



# COUNTRY REPORTS

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## ***1. Introduction***

This chapter aims to offer a general perspective regarding the legal framework of Trafficking in Human Beings in the countries involved in the PHIT Project (Belgium, Finland, Italy, Netherlands and Spain). The country reports were intended to be internal working documents; therefore, they have been adapted to fit in this publication and instead of approaching each country individually they have a more general approach regarding the main issues of the legal status of THB and its victims.

All countries involved in the project are Member States of the European Union and have ratified the Palermo Protocol and the Warsaw Convention. Therefore, Trafficking in Human Beings should be prevented, traffickers should be pursued, and victims should be protected in all those countries, even though national legislation has some scope on how and to what extent to do it.

## ***2. Trafficking in Human Beings for sexual exploitation as a crime.***

In Belgium, Trafficking in Human Beings for sexual exploitation is a crime since the 1995 Act Containing Measures to Repress Trafficking in Persons, later extended to all kinds of exploitation. According to 2018 Trafficking in Persons Report (Department of State of the USA) and the GRETA reports Belgium's *overbroad* definition of exploitation may lead to confusion with other criminal offences. Belgium's Criminal Code prescribes penalties from one to twenty years of imprisonment, article 433 *quinquies* states as constituent elements of the criminal offence the act of trafficking with the purpose of exploitation while coercion is an aggravating factor but not a constituent element of the criminal offence. Regarding whether prostitution is a criminal act or not, it is not as long as it doesn't involve minors, pimping, advertising or encouraging prostitution or the recruitment, transport or accommodation of persons for the purpose of prostitution.

Finland criminalized THB in 2004's amendment of the Criminal Code. Before, traffickers were prosecuted by other crimes, from work discrimination to usury. The penalties prescribed start in 4 months imprisonment penalty up to 6 years of imprisonment and may also include fines. Even though the penalties may seem low compared with countries

such as Italy or Spain, they are similar to those existing in Finland for other severe crimes as stated in the Trafficking in Persons reports.

In Italy THB has been criminalized since 2003 and severe punishment is established with penalties from 8 to 20 years of imprisonment. However, 2018 Trafficking in Persons report states that most of the traffickers are convicted for around 8 years of imprisonment. Prostitution in Italy is not a criminal act but facilitators and pimps are punished. In some cases, sex workers are punished with administrative sanctions by mayors

In the Netherlands, THB for sexual exploitation was firstly criminalized in 1911, regarding the trafficking in women. Later, in 1927 this was extended to trafficking in minor boys. In 1989 the term *trafficking in women* changed to trafficking in persons after in 1988 coercion was included as a constituent element of the criminal offence. Due to the Palermo Protocol, the Council of Europe Convention on action against human trafficking and the EU Framework Decision on human trafficking, the Dutch legislation has been amended several times. Currently, the criminal offense is constituted not only by trafficking in human beings for sexual exploitation but also for other purposes of exploitation. In the Netherlands, prostitution is not a criminal offense, it is considered a job performed by adults on a voluntary basis. However, the current regulation of THB includes pimps.

In Spain, THB was firstly criminalized as an independent offence in 2010. Before, THB was also a criminal offence regulated along human smuggling. In order to comply with the Directive 2011/36, the THB criminal offence was amended in 2015 in a broader reform of the Criminal Code. The criminal offence is regulated on article 177*bis* of the Spanish Criminal Code between the crimes against moral integrity and those against sexual freedom and the definition includes three elements: an action (recruitment or transportation or harboring or receipt of persons); the use of certain means (threat, use of force or coercion, fraud, or deception, or abuse of power or abuse of vulnerability) and the purpose of exploitation. The Criminal Code prescribes penalties from five to eight years for the crime without aggravating factors. Prostitution is not a crime in Spain as long as it doesn't involve minors (in this case, the consumer is always an offender), individuals with disabilities, or pimping with coercion or intimidation.

### ***3. Identification of THB victims and legal status.***

In Belgium, the legal status of THB victim can only be granted by the prosecutor. The identification is a joint responsibility between police and public prosecutors. However, this is an *initial identification* that grants a 45 days long reflection period and support to the victims. Nevertheless, if the prosecutor finds that there are no objective elements to be found during the investigation has no choice but to withdraw the status of victim. If the public prosecutor finds there are objective elements, the identification can be confirmed and during the court proceedings the victim will receive six months long residence and work permits (those residence permits will be detailed in the next section). The identification also leads to protective services and, as said before, support mostly

offered by specialized NGOs. However, the legal status of THB victims requires cooperation.

