, in order to gratify the lust of any other person, compels by means of violence or threats, or induces by deceit, a person who has attained the age of twenty-one years to leave Malta for purposes of prostitution elsewhere, shall be liable, on conviction, to imprisonment for a term not exceeding two years, with or without solitary confinement:

Provided that the punishment shall be imprisonment for a term from one to four years, with or without solitary confinement, if the offence is committed -

(a) by an ascendant by consanguinity or affinity, by the adoptive father or mother, by the husband or the wife, or by a brother or sister; or

(b) by means of abuse of authority, of trust or of domestic relations; or

(c) habitually or for gain.

(2) A conviction under this section shall entail the forfeiture of every authority and right granted to the offender over the person or property of the person to whose prejudice the offence shall have been committed.

3. (1) Whoever, in order to gratify the lust of any other person, induces a person under the age of twenty-one years to leave Malta for purposes of prostitution elsewhere, or encourages or facilitates his departure from Malta for the same purpose, shall be liable, on

* See Proclamation No. XVII of the 1st August, 1930.
conviction, to imprisonment for a term from eighteen months to four years, with or without solitary confinement:
   Provided that the punishment shall be imprisonment for a term from two to six years, with or without solitary confinement, if the offence is committed -
   (a) to the prejudice of a person who has not completed the age of twelve years; or
   (b) by means of violence or threats, or by deceit; or
   (c) by an ascendant by consanguinity or affinity, by the adoptive father or mother, by the husband or wife or tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under the age of twenty-one years; or
   (d) habitually or for gain.

(2) A conviction under this section shall entail the forfeiture of every authority and right granted to the offender over the person or property of the person to whose prejudice the offence shall have been committed, and, in the case of the tutor, his removal from the tutorship and his perpetual disability from holding the office of tutor.


5. (1) Whoever detains, or is wilfully a party to the detention of a person, against his will, in any brothel, or in or upon any premises used for purposes of habitual prostitution, even if such person may have resorted to such place of his own free will, and may have remained there to practice prostitution, and notwithstanding any obligation or debt which such person may have contracted with any person whomsoever, shall be liable, on conviction, to imprisonment for a term not exceeding two years, unless a higher punishment is applicable under any other provision of the Criminal Code or of any other law.

(2) A person shall be deemed to detain another person, for the purposes of this section, if, with intent to compel such other person to remain in a brothel or in or upon any premises used for purposes of habitual prostitution, he withholds from such other person any wearing apparel or other property belonging to the latter, or, where wearing apparel has been lent or otherwise supplied to such other person, he threatens such other person with legal proceedings if the latter takes away with him the wearing apparel so lent or supplied.

"Woman over age".
"Girl under age".

Detention, etc., of a person against his will in a brothel, etc.

Amended by: V.1994.5.
(3) No legal proceedings, whether civil or criminal, shall be taken against such other person for taking away or being found in possession of any such wearing apparel as was necessary to enable such other person to leave such premises or brothel.

6. (1) It shall be lawful for the Commissioner of Police, when, in his opinion, there is reasonable cause to suspect that a person is detained against his will for immoral purposes by any other person in any place, to issue a warrant to any police officer not below the rank of inspector, authorising him to search for the person so detained and to take him out of such place; and the Commissioner of Police may cause the person who was being so detained to be delivered up to his parents or other relatives, or otherwise dealt with, as circumstances may permit or require.

(2) Whenever the Commissioner of Police has reason to believe that the prostitution of minors is encouraged or facilitated in any brothel or other premises used for purposes of prostitution, he shall, without prejudice to any criminal action which may be competent, report the matter forthwith to the Attorney General who shall thereupon have power to apply to the court of voluntary jurisdiction for an order for the removal of any minor from any such place as aforesaid.

(3) It shall be lawful for the court, upon inquiring into the circumstances of the case, to direct that such minor be delivered up to his parents or other ascendants, or to his tutor, as the case may be, with an injunction to provide for his education, and watch over his conduct, under the penalty laid down in subsection (3) of section 35 of the Criminal Code.

(4) In default of parents or other ascendants, or of a tutor, or if such persons are unable to provide for the education or care of such minor, it shall be lawful for the court to direct that such minor be kept in an institution or other place of safety, for a term at the discretion of the court, but not beyond his minority.

(5) The parents or other ascendants of such minor shall be liable for any maintenance fees or other expenses, which may become due in consequence of the directions given by the court.

7. (1) Any person who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person, shall be liable, on conviction, to imprisonment for a term not
exceeding two years:

Provided that where that other person has not attained the age of eighteen years, the offence shall be punishable with imprisonment for a term from eighteen months to four years.

(2) Any person who in any street or other public place or in any place exposed to the public loiters or solicits for the purpose of prostitution or for other immoral purposes, shall be liable, on conviction, to imprisonment for a term of not more than three months.

(3) A person shall be deemed, until the contrary is proved, to be knowingly living, wholly or in part, on the earnings of prostitution, if it is shown that he lives with, or is habitually in the company of, a person practising prostitution or that he has exercised control, direction or influence over the movements of that person in a manner as to show that he is aiding, abetting or compelling the prostitution of that person with any other person or generally.

8. (1) Whoever shall keep or manage or share with others in the management of a brothel or of any house, shop or other premises or any part thereof which is or are, or is or are reputed to be resorted to for the purpose of prostitution or other immoral purposes shall be liable, on conviction, to imprisonment for a term not exceeding two years and to a fine (multa) not exceeding two hundred liri.

(2) Whoever knowingly lets for hire or permits the use or shares in the profits of any vehicle used for the purpose of prostitution or other immoral purposes shall be liable, on conviction, to imprisonment for a term not exceeding six months and to a fine (multa) not exceeding fifty liri.

(3) A person shall be deemed to share in the management of a brothel or of any house, shop or other premises or any part thereof for the purpose of prostitution or other immoral purposes, if he partakes directly or indirectly of any of the profits of such management, or takes an active part in the management of such brothel, house, shop, premises or part thereof.

9. Whoever keeps any shop, lodging-house or hotel or any private apartment and suffers or permits such shop, lodging-house, hotel or apartment or any part thereof to be used as a place of assignation for the purpose of prostitution or any other immoral purpose shall be liable, on conviction, to imprisonment for a term from one to six months.
10. Whoever owns or has under his administration any house or other premises and knowingly lets or permits the use of the same for the purpose of prostitution or other immoral purposes, shall be liable, on conviction, to imprisonment for a term from one to six months.

Punishment for letting house, etc., for the purpose of prostitution. Amended by: XLIX.1981.4.

11. On a second conviction for any of the crimes specified in the preceding sections the punishment may be increased by two degrees, and on a third or subsequent conviction, by three degrees.

Increase of punishment in case of second or subsequent conviction.

12. (1) Whoever, after due notice in writing has been given to him by the Commissioner of Police that a house or other premises owned or administered by him, is or are used for the purpose of prostitution or other immoral purposes, fails, within six working days, to take the necessary steps before the competent court for the ejection therefrom of the person or persons occupying the same and to prosecute the proceedings with due diligence shall be liable to a fine (multa) in terms of the Criminal Code.

Punishment in case of failure to take steps to eject person from premises used for immoral purposes. Amended by: XIII.1983.5. Cap. 9.

(2) In the case of a conviction for an offence against the provisions of this section, the court shall allow the offender a period of time within which to take the said steps under a penalty of two liri for each day during which the default in carrying out the order of the court continues.

Power of Commissioner of Police to order premises to be closed pending proceedings.

13. The Commissioner of Police may, in the course of any proceedings for an offence against the provisions of sections 8, 9, 10 and 12, order that the house, shop, lodging-house, hotel, apartment or other premises be kept closed until the court delivers judgment, saving the provisions of any other existing law under which the Commissioner of Police may suspend or withdraw any licence.

Court may cancel licence of premises. Added by: XXXIV.1955.2.

14. On conviction for an offence under this Ordinance, the court may cancel any licence held by the offender in respect of any hotel, lodging-house, shop or other premises wherein or within the precincts whereof the offence was committed, and, in the case of subsection (2) of section 8, both the offender’s driving licence and any licence held by him in respect of the vehicle to which the offence relates:
Provided that nothing in this section shall be deemed to affect any powers of the Commissioner of Police under any other law to cancel or suspend any licence.
196. A husband or wife who, during the subsistence of a lawful marriage, contracts a second marriage, shall, on conviction, be liable to imprisonment for a term from thirteen months to four years.

197. (1) Any ascendant by consanguinity or affinity who, by the use of violence or by threats, compels, or, by deceit, induces any descendant under age to prostitution, shall, on conviction, be liable to imprisonment for a term from three to six years, with or without solitary confinement.

(2) The same punishment shall be applied to any husband or wife or tutor who, by the use of violence or by threats, compels, or, by deceit, induces to prostitution his or her spouse under age or the minor under his or her tutorship.

(3) If the ascendant or the husband or wife, by the use of violence or by threats, compels, or, by deceit, induces the descendant or his or her spouse, of age, to prostitution, he or she shall, on conviction, be liable to imprisonment of a term from one to four years, with or without solitary confinement.

(4) A conviction under this section shall entail the forfeiture of every authority and right granted to the offender over the person or property of the husband or wife or of the descendant to whose prejudice the offence shall have been committed, and, in the case of the tutor, his removal from the tutorship and his perpetual disability from holding the office of tutor.
198. Whosoever shall, by violence, have carnal knowledge of a person of either sex, shall, on conviction, be liable to imprisonment for a term from three to nine years, with or without solitary confinement.

199. (1) Whosoever shall, by violence, abduct any person, with intent to abuse or marry such person, shall, on conviction, be liable, in the first case, to imprisonment for a term from eighteen months to three years, with or without solitary confinement, and, in the second case, to imprisonment for a term from nine to eighteen months.

(2) The punishments laid down in sub-article (1) shall apply to any person who shall, by fraud or seduction, abduct any person under the age of eighteen years, who is under the authority of a parent or tutor, or under the care of another person, or in an educational establishment.

200. (1) If the offender under the last preceding article shall within twenty-four hours voluntarily release the person abducted without having abused such person, and shall restore such person to the family, or to his or her place of custody, or shall convey such person to any other place of safety, the punishment shall be imprisonment for a term from one to three months.

(2) In such case, if the offender, after abducting a person, shall marry such person, he shall not be liable to prosecution, except on the complaint of the party whose consent, according to the civil laws, would be required for the marriage; and if the marriage takes place after the conviction, the penal consequences thereof shall cease and the party convicted shall, upon his application, be forthwith released by order of the court.

201. Unlawful carnal knowledge and any other indecent assault, shall be presumed to be accompanied with violence
(a) when it is committed on any person under twelve years of age;
(b) when the person abused was unable to offer resistance owing to physical or mental infirmity, or for any other cause independent of the act of the offender, or in consequence of any fraudulent device used by the offender.
202. The punishment prescribed for any of the crimes referred to in the preceding articles of this sub-title, shall be increased by one degree in each of the following cases:
(a) when the offender has availed himself of his capacity of public officer, or when the offender is a servant of the injured party, with salary or other remuneration;
(b) when the crime is committed by any ascendant, tutor, or institutor on any person under eighteen years of age;
(c) when the crime is committed on any prisoner by the person charged with the custody or conveyance of such prisoner;
(d) when the offender has, in the commission of the crime, been aided by one or more persons;
(e) when the offender has, in the commission of the crime, made use of any arms proper;
(f) when the person on whom the crime is committed, or any other person who has come to the assistance of that person, has sustained any bodily harm;
(g) when the person carnally known has not completed the age of nine years.

203. (1) Whosoever, by lewd acts, defiles a minor of either sex, shall, on conviction, be liable to imprisonment for a term not exceeding three years, with or without solitary confinement:
Provided that the offence shall be punishable with imprisonment for a term from three to six years, with or without solitary confinement, in each of the following cases:
(a) if the offence is committed on a person who has not completed the age of twelve years, or with violence;
(b) if the offence is committed by means of threats or deceit;
(c) if the offence is committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor of the minor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the minor.

(2) The provisions of subsection (4) of section 197 shall also apply in the case of an offence under this article, when the offence is committed by any ascendant or tutor.

(3) No proceedings shall be instituted in respect of any offence under this article except on the complaint of the injured party:
Provided that where the offence is not accompanied by any of the circumstances as to fact or person mentioned in sub-article (1)(a), (b), and (c), the complaint shall not be admissible after the lapse of one year from the day on which
the act was committed or knowledge thereof was obtained by the person entitled to lodge the complaint in lieu of the injured party:

Provided further that proceedings shall be instituted ex officio -
(a) in any of the cases referred to in the proviso to section 544;
(b) when the act is committed with abuse of parental authority or of tutorship.

204. (1) Whosoever in order to gratify the lust of any other person induces a person under age to practise prostitution, or instigates the defilement of such person, or encourages or facilitates the prostitution or defilement of such person, shall, on conviction, be liable to imprisonment for a term from eighteen months to four years, with or without solitary confinement:

Provided that the offence shall be punishable with imprisonment for a term from two to six years, with or without solitary confinement, in each of the following cases:
(a) if the offence is committed to the prejudice of a person who has not completed the age of twelve years;
(b) if the offence is committed by deceit;
(c) if the offence is committed by any ascendant by consanguinity or affinity, by the adoptive father or mother, by the husband or wife or tutor of the minor, or by any other person charged, even though temporarily, with the care, eduction, instruction, control or custody of the minor;
(d) if the offence is committed habitually or for gain.

(2) The provisions of subsection (4) of section 197 shall also apply in the case of any offence under this article, when the offence is committed by the husband or the wife, by an ascendant or by the tutor.

205. Whosoever in order to gratify the lust of any other person, by the use of violence, compels or, by deceit, induces a person of age, to practise prostitution, shall, where the act committed does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term not exceeding two years, with or without solitary confinement:

Provided that the offence shall be punishable with imprisonment for a term from one to four years, if it is committed -
(a) with abuse of authority, of trust or of domestic relations; or
(b) habitually or for gain.
206. The crimes referred to in this Title to constitute which there must be a carnal connection shall be deemed to be complete by the commencement of the connection, and it shall not be necessary to prove any further acts.

Proof of carnal connection.
Substituted by:

207. Whosoever shall be guilty of any violent indecent assault which does not, in itself, constitute any of the crimes, either completed or attempted, referred to in the preceding articles of this sub-title, shall, on conviction, be liable to imprisonment for a term from three months to one year:

Provided that in the cases referred to in article 202, the punishment shall be increased by one degree.

Violent indecent assault.
Amended by:
VI. 1871.13;
XI.1900.30;
VIII. 1909.17;
XLIX. 1981.4.

