



Secondary victimisation of trafficking victims through law enforcement interventions with

1. Introduction

According to Campbell et al., (1999) secondary victimization is the re-traumatization of a victim as an indirect result of assault which occurs through the responses of individuals and institutions, such as police, judicial institutions and social service providers, to the victim. The types of secondary victimization include victim blaming, inappropriate behaviour or language by those individuals or institution. (Campbell et al., 1999). Unfortunately, secondary victimisation is not an unknown feature in cases of human trafficking and occurs due to the behaviour of social service providers and law enforcement institution including the judiciary. Already in 2007 it was reported that measures to combat trafficking not seldom had the adverse effect, which was coined collateral damage (GAATW 2007). This collateral adverse effects can be divided in three categories: anti-trafficking measures are used to eradicate prostitution or restrict migration, policies to protect victims are restricting a victim's human rights, and law enforcement interventions having negative effect on victims (Dottridge 2007). This paper will focus on the third category of counter trafficking measure having negative effects namely the interventions of law enforcement and the judiciary on the victim's well-being and as such causing secondary victimisation. Regardless the multiple efforts by states to criminalise and combat human trafficking, the number of success prosecutions of trafficking cases remains low. In principle human trafficking can be prosecuted without a victim report or a victim witness, but in practice, it turns out to be nearly impossible to prosecute without a victim testimony. This brings the victim in a dual role, namely, on the hand as witness and informant for law enforcement and on the other hand as beneficiary of protection measures in place for trafficking victims (Goodey 2004), and often law enforcement finds itself in the same dual role, namely as investigators and the one who provides or facilitates victim protection. This article is structured around three main themes related to secondary victimisation cause by law enforcement anti-trafficking interventions; Identification, (un-)conditional protection and treatment during the criminal procedure. However, before we start to unveil these three themes a further exploration on trafficking victims is encountered. In the past few years, awareness has grown with regards to the role of the victim and several instruments such as the Directive 2011/36/EU describe a more victim-oriented approach. However, in practice it is often seen that counter measures currently seem to be directed mostly towards investigating the case and gathering enough evidence to lock up the perpetrators.

Victims of THB in Europe are considered a heterogeneous group with regards to various aspects, but not in the least with regards to their nationality. Current countermeasures are often not appropriately tailored for the victims who are nationals in the country of exploitation, EU residents, and victims who are from outside of the EU.

In this article the impact and problems of countermeasures against THB are reviewed from a victim's perspective.

2. Victims of human trafficking

Human trafficking is internationally defined in the trafficking protocol but given the complexity of the definition it is widely debated and highly controversial what practices exactly can be qualified as human trafficking (Article 3 trafficking protocol, Gallagher). Apart from that national interpretations and applications of the definition show a big variety as well (Allain 20..). Consequently, it is equally difficult to determine who is a victim of human trafficking. Despite these challenges the international number of victims identified by UNODC between 2012 and 2014 is 63,251. Based on the victims of whom age and sex was reported, a clear majority of victims (70%) is female. Although a trend is seen in the increase of male victims of trafficking, ever since the UNODC began collecting data on victims of human trafficking, females have made up a clear majority of victims. Internationally, 72% of females who have been trafficked have been trafficked for sexual exploitation purposes.

Human trafficking is one of the fastest growing forms of organized crime in Europe (Europol, 2016). ... some numbers or examples in European context. Approximately 15200 victims detected in Western and Southern Europe between 2012 and 2014, of whom a majority were females. Of the 15200 victims 67% were trafficked with purpose of sexual exploitation. Over the years (since 2007) the percentage of females has decreased from 77% to 56% (percentage of male victims has increased and also relatively the percentage of forced labour exploitation has increased- 17% in 2007, 30% in 2014-).

Majority (52%) come from medium distance countries (do not share a border, but less than 3500 km away).

National victims, eastern-european victims, west-african victims.

Violates human rights, human integrity, etc. The Directive 2011/36/EU uses the following definition: The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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.

(2011/36/EU, bron).

Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

A situational report by Europol (2016) revealed that it is estimated that approximately 70% of victims and suspects of trafficking in human beings in the European Union is an EU national. Although trafficking in human beings according to the aforementioned definition includes a variety of forms of exploitation, sexual exploitation of females is the most frequently reported form of THB in Europe (Europol, 2016).

Trafficking in human beings for sexual exploitation is a gender-specific phenomenon; the vast majority of victims are females (lit. Europol, 2016). According to the report by Europol (2016) the Member States in Western Europe that are most targeted as destinations for victims of sexual exploitation are Austria, Belgium, France, Germany, Greece, Italy, the Netherlands, Spain and the United Kingdom.

Those Member States that are situated at the borders of the EU, which are mainly Italy, Portugal, Spain, and the United Kingdom – often serve as entry points for non-EU victims, who are dispatched as commodities to different locations in Europe (lit. Europol, 2016).

Victims of human trafficking who were sexually exploited have endured situations that are considered gross violations of human integrity. Victims of trafficking often display an array of physical and mental health problems and psychopathologies (Zimmerman, 2003?). In particular depressive symptoms and symptoms of post-traumatic stress are found regularly among 30-40 % of victims (Klerkx, van der Velden et al.). It should be noted that not all symptoms should be attributed to psychopathologies as women are often displaying a normal and healthy reaction to an extremely stressful situation. Not all victims will experience long-term severe mental health problems and these problems can manifest themselves differently among different victims. However, certain problems such as headaches, fatigue, anxiety, and difficulty with concentration and memory are often seen in victims (Klerkx, van der Velden et al.).

