



Case study

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1. Introduction

This file study aims to gain insight into the level of compliance of the Dutch government which the obligations on to take into account the psychological well-being of victims of human trafficking as identified in **Chapter X**. To that end the files have been analysed while focussing on two aspects relevant in the criminal proceedings: 1) the impact of interventions and interactions of police and justice on the psychological well-being of victims of human trafficking; 2) how is the psychological well-being taken into account during the criminal justice procedure. The first aspect relates to the obligation of States

to prevent secondary victimisation as guaranteed in e.g. Article 12(4) Trafficking Directive and the latter aspect to the State obligation to take into account the specific needs of victims of trafficking, as reflected in e.g. Article 11(7) Trafficking Directive. Furthermore, we have looked at the unconditional access to assistance and support during the reflection period and the compensation provided to victims. Another important aspect taken into consideration is the safety during the criminal justice process and the prosecution of traffickers. Special attention was paid to the victim's testimony and the way this is interpreted by the judges.

2. Methodology

2.1 Case selection

Cases are selected in consultation with professionals. Public prosecutors, advocates general and a lawyer have been asked to provide cases in which the victim's psychological well-being or psychological suffering has played a role. The criteria on which these cases were selected are Dutch, East-European and African adult victims of human trafficking for sexual exploitation. In three cases these criteria were not fully met. One case included a Chinese victim and in two cases the victim was a minor during (part of) her victimization. These cases have anyway been included in this research because the victims were close to adulthood during the trafficking. The information about the underage victims is processed as if they were 18. Any additional rights and procedures with regard to minors are not taken into account. In the files we primarily studied transcripts of hearings with the police, investigative judges, the examination of judges in courts and medical reports on victims if these were present.

In order to gain access to these files the permission of the board of procurators general was requested and granted (Appendix 1). Furthermore ethical clearance was requested and granted by the Ethical Review Board of Tilburg Law School, Tilburg University. As

such the research meets the university's standards on ethics, data management and the data processing register. The permissions came with some limitations and conditions. No personal information was allowed to be taken from the files. Personal details of the victim, the accused and others may not be copied or used in any way. No data reducible to individual natural persons and legal entities may be disclosed. The researchers were not allowed to make photocopies of the documents.

After permissions were granted the locations of the approved cases were determined and appointments made to conduct the file study. In the end 11 case files have been studied which resulted in information about 17 victims. Two files were studied in Den Bosch, seven in Amsterdam, one in Haarlem and one in Arnhem. Four researchers have exercised this case study in the period from August until November 2018.

Based on the literature review and interviews with professionals and victims a questionnaire was compiled. During the file study answers on these questions were deprived from the files. The questionnaire was answered per individual victim. So if more than one victim were involved in a case, the questions have been answered for each victim separately.

3. General information

All criminal procedures took place between 2009 and 2017. The victims in the examined cases descend from all over the world (table 1). Five victims originated from the Netherlands (of which one with a Brazilian and one with a Turkish background), one from Belgium, two from Bulgaria, one from China, three from Romania and five from Hungary.

	Origin
Victim 1	The Netherlands
Victim 2	The Netherlands
Victim 3	Belgium
Victim 4	China
Victim 5	Bulgaria
Victim 6	Bulgaria
Victim 7	The Netherlands
Victim 8	Romania
Victim 9	Romania
Victim 10	Romania
Victim 11	Hungary
Victim 12	Hungary
Victim 13	The Netherlands (adopted from Brazil)
Victim 14	Hungary
Victim 15	Hungary
Victim 16	Hungary
Victim 17	The Netherlands (Turkish background)

Table 1: Victim's origin

Except from the Belgium victim, neither of the foreign victims spoke the Dutch language. 47% of these victims fall within the age category of 18-25, 29% in the category 25-35 and 12% is older than 35. One victim fell within the category 25-35 during the exploitation period but turned 36 during the criminal justice period. Of one victim the age is unknown. One victim was a minor during the whole exploitation period but turned 18 during the criminal justice procedure, another victim turned 18 during the exploitation period.

Each file contained one suspect. Some cases were treated simultaneously with the case of another suspect because they worked in an organised network. Thus in some cases during one court trial the cases of more than one suspect were addressed. As such the victim's interviews with the police or investigating judge might be used in more than one case. If a victim was involved in a case with multiple suspects she may be confronted with more than one defence lawyer. Six victims were involved in a procedure with only one suspect.

In the cases of seven victims two suspects were prosecuted. One victim pressed charges against three suspects and three victims had to provide information on four suspects.

Two cases were only brought before the Court of First Instance, six cases have also been treated by the Court of Appeal and three cases continued to the Supreme Court. Most victims in the studied files have filed an official complaint. Only two victims have not filed an official complaint. The amount of time between the victim's official complaint (or first hearing as a witness) and the date of judgment of the Court of First Instance differs a lot per case (table 2). In four cases the time between the first hearing or intake and the ruling by the Court of First Instance is unknown. In the other cases this lasted between three months and five years and ten months, with an average of over 31 months (a bit over 2,5 years). The average time of the procedure with the Court of Appeal or the Supreme Court is approximately one and a half year.