208. (1) Whosoever, for gain, or for distribution, or for display in a public place or in a place accessible to the public, manufactures, prints or otherwise makes, or introduces into Malta, or acquires, keeps, puts in circulation or exports, any pornographic or obscene print, painting, photograph, film, book, card or writing, or any other pornographic or obscene article whatsoever, whether similar to the above or not, shall, on conviction, be liable to imprisonment for a term not exceeding six months or to a fine (multa) not exceeding two hundred liri, or to both such imprisonment and fine.

(2) Whosoever trades in any article mentioned in sub-article 1), even if such trade is clandestine, or distributes any such article or displays any such article in public or in a place accessible to the public, shall, on conviction, be liable to the punishment prescribed in sub-article (1).

(3) For the purposes of this section an article shall be regarded as pornographic or obscene if it is so described or defined by regulations made under subsection (4) of this section or is otherwise to be so regarded in accordance with any regulation made as aforesaid.

(4) The Minister responsible for justice shall, in consultation with the committee established under subsection (5) of this section, make regulations for the purpose of describing or defining or otherwise establishing what is to be regarded as pornographic or obscene for the purposes of this article and may by such regulations make provision regarding the criteria to be followed for that purpose and may make different provision for different circumstances and different purposes.

(5) There shall be a committee whose functions shall be to advise the Minister responsible for justice in making regulations under this article. The committee shall consist of

Offences relating to pornographic or obscene articles.
Added by:
XXVII. 1975.17.
Amended by:
XIII. 1983.5.
the said Minister, who shall be the chairman, and four members of the House of Representatives appointed by the Prime Minister after he has consulted the Leader of the Opposition.

(6) Without prejudice to any other right competent to him, any member of the committee may request that any regulation made under this article with which he disagrees be discussed in the House of Representatives; and upon receipt of any such request in writing, the Minister responsible for justice shall ensure that the matter is discussed in the House as early as practicable.

209. Whosoever, except in the cases referred to in the preceding articles of this sub-title or in any other provision of law, shall commit an offence against decency or morals, by any act committed in a public place or in a place exposed to the public, shall, on conviction, be liable to imprisonment for a term not exceeding three months and to a fine (multa).

Sub-title III
OF CRIMES TENDING TO PREVENT OR DESTROY THE PROOF OF THE STATUS OF A CHILD

210. Any person found guilty of kidnapping, or concealing, an infant, or of suppressing its birth, or of substituting one infant for another, or of suppositiously representing an infant to have been born of a woman who had not been delivered of a child, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years.
THE NETHERLANDS

Prostitution

The law on abolition of the ban of brothels was passed on 1 October 2000. The abolition of the ban of brothels is seen as one of the weapons in the fight against trafficking in women. The aim is that by decriminalising prostitution, setting up a licensing system for brothel operators and improving working conditions for prostitutes, the industry will be less susceptible to crime. An important additional advantage is that the licensing system will make the industry more transparent and easier for the police to monitor.

If a brothel owner employs women who do not have valid residence permits, this will affect the licence one needs to operate a brothel, and may in some cases lead to closure of the premises. The introduction of stringent regulations will make it unattractive and largely impossible to employ illegal immigrants as prostitutes, trafficking in women will lose a key market in the Netherlands.

Municipal policy is organised along three lines. Firstly, the municipalities operate a licensing policy to control the number and type of brothels. Secondly, regulations are introduced to govern the construction and design of brothels, for examples as regards hygiene, prevention of sexual transmitted diseases and fire safety. Finally, regulations are introduced to ensure that the way brothels are operated does not adversely affect the position and status of prostitutes. This includes the protection of their mental and physical well being and prohibiting the employment of minors or illegal immigrants.

Trafficking in Human Beings

Although trafficking in women is not a new phenomenon, attention to the problem has increased during the last 15 years. It usually involves women from countries stricken by poverty.

The law was amended in 1994. The offence was redefined as "trafficking in people", the legislation was specified in greater detail and the sanctions were increased.

In 1989, guidelines were issued regarding the investigation and prosecution of "trafficking in people". An evaluation study was undertaken, and a brief was published in 1994.

Measures that have been taken to encourage victims to report offences:

- Some women are given residence permits for the duration of the investigation and trial to allay the fear that the victim will be deported from the Netherlands after reporting an offence.

- "The Foundation Against Trafficking in Women", a voluntary organisation, provides relief and assistance to victims by providing safe houses, legal aid and support during the investigation and the trial.
National rapporteur on traffic in persons

On 26 April 1997, under the Dutch presidency, a conference of EU Ministers of Justice and Emancipation 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 urges signatory states to appoint a national rapporteur to report to their respective governments on the scale, nature and mechanisms of traffic in women and on the effects of the policies they pursue. As initiator of the declaration, the Netherlands was the first member state to appoint a rapporteur. The rapporteur, who took office on 1 April 2000, is assisted by a small team of researchers and a secretary. The office is funded by five ministries. The rapporteur is independent and will make recommendations to the government based on his own views. He and his staff are authorised to consult police and criminal records. The rapporteur’s mandate is based on article 250a of the Criminal Code. He is required to present an annual report to the government with facts and figures on:

- The nature, incidence and mechanisms of traffic in persons, including information on offenders, victims and potential offenders and victims;
- Investigations by the police and legal proceedings against offenders (in cases abroad, if relevant);
- Information and assistance to victims or potential victims; repatriation;
- Indications of any change in the nature of traffic in persons or the way it operates which might have implications for the implementation of national, regional or international policy.

The rapporteur is also responsible for fostering international co-operation within the existing international frameworks to curb the traffic in persons. This involves promoting international consensus on the collection and management of data.

The rapporteur’s recommendations may be addressed to central or local government or other administrative authorities, or international organisations or NGO’s. His annual reports will be published and submitted to parliament. His work will give the government a better understanding of the nature and scale of the problem in this country.

Problems

The complexity of the phenomenon of trafficking; it is a multi-faceted offence and difficult to trace. Consequently, experts are required for the investigation and prosecution of offenders, and a high level of co-operation between the different authorities. It is necessary to stimulate proactive network-orientated investigation to facilitate co-operation and information exchange at a national and international level.
Prostitution

Buying sexual services from persons under the age of 18 years is a criminal offence that came into force on 11 August 2000. Whether buying sexual services shall be made a criminal offence or not will be considered during the two following years.

Promoting prostitution by others is prohibited (pimping). This is defined as follows:

"Any person who misleads another person into engaging in prostitution or continuing such an occupation, or who is an accessory thereto shall be liable for a term of imprisonment not exceeding 5 years.

Any person who assists or exploits another person engaging in prostitution shall be liable to fines or a sentence of imprisonment not exceeding 5 years. The same applies to any person who, for the sake of gain, aids and abets or exploits another person's commission of acts of indecency.

A proposal to prohibit the rental of properties for brothel activities was decided upon in 1995.

Prostitutes subjected to violence or abuse from their pimps are eligible to free legal aid if they make a complaint. Free legal aid extends to compensation claims.

The extent of prostitution in Norway is assumed to be limited, but may have increased recently due to problems in the labour market and the international sex industry reaching Norway, as indicated in the rise of foreign women in prostitution. The women come from East Europe, Asia and Latin America. There has been a marked growth of prostitution in northern Norway in the county of Finnmark. Norwegian men, in growing numbers are buying sex from Russian women. It is reasonable to believe that this prostitution is organised both at the Norwegian and Russian sides of the border. There has been a quite active mobilisation against the buying and selling of sex from people living in the villages were the prostitution is taking place.

There has been an increase in the number of "massage parlours" which sell sexual services and a growth of “mobile-massage”.

The Norwegian policy is that prostitution is not a desirable phenomena because of its damaging effects for the women involved, and because of its negative consequences for building gender equality in society. The Norwegian government has therefore provided financial support to organisations working against prostitution and trafficking in women. Among these are “Coalition Against Trafficking in Women” (CATW) and “Network North Against Prostitution and Violence”. “PION”, an organisation for women in prostitution, has also received money for their health information work among foreign women working in massage parlours.

An action plan to combat trafficking is being prepared and is supposed to be finalised in spring 2001.
POLAND

Prostitution

Incitement to prostitution:

“Anyone who incites others to engage in prostitution is liable to imprisonment for between one and ten years” (Article 174 of the Criminal Code).

Procuring, degrading treatment and the exploitation of immoral earnings are prosecutable offences.

In accordance with the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others - an instrument which Poland ratified in 1952 - those running commercial activities linked with prostitution, and not those engaging in prostitution, are liable to prosecution. Consequently, the police have stopped maintaining registers of prostitutes, who are no longer subjected to any discrimination.

As a consequence of the United Nations Conventions, new offences were introduced into the Polish Criminal Code. Of particular note were the enslavement of others, the recruitment of others for the purposes of prostitution and the traffic in women.

“Anyone who enslaves another person or engages in the traffic in slaves is liable to imprisonment for a maximum of three years.

Anyone who engages in the traffic in women, even with their consent, or in children is liable to the same penalty” (Article IX of the introductory provisions to the Criminal Code).

New sex trade practices have caused an upsurge in the traffic in women. Such practices generally consist of recruiting Polish women for brothels in Germany, the Netherlands and Belgium. They are attracted by false promises of employment as seasonal workers, domestic staff or waitresses, but on their arrival psychological pressure and physical violence (including rape) are used to force them into prostitution. These networks may be headed by Poles or by foreign nationals.

Despite the difficulties of bringing cases to court, between 1991 and 1993 some 502 people were convicted of incitement to prostitution. In addition, proceedings were instigated in respect of several offences against the prohibition on exploiting immoral earnings, with four cases in 1991, 423 in 1992 and 75 and 1993.
Trafficicking in women

Legislation


The legal structure in Portugal leaves no room for the existence of places where prostitution can be exercised, nor does it foresee the obligatory registration of prostitutes.

The fight against trafficking is one of the objectives of the Global Plan for Equal Opportunities, approved by the Cabinet Resolution No. 49/97 of 24 March 1997 (see section on combating violence).

Law No. 65/98 of 2 September 1998 makes it easier to punish crimes concerning trafficicking in human beings and the exploitation of prostitution by no longer requiring that, in order to be recognised as a crime, these must be based on the exploitation of situations of abandonment or of the financial needs of the victim.

The programme of the 14th Constitutional Government contains a transversal approach to equal opportunities and makes reference – in the fields of prostitution and trafficicking in women – to several measures relating to social integration, support, awareness-raising and application of national and international legislation.
Encouragement or constraint to prostitution, its facilitation or making profit out of it by a person, as well as recruitment of persons for prostitution or traffic with persons for prostitution, are punished by 2-7 years jail and interdiction of certain rights.

If the deed stipulated in paragraph 1 is committed against a minor or has another serious aspect, the punishment is 3-10 years jail and interdiction of certain rights.
RUSSIAN FEDERATION

Criminal Code (in force since 1 January 1997)

Chapter 20: Crimes against the Family and Minors

Article 152

Trade in Children

1. Buying and selling a minor, or performing any deals in regard to a minor in the form of his transfer and ownership of him are punishable by compulsory work for a period of from 180 to 240 hours, or by correctional work for a term of from 1 to 2 years, or by limitation of freedom for a term of up to 3 years, or by imprisonment for a term of up to 5 years.

2. The same actions performed:
   a) repeatedly;
   b) in regard to two or more minors;
   c) by a group of persons by preliminary agreement or by an organised group;
   d) by a person who uses his official position;
   e) with unlawful summoning of the minor abroad or his unlawful return from abroad;
   f) for the purpose of involving the minor in commission of a crime or other anti-social actions;
   g) for the purpose of removing organs or tissues for transplantation from the minor, are punishable by imprisonment for a term of from 3 to 10 years.

3. Actions specified in parts one or two of the present article, which through negligence entail the death of the minor or other grave consequences, are punishable by imprisonment for a term of from 5 to 15 years.

Article 240

Involvement in engaging in prostitution

1. Involvement in engaging in prostitution by means of application of force or threat of its application, blackmail, destruction or damage to property, or by means of fraud are punishable by a fine in the amount of from 200 to 500 times the amount of the minimal labour wage or in the amount of the wages or other income of the convicted person for a period of from 2 to 5 months, or by imprisonment for a term of up to 4 years.

2. The same action, performed by an organised group is punishable by a fine in the amount of from 700 to 1000 times the amount of the minimal labour wage or in the amount of the wages or other income of the convicted persons for a period of from 7 months to 1 year, or by imprisonment for a term of from 3 to 6 years.
Article 241

Organisation or maintenance of dens for engaging in prostitution

Organisation or maintenance of dens for engaging in prostitution is punishable by a fine in the amount of from 700 to 1,000 times the amount of the minimal labour wage or in the amount of the wages or other income of the convicted person for a period of from 7 months to 1 year, or by imprisonment for a term of up to 5 years.

Article 242

Unlawful distribution of pornographic materials or objects

Unlawful preparation for purposes of distribution or advertisement of pornographic materials or objects, and likewise the unlawful trade in printed matter, films, or video materials, depictions or other objects of a pornographic character are punishable by a fine in the amount of from 500 to 800 times the amount of the minimal labour wage or in the amount of the labour wage or other income of the convicted person for a period of from 5 to 8 months, or by imprisonment for a term up to 2 years.
Suppression of all forms of trade with women and exploitation of prostitution of women is regulated by the valid provision of the Penal Code (Act No. 140/1961 Coll) as amended.

Par. 246 Traffic in Women
1/ Anyone who entices, contracts or transports a women abroad with an intention that she be used for an intercourse with others, shall be sentenced to a prison term of one to five years
2/ Anyone shall be sentenced to a prison of three to eight years
   a/ if he commits an act described in Par. 1/ as a member of an organised group
   b/ if he commits such an act with a woman younger than eighteen years
   c/ if he commits such an act with the intention to use the woman for prostitution

Par. 204 Procuring
Anyone, who induces another person to engage in prostitution or who profits from prostitution exercised by other person, will be punished by imprisonment of up to 3 years. The offender is punished by 1 to 5 years of imprisonment, if he commits this crime with use of violence, threat of violence or threat of causing other serious injury, or by misuse of pressure conditions or dependency of the other person.
The offender will be punished by 2 to 8 years of imprisonment, if he substantially profits from such act, commits such crime as a member of an organised group, commits such crime on a person younger than 18 years, or commits such crime abroad.
The offender will be punished by 5 to 12 years of imprisonment, if he commits such a crime on a person younger than 15 years, or in connection with an organised group active in more countries.

The aforementioned forms of acts do not have to take place against the will of the woman, since she may be enticed by the description of an easy life abroad, money, etc. According to the Criminal Act, enticement means various means of convincing the woman to live abroad, for example by attractive promises, money, etc.

Prostitution is not prohibited in Slovakia so far. Profit from prostitution is the criminal act of procuring, according to the valid Penal Code.