3. Victim Identification

The manner in which victim identification takes place differs between Member States due to differences in national policies with regards to the legality of prostitution. In Member States that have prohibited the presence of brothels or prostitution as a whole, victims may be discovered during prostitution raids. These prostitution or anti-trafficking raids, that are often executed by (armed) law enforcement personnel, may lead to victims experiencing intense fear due to the fact that victims are often not aware of their legal rights (Ditmore & Thukral, 2012).

However, in Member States such as The Netherlands and Germany, where prostitution is legalized and regulated, systematic controls take place during which the emphasis is placed on the degree to which a woman is working voluntarily in prostitution and whether she is able to keep her own income. These controls often entail a **“conversation”/ short interrogation/ interview** and a passport check.

As illustrated above, different regulations between Member States lead to different policies and methods of victim detection and identification. These different methods consequently differ with regards to effectiveness and the degree to which they affect victims' well-being.

Due to several factors such as ongoing fear and lack of knowledge of their legal rights, victims often do not independently reach out to law enforcement (Goderie, 2014). Among victims of trafficking it has been found that willingness to file a report or to inform law enforcement about their situation during controls is notoriously low (Goderie, 2014; Helfferich, Kaveman & Rabe, 2010; ROOD Utrecht, 2009). However, in The Netherlands an increase has been seen in anonymous reports of suspicion of human trafficking (BNRM, 2017). These reports are often filed by friends and family members of potential victims, but also by clients and other prostitutes. **Is this true for all member states? Check directive** **Due to the nature of the crime of human trafficking, it can also be investigated ‘ambsthelve’, without the necessity of an accusation. In The Netherlands 22% of the criminal investigations against human trafficking have been initiated due to prostitution controls (Goderie & Kool, 2016; BNRM, 2014).**

Threshold to contact with law enforcement

The willingness to file a report is very low among victims of human trafficking. This lack of motivation to contact law enforcement and subsequently file a report is due to several reasons (Goderie, 2014). Helfferich, Kaveman and Rabe (2010) distinguished following four categories of determinants with regards to unwillingness of victims to report to law enforcement officials. Offender strategies,

association with the police, victim determinants and lastly a lack of knowledge of the legal system and rights. Strategies that are used on the side of the offender such as threat of force, violence, isolation, control, and punishment are an important determinant. These offender strategies often lead victims to have negative perceptions of the police. Victims often report experiences of 'brainwashing' by their traffickers whereby traffickers intentionally create negative images of the police and society, so their victims will fear the police (Rijken & van Dijk, 2013). Foreign victims of trafficking often originate from countries where there is a high percentage of corruption among officials. However the strategy of 'brainwashing' also seems to be effective for national victims of trafficking. (Intimate relationship with trafficker and consequential loyalty also increase the threshold for filing a report). Due to the emotional and psychological control that offenders exercised over victims, victims have a tendency to take responsibility for their victimization (Canada, 2018). They blame themselves for not fighting back enough during the trafficking situation, consequently they do not feel like they should step forward to the police for a mistake of their own.

Another category of determinants distinguished by Helfferich et al. (2010) was association with the police and police action. This also concerns controls of the police and pressure felt by victims to file a report due to fear of deportation or imprisonment. Additionally, victims report that they often experience that police officers are treating them as suspects rather than victims. During interviews they often experience a lack of personal treatment which decreases the willingness to file a report. A key factor is the degree to which police officers are able to guarantee certain appropriate (legal) services such as protection from offenders.

Some determinants associated with the victim are also found and mostly entail migration goals, as non-national victims often do not want to return to their country of origin due to several reasons. Many victims have a need to take care of themselves after escaping a trafficking/ violent situation before reporting to law enforcement agencies (Canadian report, 2018). They fear that the process of reporting and the intensity and duration of lawsuits will require too much energy. They realize that only a very small percentage will result in a case and eventually punishments are low.

The last determinant that was distinguished was a lack of knowledge about the legal system, victim rights, and general information that is needed by a victim in order to decide whether she wants to file a report. This lack of knowledge was often due to a language barrier. In Canada (2018) lack of information about the legal system was an important factor. Additionally, lack of information for victims with a non-Canadian background was lacking; they were not aware of the specific rights that they would have as 'illegal' immigrants.

Victims often display a lack of trust in the system due to negative previous experiences of negative media exposure. From experience with similar cases in their surroundings victims often know that countermeasures can be ineffective and often lead to low or no penalties. They believe that the police does not possess sufficient resources to counteract human trafficking practices and ensure their safety (Canada, Helfferich et al, 2010; Rood, 2009, Goderie, 2014).

The same sentiment appears to be present among law enforcement officials, who perceive the current measures to be insufficient to effectively combat human trafficking practices (Goderie, 2014 daarin: Hendriks & Corsel, 2009; Goderie & Boutelier, 2009).

They are rather seen as illegal migrant than victims of trafficking (Rijken 2003, Srikanthia) as is also seen in the case of Chowdury v. Greece (ECtHR, March 2017) and consequently, fear of deportation. In states

in which prostitution is prohibited and prostitutes are criminalised (e.g. in most of the states in the US) they are rather seen as criminals, regardless the force used to perform the criminal act.