	Court of First Instance	Court of Appeal	Supreme Court
Victim 1	1 year and 1 month	8 months	1 year and 3 months
Victim 2	1 year and 4 months	n/a	n/a
Victim 3	Unknown	n/a	n/a
Victim 4	3 years and 11 months	1 year and 8 months	n/a
Victim 5	11 months	11 months	1 year and 3 months
Victim 6	Unknown	Unknown	Unknown
Victim 7	3 months	Unknown	n/a
Victim 8	5 years and 10 months	1 year and 8 months	n/a
Victim 9	5 years and 4 months	1 year and 8 months	n/a
Victim 10	4 years and 10 months	1 year and 8 months	n/a
Victim 11	1 year and 7 months	3 years and 6 months	n/a
Victim 12	4 years and 1 month	3 years and 6 months	n/a
Victim 13	1 year and 7 months	10 months	n/a
Victim 14	Unknown	n/a	n/a
Victim 15	1 year and 5 months	n/a	n/a
Victim 16	1 year and 8 months	n/a	n/a
Victim 17	Unknown	Unknown	n/a

Table 2: duration of criminal procedures before Court

4. Psychological well-being

During the file study information is collected about the victim's psychological well-being before and after their victimization. None of the files contained information on whether medical examination has been performed. Five files contained a psychological or

psychiatric report regarding the victim. In three cases the files contain information about diagnoses that have been made before the victimization. In four cases information was present about medical problems after the victimization. One victim, who was still a minor during her victimization, was staying at a psychiatric institute because of borderline, depression and a personality disorder before she became a victim of human trafficking. Another victim was diagnosed with Attention Deficit Disorder (ADD) and Oppositional Defiant Disorder (ODD) before her victimization. A third victim was already known to have a mild mental handicap, ADD and adhesion problems prior to her victimization.

Diagnoses that have been made after the victimization took place were (complex) Posttraumatic Stress Disorder (PTSD), suicidal, depression, alcohol abuse, disturbed personality development, personality problems (e.g. impulse and emotion regulation problems), unstable social situation and dysthyme.

5. Police investigation

The police's and public prosecutor's task is two-folded: on the one hand they want to prosecute the trafficker and they want the victim to provide them with information enabling them to do so. On the other side they have an official task to provide assistance to victims. In all their act and interventions they should avoid secondary victimization.

5.1 Direct aid and assistance

All victims in the studied files have been in contact with the police during the criminal justice process. Some of them approached the police by themselves, others were found e.g. during controls. Not all files include transcriptions of the interviews with the victims. Some files contain information about the police's referral to Victim Support and a victim's lawyer.

Several victims who did not have a place to stay were offered to be brought to a shelter where they would receive social benefits, housing, food and assistance. The underaged victim who suffered from borderline, depression and a personality disorder was placed for one night in Transferium (a youth care institution for children with behavioural problems) before she was returned to the psychiatric institution. One victim was very worried about her children who were staying with her ex-husband. The police offered her to try to get her children to the Netherlands. Some victims who were already out of the exploitative situation before they got into contact with the police and were already receiving help.

5.2 Victims' procedural rights

As was mentioned in **Chapter X** victims of human trafficking have various rights during the criminal justice process.

Oral communication about victims' rights during police interviews

Not all files contain a transcription of the police interviews. Some are written in story form and only contain information about what the victim said. This makes it difficult to ascertain whether the victims were sufficiently informed about their rights. In the Netherlands the informative talk (intake) is aimed at providing information to the victim and proceeds the actual interview. Often the intake does not entail much information about the exploitation itself. The files of eleven victims contain information about the explanation of the victim's rights during the intake. Two victims were not staying in the Netherlands when their contact with the police started. Their first conversations with the police took place in their home country. It is not clear whether and how the police in their home country have informed them. In most files the way the victim was informed about her rights was inexplicitly mentioned without a specification of which rights were explained exactly. Only one file did contain an elaborate description. During the intake of

this case the police officers explained comprehensively how the procedure and treatment of victims of human trafficking works. They informed her about her right to speak, right to receive information, right to consult a lawyer, etc.

In two cases the victim approached the police already a while before the criminal justice procedure started but indications of human trafficking were not picked up at that time. One of these victims went to the police shortly after her victimization. The police promised her that her report would be forwarded to the human trafficking team and that they would get in touch with her. This eventually never happened. Four years later when the accused came up in an investigation they approached her and invited her for an interview. The accused was sentenced to four months of imprisonment at the Court of First Instance. In the appeal procedure the accused was acquitted because of lack of support evidence.

Written information

As soon as the police have referred the case to the public prosecutor, the public prosecutor informs the victim about the process by sending her a letter.

Victim's needs

In order to take the victim's needs into account the victim is often asked to fill out a form. On this form the victim can fill out whether she wants to receive information throughout the procedure, wants to participate in the procedure, make use of her right to speak, etc. On this form the following note is made:

“For a restricted number of crimes, the right to speak and / or written victim declaration is possible. In the later phase it will be known if you can make use of this possibility”

This note may be disturbing both for those victims who later hear that they cannot use these rights, and for those who can. In cases of human trafficking the right to speak and / or to provide a written victim declaration is possible anyway, so this lack of clarity is unnecessary. The same goes for the victim conversation with the public prosecutor. On the form the victim can fill out whether she wants a conversation with the public prosecutor. Side note is made that these conversations only take place in very severe cases and that the victim's request possibly won't be honoured.

