

## **(Preventing) Secondary Victimisation of Trafficking Victims through Law Enforcement Interventions**

Conny Rijken

Tilburg University

Leyla Khadraoui

Tilburg University

Marian Tankink\*

Independent consultant

### **Abstract**

*Secondary victimisation during criminal proceedings is a serious risk for victims of trafficking who participate in these proceedings. Psychological consequences of trafficking and pre-existing vulnerabilities make them prone to secondary victimisation. Based on empirical research among trafficking victims, stakeholders and of criminal files, the article provides insights on the psychological consequences of human trafficking and identifies a number of risk factors. These are: lack of identification, lack of safety and trust, not being believed, repetition and intensity of hearings, disrespectful treatment, lack of empathy and lack of knowledge about victim's rights. These factors are discussed and contextualised in the current discourse with the ultimate aim to provide indications on the prevention of secondary victimisation. The article unveils the discrepancy between victims' expectations towards the police to take them out of a trafficking situation, even if they decline assistance and police's perceptions on their ability to intervene only if the victim accepts assistance. This leads to the call for further research in order to answer the question to intervene or not to intervene.*

### **I. Introduction**

According to Campbell and Raja, secondary victimisation is the re-traumatisation of a victim as an indirect result of assault which occurs through the responses of individuals and institutions, such as police, judicial

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institutions and social service providers, to the victim.<sup>1</sup> The types of secondary victimisation include victim blaming, inappropriate behaviour and language by those individuals or institutions.<sup>2</sup> Secondary victimisation is not unknown in cases of human trafficking and occurs due to the behaviour of in particular law enforcement institutions, including the judiciary. In literature secondary victimisation of human trafficking victims consisting of not being believed, threatened with being charged if not provided an adequate story, questions about their sexual history and victim blaming, have been identified.<sup>3</sup> In 2007 it was reported that measures to combat trafficking could have several adverse effects, which was coined collateral damage.<sup>4</sup> These collateral adverse effects can be divided in three categories: anti-trafficking measures used to eradicate prostitution or restrict migration, policies to protect victims which restrict the victims' human rights, and law enforcement interventions having negative effects on victims.<sup>5</sup> This article focuses on the third category of anti-trafficking measures having negative effects, namely the interventions of law enforcement and the judiciary on the victim's well-being causing secondary victimisation.

Victims of human trafficking have an increased risk of secondary victimisation for several reasons: first, because of the psychological consequences of human trafficking. Second, and especially in cases of sexual exploitation, victims have to talk about delicate and often personal experiences and situations that can make them feel shameful. And third, there is a serious risk of revenge or reprisals from the trafficker(s) or the trafficking network, when the victim reports to the police. 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 successfully prosecute without a victim's testimony. This brings the victim in a dual role, namely, on the one hand, the victim as witness and informant for law enforcement and on the other hand, as beneficiary of protection measures in place for trafficking victims.<sup>6</sup> Similarly law enforcement often finds itself in a parallel dual role, namely as investigators searching for evidence of

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<sup>1</sup> R Campbell and S Raja, 'Secondary Victimisation of Rape Victims: Insights from Mental Health Professionals Who Treat Survivors of Violence' (1999) 14 *Violence and Victims* 261-275.

<sup>2</sup> *ibid.*

<sup>3</sup> T Logan, L Evans, E Stevenson and DE Jordan, 'Barriers to Services for Rural and Urban Survivors of Rape' (2005) 20 *Journal of Interpersonal Violence* 591-616; Campbell and Raja (n 1); J Srikanthiah, 'Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law' (2007) 87 *Boston University Law Review* 157-211; CP Carroll, 'The 'Lottery' of Rape Reporting: Secondary Victimization and Swedish Criminal Justice Professionals' (2021) 22(1) *Nordic Journal of Criminology* 22-41.

<sup>4</sup> M Dottridge, *Collateral Damage: The Impact of Anti-trafficking Measures on Human Rights Around the World* (Bangkok: Global Alliance Against Traffic in Women (GAATW) 2007).