Human trafficking controls

Rules and regulations with regards to prostitution differ between Member States; in only six of the Member States prostitution is legalized and also regulated. Especially The Netherlands and Germany are considered to have rather permissive prostitution policies. This contributes to these countries being popular destinations for sex tourism in Europe. Controls that are done in these countries therefore contain fundamentally different elements compared to human trafficking controls in Member States where prostitution in itself is illegal. For example, Dutch policy dictates that all venues that provide sexual services should be randomly controlled at least six times per year. During these controls the necessary permits for the venue will be checked, but the employees will also be questioned. Most importantly they will evaluate whether all women are at least 18 years of age or older, whether they are working voluntarily and independently and whether they have the appropriate documents and permits to work in The Netherlands. It has been found that the implementation of regular controls has led to an improvement with regards to illegal activities in the prostitution branch. However, in practice it is often seen that all the necessary documentation is checked briefly but that a critical and adequate evaluation of the circumstances of the employees is lacking (Goderie, 2014). More specifically, it is seen that the questioning of employees with regards to voluntariness and independence often takes place in areas where others are present or would be able to hear them. Although the intention of these interviews/controls is to identify any suspicions of human trafficking, these controls are often experienced as an assessment by the police on whether these women are performing illegal activities. Due to the circumstances of the interview and the way the intentions of the interview are interpreted, victims often have a tendency to not disclose the full truth. They do not want to provide self-incriminating information to the police and they often fear retaliation of the trafficker for talking to the police.

The observational study by Goderie (2014) in The Netherlands revealed a number of points of improvement with regards to prostitution controls that are done by the police. For example, it was found that even when indications of involuntariness are found during these controls, the police does not always adequately identify these indications as such, and therefore do not ask further questions. Additionally, it is not sufficiently clear to victims to which degree the police is able to provide assistance and protection during these controls (Goderie & Boutellier, 2009). Victims seem to presume that police officials would not immediately take them out of their situation if they were to disclose about their trafficking situation.

Although women who are working in prostitution tend to experience these controls as an assessment of illegal activities of their own, they do emphasize the importance of regular controls. However, these controls, according to victims, should be done in a more thorough manner. Victims also stress the value of information provision by the police during these controls. If they are not aware in which ways the police would be able to provide assistance and protection, they are less inclined to disclose any information.

A study that was done in a German context revealed similar results with regards to how such controls are experienced by victims. The controls either entailed a regular passport check or a police raid, during which armed police forces would enter the venue. The methods of investigation were therefore viewed by victims as 'not sufficient' or as terrifying (Helfferrich, Kaveman, & Rabe, 2010).

Problematic (less ethical) methods of controls

The options to perform random controls in the "escort" branch of prostitution are limited due to the nature of these controls. Therefore, a common strategy to perform these controls is by posing as a costumer while booking the appointment with a prostitute in a hotel room (Loeber, 2012). Upon arrival of the woman in the room, the true nature of the scheduled appointment will be revealed to her. Due to the limited options, this method may be most practical, but for the prostitutes (regardless of whether they are victims of trafficking) this is often a highly intrusive experience (Goderie, 2014). According to observations by Goderie (2014) women were often visibly shocked and often remained to feel uncomfortable throughout the interviews. An advantage of this approach is that possible victims are temporarily separated from their trafficker which may increase the likelihood of disclosure about the situation.

Another method of temporarily removing possible victims from their (socially) isolated situation and their traffickers is by arresting them for (minor/petty) criminal offences that they have committed (Van Herwijnen, 2011). In these cases the police will try to keep a possible victim in custody for a couple of days to establish a relationship of trust which is supposed to increase the likelihood of disclosure and filing an accusative report. In a police academy master thesis by Van Herwijnen (2011) it is mentioned that arresting (possible) victims on account of using false identification has already led to a number of accusative reports in the past.

However, when regarding this method from a victim's perspective it seems to contain some elements that can be deemed less ethical. Some of the victims in the report by ROOD Utrecht (2009) mention that they have indeed been arrested by the police for petty offenses or for carrying false identification. These victims were indignant at being arrested in public in front of their traffickers, as this would put their safety in danger upon return. The mere fact of being arrested decreased their confidence in the police. While one of the victims mentioned that she suspected that this was a strategy of the police to get her separated from her traffickers, she did not have sufficient trust in the ability of the police. However, another victim took advantage of the opportunity that was provided to her by the police and fully disclosed about her situation. Although the police gave her some advice, they did let her go and she eventually returned to her trafficker.

Women who are arrested and interrogated by the police often experience fear of deportation or imprisonment (Helfferrich, Kaveman, & Rabe, 2010). Due to this fear they feel highly pressured to cooperate with law enforcement authorities.

Informative interview

Dutch policy with regards to victim identification prescribes that an informative interview must take place before a possible victim can file a report. **In other countries too? * Conny?** This informative interview serves multiple purposes as it is a way to establish whether and on what grounds a person

may be a victim of human trafficking, but also to inform a possible victim about her rights and the availability of services. Based on the information that is obtained during the informative interview, law enforcement can decide whether or not to initiate a criminal investigation. What is currently lacking in the Netherlands is a set of guidelines around the content, purpose, and frequency of the informative interview. Additionally, there appears to be a lack of consensus between Public Prosecution (OM) and law enforcement about the content of these interviews (Goderie & Kool, 2016). The informative interview is seen by some law enforcement officials as an opportunity to convince victims to file a report or to gather sufficient information to initiate a criminal investigation (Goderie & Kool, 2016 p. 16 uit Dorst, 2016).