Procedural information

Besides this first letter and the form, most files contain several letters from the public prosecutor which inform the victims about trial dates, the procedure in appeal, and other issues. When the case is brought before the Court of Appeal the (changed) victim's rights are explained once again. About two third of the studied victims do not (fully) understand the Dutch language. Almost all letters send by the public prosecutor to the victim are written in Dutch. Only in one file the letters were written in English. The files do not show whether the public prosecutor's office makes any effort to check whether the information has reached the victim and was understood. In general the letters from the public prosecutor or advocate general have a neutral tone. The victim is addressed as such and the information is provided in an understandable way. Some letters did contain passages which may be unclear or unpleasant for the victim. Some examples of both positive findings and negative ones are given below.

The victims receive a letter before each trial date. In these letters they are informed about the possibility to attend the court hearing. The victim is mostly asked to indicate beforehand if she wants to be present. In the letters reference is made to the possibility to be assisted by a victim's lawyer and / or Victim Support. Victims are adverted to the court's victim counter. They are asked to log on at the desk upon arrival so that they can

be assisted at court and be referred to a special waiting room for victims. If after the judgement of the Court of First Instance the case is brought up to the Court of Appeal the victim is directly informed about this. This letter informs the victim also about the (changed) victim's rights in the appeal procedure. One letter informed the victim about the trial date at the court of appeal. The letter states: "If you wish, you can attend the hearing as an interested party". The term 'interested party' (belangstellende) seems a bit offensive when referring to a victim. Another letter informs the victim about her rights in the procedure in appeal. In this letter an explanation is given about the victim conversation, but the victim conversation is not offered or explained in concrete terms how to apply for this. In the examined files one example is found of a letter in which the victim is explained that the procedure in cassation can take a long time. By providing this information up front the victim is not left with false expectations. This is very different in another file where a communication stop of about two years does not seem to be motivated.

Depending on the case the victim is either directly informed or through her lawyer. We cannot know for sure if the files contain all communication or maybe some parts are missing. This is especially the case when the victim is assisted by a victim's lawyer. It seems like not all communication with the victims' lawyers is recorded in the files.

5.3 Special measures

International and European laws prescribe that measures have to be taken to assist victims in their physical, psychological and social recovery.

Reflection time and B8-procedure

Victims in the studied files who are staying in the Netherlands without a legal status are often (but not always) informed about the reflection period and the B8-procedure during the intake. In eight cases it is clear that the B8-procedure has been offered and/or used.

In three cases it is not clear whether the victim had a legal residence status or the B8-procedure has been offered and/or used. Since the hearings were mostly not transcribed it is not clear whether the reflection period was offered and/or used in these cases.

The files show that the way the police discusses the B8-procedure is very important. Victims who qualify for the B8-procedure might be afraid of the police because they fear to be expelled. They often do not consider themselves as trafficking victims. This appears from the initial interviews with the police where they say that they work voluntarily and are not forced by anyone. These circumstances have to be taken into account by the police when they are in contact with these victims. The defence counsel often mentions that for a person without a legal residence status the prospect of a temporary residence status together with shelter, social benefits and medical help may be a very good reason to make up a story. The police have to take this into account in order to prevent that the victim's statements with the police are labelled as unreliable. Especially in cases with little supportive evidence this is very important.

In one case the B8-procedure had a very prominent role in the police interviews. The victim was staying in the Netherlands without a legal status already for a couple of years. The police kept reminding the victim about the B8-procedure throughout the interviews and tried to pursue her to file a complaint. During the first couple of interviews the victims denied that she was a victim of human trafficking. Later, after the police officers repeatedly informed her about the fact that if she would file a complaint she would be able to stay legally in the Netherlands, she did file a complaint. Eventually the Court of First Instance acquitted the accused because the victim's statements were not reliable due to the police officers' guiding questions.

Trained police officers

Almost all police officers who are in direct contact with the victims are specifically trained and specialised in human trafficking. In some cases the information about the police officers' expertise was not present. The victims were mostly heard by two police officers. In those cases at least one of the two was specialized in human trafficking.

One exception was the case of an underage girl who ran away from a psychiatric institution. After a report four male police officers went to the address where the victim was held. According to the file neither of them was specialized in dealing with victims of human trafficking, while they had very concrete indications that they would find an under aged girl in a trafficking situation.

Assistance by an interpreter

Eleven victims did not understand the Dutch language (sufficiently). The files show that almost all of these victims have been supported by an interpreter. In three cases the file did not show any information about this. One victim was first interviewed in English but all later interviews were held in Bulgarian with the assistance of an interpreter. In the case of one victim the interpreter was the same person during all interviews. The police regularly checked whether the victims understood the interpreter properly. In one case the police officers emphasized that the interpreter is independent.

Assistance by another

Most victims were not yet supported by a victim's lawyer or Victim Support during the police investigation. One victim was supported by victim support, one by a victim's counsel, one by a trusting person and one by a contact person of her shelter.

Other measures

During one of the interviews with the police a victim indicated that she was in need for help regarding her children. Her children were staying abroad with her ex-husband. She

feared for their safety. The police promised her to approach the Dutch Central Organ for reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers) to see if her children could come to the Netherlands.

Another victim who was assisted by a contact person of a Christian organization asked for a private moment with one of the police officers who speaks her mother tongue. She tells that she does not feel comfortable with the contact person. She is afraid that she will take away her child. The police officers offered to help her to find another shelter to stay. They emphasize that their offer does not depend on whether the victim decides to file a complaint.

One of the victims has a very low IQ, and is mentally disabled. Her intake was situated in a specialized setting, a studio hearing to make her feel more at ease.