In Finland, after the identification, victims are allowed to receive a six-month long reflection period. However the last reports show that the fight against terrorism and illegal immigration led to fewer law enforcement officials investigating THB offences. Also there is a lack of specialized units, however law-enforcement officers receive training regarding THB indicators.

In Italy, THB victims are mostly identified by specialized NGOs or during court proceeding by Public Prosecutors. This is narrowly linked to the permits regulated on article 18 of the Italian Immigration Law, which established the residence permit for humanitarian reasons that may be issued either as a result of a victim's complaint (Judicial Way, Proposal or Advice of the Prosecutor of the Republic) and in absence of complaint through the social path, mostly proposed by specialized NGOs.

In the Netherlands police, labour inspection and border guards (KMAR) are formally mandated to offer a reflection period of a maximum of 90 days, without a minimum duration. They must do so in case of the “slightest indications” that a person has been subjected to human trafficking. In case there are enough leads for human trafficking police is obliged to start a criminal investigation. It is not required a report or complaint by a victim. There is no authority assigned to grant the status of ‘victim of trafficking’. In case of trafficking victims, authorities refer to ‘presumed’ victims. Anyone can refer a person who might be victim to human trafficking to the centralized human trafficking coordination center (CoMensha). However, if there is not “slightest indications” that a person has been subjected to human trafficking, after the 90 days reflection period, the police will drop the case and won’t issue the residence permit.

In Spain, law enforcement officers are mandated to offer a reflection period with a minimum of 90 days reflection period as soon as they identify a human trafficking victim. However, it must be taken into account that the second report of GRETA and 2018 Trafficking in Persons report from the Department of State of the USA stated that Spain needs to improve the process of identification with a more proactive approach. During the reflection period, the victims must be informed about their options, receive assessment and support from specialized NGOs, also since 2013 they are also entitled to free health care. In order to be identified as a victim of THB active cooperation is not a requirement. THB victims need to be identified by specialized police units in order to have access to support and protection. Identification is linked to the existence of “reasonable grounds of being THB victim”. THB indicators are used in order to identify victims. Specialized NGOs and professionals may deliver to the police relevant information about the concrete case during the identification proceeding.

#### ***4. Residence permits for THB victims.***

The Belgian residence permits for THB victims include in most cases also a work permit. After the 45 days long reflection period mentioned in the previous section, if the victim

decides to participate in the court proceedings, they will be granted with a three months long residence and work permit. After the formal complaint, if the public prosecutor confirms that the complainant is a THB victim, a six months long residence and work permit, which is renewable every six months until the court proceedings end, will be issued. In the case that the traffickers are convicted, a permanent permit will be granted.

As stated before, in Finland the reflection period is longer than in the other countries that have been studied in this chapter and can last up to six months in case of irregular stays and up to three months in case of regular residence. Special permits can be issued for THB victims for a period from six to twelve months and can be renewed for studies or work.

The Italian temporary residence and work permits can be issued taking in consideration their cooperation or for social protection (or humanitarian) reasons. Like we'll be able to see below on Spain's regulation, the cooperation and the social protection permits differ from the fact that the first one has a rewarding motivation and the second one doesn't. Moreover, the second permit also includes a particular program of assistance and social integration. However, for the social protection permit not only are THB victims eligible but also victims of other criminal offences. 2018 Trafficking in Persons report states that even though those permits don't require cooperation it has been reported that sometimes Italian authorities gave preference to the individuals that cooperated. The permit is issued for six months and can be renewed if the victim is studying or working.

In the Netherlands, the residence permit for THB victims is linked to the existence of a criminal investigation and victim's cooperation. If the victim decides to participate in the court proceedings against traffickers, they can apply for a B-8 permit, a temporary residence permit, and will be able to apply for a permanent residence permit if the traffickers are convicted or if they maintain the B-8 permit for more than three years. Nevertheless, a residence permit can be granted if the victim is unable to cooperate because of medical or psychological reasons and serious threats that must be stated by the police or a medical professional. The permit can be granted even though it may be a threat to public order if this threat is related to the fact that the person is a trafficking victim and if the victim doesn't have valid travel documents. In this country, this permit is barely used. The permit is issued for a one-year period and it is not renewable.