<sup>5</sup> *ibid.*

<sup>6</sup> J Goodey, 'Sex Trafficking in Women from Central and East European Countries: Promoting a 'Victim-Centred' and Woman-Centred Approach to Criminal Justice Intervention' (2004) 76 *Feminist Review* 26-45.

the crime committed, and as providers or facilitators of victim protection. In the past decades, there has been an increasing awareness of the precarious position of victims and several anti-trafficking instruments chose a more victim-oriented approach, such as the EU Directive on preventing and combating trafficking in human beings and protecting its victims<sup>7</sup> and the Council of Europe Convention on Action against Trafficking in Human Beings.<sup>8</sup> However, in practice it is often seen that anti-trafficking measures are directed towards investigating the case and gathering enough evidence to convict perpetrators while victim support and assistance are relegated to a subordinate position.<sup>9</sup> This article places the outcomes of empirical research conducted in the Netherlands on female victims of sexual exploitation in the broader theoretical perspective in order to identify ways to prevent the secondary victimisation of trafficking victims during the criminal process. It will discuss the impact of trafficking on the psychological well-being of victims (section 2) and the impact of the interactions and interventions by law enforcement on the psychological well-being of trafficking victims (section 3).

The empirical data presented in this article were collected in 2018 in the Netherlands among female victims of sexual exploitation to measure the impact of trafficking on victims' psychological well-being as well as the impact of law enforcement interventions on trafficking victims.<sup>10</sup> Interviews were conducted with 15 adult female victims of sexual exploitation (from Eastern Europe (N=4), West Africa (N=5), and the Netherlands (N=6)) using a structured questionnaire that was developed based on a literature review. Additionally, 50 stakeholders were interviewed (assistance and support (N=26), policy makers and lawyers (N=10), law enforcement (N=9), criminal justice (N=5)) using a topic list per category of stakeholders. Furthermore, documentation about eleven victims in criminal files of trafficking cases were studied. All interviews were transcribed verbatim and analysed using ATLAS.ti.

<sup>7</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA OJ L 101, 15 April 2011, 1-11.

<sup>8</sup> Council of Europe Convention on Action against Trafficking in Human Beings, CETS No 197; AT Gallagher, 'Two Cheers for the Trafficking Protocol' (2015) 4 *Anti-Trafficking Review*.

<sup>9</sup> J Kaye and T O'Doherty, 'Exploring Human Rights in the Context of Enforcement-Based Anti-trafficking in Persons Responses' in J Winterdyk and J Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave 2019); C Rijken and E de Volder, 'The European Union's Struggle to Realize a Human Rights-Based Approach to Trafficking in Human Beings: A Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law' (2010) 49 *Connecticut Journal of International Law* 49-80.

<sup>10</sup> This empirical research was part of the EU funded PHIT-project on Psychological Health Impact of THB for Sexual Exploitation on Female Victims, HOME/2015/ISFP/AG/THBX/4000008432. The results of this project are published in M González Beilfuss (ed), *Psychological Health Impact of THB for Sexual Exploitation on Female Victims* (Thomson Reuters Aranzadi 2020).

## 2. Trafficking and its Impact on Victims' Psychological Well-being

During the period of exploitation, victims are often repeatedly exposed to physical, sexual, and psychological violence. As a consequence of the combination of pre-existing vulnerabilities and the gross violations of human integrity, victims of trafficking often display an array of physical and mental health problems and psychopathologies.<sup>11</sup> In particular Klerx et al, found that 30-40% of the victims experience depressive symptoms and symptoms of post-traumatic stress.<sup>12</sup> Victims of trafficking often show a wide range of physical and mental health problems and psychopathologies not necessarily related to the trafficking situation and they were often specifically targeted by traffickers based on pre-existing vulnerabilities.<sup>13</sup> Not all victims will experience long-term severe mental health problems and these problems can manifest themselves differently. However, certain problems such as headaches, fatigue, anxiety, and difficulty with concentration and memory are often seen in trafficking victims.<sup>14</sup>

This is confirmed in our empirical data. The mental health problems and symptoms mentioned by interviewees are post-traumatic stress disorder (PTSD) symptoms such as general anxiety, sleeping problems, flashbacks, hypervigilance, and forgetfulness. Depression and depressive symptoms are most often mentioned by those in the assistance sector. The psychological symptoms that were experienced right after trafficking are anxiety, depression, hostility and traumatic stress. The symptoms relating to anxiety and traumatic stress were most often reported by all participants. Loneliness, anger, frustration and suicidal ideation were experienced by the majority of the West African and Dutch victims interviewed. Mental health professionals stated that persistent PTSD symptoms combined with pre-existing vulnerabilities such as early childhood trauma, (mild) intellectual disabilities or psychological issues are in fact the biggest risks for re-victimisation. Therefore, PTSD is considered to be both a psychological consequence and a risk factor for victims of human trafficking.

