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Trafficking of migrant workers for forced labour

Opinion[1]
Committee on Equality and Non-Discrimination
Rapporteur: Ms Pirkko MATTILA, Finland, Representatives not belonging to a Political Group

A. Conclusions of the committee

1. The Committee on Equality and Non-Discrimination congratulates the rapporteur of the Committee on Migration, Refugees and Displaced Persons, Ms Annette Groth, for her comprehensive report and supports the draft resolution and draft recommendation.

2. The committee shares Ms Groth's view that trafficking is not only an organised criminal activity and a violation of national legislation on immigration or labour. It is primarily a violation of human rights of which trafficked workers are the victims. Anti-trafficking law and policies should therefore focus on the right objective, namely protecting victims, prosecuting traffickers and preventing the phenomenon of trafficking altogether. In a nutshell, the Assembly should reiterate its support for a human rights-based and victim-centred approach to action against human trafficking, as epitomised in the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

3. States should take into account that, while all victims of trafficking have protection needs, they are not all in the same situation. Even if, on average, the great majority of victims of trafficking in Europe are women and girls coerced into prostitution, there are also male victims. Similarly, there are forms of exploitation other than forced prostitution, and trafficking can take place within one country instead of being transnational. Assistance and protection measures, therefore, should be geared towards meeting the specific needs of each group. In addition, vulnerability factors should be taken into account when designing anti-trafficking legislation and policies.

4. The Committee on Equality and Non-Discrimination encourages parliaments to play a more central role in the action against human trafficking and to place more emphasis on prevention activities.

B. Proposed amendments

Amendment A (to the draft resolution)

In the draft resolution, paragraph 7, replace the words "representatives of civil society and trade unions" by the words:

> *"tax authorities, health services, representatives of civil society including NGOs, the third sector and trade unions."*

1. Reference to committee: Doc. 12411, Reference 3736 of 24 January 2011. Reporting committee: Committee on Migration, Refugees and Displaced Persons. See Doc. 13086. Opinion approved by the committee on 21 January 2013.

Amendment B (to the draft resolution)

In the draft resolution, after paragraph 8.1.1, insert the following sub-paragraph:

> *"appointing an independent national rapporteur on human trafficking, in charge of the follow-up on this issue and of reporting periodically to the government and parliament on the national situation;"*

Amendment C (to the draft resolution)

In the draft resolution, after paragraph 8.1.5, insert the following sub-paragraph:

> *"introducing action plans on human trafficking and closely involving parliaments in their preparation, implementation and monitoring of the implementation;"*

Amendment D (to the draft resolution)

In the draft resolution, after paragraph 8.1.7, add the following sub-paragraph:

> *"providing the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) with sufficient financial and human resources, and ensuring the independence of the experts appointed;"*

C. Explanatory memorandum by Ms Mattila, rapporteur for opinion

1. A human rights-based and victim-centred approach to action against human trafficking

1. The Committee on Equality and Non-Discrimination shares the rapporteur's approach on the issue of trafficking of migrant workers: this is not only an organised criminal activity and a violation of national legislation on immigration and labour. It is primarily a violation of human rights of which trafficked workers are the victims.

2. Anti-trafficking law and policies should therefore focus on the right objective, namely protecting victims and prosecuting offenders, while striving to prevent the phenomenon of trafficking altogether. In a nutshell, the Assembly should reiterate its support for a human rights-based and victim-centred approach to action against human trafficking, as epitomised in the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

3. A human rights and victim-centred approach implies that victims of trafficking should not be held responsible for breaches of immigration or labour legislation. Only in this way, would the respect of human rights prevail over other considerations and would victims feel free to seek help and co-operate with law enforcement authorities.

4. A human rights and victim-centred approach also means that States should take into account that while all victims of trafficking have protection needs, they are not all in the same situation. Even if, on average, the great majority of victims of trafficking are women and girls coerced into prostitution, there are also male victims. Similarly, there are forms of slavery and exploitation other than forced prostitution, and trafficking can take place within one country instead of being transnational. Assistance and protection measures should therefore be geared towards meeting the specific needs of each group.

2. Trafficking for forced labour in Europe

5. Reading Ms Groth's report, it is disheartening to realise that despite all the efforts deployed in the last two decades, trafficking in human beings not only persists but thrives. Europe continues to be a continent of origin, transit and destination for human trafficking.

6. However, in the last few years, two new developments have taken place: trafficking of European Union citizens towards other European Union countries has increased and continues to be on the rise; the forms of exploitation, to which victims are subjected have diversified: in some States forced prostitution remains the main and nearly only form of exploitation, whereas, in other States, forms of exploitation such as domestic slavery, forced labour in construction and agriculture or forced begging have become predominant. These remarks apply only to cases which are reported. As is well known, a large proportion of the phenomenon of trafficking never comes to the surface.