The Slovak Republic is currently working intensively on re-codification of the Penal Code. The conditions of criminal responsibility for trafficking in women are further extended in the proposed Penal Code. The range of circumstances, which will be the condition of the higher punishment of imprisonment in this crime, is broad and specifically expresses all important aspects scaling the seriousness of the offender’s act.
The proposed draft of new Penal Code in the effort to extend punishment of other forms of procuring and to express the individual activities, based on profit from prostitution, as precisely as possible, creates two principal qualifications: procuring and pandering. According to this proposed provision, the criminal offence of procuring is committed by an offender, who, in connection with his own business intermediates or enables repeated exercise of prostitution, or under the pretext of other business activity, even partially, intermediates or enables also repeated exercising of prostitution, participating in profits from this activity. It is, in fact, the misuse of otherwise legal conduct of business for exercising of prostitution, often connected with limitation of personal freedom and other violation of individual rights.
In March 1997 “Measures to combat pornography and sexual abuse of women and children“ were adopted. Working positions were created in the units of the Police Constabulary of the Slovak Republic dealing with the investigation of criminal activities in these areas.

Women who are victims of these crimes may invoke their claim for compensation in the preparatory stage of court proceedings against the persons suspected of the crime of trafficking in women and procurement. The Court then subsequently decides on the merits of the claim and includes the relevant compensation for the victim in the judgment against the perpetrators.
Summary of legislation

It is possible that victims of trafficking in human beings, especially victims of forced prostitution and similar sexual exploitation, appear as witnesses in criminal cases against sexual or other exploiters or criminal cases against persons charged of unlawful taking of people over the Slovenian state border. In such cases these victims face the danger of the so-called secondary victimisation, as the criminologists and psychologists call the psychological suffering of the victim, forced to confront "his" or "her" offender before the court. In general there are no special instruments in the Slovenian criminal procedural law ("Zakon o kazenskem postopku") for preventing such secondary victimisation. Only in very exceptional cases, where the disclosure of the witness’s identity would seriously endanger his or her life or the life of his or her relatives (as it could be the case for instance in organised crime cases), the newest amendments of the Slovenian Criminal Procedure Act (from 1999) allow anonymous testifying of witnesses (Art. 240/V, VI, VII and Art. 331/VII) by means of electronic equipment.

The Slovenian Criminal Law ("Kazenski zakonik") from 1994 (last amendments 1999) contains several incriminations that can be used for combating trafficking in human beings. There are several incriminations (Art. 180 to 187) of sexual exploitation including all forms of intentional participation (also art. 25 to 29).

Any intentional participation in organising prostitution for instance is a criminal offence under Slovenian Criminal Law. Prostitution as such is in Slovenia a trespass of administrative law.

Unlawful taking of persons over the state borders is in Slovenia a criminal offence under Art. 311/II and III of the Criminal Law Act. Under Art. 387 it is also a criminal offence against humanity, when somebody is "enslaving persons" (bringing or holding them in slave-like conditions, when this is a violation of international law provisions). All criminal offences are according to Slovenian criminal law equally punishable, when the offender is national or migrant. Offenders who are not Slovenian citizens may, under certain conditions prescribed in the Criminal Law Act, also be expelled from Slovenia.
These are the legal provisions on trafficking in human beings that the Women’s Institute considers relevant to the International Seminar for the establishment of “Co-ordinated Action Against Trafficking in Human Beings in South-eastern Europe.”


The regulations set forth in Title VIII, Chapter V, of Organic Act 10/1995’s Book I, entitled “on prostitution-related crimes”, in articles 187 and 189 (the only articles to which this issue is pertinent), are mainly aimed at differentiating between child prostitution and the prostitution of persons of full legal age. A more serious penalty is set upon child prostitution.

Whoever induces, promotes, favours or facilitates the prostitution of a child or a disabled person is punishable under this law with one to four years' imprisonment and a fine of twelve to twenty-four months.

In the prostitution of persons of full legal age, whoever coercively determines, through deceit or abuse of a situation of need or superiority, that a person of full age shall exercise prostitution or remain in prostitution can be punished with two to four years' imprisonment and a fine of twelve to twenty-four months.

In both cases the punishment is made heavier by six to twelve years' absolute disqualification from office for anyone convicted of such conduct availing him/herself of office as a public authority, an agent of public authority or a public functionary.

The **Organic Act of 30 April 1999** amended Title VIII of the Penal Code, establishing a new regulation for it.

The new text is the first law specifically to classify trafficking in persons as a crime. For instance, article 188.2 reads, “The same penalties (two to four years imprisonment and a fine of twelve-four months) shall be inflicted upon whoever directly or indirectly favours entry to, stay in or departure from national territory by persons with the intention of sexual exploitation of such persons, using violence, intimidation or deceit, or abusing a situation of superiority or need or vulnerability of the victim.”

Another law to take into account is **Act 35/1995 of 11 December** on aid for the victims of violent crimes and crimes against sexual freedom. This law regulates economic aid and assistance for the victims of this type of offence.

Article 2 of this Act establishes the beneficiaries of such aid. This article is difficult to apply in the case of trafficking in women and girls, because customary residence is required or they must be natives of countries that recognise aid measures similar to Spain’s in their own territory.
Under Spanish penal regulation, various types of conduct in infringement of employee rights are considered crimes; in this case, the law seeks to correct the especially vulnerable situation in which the victims of trafficking frequently find themselves.

First, the law punishes any person who, through deceit or abuse of necessity, imposes upon the workers in his/her service a set of working or Social Security conditions that harm, restrict or disregard the rights recognised to them by law, collective bargaining or individual contract.

Second, it punishes the conduct consisting in illegal traffic in labour and those persons who employ foreign subjects without working permits in conditions that harm, disregard or restrict the rights recognised to them by law, collective bargaining or individual contract.

It is also considered a crime to by any means promote or favour clandestine immigration in Spain.

One important development in the trafficking issue is the recent approval of Organic Act 4/2000 of 11 January 2000 on the rights and freedoms of foreign citizens in Spain and the social integration thereof.

On this issue, article 55 of Organic Act 4/2000, which is entitled “Co-operation with Organised Crime,” gives the following provisions:

1. Any foreign citizen who shall have crossed the Spanish border without respecting the proper procedure or without having discharged his or her obligation to declare entry, and who is illegally in Spain or working without a permit, without credentials or with irregular credentials because he or she has been a victim, sufferer or witness of an act of unlawful trafficking in labour or exploitation in prostitution abusing his or her situation of need can be held to be exempt of administrative liability and shall not be deported if he or she reports the perpetrators of or co-operators in such trafficking to the proper authorities or co-operates or collaborates with the police officers in the foreign citizens' service, providing essential information or testifying, if need be, in legal proceedings against the perpetrators.

2. The administrative authorities in charge of investigation prior to the penalising proceeding will submit the appropriate proposal to the deciding authority.

3. Foreign citizens held to be exempt of administrative liability may be facilitated the return to their country of origin or their stay and residence in Spain, plus a work permit and social integration facilities as established in this Act.

4. When the Department of the Public Prosecutor receives information that a foreign citizen against whom a deportation decision has been handed down appears in a criminal procedure as a victim, sufferer or witness, and it considers that foreign citizen’s presence vital for the judicial proceedings, it shall notify the proper government authority, which can then consider not enforcing that person’s deportation, and should the deportation have already been enforced, the same procedure shall be followed to authorise that person’s return to Spain for the time necessary in order to perform the required proceedings, without prejudice of the possibility that some of the measures called for in Organic Act 19/1994 of 23 December on witness and expert protection in criminal trials may be taken.
Section 1

If a person, by violence or by threat involving or appearing to the threatened person as imminent danger, forces the latter to copulate or have other comparable sexual intercourse, he or she shall be sentenced for *rape* to imprisonment for at least and at most six years. Rendering that person unconscious or putting the person in other such state shall be regarded as equivalent to violence.

If in view of the nature of the violence or the threat and the circumstances in other respects the crime is considered less grave, a sentence to imprisonment for at most four years shall be imposed.

If the crime is grave, a sentence to imprisonment for at least four and at most ten years shall be imposed for *aggravated rape*. In judging whether the crime was grave, special attention shall be paid to whether the violence involved a danger to life or whether the offender had inflicted serious injury or serious illness or otherwise displayed particular brutality. (SFS 1984:399)

Section 2

A person who, under circumstances other than those mentioned in Section 1, by unlawful coercion makes someone engage in sexual intercourse shall be sentenced for *sexual coercion* to imprisonment for at most four years. (SFS 1984:399).

Section 3

A person who induces another to engage in sexual intercourse by gross abuse of his or her dependency or by improperly taking advantage of the fact that the latter is unconscious or in other helpless state or is mentally retarded shall be sentenced for *sexual exploitation* to imprisonment for at most four years. (SFS 1984:399).

Section 4

A person who has sexual intercourse with someone under eighteen years of age and who is that person's offspring or is in his or her charge, or for whose care or supervision he or she is responsible by decision of a public authority, shall be sentenced for sexual *exploitation of a minor* to imprisonment for at most four years.

If the offender has acted with especial lack of regard for the minor the crime is otherwise to be regarded as grave, a sentence to imprisonment for at least to and at most eight years shall be imposed for *aggravated sexual exploitation* of a minor. (SFS 1984:399).
Section 5

If a person, otherwise than as stated in Section 4, has sexual relations with his or her own child or its offspring, a sentence of imprisonment for at most two years shall be imposed for sexual intercourse with an offspring.
A person who has sexual relations with his or her whole sibling shall be sentenced to imprisonment for at most one year for sexual intercourse with a sibling.
The provisions of this Section do not apply to the person who has been made to commit the act by unlawful coercion or other improper means. (SFS 1984:399).

Section 6

If a person, otherwise than as previously stated in this chapter, has sexual intercourse with a child under fifteen years of age, a sentence of imprisonment for at most four years shall be imposed for sexual intercourse with a child. (SFS 1984:399)

Section 7

A person who, otherwise than as previously stated in this chapter, sexually touches a child under fifteen years of age or induces the child to undertake or participate in an act with sexual implication shall be sentenced to a fine or imprisonment for at most one year for sexual molestation.
The same shall apply if a person exposes himself to another in a manner apt to give offence or otherwise behaviour indecently towards the latter by word or deed that flagrantly violates a sense of decency. (SFS 1984:399).

Section 8

A person who promote or in an improper way exploits the fact that someone has casual sexual relations against payment shall be sentenced for procuring to imprisonment for at most four years.
If the person who consigns the usufruct of a dwelling acquires knowledge that the dwelling is wholly or to a substantial extent used for casual sexual relations against payment and fails to do what can reasonably be desired to terminate the consignment of usufruct, and if the activity continues or is resumed in the dwelling, he shall be considered to have promoted the activity and shall be sentenced in accordance with the first paragraph. (SFS 1984:399).

Section 9

If the crime is grave, imprisonment for at least two and at most six years shall be imposed for grave procuring.
In judging the gravity of the crime, special attention shall be paid to whether the offender has widely encouraged casual sexual relations against or has ruthlessly exploited another. (SFS 1984:399).
Section 10

A person who, by promising or giving compensation, obtains or tries to obtain casual sexual intercourse with someone under eighteen years of age, shall be sentenced for *seduction of youth* to pay a fine or to imprisonment for at most six months; (SFS 1984:399).

Section 11

A sanction provided in this Chapter for an act committed against someone under given age shall be imposed even on a person who did not realise but had reasonable grounds for assuming that the other had not reached such age. (SFS 1984:399)

Section 12

Attempt to commit rape, aggravated rape, sexual coercion, sexual exploitation, sexual exploitation of minor, aggravated sexual exploitation of minor, sexual intercourse with a child, procuring and grave procuring shall be punished as stated in chapter 23. The same applies to preparation for and conspiracy to rape, aggravated rape, aggravated sexual exploitation of a minor and grave procuring. (SFS 1984:399).

Section 13

When, in case of sexual intercourse with a child or attempt to commit such a crime, or sexual molestation as under Section 7, first paragraph, there is little difference in age and development between the offender and the child, public prosecution shall not occur unless it is called for in the public interest. (SFS 1984:399).

* * *

**Law (1998:408) relating to a ban on purchase of sexual services.**
"The person, who for payment has casual sex, is - if the act is not made penal according to the penal Code - convicted of purchase of sexual services and is fined or sentenced to prison for a maximum of six months".

According to **chapter 23**, the Penal Code, penalty is imposed for attempt.

* * *

**ALIEN ACT**

Chapter 4 "Refusal of entry and expulsion", section 2, paragraph 2

An alien may also be refused entry:

"If he intends to earn his living in Sweden or in any other Nordic country and there is no reason to assume that he will not be supporting himself by honest means or that he will be carrying on activities for which a work permit is required without actually possessing such a permit".
Violence against Women

Government Bill 1997/98:55

Sweden is by many regarded as a society in which there is a relatively high degree of equality between women and men. This goes, for instance, concerning women’s representation in Government (50 per cent), in Parliament (43 per cent), in County Councils (48 per cent) and in Municipalities (41 per cent). Swedish women also have a relatively high employment rate (70 per cent) and thereby good possibilities to support themselves. Both women and men have ample possibilities to combine employment with parental and household responsibilities.

In many areas, however, there is a considerable imbalance in the power relations between women and men. The most extreme example of such an imbalance is the occurrence of men’s violence against women. Despite several measures, particularly in recent years, thousands of women in Sweden are subjected to violence. Over the last decade, the number of reported assaults and various forms of sexual offences has increased markedly. Often, these offences are committed by a man who has a close relationship to the woman concerned (domestic violence).

Violence against women is therefore an obstacle to the ongoing development towards equality between women and men. Violence against women is also a serious social problem. To take action against this form of criminality is thus a task which has been declared by the government to be given priority in the criminal justice system.

The government’s Bill for action against violence against women, dealt with a number of issues and entailed three essential points of departure:

- Legislation was to be further improved and made more rigorous
- Further preventive measures were to be undertaken
- Women victims were to be dealt with in better ways than hitherto

In total, the government is allocating SEK 41 million for 1998 for use on a variety of measures. The measures mean that Sweden fulfills obligations arising from the Fourth World Conference on Women, held in Beijing in 1995. The government does however not exclude that further measures may be called for.
New and more rigorous legislation

Gross violation of a woman's integrity - a new offence

A new offence has been introduced into the Penal Code. Its purpose is to deal with repeated punishable acts directed by men against women having a close relationship with the perpetrator (gross violation of a woman's integrity), but also covers children and other closely related persons (gross violation of integrity).

In short, gross violation of a woman's integrity, means the following. If a man commits certain criminal acts (assault, unlawful threat or coercion, sexual or other molestation, sexual exploitation, etc) against a woman to whom he is or has been married or with whom he is or has been cohabiting, he shall be sentenced for gross violation of the woman's integrity, instead of for the crime that each of the acts comprise. A necessary condition for sentencing for the new offence is that the acts were part of a repeated violation of the woman's integrity and were suited to seriously damage her self-confidence. The punishment is imprisonment for at least six months and at most six years.