During this interview victims receive information about the possibilities for filing a report, the procedures of the criminal investigation, legal procedures, and the implications of the outcomes for a victim. However, information provision during the informative interview with a possible victim appears to be problematic. Victims often report experiencing a lack of information about procedures, possibilities and assistance (Rijken & Van Dijk, 2013; Brunovskis & Surtees, 2007). Due to different policies, the provision of information, as well as the content and purpose of the information differs across Member States. However, a common factor between many countries is that a multitude of complex information is often given verbally during first contact with a victim (Goderie & Boutellier, 2009; Brunovskis & Surtees, 2007; Rijken & van Dijk, 2013). Accurate comprehension and recall of this information is cognitively demanding, regardless of the context in which it takes place. However, information processing of victims of human trafficking may be influenced by language barriers, level of intelligence, anxiety and stress, or by possible (undiagnosed) psychopathologies (Brunovskis & Surtees, 2007). The lack of information that is often described by victims, does not necessarily imply that victims have not been provided with detailed information. It is likely that victims receive information in a manner that is not compatible with their ability to process and remember information at the time of the interview. For example, it appears that victims tend to not fully comprehend or misinterpret the difference between matters such as a criminal justice investigation and immigration law (Rijken & van Dijk, 2013).

Being taken seriously

MEER TOEVOEGEN VD VELDEN

As mentioned before, victims tend to have negative perceptions of law enforcement officials due to several reasons such as offender strategies or negative previous experiences (Goderie & Boutellier, 2009). In approximately half of the cases this negative image improved after having been in contact with law enforcement in The Netherlands (Goderie & Boutellier, 2009). Victims who did not experience an improvement in their perspective towards law enforcement have often experienced troublesome interactions (Goderie & Boutellier, 2009). For instance, victims report not being understood, having to speak with a male police officer, and repeated interruption while telling their story. Additionally, due to the questions that were asked victims felt like they were being ridiculed and that they were not taken seriously.

The examples that are given by victims provide support for the 'idea' that there is a disparity between the criminal justice perspective and the perspective of the victim.

Many of the questions that are asked during such an interview with a victim have the purpose to either gather information to adequately start an investigation which may lead to justice. From a law enforcement perspective, this is often in favor of the victim.

Police asks questions in order to be able to get details which may help in investigation, these questions are often interpreted as ways to detect if the victim is lying. Inconsistencies that are noticed by the police are also often interpreted as a proof of dishonesty. Whereas police officers want to structure the story to strengthen the case. Personal questions are asked and also questions are asked about prices that customers had to pay for services in order to estimate the amount of money the trafficker made, which is important in possible further criminal proceedings. Victims feel these questions are too personal, another victim (read this in ROOD report?) reported that due to the questions about prices she assumed that police investigators were interested in sexual services.

The way the situation is perceived by a victim and the intentions that victims attribute to behavior that is displayed by law enforcement likely contributes to the negative experiences. However, research has shown that *victims are not always taken seriously, especially in the case of sexual violence. After having been identified as a victim of human trafficking, victims have the possibility to apply for welfare, assistance and (temporary) residency. As a result, misuse of these policies occurs as well. Police to be critical for each case. Additionally, due to complex trauma, extreme stress, anxiety or fear, victims may deliver inconsistent testimonies.*

As mentioned before, a considerable amount of trafficking victims experiences at least some problems with regards to their mental well-being. These mental health issues such as depressive symptoms, impaired memory and concentration, and symptoms of post-traumatic stress often lead to functional impairment. In combination with ongoing stressors such as pressure from the trafficker, fear of retaliation and possible consequences in general, this may have a considerable effect on coherent and consistent testimonies. From a mental health perspective it could mean that victims experience gaps in their memories, have repressed certain memories or find it too stressing to talk about the situation. It could also entail that due to problems with concentration they make an incoherent statement which is hard to follow. From the perspective of ongoing stressors it could happen that victims fear that telling the truth will have negative consequences or that they try to protect the trafficker. Additionally, they may be scared to tell the whole story because it includes confessing to crimes that they themselves have committed. As a result of the abovementioned circumstances, it happens quite often that victims deliver incoherent and inconsistent testimonies which are often altered over time.

A recent study into victim credibility by law enforcement (pp, judge, police?) revealed that victim credibility on behalf of law enforcement personnel decreases if no report is filed (accusation etc), if the victim (initially) does not choose to file report from own initiative, important information is lacking due to gaps in memory, emotions not compatible with declaration of victim, declaration is inconsistent or not logical, information keeps getting added.

In a study done by Goderie and Boutellier (2009) law enforcement personnel was questioned with regards to their attitudes towards victims of trafficking. Due to several 'knelpunten' themes that are experienced as problematic or that are inconsistent with their own views, law enforcement staff may have difficulties in adequately dealing with these victims. A problematic theme is understanding motives of victims. Victims often display ambivalent attitudes towards their traffickers with whom they have often had a romantic relationship. For bystanders it may be difficult to comprehend that some women defend the men who have done her wrong. Victims often deny being a victim of human trafficking or decline assistance or possibilities to escape. Aside from this being difficult for law enforcement personnel to evaluate from their own perspective, these themes are also often used as a strategy by the defense to prove voluntariness on behalf of the victim.

Victim bias

Policy and law enforcement perspectives on victims of human trafficking often include a stereotypical image of victims being helpless, innocent and naïve (Oude Breuil, 2011). If a discrepancy exists between ones image of a victim and behaviour that is displayed by the victim and the way the victim portrays herself, this may decrease the degree to which the victim's story is seen as credible (Lens, 2014). The Canadian report (2018) mentions that women often experience bias towards victims of sexual violence. Additionally they experience an attitude of culpability towards them. The officials often display an attitude of disbelief that these women, who are educated and etc, have let these things happen to them. They seem to have a stereotypical image of a victim of sexual violence and forced prostitution which is not in line with the characteristics that are seen in the victim.