5.4 Victim approach by police officers

All victims have been interviewed several times by the police. The average number of times the victims have spoken to the police is four times. The victim who was interviewed most often was interviewed nine times. This includes three days in which the victim filed a complaint and a few times during which she drove around in a car with the police to point out addresses.

The studied cases show differences in the way the first contact with the police was established. In some cases the police found the victims while she was being exploited. Sometimes this was after a report of a third person, and sometimes the police was already involved in an investigation on the accused. In other cases the victim contacted the police herself because she wanted to file a complaint. These different situations ask for a different approach. A victim who contacts the police herself already knows that she is a victim, while others may not feel they are a victim. Sometimes when victims do not want

to see themselves as a victim the police can be quite compelling. The police informed the victim in some cases that even if they decide not to file a complaint, they can be called up to appear in front of a judge as a witness.

The police use various ways to avoid discomfort for the victim during interviews. All of the victims are women who have been sexually exploited. Most of them have violent experiences with men, both customers and/or traffickers. That the police do take this into account appears from the fact that during almost all interviews at least one female police officer was present. No files contained information on whether the victims had been given a choice in this.

One notable exception is again the case of the underage girl who ran away from a psychiatric institution. They knew that the victim is a minor and has been sexually abused and exploited by an older man for the past couple of days. With this kind of information they could have asked assistance of a caregiver or bring a female colleague. Instead they arrived with four male police officers. Two of them spoke with the victim directly at the house. Another police officer, who was guarding the door during their visit, was seated next to the victim in the back of the car on the way to the police station. This police officer spoke, together with a female colleague, with the victim after arriving at the police station. The report shows that this female officer left this conversation early. It appears that the male officer continued this conversation by his own. There are no indications that the police officers have taken extra measures. Not being sensitive to this gender aspect and taking into account the fact that the victim has psychological problems and that they have strong indicators that she has just been exploited for a week, leads to the conclusion that the victim's special needs are not taken into account sufficiently.

A positive example is a case in which two police officers, male and female, went for a ride with the victim in order to point out addresses. The female police officer was seated in the back of the car next to the victim. When they stopped somewhere to have look at one of the addresses the female police officer stayed in the car with the victim.

As described above most victims have been heard multiple times by the police. Most victims are only in contact with a limited number of police officers. After the initial interview the victim is in most cases not confronted with two new faces at once. If a new police officer is involved in the hearing this is almost always in presence of another police officer who was present during a previous hearing. In one case the victim had been in contact with a neighbourhood agent for a while. Even though this neighbourhood agent is not specialized in hearing victims of human trafficking this agent was present during an interview in order to provide a trusted environment for the victim.

Sensitivity of the police to victim's psychological well-being

Since many files do not contain transcripts of the interviews it is difficult to judge the police officers' communication skills and whether they have sufficiently taken into account the victims' psychological state of mind. Sometimes even when a transcript of an interview is present it seems like some parts are missing since some transitions do not seem logic. Still some information can be deprived from the files.

Several reports show that the police officers start an interview with comforting the victim and asking her how she is feeling, both physically and psychologically. They explain that if she does not feel comfortable at any moment or just wants a break she can always say this.

Two victims mention that they have bad experiences with the police in their home country. In one case the police try to comfort the victim by telling that the Netherlands

scores very high in a list of the least corrupt police forces in the world. In another case they do say that they are sorry after she explains how rueful the police have treated her, but they do not seem to show much sympathy.

Several victims do not speak the Dutch language and are assisted by an interpreter. This sometimes results in misapprehensions. The police officers do not seem to be aware of this. They show and speak out their irritation and do not check if the victim's answers might be a result of a misunderstanding due to language differences. For example in one case the police officers blame the victim that her statements are not consistent. So they keep asking the same question again and again. When they confront her with inconsistencies she responds that they did not ask the question in an understandable way.

Not only language is an important factor to be taken into account, also cultural differences. It is inherent to the subject that the police officers have to ask very private questions about intimate details. In general they seem to be aware of the sensitivity of the subject and explain properly why they have to ask this. They also emphasize that the victim does not have to be ashamed. In the case of a Chinese victim they do not show much sensitivity for the victim's culture and the fact that in her culture shame is experienced differently than in the Dutch culture. She indicates that in her culture prostitution work brings embarrassment and one does not talk about it. Still the police officers ask various specific questions in vulgar language about the sexual acts she had to perform.

Sometimes false promises were made. In one case the police promises the victim that if she tells them everything honestly and elaborately that there is not much left to ask for the investigating judge and the defence lawyer. In another case the police even 'promised' the victim that she wouldn't have to tell her story again. Later she was heard two times by the investigating judge.

6. Preliminary investigation by the investigating judge

Often a victim is not only heard by the police. In a later stage in the criminal justice procedure the victim can be called as a witness by the investigating judge. All victims in this research have been called to appear with the investigating judge.

When the victim is called by the investigating judge she is called as a witness and not as a victim. Victims are summoned by a letter to come forward as a witness. These letters do not contain any information with regard to being a victim. It is a general letter which can be sent to all witnesses.

Most victims were heard only once by the investigating judge, five victims were heard twice and two victims were heard three times. In one case other documents in the file referred to the victim's hearing with the investigating judge, but no further information about this hearing was present in the file.

Some files show who was present during the victim's hearing with the investigating judge, but other files do not. If this information was available it shows that during the hearings of foreign victims who do not speak the Dutch language (properly) an interpreter was present who speaks their native language. Even though the victim was assisted by an interpreter the hearing with the Chinese victim shows mutual misunderstandings. From the whole conversation it appears that the communication was problematic.