Thereby, the new crime makes it possible for the court to increase the minimal value of the above mentioned acts in situations where they are part of a process which constitutes a violation of integrity, which is often the case with domestic violence. It is thus also possible, in a better way than with previous legislation, to take the entire situation of the abused woman into account. The new crime does not exclude that the perpetrator simultaneously can be indicted for, for instance, aggravated assault or rape.

The crime gross violation of a person's integrity can be used in situations equivalent to the above mentioned. However, under this crime falls repeated violations directed against children or other closely related persons (such as parents and siblings to the perpetrator). The punishment is the same.

Definition of rape widened

The provision of rape is widened so that sexual intercourse is to include other sexual acts if, having regard to the nature of the violation and other circumstances, the act in question is comparable to forced sexual intercourse. This means that certain acts which under previous legislation were defined as sexual coercion, for example so-called fast-fucking, now will be considered as rape.

Neglecting to report certain sexual crimes is made punishable

Under certain circumstances, neglecting to report or otherwise reveal gross sexual offences (rape, gross rape, gross sexual exploitation of a minor or gross procuring) has been made punishable.

Prohibition on the purchase of sexual services

Obtaining casual sexual services (prostitution) against payment is prohibited. The punishment for this offence is fines or imprisonment for up to six months. The attempted offence is also made punishable. The offence comprises all forms of sexual services, whether they are purchased on the street, in brothels, in so-called massage-institutes, etc.

This new prohibition marks Sweden's attitude towards prostitution. Prostitution is not a desirable social phenomenon. The government considers, however, that it is not reasonable to punish the person who sells a sexual service. In the majority of cases at least, this person is a weaker partner who is exploited by those who want only to satisfy their sexual drives.

It is also important to motivate prostitutes to seek help to leave their way of life. They should not run the risk of punishment because they have been active as prostitutes.

By prohibiting the purchase of sexual services, prostitution and its damaging effects can be counteracted more effectively than hitherto. The government is however of the view that criminalisation can never be more than a supplementary element in the efforts to reduce prostitution and cannot be a substitute for broader social efforts.

The government estimates that the new law will mean increased costs for the police of the order of SEK 10 million from the beginning of 1999 when the prohibition will enter into force.

Social welfare legislation is supplemented

The present social welfare legislation is supplemented by a new provision which means that local social welfare services must act to provide women, who are or have been exposed to violence or other abuse in the home, with help and support in order to change their situation.

The responsibility of the social services is made plain by this provision. In consequence, the competence and readiness of the social services to provide help and support to women who have been subject to such acts should be further developed.

The National Board of Health and Welfare is also required to draw up general guidelines for social work in the light of the new provision.

Increased punishment for genital mutilation

The term 'genital mutilation' replaces that of "circumcision" in the law. The serious nature of the offence means that fines have been removed from the scale of punishment. The scale has also been made more rigorous by making imprisonment for at most four
years the punishment for the normal crime instead of
the previous two years. For the gross form of the crime
the minimum punishment is two years, instead of one
year as previous.
Preparation, conspiracy to commit the offence and
neglecting to report or reveal genital mutilation have
also become punishable. Furthermore, an extension of
the area of criminal responsibility to comprise also a
person performing genital mutilation abroad is under
consideration.

Provisions on sexual harassment in working life are
made more rigorous
In Sweden, the Equal Opportunities Act contains
provisions concerning equality between women and
men in working life. This Act is made up of two parts.
The first part consists of provisions which makes it
incumbent upon an employer to take certain active
measures in order to promote equality at the work
place. The employer who does not comply, runs the risk
of being ordered to do so under the penalty of a fine.
The other part of the Act consists of several provisions
prohibiting discrimination based on sex. The Equal
Opportunities Ombudsman has the task of overseeing
compliance with the Act and can also bring cases of
discrimination to the Labour Court.
The rules concerning sexual harassment in the Act
have now been strengthened. First, a definition, as
follows, is inserted into the Act:
Sexual harassment means such unwanted conduct
based on sex or unwanted conduct of a sexual nature, that
violates the integrity of the employee at work.
Second, the Act is improved so that it becomes fully
evident that every employer is obliged to take active
measures to prevent and hinder an employee from
being exposed to sexual harassment. The employer
must make clear in a general staff policy statement that
sexual harassment involving employees cannot in any
way be tolerated. This policy must be made known to
the employees. It is equally important that routines are
devised for dealing with alleged or factual sexual
harassment. The employer who does not fulfil his or her
obligations runs the risk of having to do so under the
penalty of a fine.
Finally, an employer who receives information that
an employee has been exposed to sexual harassment by
another employer must investigate the circumstances
surrounding the alleged harassment. Where necessary,
the employer must take such steps as can be reasonably
required to prevent continued sexual harassment. An
employer who fails to fulfil these obligations is liable
to pay damages to an injured employee. Damages are
payable for the violation which the neglect of required
measures occasioned.

Already before these amendments, the Equal
Opportunities Act stipulated that an employer may not
subject an employee to harassment because the latter
has rejected the employer’s sexual advances or lodged a
complaint about the employer for sex discrimination.
In cases where the employer is the one sexually harass-
ing an employee, the rules in the Penal Code
concerning molestation or sexual molestation are
applicable.

A gender-neutral language in the Penal Code
In a number of the provisions on, inter alia, assault
and sexual crimes of the Penal Code, the words his or
him were used to refer to persons of both sexes. These
words are now modified in favour of expressions such
as his or hers or similar. The government attaches
importance to a gender neutral language as a whole in
the Penal Code. Work on this question is started by
overhauling the chapters referred to and continue as far
as possible when the opportunity arises.

A Law Committee on Sexual Offences has been set up
The Law Committee on Sexual Offences is to
undertake a complete review of the provisions on
sexual offences. A certain number of recently rendered
judgments concerning rape and sexual exploitation of
young women have attracted much attention. They
have given rise inter alia to questions about where the
boundary lies between different offences in chapters on
sexual crimes in the Penal Code.
The Committee will examine to what extent the
offence of rape should focus on consent rather than
force. The provisions on rape in relation to children
will also be reviewed. The Committee will furthermore
undertake a study of the courts’ practice in the deter-
mination of punishment and of the reasoning employed
about penal value where sexual offences are concerned.
Furthermore, the Committee is to consider whether
there is a need of penal provisions on trafficking in
human beings despite the fact, that such trafficking may
already be a criminal offence under other penal
provisions.
Preventive Measures

Common tasks to be undertaken by certain administrations
In connection with the Bill, the government has by a special decision charged certain administrations to undertake common tasks concerning violence against women. The aim is to give concrete expression to the administrations’ responsibility and duty to take appropriate measures on issues concerning violence against women. The tasks concern the Office of the Prosecutor General and all prosecution administrations, the National Police Board and all police administrations, the National Council for Crime Prevention, the National Prison and Probation Administration, the Crime Victims Compensation and Support Authority, the National Board of Health and Welfare, the county councils and, in certain respects, the National Courts Administration.

Each of these administrations is required to:
- increase its efforts to prevent violence against women;
- draw up an action programme or a policy document for its work on this question;
- engage in mutual collaboration with other administrations and with the relevant voluntary organisations;
- follow international developments concerning violence against women, and
- report regularly to the government on the steps taken.

Certain administrations are furthermore charged with specific tasks. Some of these tasks are described later on in this Fact Sheet.

Improved statistics
The government believes it necessary to improve statistics on violence against women. Current statistics, for example, contain no information on the sex of victims, only on the perpetrator of various crimes. Nor is it easy with the help of statistics to follow cases through the reporting and investigating phases and on to the courts and the prison and probation services.

The National Council for Crime Prevention is currently working on an improvement of the official crime statistics. This will, inter alia, make it possible to ascertain the sex of both perpetrator and victim, the age of the latter and his or her relationship with the perpetrator. The government is charging the Council to complete this work speedily.

The government is also charging the Office of the Public Prosecutor to present regular reports on the number of restraining orders issued and to make suggestions as to how such statistics can be co-ordinated with statistics concerning breaches of restraining orders.

A special research study
Official crime statistics on reported offences can never give a complete picture of the scope of violence against women. A special research study is necessary for an assessment of the true nature of this form of criminality and the resources necessary to halt it.

Such a study, directed specifically towards investigating the occurrence of violence against women, is now to be carried out. The Crime Victims Compensation and Support Authority has received the financial means for this purpose.

A gender perspective in criminological research
Women’s studies in Sweden and other countries have contributed much to new knowledge on violence against women - its causes and consequences. Criminological and legal research is however still lacking a gender perspective.

The National Council for Crime Prevention is a governmental expert body, which works as a centre for research and development work in the field of crime prevention within the judiciary and is also responsible for the official crime statistics. The Council is now charged inter alia to develop research on violence against women as well as to incorporate a gender perspective in its present research and development work. This means inter alia that the Council must set aside resources for method development, and arrange for an increased exchange of information with the women’s studies.

An inventory of police efforts
The National Police Board is charged with making an inventory of efforts made by the police concerning violence against women and to report them to the government. The inventory shall also include an investigation into the extent to which correct and good information is provided for victims of crime.

Electronic monitoring to be studied
The National Council for Crime Prevention is charged with making a study of the practical and technical conditions necessary for electronic monitoring of men who breach a restraining order.

The increased risk of detection which such a form of monitoring implies, can have a deterrent effect as well as providing greater security for the woman concerned. It would also mean a limitation of the freedom of movement of the perpetrator, instead of, as is often the case today, the woman bearing the responsibility of reporting the breach to the police. The setting up of such a project necessitates however having reliable technology and that the surveillance can be carried out practically.
Development work concerning violence against women and prostitution

The National Board of Health and Welfare is charged to undertake development work on questions concerning violence against women and on prostitution.

The work will seek to facilitate the expansion of competence and improvement of methods within the social and health services. Included in this task is the initiation and support of collaborative projects and of the dissemination of information and the following of international developments.

For the above-mentioned tasks, the National Board will be allocated extra financial support for the period 1998-2000. Thereafter, the tasks will become a part of the routine work of the National Board.

Treatment methods for men are to be surveyed and evaluated

Increased attention must be given to those men who commit acts of violence against women.

The National Prison and Probation Administration is therefore charged, in consultation with the National Board for Health and Social Welfare, to survey existing methods of treatment for men sentenced for violent offences against women. Consideration shall also be given to the need to provide more adequately for such treatment. The result of the survey should be reported at latest by 31 December 1998.

In order to ascertain what methods are suitable and effective, the government will also initiate and fund evaluation of existing methods of treatment for men who commit violent offences against women.

In the forthcoming evaluation it will be especially important to direct attention to the available international experience. Knowledge of the cases of male violence against women which has been acquired by women's studies in Sweden and other countries must obviously be taken account of in such an evaluation.

A national rapporteur on trafficking in women

The question of trafficking in women for the purposes of their sexual exploitation, has been taken up in recent times by the European Union. A national rapporteur on this question is recommended to be appointed in all Member States, in accordance with a declaration signed jointly by the Ministers of Justice and the Ministers of Equality Affairs.

The National Police Board is charged with being the national rapporteur for Sweden.

The National Police Board shall inter alia collect information on the extent of trafficking in women in Sweden as well as between Sweden and other countries, including outside of the European Union, and consider how such trafficking can be prevented and combated. It shall report regularly to the government.

Information to those seeking residence permits

Sweden has, in comparison with many other countries, far-reaching legislation on violence and aggression against those in close relationship. Thus, for example, it is forbidden for parents to physically punish their children or treat them in humiliating fashion. Rape in marriage is also forbidden and domestic violence can be indicted even if the victim has made no formal accusation.

The Immigration Board will now be charged with drawing up information material on Swedish legislation relating to violence in close relationships. This information is to be disseminated among those seeking residence permits in Sweden.

Support for certain voluntary organisations

Men

The government considers it important to support preventive work among men. In recent years, several men's organisations have been created in Sweden for the purpose of helping and supporting men running the risk of or having committed violent crimes against women. Among these, emergency centres, run by men for men, and a Male Network against Male Violence, can be mentioned. As a result of the Bill, the government has allocated financial support to these organisations for projects with the aim to further develop ways and means, including information, to men about violence against women.

Youth

It is especially important to reach out to youth on questions concerning violence against women. Funding are therefore available for projects that relate to, and are initiated by, young people and these organisations on issues related to violence against women.

Immigrant and disabled women

Organisations working on behalf of immigrant and disabled women has also received financial support for projects and other efforts in this field.

Financial contribution to the United Nations

The government allocates around SEK 2 million to the UN Centre for Human Rights and the Special Rapporteur on violence against women in order to support the ongoing work concerning the human rights of women.
Improved ways and means of supporting women victims

Nation wide further training for professional groups
Women victims must in the future be better understood and supported by the professional groups with which, in various ways, they come in contact. This can be achieved if personnel receive training in matters concerning violence against women, the mechanisms behind this violence and on ways and means to prevent it and support women victims of violence.

In connection with the Bill, the government has charged the National Police Board, in consultation with the National Courts Administration, the Prosecutor-General and the National Board of Health and Social Welfare, to carry out a nation wide training at central, regional and local levels. The training will be financed through extra funding from the State Budget.

A similar training was last carried out in 1982. Nearly 20,000 persons from the criminal justice system and the social welfare and health services took part. The aim now is to bring about a more widespread training with a larger number of participants from the police, the prosecution, the social services etc. Training and information for judges and lay judges will also be carried out.

Further training must normally be financed as part of an administration’s ordinary work. The government has announced that this should be arranged in future on a larger scale than has hitherto been the case.

Improved professional education
Questions of gender equality and violence against women should be emphasised in the education for professions in which the professional in question comes in contact with women who have been victims of gender-related violence. It is a serious shortcoming that this is not the case today.

For this reason additions have now been made to the examination requirements in the regulations governing college education in respect of the following professions or in the following professional subjects:

- Midwifery, child and youth pedagogic, elementary school and high school teachers, law, medicine, psychology, psychiatry, nursing, social care, social work, dentistry and theology.

The police training already previous included these issues.

The University College Administration will be required to follow up and evaluate the new regulations. During a three-year period the Administration will follow up and evaluate how the new regulations have come to influence the teaching given. It is to report annually to the government.

The annual support for the women's shelters is increased
There are presently 131 local women's emergency shelters in Sweden. They constitute a significant form of work to protect and help women subjected to violence and their children. The shelters are organised in two national umbrella organisations.

The available information shows that the local shelters receive about 14,000 calls a year for help from women in need. Approximately 1,500 women with their children live in the overnight apartments possessed by the shelters.

The shelters’ national umbrella organisations receive an annual organisational support via the State budget. The local shelters receive funding by the municipality in which they are located, but the support varies from municipality to municipality. They can also receive State support for development work, after application.

Over and above the previous financial help given, the State support to the shelters has now increased. A further SEK 6 million is made available to the shelters and their umbrella organisations annually.