Oude Breuil page 32. Same information.

The stereotypical story that people often automatically assume is that of an innocent naïve girl who was lured in to prostitution by deception and violence. However, in quite a considerable amount of cases the victims were informed about the sector/ type of work they would be performing in the destination country or would have reasonably known that the type of work they were offered entailed sexual services (Brunovskis & Surtees, 2008; Oude Breuil, 2011). Moreover, often victims were already working in the prostitution sector in their country of origin. However, these victims were promised different working circumstances and a higher wage, which qualifies as deception and exploitation, explain this better!

Regardless of awareness of the type of work and the previous sector the victim was working in, these situations qualify as human trafficking. Situations like these heavily contradict the stereotypical image that law enforcement has about the naïve victim who was forced into prostitution under false premises.

Brunovskis and Surtees (2008) also found that victimization in the case of human trafficking is more or less justified depending on the degree to which victims entered prostitution knowingly. Although this attitude has been clearly distinguished in law enforcement officials, it seems that victims often display a similar outlook on the situation. Victims often share the outlook on victims as being innocent, passive and ignorant (Oude Breuil, 2011). Many women consider their autonomous decision to migrate, which led to exploitation, as a mistake they made rather than something that was done to them. Therefore it is often seen that victims blame themselves and do not consider themselves full and deserving victims.

So far it has become clear* that victims initially exhibit a lack of motivation to file a report due to an array of circumstances and reasons and that often others in their surroundings file (anonymous) reports. Victims of trafficking have often had traumatic experiences which may have affected their state during interviews, as well as their memory which may lead to incomplete testimonies, inconsistencies and delayed pieces of information that get added afterwards.

-iets weggehaald-

Victim support and protection good or bad?

Although our natural reflex is to be positive about victims support and protection in general and to/of victims of trafficking more specific, some scholars and practitioners are more critical. Goodey for instance argues that witness protection programs as how they exist are not favourable to trafficking victims first because they are not necessarily able to provide relevant information on the networks, traffickers and organization behind the trafficking (2004, p. 37). Secondly, she mentions the protection is only given for the duration of the case. Furthermore, it is questioned by scholars, practitioners and victims if the police is at all able to secure the safety of victims who decided to cooperate with the police or to testify. Furthermore, a full protection package, including change of identity, moving to another country is not attractive for many victims who also need a social network and stable environment to overcome the trafficking. Moving away and changing identify does not meet these needs. If victims do testify they are seriously endangered both in their home country and in the country in which the trafficking took place. It therefore, is important to seek for opportunities for law enforcement to be less dependent on victims statements and testimonies in cases of human trafficking e.g. confiscation of assets, fraud investigations (Goodey 2004, p. 39). Others argue that victims support and protection motivate victims to report the crime and contribute to investigations (A. P. Jorge-Birol, HUMSEC Journal, p. 166, Herz 2006,). In an earlier research we conducted amongst trafficking victims in the Netherlands we found similar findings (Rijken et.al. 2013). Strong claims are also held by IOM namely that they are discriminated against and disenfranchised by the civil and criminal justice systems... (IOM Handbook in HUMSEC).

Traditionally and as follows from the Crime Victims Surveys, victims are reluctant to report to law enforcement especially because they do expect little from reporting, they fear reprisals and feel authorities are unable to protect them (Shapland, Duff & Willmore, 1985). This scepticism still is omnipresent among trafficking victims. Furthermore, several scholars (Goodey, Jorge-Birol,) have argued that trafficking victims have special needs compared to other crime victims. If their psychological needs caused by the often long period of exploitation and the harm to the physical and psychological integrity, is not being dealt with, victims are unlikely to tell a coherent story about what has happened to them (Rijken et.al. 2013).

Protection and assistance should go hand in hand with empowering the victims

Victim versus Perpetrator

Trafficked women often come in contact with the criminal justice system as victims. However, during their period of trafficking women have often committed acts that are in conflict with national law such

as immigration offences or other (minor) criminal acts. These acts may have been a result of trafficking but may also have occurred due to pressure or coercion on behalf of the trafficker. The acts that have been committed during the period of trafficking are often not a result of the victim's free will and therefore the victim should not be held accountable for the crimes she committed.

Principle of non-prosecution and non-punishment

Detention

In a Dutch report on victims of trafficking who were kept in detention it was found that only 35 of 112 victims of human trafficking filed a report from prison and were granted temporary residence (Boermans, 2009). A lack of trust was also found in this group as a reason to not file a report to the police, however in several cases this lack of trust was found to be grounded. Several victims approached the police for help and protection due to their trafficking situation and were subsequently kept in detention.

Striking! Will I put this in? In the research by Boermans/ BLinN 2009 they also encountered three victims who previously had received a temporary residence permit, which was retracted after conviction of the traffickers or a 'sepot'.

These detention centers are not equipped for victims of trafficking (Boermans, 2009). Victims of trafficking often display symptoms of posttraumatic stress disorder (PTSD) or depression, which may result in disobedient/ disorderly behavior. As these centres require 'residents'/ detainees to behave in a calm/ disciplined/ manageable manner, victims who display deviant behavior are often placed in solitary confinement (Boermans, 2009).