Other people present during these hearings were often a clerk, the public prosecutor, defence counsel and the victim's lawyer. Eight of the studied victims were assisted by a victim's lawyer during their hearings with the investigating judge. In one case the victim was staying in Bulgaria during the first phase of the criminal justice investigation. Shortly after the victim returned to the Netherlands in order to be questioned as a witness with the investigating judge the first hearing took place. The first two hearings took place

shortly after each other. During these two hearings she was not assisted by a victim's lawyer. During the last hearing she was. One victim was, besides by her lawyer, also assisted by a care giver. Another victim was accompanied by the police on her way to the hearing but not during the hearing.

The files do not show whether the investigating judge is trained in dealing with victims of human trafficking. One case shows that the investigating judge has consulted the victim's therapist before the witness hearing. This was in the case of the underaged girl who was staying in a psychiatric institution. Two other victims made an exculpatory statement with the investigating judge. They withdrew their previous statements. This took place shortly after the accused was released. The file does not show how the police, public prosecutor and/or investigating judge responded to this.

6.1. Unnecessary repetition of questions

In several cases the questions asked during the hearing with the investigating judge have already been answered during police interviews. Furthermore in at least two cases the victim was informed by the police that she did not have to tell her story another time. However, the files studied show that even though victims have been interviewed by the police several times, all of them have to repeat their statement when they were called as a witness by the investigating judge.

Especially notable was the case of the under aged victim who was staying at a psychiatric institution. The request to be heard as a victim by the investigating judge was denied a few times by her therapists. Also the public prosecutor emphasized that all evidence is already present and that the case is quite simple. Even though it was clear that the victim was experiencing psychiatric problems and a hearing could be harming, the defence

counsel insist on a hearing and the investigating judge agreed with this. Eventually it turned out that this hearing resulted in a serious relapse of the victim.

6.2. Preventing discomfort

Some witness interviews with the investigating judge were transcribed but most were not. The files show that not only the investigating judge is given the opportunity to ask questions, but also the public prosecutor and the defence counsel. In one case with three victims and five suspects all victims were heard by the investigating judge in presence of five defence lawyers (one for each suspect). Altogether there may be many people present during these hearings. Since most interviews were not transcribed it is difficult to examine how discomfort for the victim is prevented. In one case the public prosecutor refers to the victim's interview with the investigating judge during the court hearing and mentions that this interview took hours and its content is broadly unreliable. In another case the public prosecutor mentions in its requisition that the victim was completely upset by certain question that were posed by the investigating judge. In these files information about the hearing with the investigating judge was not present.

The report of another victim's hearing shows that the hearing is paused when the investigating judge notes that the victim is yawning and gets tired of the questions. This is halfway the transcript, thus after they paused they continued for a long time. It is unclear whether they asked her if she was able to continue. When she later said that she was tired the hearing was postponed to another date. On this other date, she is late and when her lawyer calls she says that she is sick. Her lawyer summons her to come anyway. During this hearing the investigating judge notes that she is yawning a lot again. The report does not show whether they have asked questions in order to find out if there might be another reason for her to act this way. Especially the report of the second hearing shows that the judge is not very understanding about the fact that the victim is tired and

yawns a lot. She is confronted with violent events (treats, etc.) of which they know from the tapped calls. The question then raises why confront her with this information while it is known from another source this has happened. She indicates that she does not have much money. Still they keep coming back (it seems judgmental) to the question why she is working again. She says that she sometimes gets confused because she repeatedly has to tell the same story and because of this she sometimes says something different than before.

The victim who came back from Bulgaria in order to be heard as a witness with the investigating judge is confronted with inconsistencies in her statements made in Bulgaria. She says that some things mentioned in these statements she has definitely not said. She was not given the chance to read these statements and did not sign them. She also says that the events she is asked about occurred 3 years ago and that she really does not know all details anymore. When she speaks about the forced abortion (by the accused) she gets emotional. The report does not show how the investigating judge has responded to this situation. Directly after the passage about the abortion is a passage in which the defence lawyer asks her questions. The defence counsel confronts her with the fact that the tapped phone calls between her and the suspect sound friendly and that she is even laughing, while they know that she has recorded these phone calls in order to collect evidence.

One victim who was a minor during her victimization was repeatedly asked about her voluntariness during the hearing with the investigating judge. This while for a minor no coercion or force is required to prove the offense of human trafficking, making the questions whether or not she agreed to do the work irrelevant.

In one case the hearing immediately starts with a question from one of the defence lawyers: "did you prepare for this with your lawyer?". To which the Public Prosecutor and

the investigating judge object. During the second interview the victim indicates that she feels attacked by one of the lawyers.

Even though the Chinese victim has made clear that, due to her culture, she suffers from feelings of embarrassment when she talks about the events, specific questions are asked about the sexual acts. This while the question in this case is not whether she has performed sexual acts. This has already been established. It is unnecessary to elaborate on this, especially in the presence of this many people. Besides, the police already asked about these details as well.

7. Court hearings & judicial decisions

When the case is brought before a judge the victim has the possibility to attend court hearings and to give a victim impact statement. Sometimes the victim is again called to be heard as a witness during the court hearing.