A crisis telephone line for women victims
The local women’s shelters today offer telephone advice and support. A need for a national crisis telephone line to further assist women in crisis situations or in some other way in need of urgent advice, support and help, has however been expressed. The telephone line should be open around the clock.

The National Board for Health and Social Welfare was therefore charged with the task to speedily study how such a central crisis telephone line for women victims of violence might be set up. The result of the study was reported to the government in June 1998 and is now under consideration.

The National Centre for battered and raped women has received additional support
The National Centre for battered and raped women was set up in 1994 by the government’s initiative. The government also provided initial funding for the Centre, whose activities fall under the auspices of the County Council of Uppsala, north of Stockholm. The Centre is attached to the Uppsala Academy hospital. Its purpose is to provide medical examination, treatment and support to women subjected to violence. Another important task of the Centre is to develop research and practical measures on ways and means with which the health and medical system receives women subjected to violence and to serve as a national resource in these matters. The Centre therefore devotes efforts to document and spread information on its work methods to other regions in Sweden.

The Centre’s activities to develop routines and treatment methods within the medical system is decisive for enabling women subjected to violence to seek medical advice or medical treatment. Therefore the Centre has received additional extra funding for 1998. Funding of the Centre’s activities is otherwise a matter for the County Council.
Previous measures to combat violence against women

Efforts to prevent and eliminate violence against women have had high priority in Sweden in recent years and various measures have been implemented to this end. They include preventive measures, stricter penalties, procedural improvements and better support for women victims of violence.

Some milestones

1965 Rape in marriage is forbidden.

1982 Changes in the rules concerning prosecution for battering and rape so that prosecution no longer is dependent on an accusation being made by the person subjected to the offence. Anyone who receives information about such an offence can report it to the police, thus marking that these offences are not a private matter between the parties involved.

1984 Reformation of the sexual crimes in the Penal Code. The definition of rape is widened to comprise also oral and anal intercourse as well as intercourse between homosexuals. In addition, also men can be the victims of rape committed by a female perpetrator. It is made clear that the behaviour of the victim prior to the rape is irrelevant. The provisions concerning procuring are strengthened.

1988 Law on Restraining orders is introduced in the Penal code. This law has since been strengthened. The law is presently being subject to an evaluation.

The Injured Party's Counsel Act is introduced. Under this Act the victim of a crime of violence is entitled to free legal counsel during police investigation and trial. In 1991 and 1994 the possibilities of getting free legal aid was extended. The law is presently being subject to an evaluation.

1991 Rules on sexual harassment in working life are introduced in the Equal Opportunities Act.

A national training of personnel in the judiciary, the social services and the health care system is launched. The training, with the purpose of increasing the knowledge on issues related to violence against women - its causes and consequences, is given to app. 20 000 persons.

1993 Projects are launched for a better co-operation between the police, the social services and other relevant parties at regional level.

Every police station in Sweden is equipped with so called alarm kits which can be given to threatened women free of charge. These kits consist, inter alia, of alarm systems for the home, mobile telephones etc.

The possibility for severely threatened women to receive body guards, free of charge, is introduced on a trial basis. This possibility is now permanent.

A Chair in sociology - in particular violence against women - is introduced at the university of Uppsala, north of Stockholm, financed via the State budget.

1994 The punishment for battering, molestation, sexual molestation and unlawful threat is increased.

The National Centre for raped and abused women is set up. The aim is to receive and treat women who are victims of abuse, rape etc. and to contribute to a better treatment of such patients within the health care system. This means that the Centre is also involved in development work, in research and in training etc. The Centre is available around the clock.

1995 The punishment for gross sexual exploitation is increased. The definition of sexual molestation is widened.

1998 The government presents a Bill to Parliament on violence against women. The Bill comprises, inter alia, new legislation, changes in existing legislation, measures for a more effective work within the police, the prosecution and the social services and increased financial support to the shelters.

Parliament decided on the Bill and the legislative amendments entered into force.
Penalty regulations

Chapter 17, section 10 in the Penalty Code provides injured parties and witnesses with a special protection against violence or threats of violence. A person, who with violence or threats of violence attacks somebody because of the fact that this person at court or at another authority has made a report, pleaded a cause, given evidence or otherwise has made a statement when interrogated or in order to prevent him from such a measure, is convicted of interference in a judicial matter. The same applies to the person who with another act that involves suffering, injury or inconvenience or with threats of such an act attacks somebody because he has given evidence or otherwise has made a statement when interrogated at an authority or in order to prevent him from such a statement. To be fined or imprisonment for no more than 2 years, at aggravated crime for a minimum of one year and no more than 6 years.

Also other penalty regulations in the Penal Code are applicable, for instance chapters 3 and 4 about crime against life and health and freedom and peace. The law about mapping (1998:688) is applicable and makes it possible to ban a person from visiting or in another way taking contact with another person or in following this person.

Personal particulars

In order to protect injured parties and witnesses there are regulations in the Code of Judicial Procedure: information about the age, profession and permanent home address of injured parties and witnesses must not without due cause appear from documents which are communicated to the accused and that injured parties and witnesses only when necessary are to asked about such personal particulars before they are heard in court. These regulations involve a limitation of the possibilities of, in a simple way, being informed about the personal particulars of injured parties and witnesses. To have the possibility of being informed about the particulars it is required that suspect makes a request.

Measures during the trial etc.

There are possibilities for the court to ordain that one party or listeners will not be allowed to be present during the interrogation if there is reason to suppose that a witness, because of fear or for another reason, will not openly tell the truth because of the presence of one party or of listeners (chapter 36, section 18 in the Code of Judicial Procedure).

In situations where there is a more pronounced threat against an injured party or a witness there are possibilities of, for instance, deciding about security control at a court session (1981:1064).
Experimental work

At some district courts. Is run by local emergency services for victims of crime. Answers questions and informs about the judicial proceedings, procedure, useful details. Is found in the waiting room of the district court, visiting activities. In some cases in the district-court sessions-hall. Proposals in the SOU (Swedish Public investigations) about development of the work.

Physical protection

Threatened and persecuted persons have the possibility of having a security parcel: a bag containing a safety telephone (a mobile telephone that directly alerts the police alert computer and you can also phone the SOS centre directly), emergency telephone (stationary alarm system at home), an emergency bracelet, a sound alarm and an answering machine. At very serious threats it is possible to have bodyguard protection (very unusual).

Law about mapping

Mapping may be announced by a prosecutor if for special reasons there is a risk that the person who has been banned from visiting will commit a crime against, persecute or in another way severely harass the person that is to be protected. At the assessment of such a risk it is to be especially considered whether the person who has been banned from visiting has committed a crime against the other person's life, health, freedom or peace.

Protection within the national registration system

Secrecy marking

The information in the national registration is usually public and is to be handed out immediately to the person who requires this. However, by virtue of the Official Secrets Act the taxation authorities can refuse to deliver information. The taxation authorities can in certain cases provide a certain person with a so-called secrecy marking in the national registration as a warning signal about the fact that the Official Secrets Acts may be applicable. All information about a person is secrecy-marked. In order for a secrecy marking to be introduced into the national registration there ought to be a tangible threat in the special case. Application for a secrecy marking is made by a petition to the local tax office, where the applicant is registered.

Registration at the previous address

A person who for special reasons can be suspected to be subjected to crime, prosecution or severe harassment in another way, can when moving be permitted to still be registered at the previous address. Application for being permitted to be registered at the previous address must be made in writing to the local tax office, where the applicant is registered.

Assumed personal particulars

A registered person running the risk of being subjected to aggravated criminality that is directed against his life, health or freedom can be permitted to use other personal particulars about himself than the real ones (assumed personal particulars). Permission to use assumed
personal particulars is granted by the Stockholm district court after application. The application is made by the National Police Board after petition from the concerned person.

**Remarks**

- Nothing that can be called a witness protection programme exists in Sweden concerning trafficking in women.
- We have no experience with regard to witness protection on an international level.
- The protected persons are in all cases living in Sweden on a permanent basis.
- There are no formal limitations of the protection based on the severity of the crime. The most common categories of crimes concerned are different forms of threats and violence.
- As regards injured party and witness, the accused has always the right to be informed about their identity. Here identity refers to full name and year of birth.
1. THE COMMISSION

As a part of the government commission to the police of 16 December 1997 to fight against violence against women the National Police Board will be the body that submits national reports and will within the Swedish police have the international responsibility as regards "Trafficking in women". The commission implies the collection of information about trafficking in women in Sweden and between Sweden and other countries and about the possibilities of preventing and fighting against this trade. The commission also involves regular reports to the government. The National Police Board has commissioned the National Criminal Investigation Department to execute the commission.

"Trafficking" refers to trade in women with the purpose of exploiting them sexually. However, experience shows that trafficking is a multifaceted and international social problem, closely associated with prostitution, and that the tasks and responsibility of the police only concern a part of the problem and that the opposite interests to a certain extent demand external co-operation as regards the protection of the women concerned.

Within the police, this commission demands increased knowledge, a continuous follow-up and analysis of the situation and an extended network of information within and outside the National Criminal Investigation Department.

The Commission demands an active, trusting, rational and effective co-operation with the police authorities in Sweden, foreign police organisations and external groups and networks of experts.

2. MEASURES

Within the National Criminal Investigation Department the head unit for criminal intelligence service, the division for the fight against illegal immigration has the main responsibility for the execution of the commission. Other units at the National Criminal Investigation Department are to assist the division, above all the division for special objects that has the main responsibility for the fight against commercial exploitation of children. Co-operation is also to take place with the main unit for investigation/surveillance.

- The National Criminal Investigation Department is to inform, nationally and internationally, about the commission and the measures that it will demand from a Swedish police aspect.

- Based upon Swedish interests, the National Criminal Investigation Department, in co-operation with external bodies, is to identify and characterised the existence of "Trafficking in women". This implies that the National Criminal Investigation Department at the same time centrally within the police puts together and analyses the police reports concerning prostitution. Here, co-operation with the National Board of Health and Welfare ought to take place.
- The National Criminal Investigation Department is to play a leading role nationally in qualifications development within the field in question and in collecting information about the judicial system, experiences, knowledge, practice and working methods of other countries and also in providing a well working exchange of information within the Swedish police-system.

- The National Criminal Investigation Department is to make a survey of the link to organised crime, smuggling of human beings, commercial sexual exploitation of children and also to follow up modus operandi and to put together characteristics of a perpetrator profile of such persons that are behind "trafficking in women" and commercial sexual exploitation of children.

- The National Criminal Investigation Department is to develop forms of activities and cooperate within and outside the authority (see list in the government commission of involved authorities and organisations).

- Contact men are to found at every police authority.

- The requirements for training within this field of concerned officials are to be estimated. The requirements for training for a better ethnic and cultural knowledge in order to try to prevent this type of crime are to be looked over. Co-operation ought to take lace with the Police Division and the Police Academy.

- Together with especially concerned authorities a programme is to be elaborated in order to prevent this type of criminality.

- The National Criminal Investigation Department is, within the field, to follow up routines for victims of a crime and to take part in the procurement of support to women, who have been subjected to trafficking. And these aspects also concern the Aliens' Act.
BALTIC SEA TASK FORCE

REPORT ON TRAFFICKING IN WOMEN

During the month of April 1999 a questionnaire on the subject of trafficking in women was sent out to the countries participating in the Baltic Sea Co-operation programme. The collation of the material received in response turned out to be difficult, as some countries chose not to answer the questions directly but instead provided separate situation reports.

However, the amount of knowledge in this field was found to vary considerably, being in some cases fairly indifferent. When work began with the Trafficking in Women project this fact also proved to be valid in Sweden, where there was much less knowledge of the subject at central level than locally and, in particular, in comparison with other organisations (e.g. the NGOs).

Summary of the Member States' response to the Questionnaire:

SWEDEN

• As of 1 January 1999, it is prohibited by law to buy or attempt to buy sexual services in Sweden. Anyone who violates this law shall be fined or sentenced to imprisonment for at most six months.

• The number of domestic prostitutes in Sweden is estimated at approximately 2,500. About a third of them engage in soliciting in the streets.

• Trafficking in women is not per se a criminal offence under the penal Code, whereas procuring is a criminal act liable to punishment by imprisonment for at most four years. The penalty for aggravated procuring ranges from two to six years’ imprisonment.

• During 1998, five preliminary investigations were initiated into cases of procuring which could be linked to trafficking in women. The women involved had arrived mainly from Poland, the Czech Republic, Slovakia, Estonia, Lithuania and Russia. The organisers of this trafficking come predominantly from the respective native countries of these women.

NORWAY

• It is permitted to sell sexual services, whereas procuring is a punishable offence. It is also a punishable offence to buy sexual services from a person under 18 years of age (Parliament decision, 13.06.2000).

• It is believed that there are some 900 prostitutes operating in Oslo and Finnmark and of these about 95% are women aged over 18. Finnmark is visited by around 50 foreign prostitutes each week who stay there for 4 days on average. 95% of the foreign prostitutes, too, are estimated to be women over 18 years of age. In Finnmark, 90% of the prostitutes from Russia are believed to be working with pimps as compared to the native prostitutes, of whom only 10% are thought to be controlled by pimps.
• In 1998, Norway received prostitutes mostly from Russia, the Balkans, Thailand, Lithuania, Estonia and the Czech republic. The planners and organisers of these activities are supposedly of Russian, Balkan and Norwegian extraction. Only a few cases involving procuring with possible links to trafficking in women are under investigation.

• In March 1999 a Swedish man of Yugoslav decent was sentenced to five months imprisonment and deportation with a two-year re-entry ban for procuring in Norway to the detriment of three Czech women.

DENMARK

• Only a small number of police districts are aware of the occurrence of trafficking in women. These cases that have come to notice do not give rise to any far-reaching conclusions, nor is it currently felt that they justify any statistical processing.

• The Copenhagen police are presently conducting a study of the prostitution scene distinguishing between street prostitution, massage parlours and night clubs. There is no evidence of East European prostitutes operating in the streets and at the time of answering the questionnaire 42 out of 118 massage parlours had been inspected. So far, no East European women were found in those establishments either, but the study is still in progress.

• In the cases where procuring believed to be related to trafficking in women has been investigated, there have been no indications of violence or threats against the women. The women have always had access to their passports and been allowed to come and go as they pleased.

• The Arhus police district includes a direct ferry service to Latvia. Young Latvian women have been seen to be picked up at the ferry terminal by Danish men from various parts of Jutland; when interviewed, some of these women said that they had come to Denmark to take a strip-tease course but the police believe some of them have arrived there to prostitute themselves.

• Recently, a Danish man was convicted of procuring for having exploited a Polish prostitute. The woman frequently lived with the man and he shared the money she earned from sexual relations with other men against payment. The man advertised these sexual services and, on request, took the women to the customers' addresses. However, she was allowed to travel freely between Poland and Denmark.