Reasonable grounds

4. (Un)conditional protection

After escaping a trafficking situation, victims are often not safe. BRON about how victims often get threatened by traffickers. An essential need (BRON) victims often have is the need for safety and protection. Victim cooperation with authorities can have serious consequences for victims' own safety and well-being as well as their family's well-being. In some cases* law enforcement can provide the victim with sufficient protection in order for her to safely cooperate with authorities. However, in other cases (due to several reasons) the protection measures that can be provided by law enforcement may not be sufficient to adequately ensure the safety of a victim and her loved ones. Therefore, it is not in the interests of all victims to cooperate with authorities (Brunovskis & Surtees, 2012).

In Article 11.3 of The Directive it is stated that Member States should take the necessary measures to ensure that assistance and support for a victim are not made conditional on a victim's willingness to cooperate in criminal investigation, prosecution or trial. In practice this proves to be difficult to fulfill. In most Nordic countries, Italy, Belgium and The Netherlands (and Spain? Info) potential victims of human trafficking will be granted a reflection period that varies from 30 days to six months during which cooperation with the police is not mandatory (Brunovskis & Surtees, 2012). The reflection period entails the period that victims have after coming to law enforcement officials in which they can decide whether or not to file a report. However, between countries the purpose and application of a temporary

residency period differs in terms of what victims need to deliver. Among the countries that were included in the study of Brunovkis (2012) only Finland, Iceland and Italy explicitly include the option of providing victims with residence permits based solely on personal vulnerability, regardless of cooperation in criminal justice procedures. In the other countries assistance terminates after the reflection period once a victim has chosen to not cooperate. With this, assistance becomes contingent on cooperation with authorities. This is considered problematic and difficult because cooperation with authorities may be harmful for a victim, yet the woman may still be in need of assistance. In the study by Helfferich, Kaveman and Rabe (2010) it was found that women who were arrested and interrogated by the police often experienced fear of deportation or imprisonment. Due to this fear they felt highly pressured to cooperate with law enforcement authorities.

The unconditional access to support and assistance is limited to at least the reflection period. In the Netherlands to be granted the reflection period there is no need for cooperation or reporting the crime before the reflection period can be granted. The only requirement is that there is a slightest indication of human trafficking. Again, in practice and because of the involvement of law enforcement this is often interpreted as the existence of leads for a criminal investigation (Roeleven, 2013, Rijken 2012 *Journal Vreemdelingenrecht*, BNRM 2017). As such the migration law and criminal law are intertwined.

Furthermore, and based on suspicion of abuse of the B8 procedure, the prosecution service started a pilot to streamline and shorten procedures in which there are no or little leads for human trafficking. The aim is to have a maximum of 10 days between the report by the victim and the dismissal of a case.

In practice, information gathered during the intake is the basis for the decision whether or not the reflection period will be granted (BNRM 10, p. 95). In practice some police officers already ask concrete details related to the case while others only want to verify whether or not there are leads for human trafficking. As such the intake forms another filter for granting the reflection period. In case the reflection period is not granted because the information in the intake cannot be verified then this seems to conflict with the 'slightest indication' or 'reasonable ground' test and may as well impede unconditional access to support and assistance during the reflection period. The rapporteur concluded that a 'slightest indication' not in all cases led to the granting of the reflection period. So although on paper and in law the Netherlands does comply with this provision, practice shows otherwise. Even stronger, the rapporteur indicated that the criteria of 'slightest indication' of human trafficking did not play a major role in the decision to grant a reflection period.

Another problem is that not in all cases the reflection period and thus access to support and services, is granted to EU/EER nationals, although this is guaranteed in law (B8/3 Vc). In such cases unconditional access to support and services is denied to EU/EER nationals. For Dutch victims of trafficking it is even more complicated because they are referred to the ordinary procedures for support and services, which means that they need to have health insurance for their access to health support, and need to apply for allowances at the municipalities. It is not guaranteed that workers at municipalities are familiar with the support and services that need to be granted to trafficking victims.

Many differences exist between different authorities how they interpret 'slightest indication' as well as individuals on the decision to grant a reflection period and thus access to support and services. There is not a unified framework to take a decision, not even in the same organisation.

In the Dutch report on 'Loverboys' (Rood, 2009) a victim stated: The police does not care about us as a victim, all they want is to catch the trafficker via us

Necessity of accusations by victim or role as witness

Although the Directive 2011/36/EU states the following: To ensure the success of investigations and prosecutions of human trafficking offences, their initiation should not depend, in principle, on reporting or accusation by the victim. It is often seen in practice that accusations and declarations by victims play an essential role. (voorbeeld case Goderie, 2014). Countermeasures policy in the Netherlands is perpetrator oriented, so often the goal is to gather as much information as possible about the perpetrators to lead to arrest or conviction (Verhoeven, van Gestel & de Jong, 2011).

In The Netherlands about half of the criminal investigations against human trafficking were initiated because an accusative report was filed. In 22% of the cases prostitution controls were the leading reason to initiate the criminal investigation. In 10% of cases the investigation was initiated due to information from the borders (Goderie & Kool, 2016; BNRM, 2014).

In 95% of the cases in which an investigation was started at least one of the victims had officially filed an accusative report against the trafficker or made an incriminating statement (Goderie, 2014). (gekopieerd)

The extent to which the absence of a victim report is a limitation to start an investigation seems to vary when looking at policy and practice. In The Netherlands, Belgium and Spain an incriminating statement or a report of the victim is not a burden to start a case. If there are sufficient elements to build a case upon such as location, (partial) identity of the offender or previous findings there is no need for a victim statement. However in practice, as mentioned before, in The Netherlands in about 95% of the cases in which investigations that were started at least one victim has filed an official accusative report or made incriminating statements (Goderie, 2014: NRM, 2014 – 253-254). This emphasizes the essential role of the victim in the investigative process. Both public prosecutors as judges seem to view an accusative report as a necessity to prosecute, even when there is sufficient supporting evidence (Goderie, 2014; Goderie & Boutellier, 2009). In Spain it is not necessary to have a victim's statement to start an investigation, yet it is necessary to acquire this in order to continue the judicial process. Once the case is taken to court and there is no statement from a victim declaring to be a victim of trafficking in human beings, the judicial process is stopped. This happens even if the evidence gathered by the police can sustain the existence of human trafficking with concrete elements such as conversations, messages, recordings.