If the victim is not called as a witness she is not obliged to attend the court hearings. Not all files show whether the victim was present in court. In those case that inform us about the attendance in six cases the victim was present in court. Two of these victims did not consider themselves as victim anymore during the court hearings. One of them even married the suspect during the criminal justice investigation. In six cases in which the victim was present the accused was also present in five of them. During the court hearings the victim can be assisted by for example a victim's lawyer. The victims who did not consider themselves to be a victim anymore were not supported by a victim's lawyer. Three victims who were present have been supported by a victim's lawyer and one also by her psychologist. There is no information available about the possible assistance of the sixth victim who was present during the court hearing. In total ten of the studied cases a victim's lawyer assisted the victims during the court procedure. In eight cases in which

the victim was either not present during the court hearing or no information was available about this, the victim was represented by another during the court hearing: in six cases by her lawyer and in two cases by Victim Support.

Four victims have been heard as a witness in court. In four other cases no information on this was present in the file. In nine cases the victim was not heard as a witness. In two of these cases a hearing was requested but denied. In one case the victim's lawyer avoided her to be heard as a witness in court because of the emotional burden this would place on her. Two of the victims were supported by their lawyer. In the other cases this information is not present. It is unknown whether the judges who have heard the victims during the court hearing were trained in dealing with victims of human trafficking.

Two of the victims that were heard during the court hearing did not consider themselves to be a victim anymore (one of them is married to the suspect). In an earlier stage they withdrew their accusations. In the case of one of these two victims a police officer explained two weeks prior to the court hearing what she can expect and asks whether she wants to meet the suspects. She indicates that she does not want that. She was picked up by the police officer from the station and entered through the back door so she would not encounter the suspect. The court did not really seem to be sensitive to the fact that she said she was afraid. However, because of the European directive (which is specifically mentioned), the hearing takes place behind closed doors. The suspect and the public are sent out of the room when she is heard as a witness. When the defence asks whether the suspect is allowed to come in again, the victim agrees. The court approves on this. During the hearing it is said several times that her story is not consistent. Repeatedly it is mentioned that she is under oath. They also mention that there could be a lawsuit against her because of lying and false statements.

In two other cases the victim is seated in a separated room while waiting. In one of these cases there were indications that friends of the suspect wanted to attend the court session. If this would have been the case they would not have been allowed in the court but in the end they were not present. The suspect and co-defendant were taken to another room with audio-connection when the victim was heard as a witness.

Little information is available on how the witness hearing in court took place. One hearing took place in public and two behind closed doors. In one case this information is not present. In another case the hearing took place in a separated room with audio connection.

Four of the victims that were heard during the court hearing did not speak the Dutch language (properly). Three of them were assisted by an interpreter in their native language. In the fourth case there is no information about this.

In one case the report shows that the information required during the court hearing is no different from other information that was already present in the file. This leaves the question whether the court hearing was strictly necessary. Especially since this victim was in contact with the police already nine times (including appointments to point out addresses) and once with the investigating judge. The defence lawyers are the ones who have requested to hear the victim in court. They have asked to hear the victim and to add the victim's immigration file to the procedure. In this case the Advocate General opposes the request for hearing of the injured party because the requests are insufficiently substantiated and, moreover, the victim has already been heard by the investigating judge in the presence of the defence counsel. Secondary victimization should be avoided, and so should unnecessary repetition of hearings. The court can fully test the reliability of the statements on the basis of the existing file, so that further questioning is not necessary.

Furthermore, she opposes the addition of immigration file because of lack of interest. The judges agreed with the hearing but did not allow the addition of the immigration report.

7.1. Treatment of the victim in the court room

The victim has the right to be seated in a separated room while awaiting the start of the court hearing. Also inside the court room the victim can indicate if she wished to be seated in a special place. One of the victims who had been heard in court was seated in a separated room until the hearing started. Another victim awaited her hearing in a special victim room as well.

The victim has the right to speak during court hearings. Seven of the studied victims have made use of this right. These victims have provided a written victim impact statement (VIS).

Only one of them has also provided an oral statement during the court hearing. In the other cases the file does not always show whether the VIS was read out during the court hearing. In three cases it is known that the VIS was read during the court procedure. In one case the VIS was not read out in the court hearing in first instance. Whether the VIS was read out in appeal does not appear from the file while the victim has requested if her VIS could be read out. This is also the case in another file. In one of the cases where the victim did not provide a VIS her lawyer did explain during the court hearing that she is not doing well. She does not accept any help and distrusts everyone. The only help she gets is from doctors during their speaking hour for prostitutes. In the cases where the VIS was read out by someone else than the victim this was done once by the president of court and once by the victim's lawyer. In three other cases the president or the victim's lawyer did mention the VIS but it is not clear whether the whole VIS was read out.

Only in two cases the file shows when the VIS was read out/mentioned. In one of these cases the VIS was read immediately after discussing the short content of the file, i.e. before the public prosecutor's requisition. In the other case the VIS was read during the treatment of the claim for compensation. In further cases this information was not available. The files contain no information on whether one of the victims has indicated a desired sentence. The judgments often do not show whether the VIS has been taken as evidence. The VIS is mostly mentioned with regard to the victim's claim for compensation.

7.2. Content of the VIS

The content of the VIS naturally differs per victim. Most of them describe their feeling during the exploitation and the consequences of their victimization. One victim specifically expresses her feelings about the court procedure:

"I have a lot of trouble with the fact that I have to appear at the hearing and will be confronted again with my "2 bosses" of more than five years ago. As a result, I again experience memories of painful experiences. I have many problems with these experiences: nightmares about torture and ill-treatment by psychopathic clients. Further I am psychologically traumatized and afraid of men. I am unable to deal with men in a normal way."