• The Copenhagen police have investigated cases where women from the Baltic countries have arrived in Denmark claiming personal ties with Danish men and obtained permanent residence permits on these grounds. The women have then worked as prostitutes but have been permitted to telephone. Also, they have been allowed to travel at will.

FINLAND

• The foreign prostitutes who travel to Finland usually come from Russia, Belarus, Ukraine and Finland. With few exceptions they are women over the age of 18 and the problem of prostitution is worse in the big towns on the coast near the Russian border.
It is estimated that Finland has about 500 native prostitutes and that some 2,000 foreign prostitutes visit the country each year. The foreign women stay in Finland for an average period of 2-4 days.

Several reports indicate that prostitutes enter the country in large groups and register at certain small hotels. The travelling is organised in the women's home countries and hotel rooms are booked in advance. Hotel and restaurant management appear to have been aware of and in agreement with the arrangements but, barring a few exceptions, it is not known whether or not they make any profit from these activities. In many cases the women have been surrounded by men who obviously "supervise" their movements.

Eleven police districts in Finland have conducted preliminary investigations into procuring operations controlled from abroad. Some of these cases have resulted in convictions. Several police departments were in possession of confidential information and/or suspected that procuring activities were carried on in their own districts. One case involved a foreign woman who had been coerced into prostituting herself but otherwise the women claim they came voluntarily to earn money. Many of the women will reveal absolutely nothing about their activities, just that they are private citizens supporting themselves by prostitution.

ESTONIA

Trafficking in women and prostitution are not criminal offences under the penal code. Consequently there are no official statistics and it is therefore impossible to answer the questions in the Questionnaire. In as far as cases relating to trafficking in women are investigated at all, they are classified under other categories of crime, such as unlawful threats, other crimes of violence, forgery and fraud, etc..

LATVIA

There are an estimated 2,500 domestic prostitutes, about 60% of the women are aged over 18.

Some 20 foreign prostitutes visit the country yearly.

During 1998, approximately 500 women are believed to have been victims of trafficking in women abroad. They have been used in prostitution mainly in Germany, Italy and Denmark. It is assumed that the persons organising the activities are Russian, Latvian, Lithuanian and Danish nationals. Most of the women have, one way or the other, been deceived or cheated in the process.

LITHUANIA

In Lithuania, prostituting oneself is legal and, consequently, prostitutes are not registered.

Young Lithuanian women are known to travel abroad to earn money by prostitution and they usually go to Germany, the Netherlands and Israel. They are often under some sort of pressure and in some cases it is known that the persons responsible for the trafficking in women are Lithuanian nationals.
● In 1998 the police investigated 48 cases of procuring in which women aged over 18 were implicated and which could not be linked to trafficking in women.

● The Lithuanian authorities think that some native prostitutes are victims of trafficking in women abroad. In 1999 they had one case with two women involved and two other cases are currently under investigation. It is assumed that the women are being used as prostitutes in Germany, the Netherlands and Israel.

RUSSIA

● There is no statistical material available on trafficking in women.

● The authorities are aware that the problem exists, however, and according to the intelligence they have at their disposal the current tendency appears to be that the problem is getting worse.

● Russian women who are the subject of trafficking travel abroad on forged invitations or as tourists, dancers, nursemaids or seasonal workers. These illegal operations are conducted by well organised criminal groups. The women travel chiefly to Germany, Denmark, Sweden, Finland and other countries in the Baltic Sea region.

● The involvement of criminal structures in the international trafficking in women is a new, previously non-existent trend in the commercial sex industry. The current legislation views prostitution as an administrative phenomenon and does not provide the legal system with the tools to intervene.

POLAND

● Prostitution is not prohibited in Poland and prostitutes are not registered.

● The criminals who expose foreign women to trafficking in Poland come predominantly from former Yugoslavia, Bulgaria, Ukraine and Poland.

● Trafficking in Polish, Russian and Ukraine women abroad frequently takes place in Germany and the Netherlands and the persons responsible usually come from Poland and Turkey. The Turks have in certain cases been domiciled in Germany.

● During 1998 the authorities investigated 84 cases of trafficking in women targeted on foreign markets. A total of 180 women aged over 18 were involved. Tip-offs and investigative information seldom result in preliminary investigations as the women decline to provide evidence.

● Trafficking in human beings is a punishable offence in Poland, even if conducted on a "voluntary" basis.

GERMANY

● Since 1992 the German authorities have been compiling yearly progress reports on trafficking in women.
• In 1997 investigations were conducted into 397 cases linked to trafficking in women and in 60% of these cases the women involved were between 18-25 years old. In all, the investigations comprised some 1,200 women who were almost exclusively from Poland, Ukraine, the Czech Republic, Russia and Lithuania.

• Of the persons organising the trafficking activities 44% held German citizenship, the next largest group were Turkish nationals.

• About 15% of the German citizens were originally of German descent.

• 200 out of 106 suspected organisers were women.

• Several of the perpetrators of this type of crime are inclined to resort to violence and are not exclusively involved in trafficking in women. It is not unusual for them to engage simultaneously in trafficking in stolen vehicles and/or drugs.

• In most cases, the women are lured into prostitution in Germany and violence is normally not used while they are in the process of being recruited. They often enter the country by land and at this initial stage when crossing the border it is difficult to predict whether or not the women are running the risk of becoming victims of trafficking.

• Germany is using a system of officially authorised brothels where women are permitted to work as prostitutes. Prostitution is punishable only under certain conditions, for instance if there is use of violence or if a state of dependency exists.

Summary

It is noted that knowledge in this field varies considerably, being fairly negligible in some cases. From the Questionnaire it appears that most of these women are tricked into prostituting themselves in the West. Only in a small number of cases violence or threats of violence have been used to force the women to travel abroad. The women may be deceived by false pretences, promising them other kinds of work or the opportunity to earn a lot of money by prostituting themselves.

It is often a matter of very young women who lack experience of life and who may never have been abroad before. They might be easily influenced and prone to quickly end up in a position of dependency vis-à-vis their organiser. The women are seldom allowed to keep any major part of their earnings.

Suggestions for further initiatives

At the OPC meeting in Lubeck on 22-23 September 1999 it was decided that Sweden and Latvia should form a working group with instructions to draw up recommendations outlining how to deal with these issues within the OPC and, in doing so, take into consideration the efforts of Europol in this context.

The meeting between the countries is scheduled for January 2000 and is to be regarded as an expert conference. The issues and planning to be discussed during this meeting include how to raise the level of awareness among the Baltic Sea countries where the problem of
Trafficking in Women is concerned. The meeting will also discuss a future project in intelligence and investigation tactics designed to combat this problem in the Baltic Sea region.
Article 195

Encouraging to prostitution

Anyone who pushes a minor into prostitution, anyone who, profiting from a dependence relationship or for the purpose of making a financial profit, pushes another person into prostitution;
Anyone who infringes the freedom of movement of a person engaging in prostitution by watching her/his activities or imposing her/his the place, the time, the frequency or other conditions;
Anyone who keeps a person in prostitution shall be sentenced to 10 years’ imprisonment or more.

Article 196

Trafficking in human beings

1. Anyone who, for the purpose of satisfying another person’s desires, engages in trafficking of human beings, shall be sentenced to at least six months’ imprisonment.

2. Anyone who takes steps with a view to engaging in human trafficking shall be sentenced to up to five years’ imprisonment.

3. In all cases, offenders shall also be sentenced to a fine.

Systematic compilation of federal law (Recueil systématique du droit fédéral)

Table of domestic law contents
Cover page | RS 142.20 Federal law on foreigners’ rights of residence and establishment
Section 3: Data protection provisions
Section 4: Criminal provisions
Art. 22g
Art. 23a
Article 23

1. Anyone who forges identity papers for immigration purposes, or falsifies genuine papers, or knowingly uses or obtains such papers;

Anyone who knowingly uses genuine papers intended for someone else;

Anyone who supplies genuine papers for fraudulent purposes to persons not entitled to use them;

Anyone who illegally enters Switzerland or resides there illegally;

Anyone who, either in Switzerland or abroad, facilitates or helps to prepare a person’s illegal entry, exit or residence;

shall be sentenced to up to six months’ imprisonment, in addition to which they may be liable for a fine of up to 10 000 francs. In minor cases, punishment may be limited to a fine.

2. Any persons who, with a view to their own or another person’s unlawful enrichment, facilitate or help prepare a foreigner’s illegal entry or residence in Switzerland shall be sentenced to imprisonment and a fine of up to 100 000 francs. The same sentence shall also apply in the case of offenders who act not with a view to enrichment but in the context of a group or association set up for the purpose of repeatedly committing such offences.

3. In the case of persons turned back at the border, any penalties for illegal entry may be waived. Persons seeking refuge in Switzerland shall be exempt from punishment if the nature and gravity of the persecution they face justify their unlawful crossing into Switzerland; anyone offering assistance to such persons shall also be exempt from punishment providing their motives are honourable.

4. Anyone who knowingly employs foreigners not authorised to work in Switzerland shall, in addition to possible punishment under paragraph 1, be sentenced to a fine of up to 5000 francs for each foreigner unlawfully employed. Anyone who acts out of negligence shall be sentenced to a fine of up to 3000 francs. In very minor cases, any penalties may be waived. In the case of offenders motivated by gain, the judge may impose fines in excess of these limits.
5. Anyone who, having acted with intent, has already been the subject of an enforceable sentence under paragraph 4 and who, within five years, again illegally employs a foreigner, may be sentenced to up to six months’ imprisonment in addition to the fine\(^1\).

6. Other infringements of the immigration rules or the decisions of the competent authorities shall be punishable by a fine of up to 2000 francs; in very minor cases, any penalties may be waived\(^2\).

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Extract from the Criminal Code

Chapter 19. Crimes against sexual freedom and sexual morality

(…)

Article 191
Mediation in conducing prostitution

(1) A person who recruits, instigates, stimulates or entices another to prostitution, or a person who in any kind of way participates in handing over another to someone for performing prostitution, shall be punished with imprisonment of six months to five years.

(2) A person who because of profit enables another to use sexual services shall be punished with a fine, or with imprisonment of up to one year.

(3) A person who because of profit, by using force or by serious threat to use of force, forces or by deceit induces another to give sexual services, shall be punished with imprisonment of six months to five years;

(4) If the crime from items 1, 2 and 3 is committed with a juvenile, the offender shall be punished with imprisonment of six months to five years.

(5) If the crime from items 1, 2 and 3 is committed with a child, the offender shall be punished with imprisonment of one to five years.

(6) A person who organises the crimes from items 1 to 5 shall be punished with imprisonment of one to ten years.

Article 192
Procuring and enabling sexual acts

(1) A person who procures a juvenile to sexual acts shall be punished with imprisonment of three months to five years.

(2) A person who enables the performing of sexual acts with a juvenile shall be punished with imprisonment to three months to three years.

(…)

Article 402
Illegal crossing of the state border

(1) A person who without the prescribed permission crosses or ties to cross the border of the Republic of Macedonia, armed or with the use of violence, shall be punished with a fine, or with imprisonment of up to one year.

(2) A person dealing in illegal transfer of other persons across the border of the Republic of Macedonia, or a person who out of self-interest enables another illegal crossing of the border, shall be punished with imprisonment of six months to five years.
Chapter 34. Crimes against humanity and international law

(…)

Article 418
Founding a slave relationship and transportation of persons in slavery

(1) A person who by violating the rules of international law places another in slavery or in some similar relationship, or keeps him under such relationship, buys him, sells him, hands him over to another, or mediates in the buying, selling or handing over of such a person, or instigates another to sell his freedom or the freedom of a person he is keeping or caring for, shall be punished with imprisonment of one to ten years.

(2) A person, who transports persons under a slavery or similar relationship from one country to another, shall be punished with imprisonment of six months to five years.

(3) A person, who commits the crime from items 1 and 2 against a juvenile, shall be punished with imprisonment of at least five years.
LEGISLATION

No special measures exist to protect women from prostitution and related hazards both at national and international levels. Brothels are officially recognised institutions and regulated by the law no. 1583 on general hygiene. In this regard, it could be said that prostitution is partly legal in Turkey, if necessary registrations are made both by the owner of brothels and by the prostitute. In line with the provisions of the above-mentioned Law, registered prostitutes are subject to periodic health examination in State hospitals. Penalty for incitement to prostitution is specified under Articles 435-436 of Penal Code (Law no. 765 enacted in 1926)

a) If persons incited under age 15, penalty is not less than 2 years. If the inciter is a relative of the victim, the penalty is not less than 3 years
b) For persons incited between the age 15-21, penalty for the inciter is from 6 months to 2 years, if the inciter is a relative of the victim, the penalty is not less than 2.
c) For persons incited above age 21, penalty is between 6 months to 2 years.
d) As is stated in Article 436 of Penal Code, those who force women (under 21 years or 21 years old) for prostitution by using any means (power abuse, threat, beating and etc.) will be penalised with one to three year sentence in prison. If the inciter is a relative of the victim, penalty is between 2-5 years.

As is indicated above, there is no specific national legislation concerning trafficking in human beings.

Law no. 5682 on passports and Law no. 5683 on residence and travelling for foreigners in Turkey, both enacted in 1950, contain particular articles addressing trafficking in women. According to the Passport Law, if the prostitute or the trafficker is a foreigner, they are immediately deported. Article 8 of the same Law states that “those who are engaged in prostitution, make a living by inciting women to prostitution, and those trafficking in women are prohibited to enter the country”. Therefore, their testimony is not sought. Similarly, article 19 of Law no 5683 states that the Ministry of Interior, governors and sub-governors have the authorisation of deporting foreigners (all who are involved in trafficking; prostitutes, traffickers) after 15 days following the notice issued for this purpose. If the same person is reported once again for the same offence, no further notices are made, therefore that person is deported immediately after captured by the police.

Turkey has been a party to CEDAW since 1985. Turkey also supports the recommendations and resolutions of UN, the Council of Europe and OSCE

MEASURES

There is no specific unit established only for this purpose within the General Directorate on Security, but, there are some departments such as departments of general security, of children etc, are involved in the issues concerning trafficking in women and children.
Gender sensitive training programmes to police forces and law enforcement offices are being conducted by several academic centres mainly on violence against women though not specifically trafficking in women for sexual exploitation.
UKRAINE

Law of Ukraine

Introduction of changes into the Criminal Code of Ukraine

Article 124: Traffic in Persons

Open or secret seizure of a person connected with his or her legal or illegal movement across the border of Ukraine with or without his or her consent or, without such a removal, for further sale or other transaction with the purpose of sexual exploitation, misuse in pornographic business, involvement in criminal activity, getting a person into a debt bondage, adoption of children with the purpose of commerce, use in armed conflicts, exploitation of his or her labour, is punished by deprivation of freedom for a period of 3-8 years with or without confiscation of property.