Reflection period

Combined solutions or multi-path designs (with two parallel options for residence; one that presupposes cooperation with authorities, and one that can be used for victims in a particularly vulnerable situation) may reconcile the needs to protect victims and to prosecute traffickers. Letterlijk from Brunovskisk and Surtees balance 2012 When temporary residence is granted it is important to remember that residence in itself is not enough. Residence alone can sometimes be harmful to victims if

not handled properly. Long temporary residence permits may create false hopes of permanent residence. The effect of suddenly finding out that residence is no longer an option may be devastating and discouraging.

Country report Q4 integreren.

In the article by Brunovkis (2012) it is stated that due to initial trauma and high levels of stress it would always be in the benefit of the victim to have a longer reflection period. However, if these reflection periods are longer, they should be filled with adequate assistance as otherwise the victim may experience insecurity about the future and the present. In addition to that it is important to manage expectations of victims and keep them updated about the likelihood of them being granted permanent residency. Trials may last for several years and the stress, uncertainty and risk of secondary victimization during trials may be considerable for victims. Therefore it should always be carefully considered whether cooperating with criminal investigations, filing a report or delivering a testimony is in the best interest of the victim's safety and well-being. During this period, victims often have to wait for adequate assistance and for things that are related to the trial. It has been found in previous studies that waiting can take a severe toll on the well-being and health of asylum seekers (Brunovkis 2012 > Brekke, 2004)

Threats of protection versus prosecution

What is indeed problematic is the tension between a victim-centred approach to trafficking and the interest of law enforcement to convict perpetrators. This is further problematised because law enforcement is put in a dual role: victim protection on the one hand and investigating and prosecuting on the other. Although these two ideally run in parallel, this often is not the case (also Shapland et.al 1985, Wemmers, 1996). This conflicting relationship is even more present in trafficking cases since protection is linked to victim cooperation in criminal proceedings in most cases.

5. Treatment during criminal justice procedures

Reports are still omnipresent of victims having to repeat their story, being confronted with intimidating questions and questioning, are discredited by defence lawyers and anonymity is not guaranteed (Jorge-Birol, Herman, Justice from the victim's Perspective in: violence Against Women, 2005).

When the investigation has led to a case, women are often needed in criminal justice procedures as victims or as witnesses. This carries "extra risks/ bad things" with it. Victims of trafficking, in particular victims of sexual exploitation, *display a higher number* of mental health problems than victims of most other crimes (Klerkx, van der Velden et al.). These mental health issues such as depressive symptoms, impaired memory and concentration, and symptoms of post-traumatic stress often lead to functional impairment. This affects victims in their daily lives, but it may also lead to increased difficulties in the criminal justice procedures. On the one hand, current mental health problems may lead to inconsistencies in victim's testimonies and may make it objectively more difficult to establish facts and derive a coherent testimony from their stories. On the other hand, these mental health problems may

increase victim's vulnerability and sensitivity in general, even in non-stressing situations. This puts trafficking victims in a highly vulnerable position during criminal justice procedures.

Contact with offender, lawyers, having to defend themselves, not receiving enough information, not having a large enough role in proceedings, hearing the verdict etc. Maybe also put information here (short) about how proceedings affect mental health to a great extent (Doornbos & Domoney)

Article 12.4 of the Directive states that victims of trafficking should receive specific treatment aimed at preventing secondary victimization by avoiding unnecessary repetition of interviews, visual contact with defendant, giving evidence in open court and unnecessary questioning concerning the victim's private life.

In The Netherlands the Code of Criminal Procedure (CCP) includes general provisions on victim protection, including prevention of revictimization. The abovementioned concepts are included in the Dutch Code of Criminal Procedure.

Additionally in 2013 an official guideline with regards to countermeasures of human trafficking has been implemented. This guideline contains a number of provisions which refer to the treatment of the victim in general and in criminal procedures more specifically. It states that victim support is central and that victims should be treated correctly; they should be supported during criminal proceedings and should be protected against prosecution and secondary victimization.

Article 12(4) of the Trafficking Directive has been implemented in this guideline. It states:

In case a victim needs to be heard in a criminal procedure, a balance needs to be made between the protection of the victim's private life, security, health of the victim and the rights of the suspect to fair process. Hearings need to take place without unnecessary delay, number of hearings need to be limited and repetition of hearings need to be avoided. Visual contact must be avoided between suspect and victim, as well as hearing of the victim as witness in public procedure, and the unnecessary questioning about the victim's private life. Prosecution service can request to hear outside public procedure and the presence of the suspect e.g. through the use of modern communication technology.

Additionally the guideline on audio-visual recording of hearings, in case the witness or victim cannot be present in court, applies in this case as well. There is an obligation to audit registration for suspects and witnesses in human trafficking cases. Audio-visual registration in case the person who is heard is vulnerable. According to the guideline this is the case when the person is below 16 years, or is mentally retarded or has cognitive disabilities.