3. Two distinct notions: trafficking and forced labour

3.1. Change of mindset

7. In my opinion, two steps are absolutely necessary to tackle trafficking. The first is bringing about a change of mindset primarily amongst law-enforcement authorities, for them to realise that forced prostitution is not the only form of exploitation.

8. In this sense, Ms Groth's report has the great merit of referring to the broad notion of forced labour as set out in the International Labour Organization (ILO) Convention (No. 29) concerning Forced or Compulsory Labour, which includes exploitation for sexual purposes. Relying on this definition, therefore, the main distinction is between trafficking for forced labour and trafficking for other purposes (such as trafficking in organs), even if in common language sexual exploitation is often distinguished from forced labour.

9. A correct grasp of the phenomenon of trafficking in its complexity would not only ensure better protection of its victims but also that all forms of exploitation are identified as such and then investigated and prosecuted.

3.2. Emphasis on prevention

10. Furthermore, it is necessary to channel more resources towards prevention. It is not possible to counter trafficking without tackling economic crime and the grey economy. Improving the transparency of business activities and money circulation has given good results. For instance, in 2012, Finland introduced a compulsory individual tax number for each person working on building sites. This requires that employers inform the authorities of the names of all contractors and sub-contractors operating on the site, which helps to track down possible activities of trafficking in human beings.

4. Special vulnerability of some groups

11. What is looming ahead for Europe? Unfortunately, as described by Ms Groth, unless decisive measures are taken immediately, trafficking is likely to rise, as a result of the economic crisis and the increased vulnerability of some specific groups.

12. Poverty, of course, is the main risk factor. An irregular immigration status is also an element which increases the risk of falling prey to trafficking and exploitation. In addition, some particular groups are in a position of special vulnerability.

4.1. Women and girls

13. Women and girls are the main victims of trafficking, in Europe and the rest of the world. The great majority of them are subjected to sexual exploitation, which, according to the estimates mentioned by Ms Groth, accounts for 76% of forced labour in the European Union and the developed economies (compared to 22% worldwide).

14. The vulnerability of women and girls to trafficking is directly linked to gender inequality and gender-based discrimination which prevail all over the world. Forced prostitution, in particular, is a form of exploitation and violence which affects women disproportionally. As such, it is covered by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention"). Hence the synergy between this instrument and the Convention on Action against Trafficking in Human Beings in providing assistance and protection to victims.

15. Despite lofty principles, the reality is dire also for those victims of trafficking who co-operate with the justice system. Not many of them are granted permission to remain in a European host country after the conclusion of judicial proceedings against traffickers. I would like to point out the absence, in the vast majority of Council of Europe member States, of reintegration programmes to help victims returning to their countries of origin reintegrate in society and find resources to provide for their own subsistence. This is a particularly worrying problem for victims of forced prostitution, given that the social stigma attached to this form of exploitation often leads to their social exclusion, further increasing their vulnerability to trafficking.

16. A lively debate has arisen in recent years on the impact on trafficking of legislation criminalising the purchase of sexual services. A report on this matter is currently being prepared by the Committee on Equality and Non-Discrimination. I look forward to its findings, which will further contribute to our reflection on how to tackle the scourge of trafficking.

4.2. LGBTs

17. In some cases, sexual orientation and gender identity can increase the risk of trafficking. This can be the result of rejection from families and social marginalisation[2] or in certain cases be linked to the demand of sexual slavery in countries of destination (cases are reported of Kenyan gay men trafficked to the Arab Gulf region for this purpose).[3] Trafficking is also mentioned by the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity,* at *Principle 11:* "Everyone is entitled to protection from trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity. Measures designed to prevent trafficking shall address the factors that increase vulnerability, including various forms of inequality and discrimination on the grounds of actual or perceived sexual orientation or gender identity, or the expression of these or other identities. Such measures must not be inconsistent with the human rights of persons at risk of being trafficked."

4.3. People with disabilities

18. Marginalisation and discrimination based on different grounds, such as ethnicity, race, religion and disability are among the factors increasing the risk of human trafficking, and disability is particularly relevant. It is both a cause of discrimination in the country of origin of the potential victim of trafficking and a factor determining the purpose of trafficking.

19. Disabled people are typically trafficked to be forced into begging. This applies in particular to child trafficking: UNICEF has recently reported that 13% of the victims of trafficking in south-eastern Europe have been trafficked for purposes of forced begging.[4] In its 2010 shadow submission to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the European Roma Rights Centre (ERRC) also noted that disability was a factor aggravating the vulnerability to trafficking for Roma women and children.[5]

5. Protecting men who are victims of trafficking

20. The International Organization for Migration (IOM) confirms that focusing on women as victims of trafficking for sexual exploitation has sometimes led European States to neglect male victims and other forms of exploitation.[6] This conclusion was reiterated at a recent expert seminar held in Finland, where the case was mentioned of trafficked men having been placed in rehabilitation centres for recovering alcoholics as a protection measure. This type of structure was clearly unfit to host victims of human trafficking. Although men represent a less significant share of trafficked people, proper facilities should be put in place to help also male victims and their specific needs should be considered when creating support systems.