The clerk makes an entry in the official report of what was stated by the persons who speak at the hearing. In a ruling of April 17, 2017, the Supreme Court has determined that it is advisable to include the content of what has been stated, but at the same time indicates that it suffices to note that the victim has expressed herself about the consequences that the offense caused her. The research contains four cases in which the victim has used her right to speak. Since not all files contain an official report of the court hearings it is often unclear how the clerk has registered the VIS. Only in one file the official report of the court hearing

contains a transcript of the VIS. This is the case in which the victim herself provided an oral statement during the court hearing.

7.3. Special conditions

Two of the victims speak out their wish to impose special conditions. In appeal the victim's lawyer sent a letter to the court in which she informed them that the victim is prepared to come forward as a witness during court hearing. In this letter the lawyer refers to directive 2012/29/EU. She indicates that her client is a victim with special protection needs so that she is eligible for special measures and can use measures in the sense of paragraphs 2 and 3 of art. 23. Reference is made to point 57 of the Directive on the risk of secondary and repeated victimization. Furthermore, she refers to point 58 which states that victims who are considered to be vulnerable should receive appropriate measures in the course of criminal proceedings. Despite the victim's lawyer's letter about the treatment of the victim during the hearing, with reference to the Directive, the file does not show whether special measures have been taken.

Another victim requested a contact ban. This request is supported by the public prosecutor and granted by the court.

7.4. Claim for compensation

Victims can join the criminal justice procedure in order to claim compensation from the suspect. Two of the studied victims have not claimed compensation and in four cases this information is unknown. The other eleven victims have joined the procedure and asked for compensation. All victims who asked for compensation requested both compensation for material and immaterial damage.

With effect from 1 January 2011, the criteria for the admissibility of the claim of the injured party have been changed. If the handling of the claim gives rise to a disproportionate burden on the

criminal proceedings, the judge can pronounce the inadmissibility. If the suspect was not acquitted the claim for compensation has been declared admissible in all cases but one. In this one case the claim for material damage was declared not admissible because the exact period the crime took place was unknown. This case was handled after January 1, 2011.

The material claims are mostly based on the loss of income. The documentation which supports these claims differ per case. In one case the claim for material damage is based on the calculation done by the police of the suspect's illegally obtained benefits. Other files include calculations and pay-slips. In many cases reference is made to case law. In one case the claim for material damage is also based on expenses for clothing and telephone costs.

Immaterial claims

In order to support their claims for immaterial damages victims have submitted their Victim Impact Statements, damage support form from Victim Support and reports of therapists. One victim has submitted a mental health psychological report which shows that she has medical complications and suffers from trauma. She is being treated by EMDR-therapy. Another victim is under treatment by the Equator Foundation, an organization specialized in therapy and support for victims of trafficking. The diagnosis of Equator is complex PTSD and personality problem cluster B (impulse and emotion regulation problems). Her therapist also says that the unstable social situation, uncertainty about the residence permit and the threat of being returned to her home country have a very negative effect on the recovery. They say that there is a high risk of suicidal behaviour. In order to determine the amount of immaterial damage most cases refer to case law of similar cases. In one case reference is made to the determination of the amount of damage claims by the Violent Crimes Damage Fund (Schadefonds geweldsmisdrijven).

Assignment of the claim

In almost all cases the claimed amount is not granted fully. Most files do not contain any information on why the claim was not fully granted. In two cases the court based its decision on research results and case law.

In one case the claim for immaterial damage was granted fully. The court has taken into account the nature and the impact when determining the amount of the non-material damage of the proven facts for the victim. The court also has considered that what is awarded in comparable cases to immaterial damages. In another case the Court of First Instance deducts the claimed amount of material damage with costs for petrol, car repair and condoms.

Not all files showed the exact amount of the granted compensation. The granted amount of material damage in the files which do show the exact amount varies between € 15.489,15 and €208.350,-. The highest amount of immaterial damage is € 15.000,- and the lowest € 1.490,73. The height of the compensation depends on various factors, for example the amount of material damage depends largely on the time during which the victim was exploited.

7.5. Reliability assessment

In human trafficking cases the victim's statements are often very important evidence to prove the criminal act. This is why it is common that the victim's reliability is challenged by the defence and discussed elaborately during the court hearings and in the final judgment.

Assessment by defence lawyers

In all cases the defence lawyer questions the victim's reliability. An often used argument is that the victim worked voluntarily. The victim's past (e.g. sexual abuse, previous experiences in prostitution) is brought up to refute the victim's reliability. Based on

Article 12(4) of the Trafficking Directive, it is questionable whether this is allowed. Other arguments are found in victim's psychological state of mind, e.g. a victim's oppositional defiant disorder is presented as proof for the unreliability of a victim's statement. In some cases, especially the cases with foreign victims who were staying in the Netherlands without a legal residence permit, the defence counsel condemns the police's interview tactics. For example in one case the defence counsel argues that the statements of the victim should be excluded because they are unreliable. In support of this, attention is drawn to the guiding manner in which the victim has been interrogated and the careless manner in which the B8 procedure has been presented to the victim. A lot of variation is seen in the way defence lawyers approaches the victim. Even though all defence lawyers question the victim's reliability some are more respectful than others. For example one defence lawyer keeps referring to the victim by her first name. One victim is depicted as a moneygrubber, another as a seasoned sexual service provider.