In Belgium every person who has been granted the status 'victim of human trafficking' will receive protection. These victims will always first reside in a secret shelter of which the location is also unknown to police and justice, in order to guarantee the victim's protection. All interviews are conducted in our (?) offices, not at the shelter. Simultaneous with the legal allocation of the victim status an extensive integration program is initiated by the shelters. This program includes learning the language and receiving support with regards to daily activities such as how to find a job. **Leyla: I don't really know how this is preventing secondary victimization by law enforcement but okay. I'll leave this in for now. Change it later.**

In Spain the framework protocol establishes that public prosecutors must ensure that the statements given by victims during the investigation are properly recorded so they can be considered valid as pre-constituted court evidence at the hearing. This is considered an effective legal tool to prevent

revictimization within criminal proceedings, as the statement can be read at the hearing without the necessity of the victim's testimony at the hearing. The Spanish Organic Law 19/04 on the Protection of Witnesses establishes several protection measures including procedures to prevent victims from being visually identified. In practice, those measures do not adequately address to protection needs of victims and witnesses in trafficking cases, as judges and prosecutors admit.

Recently, the Spanish Organic Law 4/2015 on Victims Statute redefined that system, guaranteeing a better protection to victims (no contact between victim and offender during the investigation; no delay in testifying; avoiding multiple interrogations and statements; right of privacy; individual evaluation of every victim in order to define their needs of protection; special protection for minors and vulnerable persons). Article 25 establishes measures during the investigation (related to the place where testimony is given; the expertise of interrogators; if possible only one interrogator must interview every victim; victims of THB for sexual exploitation must give testimony in front of a same sex interrogator if they require it) and during the hearing (use of video-conferencing and other technologies in order to avoid visual contact between victims and perpetrators; hearing without public; no question about private life). This new system should guarantee an effective protection to victims during criminal proceedings, if properly implemented.

Good practices identified by Goodey (2004, p. 42): Specialist police units, questioning and medical examination of women by trained female personnel, provision of 'woman-friendly' environments for interviewing. It has been suggested earlier to find inspiration in practices for child victims of sexual and physical abuse, who are interviewed in special child friendly studio's and for whom special interview techniques are being used. Application of such practices in trafficking cases can be found in Bavaria, Germany.

Country report question 13

Information about criminal proceedings

Unnecessary repetition of interviews

Avoid visual contact

Not testify in open court

No questioning concerning private life

Length criminal proceedings

Prosecution without harming the victims

Burden to cooperate

During the criminal investigation victims are often needed to provide information about their situation, the trafficker etc. in order for the investigation to lead to prosecution.

Contrary to most crimes, in the case of human trafficking the probability is high that a victim is still under influence/ control of the perpetrator/ suspect during criminal proceedings (Goderie, 2014; BNRM, 2009). This complicates the process, especially with regards to willingness to cooperate and gathering evidence (Goderie, 2014 ; BNRM, 2009).

Law enforcement personnel seems to be aware of the burden that is placed on victims when they have to cooperate with criminal proceedings (Goderie & Boutellier, 2009). One of the police employees in the

study by Goderie and Boutellier (2009) stated that he sometimes makes a consideration whether to convince a victim to file a report if she is psychologically unstable. They seem to be aware that traumatized victims often experience several problems which may lead to inconsistencies in their testimonies. These inconsistencies, according to the respondent, can easily be used by the defense attorney to completely bring a victim down in court.

Opvallend:

Goderie and Boutellier, 2009; Klerkx et al,

In studies in which law enforcement personnel (police, investigators, pp?) was interviewed about their perspective on the effect of criminal proceedings on a victim's wellbeing .. Remarkable language was used by the interviewees to describe the contact between the victim and the defense lawyers. One police officer mentioned that in the case of incoherent stories due to multiple traumatic events that occurred in a short timeframe he is less strict with the timeline because he does not want any inconsistencies to serve as 'food for the defense lawyers'. Due to statements like these it becomes evident that the extensive questions that are being asked by police officers during criminal investigations may also serve as a way to prevent further victimization in court. **However, by asking these thorough questions, police officials may contribute to secondary victimization whilst trying to prevent secondary victimization.**

Reliability of victim statement

Research in the US among victims of rape show a difference in experiences of secondary victimisation between victims whose case was prosecuted and those whose case was not prosecuted (Patterson 2013). In literature secondary victimisation consisting of not being believed, threatened with being charged if not provided an adequate story, questions about sexual history and victim blaming have been reported in cases of rape as well as in cases of trafficking (Logan et.al. 2005, Campbell and Raja 2005, Shrikantiah ...). Patterson in an earlier research found out that in cases of rape, intimate partners who are accused are more likely to be prosecuted than acquaintances (Patterson 2005). Patterson, interviewing 20 rape victims, found that victims whose case are prosecuted were viewed as credible by law enforcement and reported less experiences of secondary victimisation. None of the cases involving minority victims were prosecuted. The decision to prosecute or not is very much based on victim's perceived credibility. Victims who reported directly are believed more easily and these cases are more likely to be prosecuted. Victims whose cases were prosecuted did not experience victim blaming nor did feel believed. Victims of non-prosecuted cases experienced insensitive behaviour, victim blaming and a lack of compassion. These experiences lead to non-reporting attitude in future cases. In two of the four cases in which the suspect could not be found participants were positive about law enforcement authorities. Presence of an lawyer helps to prevent secondary victimisation (Campbell,j

Hupperetz et.al.,:

Annemarie ten Boom: intiemie en onbekenden.