The same actions committed to a minor, repeatedly and previously planned by a group of people with the misuse of his or her official position, or the same actions performed by a person who holds a victim in financial dependence or other sorts of dependence, are punished by imprisonment for a period of 5-10 years with or without confiscation of property.

Actions stipulated by Paragraphs 1 or 2 of this article, committed by an organised group or connected with the illegal movement of children abroad or failure to return them to Ukraine, or with the purpose of acquiring victims’ organs or tissues for transplantation or forcible donorship, or if they led to severe consequences, are punished by imprisonment for a period of 8-15 years with confiscation of property.

Law adopted by the Parliament of Ukraine on 24 March 1998
Entered into force on 16 April 1998
There is no specific offence of "trafficking". Those who traffic human beings into the UK infringe a number of laws - the process of trafficking involves deception, fraud, often physical and sexual violence, false imprisonment, forgery, immigration offences and pimping and procuring offences. Traffickers have been successfully prosecuted using a range of these offences.

A review of the law on sex offences and penalties by the Home Office is considering offences of sexual exploitation and whether the UK needs a separate offence of trafficking human beings for sexual exploitation. The review will report in the spring and its proposals be put out to consultation in the summer.

**Current legislation**

**Soliciting**

- S.1 Street Offences Act 1959 - offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution (persistence is required)
  Max penalty - summary offence, £500 fine, for subsequent offences £1,000 fine.
- S.1 Sexual Offences Act 1985 – Kerb crawling of women by men for prostitution.
  Max penalty – summary offence, £1,000 fine.

**1.1.2 Living off earnings of prostitution**

  Max penalty – either way (c/w) offence, 7 years' imprisonment.
- S.31 1956 Act – offence for a woman for purposes of gain to exercise control over a (female) prostitute
  Max penalty - e/w offence, 7 years.
- S.24 1956 Act – offence for a person to detain a woman in a brothel or other premises
  Max penalty – indictable, 2 years' imprisonment.
- S.25/26 1956 Act Permitting girl under 13/16 to use premises for intercourse.
  Max penalty – under 13 indictable, life, under 16e/w offence, 2 years' imprisonment.
- S.33,34,35,36 of 1956 Act – brothel keeping offences
  Max penalty – summary offence – three months imprisonment or level 3 fine or both first offence, 6 months imprisonment or level 4 fine or both, subsequently.

**1.1.3 Procuration**

- Sections 2,3,22,23,24,28 of 1956 Act – procurement of women by threats, false pretences, procuring a girl under 21 to become a prostitute or have unlawful sexual intercourse in
any part of the world, detention of a women in a brothel, causing or encouraging prostitution of girl under 16.
Max penalties – all indictable, 2 years.

1.1.4 Other sexual offences

- S.5/6 1956 Act Unlawful sexual intercourse with a girl under 13/16.
  Max penalty – under 13 – indictable life/under 16 either way – 2 years' imprisonment

- S.4 1956 Act – administering drugs to obtain or facilitate intercourse with a woman
  Max penalty – indictable – 2 years' imprisonment.

- S.17 of 1956 Act – Abduction of a woman by force or for the sake of her property.
  Max penalty – indictable, 14 years.

- S.20,21 of 1956 Act – Abduction of girl under 16/18 from parent or guardian
  Max penalty – indictable, 2 years.

- S1 1956 Act rape/attempted rape – non consensual intercourse either vaginal or anal
  Max penalty – indictable- life imprisonment.

- Indecency with Children Act 1960 – Gross indecency with or towards a child under 14
  Max penalty – e/w offence, 2 years imprisonment.

- S.14 and 15 1956 Act – indecent assault against woman or man.
  Max penalty – 10 years imprisonment.

- S.12 1956 Act – buggery
  Max penalty – life, 5 years or 2 years depending on age.

- S.16 1956 Act – assault with intent to commit buggery
  Max penalty - indictable 10 years imprisonment.

Abduction offences

- kidnapping – “the taking away of one person by another by force or fraud without the consent of the person so taken or carried away and without lawful excuse” – Unlimited penalty.

- S.17 of 1956 Act – Abduction of a woman by force or for the sake of her property.
  Max penalty – indictable, 14 years' imprisonment.

- S.20,21 of 1956 Act – Abduction of girl under 16/18 from parent or guardian.
  Max penalty – indictable, 2 years.

Other relevant English law

Offences of violence (short of homicide)

- S.18 of the Offences against the Person Act 1861 – wounding or causing grievous bodily harm (gbh) with intent. Max penalty – life imprisonment.

- S.20 of the Offences against the Person Act 1861 – wounding or inflicting gbh. Max penalty – five years imprisonment.

- S.47 of the Offences against the Person Act 1861 – assault occasioning actual bodily harm. Max. penalty – 5 years imprisonment.

- Common assault (assault and battery) – Max. penalty – 6 months imprisonment and/or level 5 fine (currently £5000).

Other measures

Under the **Proceeds of Crime Act 1985**, it is possible for the courts to confiscate the assets of those found guilty of trafficking.

**Part I of the Sex Offenders Act 1997** requires all those convicted or cautioned of sex offences against children, or other serious sex offences, to keep the police informed of their name and address and any changes to either. This came into effect on 1 September 1997.

**Part II of the Sex Offenders Act 1997** also enables prosecutions of those who commit crimes against children abroad to take place in the UK providing that the offence concerned is part of the criminal law in both countries.

**Sex Offender Orders**, which came into force on 1 December 1998 under the Crime and Disorder Act, enable the civil courts, in order to protect the public from serious harm, to make an order against someone previously convicted of a sex offence against a child and whose behaviour causes concern that children are at risk. The orders ban specific acts, such as loitering near school playgrounds. Breach of an order is a criminal offence carrying a serious penalty.

**The Criminal Justice (Terrorism and Conspiracy) Act 1998** makes it an offence for a person to conspire to commit an offence outside the UK, provided the substantive offence constitutes an offence under the law in the UK and under the law in the country in which the act is committed.

**Immigration**

Racketeers and facilitators controlling women are charged under the Immigration Act with facilitating illegal entry and under legislation to suppress vice-related criminal offences of living off immoral earnings, influencing the movements of prostitutes, etc. Foreign women found working as prostitutes in the UK are removed under administrative powers as illegal entrants. They are not normally charged with any criminal offences. Facilitating illegal entry carries a maximum sentence of 10 years imprisonment. The penalty was raised from 7 to 10 years under the Immigration and Asylum Act 1999.
The Government of Canada is participating in negotiations to conclude a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplemental to the United Nations Convention on Transnational Organised Crime. Although these negotiations are ongoing, the current Draft Protocol does address aspects of prevention of trafficking, protection of trafficking victims, reintegration of victims into society and prosecution of the traffickers.

The Government of Canada considers this draft Protocol to be an important international instrument to combat trafficking of humans. The draft Protocol requires, inter alia, the States Parties protect victims of trafficking, criminalise the trafficking in human beings and punish traffickers. An interdepartmental committee (comprised of representatives from Citizenship and Immigration Canada, Status of Women Canada, CSIS, DND, DFAIT, HRDC, Justice, Passport Office, privy Council Office, Revenue Canada, RCMP, Solicitor General, and Transport Canada) has been created with a mandate to co-ordinate Canada's domestic position with respect to the Protocol. New measures may be required for Canada to be in a position to ratify the Protocol.

The Interdepartmental committee is also co-ordinating Canada's domestic position with respect to the draft UN Protocol against the Smuggling of Migrants by Land, Air and Sea. As in the case of the "Trafficking in Persons' Protocol, this Protocol supplements the United Nations Convention against Transnational organised Crime. Both Protocols are complementary to one another containing as they do many of the same provisions and objectives. The difference between the two is that the Migrant Smuggling Protocol focuses on the situation of the transit or receiving State. By contrast, the "Trafficking in persons" Protocol focuses on the situation where an individual(s) remains under the control of a smuggling or trafficking organisation for the purpose of exploiting that person after his or her arrival. Trafficking victims often enter a country legally and do not realise they are being trafficked until after their arrival.

**Criminal Code**

a) **Trafficking**

There is no specific offence of trafficking in persons in the Criminal Code. However, for the purposes of the Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children, some existing sections of the Criminal Code may be relevant. While this list may not be complete, these sections could be usable depending on the circumstances. They are the following:

Section 279(1): Kidnapping
Any person who kidnaps another person against his/her will, with intent to confine him/her, to cause him/her to be sent out of Canada, or to hold him/her for ransom or to service, is guilty of this offence. The Alberta Court of Appeal in R. v. Oakley (1977), 36 CCC (2d) 436, specified that to constitute kidnapping there must be a movement or taking of the person from one place to another and not simply the placing of the person in the area of confinement. It has also been decided by the Court of Appeal of Ontario in R. v. Brown (1972), 8 CCC (2d) 13, that false statements by the accused which induced his victim to willingly enter into his custody constitutes kidnapping.

Similarly the Court of Appeal of British Columbia, in R. v. Metcalfe (1983), 10 CCC (3d) 114, held that "kidnap" includes to take and carry away a person against his will by unlawful force or by fraud. It is important to note that in R. v. Kear (1989), 51 CCC (3d) 574, the Ontario Court of Appeal decided that the mens rea (mental element) of the offence does not require proof that the accused knew that transportation of the victim out of Canada was unlawful.

Section 279(2): Forcible confinement

The offence is committed when a person confines, imprisons or forcibly seizes another person without lawful authority.

It was decided by the Court of Appeal of Ontario in R. v. Gratton (1985), 18 CCC (3d) 462, that the offence of forcible confinement does not require proof of total physical restraint of the victim. Forcible confinement deprives the individual of liberty to move from point to point while kidnapping consists of taking control of a person and carrying them away from one point to another. While kidnapping entails forcible confinement, forcible confinement can occur without kidnapping.

Section 346: Extortion

Any person who, without reasonable justification or excuse and with intent to obtain anything, induces or attempts to induce another person by means of threat, accusations, menaces or violence, to do anything or cause anything to be done, commits the offence of extortion.

The Court of Appeal of British Columbia, in R. v. Bird (1970), 3 CCC 340, stated that the word "anything" is of a wide and unrestricted use and accordingly the extortion of an act of sexual intercourse is an offence. A "threat" to come within this section does not necessarily connote a menace of ill to be personally inflicted by the threatener. A false statement by the accused that if the victim does not do a certain thing he will be dealt with by a third person of known violent propensities or associations will constitute an offence. It has also been decided that there is no requirement that the threats or menaces be shown to be of such a nature as to deprive the victim of the free and voluntary exercise of his will. (R. v. Laurie (1981), 63 CCC (2d) 452, Quebec Court of Appeal).

Section 423: Intimidation

In the context of the Trafficking Protocol, this offence could be committed where a person intending to compel someone to abstain from doing something he/she has a right to do, or to
do something that he/she has the right to abstain from doing, wrongfully and without authority, uses violence or threats of violence against the person or his/her spouse or children.

Section 211: Transporting person to bawdy-house

The actions encompassed by the section are broadly defined as including taking, transporting, directing or offering to do any of these things. The *mens rea* (intention) for the offence is that the action be done knowingly, namely, that the accused knew that the place was a common bawdy-house. "Common bawdy-house" is defined in section 197 of the Criminal Code: it means a place that is kept or occupied, or resorted to by one or more persons for the purpose of prostitution or the practice of acts of indecency.

Section 212: Procuring

212(a): Every one who procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada. The term "illicit" is broader than prohibited by the criminal law and includes such acts as requiring an employee to have sex with prospective clients in order for the employer to obtain business.

212(b): Every one who inveigles or entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or prostitution. In this case it must be shown that the accused did the acts for the purposes of getting that person to engage in illicit sexual intercourse or prostitution. The paragraph specifically excludes liability if the person enticed is a prostitute.

212(c): Everyone who knowingly conceals a person in a common bawdy-house. It must be proven that the accused did so knowingly, namely, that the accused did the act while aware of the nature of the premises involved.

212(d): Every one who procures or attempts to procure a person to become, whether in or out of Canada, a prostitute. This subsection applies whether the person is being procured to be a prostitute in or out of Canada. It is a defence if the accused reasonably believed that the person is already a prostitute.

212(e): Every one who procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada. It must be shown that the person does not already live in a common bawdy-house.

212(f): Every one who, on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house. In that case, no intention beyond the doing of the physical acts need be shown.

212(g): Every one who procures a person to enter or leave Canada, for the purpose of prostitution.

212(h): Every one who, for the purpose of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he/she is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally. It must be proven, in addition to the foregoing, that the acts were done for the purpose of gain.
In R. v. Perrault (1996), 113 CCC (3d) 573, the Quebec Court of Appeal decided that "control" refers to invasive behaviour which leaves little choice to the person controlled. The exercise of "direction" exists when rules or behaviours are imposed. This does not exclude the person being directed from having a certain latitude or margin for initiative. "Influence" includes any action exercised over a person with a view to aiding, abetting or compelling that person to engage in or carry on prostitution.

212(i): Every one who applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person.

212(j): Every one who lives wholly or in part on the avails of prostitution of another person. The British Columbia Court of Appeal, in R. v. Celebrity Enterprise Ltd. (1977), 41 CCC (2d) 540, states that this offence requires proof that the accused received in kind all or part of the prostitute's proceeds from prostituting himself/herself or had those proceeds applied in some way to support his/her living. It is his/her avails as such that the accused must live on. The words "living on" connote living parasitically. Where the accused is living with a prostitute, the question to be determined is whether the accused and the prostitute had entered into a normal and legitimate living arrangement which included a sharing of expenses for their mutual benefit or whether, instead, the accused was living parasitically on the earnings of the prostitute for his/her own advantage. The parasitic aspect of the relationship involves an element of exploitation which is essential to the concept of living on the avails of prostitution. A prostitute cannot be prosecuted for supporting himself/herself on the proceeds of the trade nor can such a person be convicted as a party of co-conspirator to living off the avails of their own earnings.

212(3) creates a presumption that one who lives with a prostitute or in the habitual company of a prostitute or lives in a common bawdy-house, lives on the avails of prostitution.

As mentioned above, these offences do not deal specifically with the trafficking of persons, but are related to acts that can be committed against the trafficked persons. If they do not meet the type of offences committed against the trafficked persons, they could be used as a starting point to improving the present legislation.

Once both Protocols\(^1\) are finalised, we will in a better position to examine what exactly are our obligations, to determine what existing provisions of the Criminal Code are useful in practice, and to decide the best manner to ensure that our legislation complies with the Protocols.

**Immigration Act**

b) Smuggling

Section 94 criminalises smuggling activities:

94(1): Organise entry into Canada
Every person who knowingly organises, induces, aids or abets or attempts to organise, induce, aid or abet the coming into Canada of a person who is not in possession of a valid and subsisting visa, passport or travel document where one is required by this Act or the regulations is guilty of an offence and liable
a) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both; or
b) on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year, or to both.