In Spain THB victims can apply for two special residence and work permits. The first one is based on cooperation with the authorities (police, judges, prosecutors or other authorities) against organized crime (in this case, organized crime related to trafficking in human beings). However this cooperation needs to be a qualified cooperation as witnesses or delivering essential information to authorities. Nevertheless, this permit is not only for victims but also for informants. The second special residence and work permit in Spain is specific for THB victims regarding their personal situation. THB victims and their relatives can apply for this permit that does not require cooperation and it's mostly linked to the convenience of the victim to stay in Spain in order to keep recovering from the trafficking situation. Both permits allow to issue provisional permits but an exemption of responsibility for the irregular stay needs to be requested taking into account the cooperation or the personal situation of the victim. Cooperation and personal situation definitive permits are issued for five years, granting in most cases the access to permanent

residence. The Spanish regulation on those permits is quite protective to THB victims. The residence and work permits based on the personal situation have been analyzed in a field study during the PHIT Project and its main findings are explained in another chapter.

### *5. Assistance and support for THB victims.*

As mentioned before, in Belgium the legal status of THB victim requires cooperation with the investigation. This means that victims have conditional access to support and assistance but in the 45 days reflection period they will be assessed by the specialized centres regarding their options and rights before the first proceedings start and will have the legal status of THB victim, so the access to support and assistance is unconditioned during the reflection period. If the victim decides to cooperate, the public prosecutor will confirm the legal status of THB victim. Once the victim is identified, she or he is immediately legally entitled to a full range of support (psychological support, administrative help, legal assessment...) provided by specialized centres. Belgium has three official NGO-run shelters, which receive funding from the different level of government, they are in Flanders, Brussels and Wallonia and assist victims regardless of their administrative situation, nationality or gender. It is also important to state that along the psychological, medical and legal assessment THB victims also receive protection since the shelter where they reside is secret at first.

In Finland, the assistance and support for THB victims is unconditional. Like in the other countries, it is also unconditional during the reflection period. Once a victim is identified authorities have the obligation to refer the victims to the national assistance system in order to receive assistance and a safe shelter. The shelters and the support and assistance to the victims are provided by NGOs and other private entities and the government of Finland.

Italy relies on NGOs for the support and assistance of THB victims. This has led to a non-homogeneous system. However, after the identification, support and assistance are unconditional. GRETA and Trafficking in Person reports criticize the lack of resources and funding of those NGOs to identify and assist THB victims since the number of victims is increasing in Italy.

In the Netherlands, CoMensha is the national organisation where trafficking victims are registered. Apart from registration CoMensha advises organisations (training and informing) and victims and coordinates the first assistance and support for THB victims. They are mandated to accommodate victims in specialised shelters (COSMs), which are funded by the government. Also, some local governments funded shelters for domestic violence victims that also have a dedicated space for THB victims. To be able to perform their task, there are care-coordinators in different regions in the Netherlands who are responsible for the support and assistance to the victims in a certain region. The COSMs are, however, emergency shelters where the victims can't stay longer than three months. After the three months, victims are assisted to find a place to live that meets their needs, mostly specialized NGOs. Also, all victims have the right to free legal assessment irrespective from their income. Regarding the medical and psychological support, the

care-coordinator is responsible for medical assessment of victims who are referred to them via CoMensha. In COSMs specialised mental support is available to trafficking victims depending on their needs. Generally, it consists of Prevention, Diagnosis and Treatment. This treatment can be individual or group therapy, can be trauma related or psychotherapy focusing on personality and medication. In specialised institutions victims also receive such specialised treatment again depending on their needs.

In Spain, the government mostly relies on specialized NGOs to assist THB victims. National and local governments partially fund those NGOs that provide the victims with psychological, legal and medical support. Also, the government set Victim Service Offices that provide directly this support. Despite these efforts, 2018 Trafficking in Persons report stated that Victim Service Offices are overcrowded and need more training and resources. Finally, the most interesting program is the *social interlocutors* program that helps victims during the legal proceedings with the so-called social interlocutors, who are usually former victims of THB, acting as intermediaries between the victims and the authorities.