6. Internal trafficking

21. The IOM also underlines that, in some cases, emphasis on international trafficking has led to neglect of internal trafficking, to the point that the latter phenomenon goes unnoticed and that victims are not assisted.

22. Human trafficking can take place within different regions of the same country. It can also affect citizens and naturalised immigrants, as happened in a judicial case in Finland where a Finn was convicted for trafficking and the two victims were also Finnish nationals.

23. The United Kingdom Human Trafficking Centre (UKHTC) devotes special attention to the issue of internal child trafficking and co-operates with schools throughout the country in order to prevent it and help victims. In the cases reported so far, young people (normally in their early teens) are drawn into a relationship with an older boyfriend, who then encourages them to go missing from home and moves them to other cities in the United Kingdom for the purpose of sexual abuse by individuals or groups. This is a particularly disturbing phenomenon to which we should be alert.

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2. Human trafficking a risk among LGBT youth, www.southfloridagaynews.com/news/local-news/6493-human-trafficking-a-risk-to-lgbt-youth.html.
3. Kenya's Gay, Bisexual Men Being Trafficked In Arab Gulf Sex Trade: Report, at: www.huffingtonpost.com/2012/01/03/kenya-gay-men-sex-trafficking_n_1181419.html .
4. Cherneva, Iveta, Human Trafficking For Begging, Buffalo Human Rights Law Review 17 (2011): 25. LexisNexis Academic: Law Reviews.
5. http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ERRC_2_CzechRepublic_CEDAW47.pdf.
6. IOM 2011 Case Data on Human Trafficking: Global Figures & Trends, February 2012.

7. The role of parliaments in the fight against human trafficking

24. The Committee on Equal Opportunities for Women and Men, from which the current Committee on Equality and Non-Discrimination originates, supported the Council of Europe Convention on Action against Trafficking in Human Beings by preparing a report which led to the adoption of Resolution 1702 (2010) and Recommendation 1895 (2010) on action against trafficking in human beings: promoting the Council of Europe convention. This report underlined the high potential of the convention and called on Council of Europe member States to provide its monitoring mechanism (the Group of Experts on Action against Trafficking in Human Beings – GRETA) with sufficient financial and human resources.

25. In December 2010, the Committee on Equal Opportunities for Women and Men held a conference in Paris under the title "Parliaments united against trafficking". Parliamentarians and experts from intergovernmental and non-governmental organisations took stock of the situation of human trafficking and discussed possible ways to tackle it.

26. The final declaration adopted at the Conference contains a number of recommendations, based on best practices. Amongst them was the recommendation that Council of Europe member States appoint a national co-ordinator on human trafficking. In my opinion, an independent authority can play an important role by monitoring the government's activities and keeping the issue of trafficking high in the political agenda.

27. As foreseen under European Union legislation, a national rapporteur has been appointed in a number of European Union member States with positive results. In Finland, the task has been given to the Ombudsman for Minorities, who monitors phenomena relating to human trafficking, oversees action against human trafficking and issues proposals, recommendations, statements and advice relevant to action against trafficking. Authorities, third-sector actors and victims of trafficking can contact the Ombudsman, who provides legal advice and can even assist victims of trafficking and related crimes in securing their rights.

28. The Paris declaration also highlights the role of parliaments in combating human trafficking. Parliamentarians should ask to be systematically involved in monitoring legislation and policies in this area. They can ask questions of their respective governments, in particular as regards the implementation of the Council of Europe Convention on Trafficking and its co-ordination with other legal instruments, including European Union law. National parliamentarians should also support the work of GRETA. In particular, they should pay attention to monitoring the procedure for the appointment of GRETA members, who must be independent to fully exercise their role and criticise governments when necessary.

8. Explanation of the amendments

Amendment A

Combating trafficking requires the co-operation of a large variety of public authorities and private actors. Therefore it is worth completing the list of public authorities, mention the NGOs explicitly and add a reference to the third sector, or social economy, which can contribute to countering the "grey economy".

Amendment B

This is one of the recommendations included in the Paris declaration of 2010, which I can only support. Positive examples in several European countries including Finland confirm that an independent figure can effectively stimulate the government by monitoring the implementation of the relevant regulations and periodically reporting to the government and parliament.

Amendment C

This amendment aims to foster another recommendation of the Paris declaration: parliaments should play a more important role in the preparation, implementation and monitoring of comprehensive national plans against human trafficking.

Amendment D

GRETA plays a vital role in monitoring the implementation of the Council of Europe convention and should be granted sufficient funds and human resources. For GRETA's action to be relevant and effective the members of this body must be competent in the relevant field and independent from any government.