94(2): idem

94(4): Disembarking persons at sea
Every person who, being the master or a member of a crew of a vehicle used for transportation by sea, disembarks or allows the disembarkation or attempts to allow the disembarkation of, a person or group of persons to come into Canada in contravention of this Act or the regulations is guilty of an offence and is liable on conviction on indictment to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding ten years, or to both.

94(5): Counselling false statements
Every person who knowingly counsels, induces, aids or abets, or who knowingly attempts to counsel, induce, aid or abet, any other person to make false or misleading statement in connection with a claim by that other person to be a Convention refugee is guilty of an offence and liable
a) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years, or to both; or
b) on summary conviction, to a fine not exceeding six months, or to both.

New legislation will include additional measures to combat the growing threat of people smuggling and trafficking. These measures may range from increased penalties for convicted smugglers/traffickers, to detention of victims where necessary. Canada must ensure that smuggled/trafficked migrants do not disappear illegally into Canada or the United States, or directly into the hands of "snakeheads", but are dealt with humanely in accordance with Canada's traditions.

**Institutionalised procedures for investigation and prosecution of cases involving trafficking, including witness protection programme**

The Attorneys General of the provinces prosecute the various Immigration Act and Criminal Code offences. Investigations into these offences are conducted by the various police authorities in the province.
Of note is Article 4 (2)(b) of the Trafficking in Persons Protocol which requires States to ensure that their legislative framework contain measures to assist victims of crime covered by the Protocol to enable their views and concerns to be presented and considered at the appropriate stages of the criminal proceedings against the offenders.
Training for judges and prosecutors/magistrates on rule of law and anti-corruption issues

The principle of judicial independence has led the federal government to refer the issues of judicial conduct and discipline to the Canadian Judicial Council. The Council, which is composed of all Chief Justices and Associate Chief Justices in Canada, has developed a draft set of ethical principles providing guidance to judges on the ethical and professional questions they face. The document explores such issues as judicial independence and its relationship to judicial impartiality and the constitution; judicial integrity, and its importance in sustaining public confidence in the judiciary; the diligent performance of the whole range of judicial duties; assuring equality according to the law; and maintaining and enhancing confidence in the impartiality of judiciary.

Regional law enforcement co-operation to disrupt trafficking routes and criminal activity

Through its Immigration and Passport Program, the RCMP works in concert with domestic and foreign agencies at all levels as well as with the community at large, to protect and enhance the quality of life through education, prevention and enforcement.

Part of Canada's priorities is the combating and eradication of criminal organisations involved in facilitating the illegal entry of migrants into Canada. The timely acquisition and sharing of information and intelligence pertaining to the enhancement of the national program strategy is also another part of Canada's priorities.

The Department for Foreign Affairs and International Trade (DFAIT) of Canada facilitates law enforcement co-operation internationally as required, and officers are stationed in various missions abroad, but DFAIT is not actively involved in law enforcement per se.

Article 7 of the Trafficking in Persons Protocol entitled "Law enforcement measures" provides for exactly this type of enforcement co-operation among law enforcement authorities.
United States of America

The Administration's Legislative Proposal

A BILL

Extracts

Section 3 - Definitions

(a) For the purposes of this Act (other than section 8) and except as provided in subsection (b)
(1) The term "trafficking" means recruiting or abducting, facilitating, transferring, harbouring
or transporting a person, by the threat or use of force, coercion, fraud or deception, or by the
purchase, sale, trade, transfer or receipt of a person, for the purpose of subjecting that person
to involuntary servitude, peonage, slavery, slavery-like practices, forced or bonded labour or
services, or other criminal exploitation of workers.
(2) The term victim of trafficking generally means any person subjected to the actions set
forth in paragraph (1).
(b) The definition of "trafficking" set forth in subsection (a) may be modified by the Secretary
of State and the Attorney general to make it consistent with the definition of trafficking in
persons or any other substantial similar term in any international treaty or convention to
which the United States is a party, subsequent to the date of enactment of this Act,
provided that any such modifications are consistent with the purposes of this Act.
(…)

Section 6 - Protection and assistance for victims of trafficking

(a) Victims in other countries. The Secretary of State and the Administrator of the US
Agency for international Department, are authorised to established programs and
initiatives abroad to assist victims of trafficking and their children, including mental and
physical health services, shelter, legal assistance, and safe reintegration efforts. In carrying
out this subsection, the Secretary and the Administrator should consult with the Attorney
General, NGOs, and other experts on trafficking, seek enhance co-operative efforts with
the countries of origin of victims of trafficking to facilitate protections for victims of
trafficking who are reintegrated into their countries of origin, and assist in the appropriate
reintegration of stateless victims of trafficking.
(b) Victims in the United States.
(1) notwithstanding title IV of the Personal Responsibility and Work Opportunity
reconciliation Act of 1996, the Attorney general, the Secretaries of Health and human
Services and labour, and the Board of Directors of the Legal Services Corporation are
authorised to provide assistance to victims of trafficking, without regard to the
immigration status of such victims. This assistance may include physical and mental
health services, social and legal services, or any other related programs or activities.
(…)

Section 7 - Humanitarian/Material Witness Non-immigrant visa

(a) Purpose. The purpose of this sector is to create a new non-immigrant visa classification
that will strengthen the ability of law enforcement agencies to detect, investigate, and
prosecute cases of trafficking of persons, while offering protection to victims of such offences in keeping with the humanitarian interests of the United States. Creating a new non-immigrant visa classification will facilitate the reporting of violations to law enforcement officials by trafficked and exploited persons who are not in a lawful immigration status. It also gives law enforcement officials a means to regularise the status of co-operating individuals during investigations, prosecutions, and civil law enforcement proceedings. By providing temporary legal status to those who have been severely victimised by the trafficking or similar egregious offences, it also reflects the humanitarian interests of the United States. Finally, this section gives the Attorney General discretion to convert non-immigrants to permanent status when it is justified on humanitarian grounds or is otherwise in the national interest. (…)

Section 8 - Strengthening prosecution and punishment of traffickers

(a) Criminal Provisions. Chapter 77 of title 18, United States code, is amended, as follows:

(1) In section 1581 by deleting at the end of the subsection (a) "shall be fined under this title or imprisoned not more than 20 years, or both; and if, in addition to the foregoing elements, death results from an act committed in violation of this section, or if such act includes kidnapping or an attempt to kidnapping, aggravated sexual abuse or other attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years or life, or both";

(2) In section 1583 by deleting "shall be fined under this title or imprisoned not more than 10 years, or both" and inserting in lieu "shall be fined under this title or imprisoned not more than 20 years, or both; and if, in addition to the foregoing elements, death results from an act committed in violation of this section, or if such act includes kidnapping or an attempt to kidnapping, aggravated sexual abuse or other attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years or life, or both";

(3) In section 1584 by deleting "shall be fined under this title or imprisoned not more than 10 years, or both; and if, in addition to the foregoing elements, death results from an act committed in violation of this section, or if such act includes kidnapping or an attempt to kidnap, aggravated sexual abuse or other attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years or life, or both";

(4) By adding at the end thereof the following four new sections/
   - 1589 Trafficking and criminal exploitation of workers (…)
   - 1590 Unlawful possession of documents in furtherance of trafficking, criminal worker exploitation, involuntary servitude, or peonage (…)
   - 1591 Mandatory restitution (…)
   - 1592 General provisions (…)

Section 9- Monitoring international progress to eradicate trafficking in persons

(a) Multilateral evaluation and action to gain international co-operation (…)
(b) Expansion of treatment in human rights report (…)
(c) Co-operation with NGOs (…).
REGULATION NO. 2001/4
ON THE PROHIBITION OF TRAFFICKING IN PERSONS IN KOSOVO

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation Number 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

For the purpose of creating specific legislation for the prosecution and punishment of perpetrators of the crime of trafficking in persons and related criminal acts, and the assistance and protection of victims of trafficking and of related criminal acts,

Hereby promulgates the following:

CHAPTER I: Criminal Acts and Penalties

Section 1
Definitions

1.1 For the purposes of the present regulation:

(a) “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.

(b) “exploitation” as used in subparagraph (a) shall include, but not be limited to, 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.
1.2 The consent of a victim of trafficking in persons to the intended exploitation set forth in section 1.1 shall be irrelevant where any of the means set forth in section 1.1(a) have been used against a victim of trafficking.

1.3 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 section 1.1(a).

Section 2
Trafficking in Persons

2.1 Any person who engages or attempts to engage in trafficking in persons commits a criminal act and shall be liable upon conviction to a penalty of two (2) to twelve (12) years’ imprisonment.

2.2 Where the victim of trafficking is under the age of 18 years, the maximum penalty for the person engaging in trafficking shall be up to fifteen (15) years’ imprisonment.

2.3 Any person who organizes a group of persons for the purpose of committing the acts referred to in paragraphs 2.1 and 2.2 shall be liable upon conviction to a penalty of five (5) to twenty (20) years.

2.4 Any person who, through negligence, facilitates the commission of trafficking in persons commits a criminal act and shall be liable upon conviction to a penalty of six months to five (5) years’ imprisonment.

Section 3
Withholding of Identification Papers

Any person who, acting or purporting to act as another person’s employer, manager, contractor or employment agent, intentionally withholds that other person’s personal identification documents and/or passport commits a criminal act and shall be liable upon conviction to a penalty of six (6) months to five (5) years’ imprisonment.

Section 4
Using or Procuring Sexual Services of Person in a Situation of Sexual Exploitation

4.1 Any person who uses or procures the sexual services of a person with the knowledge that that person is a victim of trafficking in persons commits a criminal act and shall be liable upon conviction to a penalty of three (3) months to five (5) years’ imprisonment.

4.2 Where the person providing the sexual services referred to in section 4.1 is under the age of 18 years, the maximum penalty for the person convicted of using or procuring such services shall be up to ten (10) years’ imprisonment.
CHAPTER II: Investigation, Confiscation and Court Procedures

Section 5
Investigations

5.1 The taking of a statement by a law enforcement officer or investigating judge shall in no way inhibit or delay the voluntary repatriation of an alleged victim of trafficking.

5.2 Appropriate measures shall be taken for witness protection during any investigation and/or court proceedings arising under the present regulation.

Section 6
Confiscation of Property and Closure of Establishments

6.1 Property used in or resulting from the commission of trafficking in persons or other criminal acts under the present regulation may be confiscated in accordance with the applicable law. The personal property of the victims of trafficking shall not be confiscated wherever it can be immediately identified by the law enforcement officer as such.

6.2 Where there are grounds for suspicion that an establishment, operating legally or illegally, is involved in, or is knowingly associated with trafficking in persons or other criminal acts under the present regulation, an investigating judge may, upon the recommendation of the public prosecutor, issue an order for the closing of such establishment.

6.3 A reparation fund for victims of trafficking shall be established by administrative direction and shall be authorised to receive funds from, inter alia, the confiscation of property pursuant to section 6.1.

Section 7
Court Proceedings

7.1 Except with the leave of the president of the panel of judges, it shall not be permissible for a defendant charged with a criminal act under the present regulation to introduce evidence of the alleged character or personal history of the alleged victim.

7.2 A defendant may petition the president of the panel of judges to allow the introduction of evidence of the alleged character or personal history of the alleged victim. Upon receiving such petition, the president of the panel of judges shall conduct a hearing in camera during which the defendant and the prosecution shall have the opportunity to be heard.

7.3 Following the hearing in camera, the president of the panel of judges shall only grant leave to introduce evidence of the alleged character or personal history of the alleged victim if satisfied that the evidence is of such relevance, and its omission would be so prejudicial to the defendant, as to result in a miscarriage of justice for the defendant if not allowed to be introduced. In such cases, the president of the panel shall establish the limits within which such evidence or questions may be introduced.
7.4 In cases before the court involving charges of criminal acts under the present regulation, the court may permit the alleged victims and witnesses to present their evidence in camera or by electronic or other special means, as the court sees fit.

Section 8
Defence Available to a Victim of Trafficking

A person is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo if that person provides evidence that supports a reasonable belief that he or she was the victim of trafficking.

CHAPTER III: Victim Protection and Assistance

Section 9
Victim Assistance Coordinator

9.1 Subject to section 9.2, the Special Representative of the Secretary-General shall appoint a Victim Assistance Coordinator who shall be responsible for coordinating the implementation of the present regulation, particularly the provisions set out in section 10 below. In the exercise of his or her duties, the Victim Assistance Coordinator shall liaise with the relevant law enforcement authorities, international and non-governmental or other organisations, and administrative departments as necessary.

9.2 Expenses arising from the implementation of the provisions under Chapter III of the present regulation shall be funded, to the extent resources are available, from donor contributions made specifically for this purpose and recorded as designated donor grants in the Kosovo Consolidated Budget. The Victim Assistance Coordinator may also request other funds to be allocated for these purposes in the Kosovo Consolidated Budget.

Section 10
Assistance to Victims of Trafficking

10.1 Upon the request of a person who provides to the Victim Assistance Coordinator reasonable grounds for belief that she or he is a victim of trafficking, the following services shall be provided to that person, subject to availability of resources provided in accordance with section 9.2:

(a) free interpreting services in the language of their choice;

(b) free legal counsel in relation to trafficking issues (criminal or civil);

(c) temporary safe housing, psychological, medical and social welfare assistance as may be necessary to provide for their needs; and

(d) such other services as shall be specified in an administrative direction.
10.2 The services and facilities for the assistance of victims of trafficking shall be available to such victims, in accordance with section 10.1, regardless of any charges of prostitution or of illegal entry, presence or work in Kosovo that may be pending against them.

10.3 Law enforcement officers shall advise persons who are suspected victims of trafficking at the earliest available opportunity of their right to request the services and facilities set out in the present section and shall contact the appropriate persons to arrange the requested assistance.

Section 11
No Deportation of Trafficking Victims for Certain Convictions

A conviction for prostitution or a conviction for illegal entry, presence or work in Kosovo shall not be the basis for deportation if the person who is to be deported is a victim of trafficking.

Section 12
Evaluation of Refugee Status

12.1 If a victim of trafficking expresses a wish to not be returned to her or his country of citizenship or previous habitual residence based on a claim of persecution, such a claim shall be evaluated by the appropriate authority, pursuant to the applicable law, who may determine that the victim may be granted residence in Kosovo or such other assistance as deemed appropriate.

12.2 Nothing in the present regulation shall affect the protection afforded to refugees and asylum-seekers under international refugee law and international human rights law, in particular, compliance with the principle of non-refoulement as set forth in Article 33 of the 1951 Convention on the Status of Refugees.

Section 13
Implementation

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present regulation.

Section 14
Applicable Law

The present regulation shall supersede any provision in the applicable law that is inconsistent with it.

Section 15
Entry into Force

The present regulation shall enter into force on 12 January 2001.

Bernard Kouchner
Special Representative of the Secretary-General