Assessment by public prosecutor

If the victim is referred to in a disrespectful manner by the defence counsel the files do not always show if and how the judges and/or the public prosecutor respond to this. In one case the public prosecutor said after the defence lawyer's plea that he is glad that the victim did not have to hear what was said. The public prosecutor states in another case that:

“contradictions in statements are rather a sign of reliability after so many interrogations. The memory is not infallible. I see indications of traumatisation in the victim's own declarations, but also in the statements of other witnesses. Living in fear for a long time results in physical and mental traces. Trauma generally has consequences for memory. That they come up with new details that are

supported by other means of proof... They do not exaggerate and differentiate their statements at times.”

With this the public prosecutor seems to be trying to show that the inconsistencies in the victim's statements are explainable and that these inconsistencies even add to the truthfulness of the victim's statements.

Court's considerations

The way the court responds to the defence lawyer's attempt to question the victim's reliability differs per case. In some cases the court does not even address the victim's reliability. For example if the victim's statements are sufficiently supported by additional evidence. In another case the court considers that in the case of human trafficking, the reliability of victims can come under pressure due to feelings of revenge, interest in the B8 procedure or the prospect of other provisions. The court is of the opinion that the police lead the interview and is looking for truth and that confrontation with inconsistencies is part of interviewing techniques. According to the court of appeal the police did not exercise its interrogations in such a way that they influenced the victim. Because of this the Court decides that the victim's statements are not unreliable. Courts acknowledge some inconsistencies in the declarations, but this is not exceptional given the long period in which the victim had to express herself repeatedly about events in a long period. No examples are found in which the court discusses the psychological health impact of the victim when assessing the reliability.

7.6. Provision of procedural documents to the victim

Most files do not show whether the procedural documents are provided to the victim. In three cases these documents have been provided. Some of the studied victims are informed about the court's judgment and others are not (or this information is not present). In one case the victims received an extensive letter through their lawyer with

which they were informed that the judgment of the Court of Appeal is irrevocable and the defendant is convicted. The letter explains what this means. Their request for compensation has been allocated. The letter indicates which part has been awarded and how this is now proceeding. The state will try to collect this from the convicted person. The victims do not have to take care of this by themselves. With regard to the inadmissible part it is indicated that this can be claimed through civil proceedings. For advice on this subject, reference is made to legal assistance.

8. Conclusion

This file study resulted in much information of all 17 victims. In this conclusion the most important findings are mentioned. We again take the four categories of State obligations as concluded in Chapter X: special needs should be taken into account, safety, support and assistance should be provided, protection during criminal proceedings, and access to residency.

The time between the victim's official complaint with the police and the judgement of the Court of First Instance often took very long. In almost half of the cases this took almost four years. It was not always clear from the files if direct aid and assistance was offered and where the victims end up during the procedure and if they received medical and or psychological help. In some cases the police was very accurate in providing the victim with aid and assistance. They made clear that this did not depend on their cooperation. In other cases this was very different.

In two cases the victims report was not followed by the police. In one of these cases the accused was acquitted in the appeal procedure because of lack of support evidence, in several other cases first an elaborate investigation took place before the victim was

contacted. This means that the police did not take immediate action to bring the victim to safety.

The form that was sent to the victim in the beginning of the procedure included much information about multiple rights. By providing the victim the possibility to make choices the public prosecutor directly knows what she wants and is able to act on this. Although this is a good attempt to get to know the special needs of victims in order to be able to address these, there is room for improvement. Even though many of the victims were foreign most of the letters that provided them with information were written in Dutch. Furthermore, the information in this form can be more tailormade.

Police interviews are crucial and in many case decisive for the rest of the criminal procedure. If the police too often offers the reflection period or the option of the B8 procedure, it can be used against the victim by the defence lawyer in court. During the victims' interviews with the police almost always one police officer who received special training for contact with trafficking victims. This does not seem to be the case for (investigating) judges and public prosecutors.

In general the police seem to be aware of the sensitivity of their questions during the hearings and explain properly why they have to ask about intimate details. On the other side cultural differences are not always taken into account.

All victims were heard by the investigating judge despite promises by police not to be subjected to repeated hearings. In the summons they are not addressed as a victim but as a regular witness. Some of these hearings with the investigating judge seemed unnecessary. Often most evidence is already present. Especially when the victim's statement is supported by additional evidence. The hearing with the investigating judge

can be very intimidating for the victim, particularly when the victim was heard by multiple defence lawyers, in cases with multiple suspects.

Most victims were not present in court so not much information is found on how they are treated by the judges. Nevertheless, witness hearing in court can be very tough. In these hearings the suspect is often present. In one case in particular it was not understandable that questioning in court was allowed by the judges because of the repeated hearings by the police and the investigating judge. The victim approach of defence lawyers differs a lot although all of them try to challenge the victim's reliability. The court does not seem to respond to this very often. Only the public prosecutor sometimes connects the victim's psychological health impact to the content of the statements.

Limitations of the study

Not all questions could be answered for all victims because of the differences of composition of the files. For example in some cases the full police hearings were transcribed, in other cases only a summary of these hearings was included. Furthermore some conclusions cannot be drawn from only the case file. It is impossible to know whether the information in these files is complete. So if no information is present in the file on whether a victim has received information about its rights, this does not necessarily mean that the victim was not informed about this. During the case study there has been no contact with the victims themselves. So the conclusion of this research does not necessarily match the experiences of the victims.