On average the victims who participated in this study were sexually exploited for a period of 49 months. What emerges from the victim interviews is that the

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<sup>11</sup> C Zimmerman, K Yun, I Shvab, C Watts, L Trappolin, M Treppete, F Bimbi, B Adams, S Jiraporn, I Beci, M Albrecht, J Bindel, and L Regan, *The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study* (London: London School of Hygiene & Tropical Medicine (LSHTM) 2003).

<sup>12</sup> F Klerx-van Mierlo, D Youngs, M Oostinga, L Mergaerts, D VanDale, and P van der Velden, *Bejegening van Getraumatiseerde Slachtoffers van Mensenhandel ten behoeve van Coherente of Consistente Verklaringen: Een Internationaal Verkennende Studie* (International Victimology Institute Tilburg (INTERVICT) 2014).

<sup>13</sup> Zimmerman (n 11); see also A Brunovskis and R Surtees 'Leaving the Past Behind: Why Some Trafficking Victims Decline Assistance' (Fafo Institute (Oslo) and Nexus Institute (Vienna) 2007) 20-23.

<sup>14</sup> Klerx-van Mierlo (n 12).

consequences of human trafficking last long after the trafficking has stopped. These consequences are enhanced by the fact that many victims blame themselves for ending up in exploitation and the reinforcing of their low self-esteem during the exploitation.

*Romanian victim: 'My mother tells me that it is not my fault what happened to me. But I know better; it is my fault. It's my fault because I was stupid. It was not my ex-boyfriend who was stupid, but me.'*

Recovery is more difficult when victims have been isolated from their social network during the exploitation or come from another country and therefore lack a social network. After the trafficking, victims find it difficult to have a purpose in life. They want to lead a normal life but have no idea how this can be achieved. The continuing fear and lack of trust in others affects their ability to sustain relations and to enter into contact with others. They frequently experience panic attacks and can still be subjected to reprisals by traffickers. For non-Dutch victims the uncertainty about residency is an additional source of stress. All victims interviewed mentioned the need to be distracted from their problems, for example caring for pets, children, or playing music.

*Ghanaian victim: 'I'm always having these negative thoughts and blaming myself. If I was working, I wouldn't be thinking about these things because my mind would be occupied with work.'*

One of the Dutch respondents mentions that she sometimes does her homework twice, just to keep herself busy. Participants with children mention explicitly that they experience a lot of comfort from their children. Although caring for children is sometimes considered a stressor, it seems like children provide a lot of distraction. It helps these women to prioritise their children's needs.

The narratives of victims seem to indicate a clear set of pre-existing vulnerabilities that arise during childhood and adolescence. Although the sample is not large enough to define clear-cut risk factors, a number of similarities is seen in the experiences these victims had prior to their victimisation of trafficking. Unstable family dynamics, emotionally unavailable parents, and poverty have been consistently mentioned in interviews with both victims and stakeholders. Sexual abuse and rape prior to adulthood seem to be common experiences among some of the victims and they all had a troubled childhood. The problems they encountered were diverse, eg war and conflict, psychological problems of parents, living in children's homes or with foster families, substance abuse, sexual abuse, poverty. There were some differences between the groups from West Africa, Eastern Europe and the Netherlands. The file study also has shown that a number of victims had to deal with psychological disorders before they were trafficked or had mild intellectual disabilities. Due to these experi-

ences, victims were already psychologically burdened, which increased their vulnerability to become trafficked. Stakeholders reported early childhood trauma, (mild) intellectual disability and psychological suffering prior to the trafficking experience which cannot be fully separated from the psychological consequences of trafficking.<sup>15</sup> Thus, to reduce the risk of re-victimisation it is of utmost importance that the psychological problems of trafficking victims are sufficiently dealt with. Addressing both pre-existing vulnerabilities and the impact of trafficking on the psychological well-being of victims are relevant for the prevention of secondary victimisation.

### 3. Secondary Victimization during Criminal Proceedings

As mentioned above secondary victimisation occurs through the responses of individuals and institutions, such as police and judicial institutions and causes re-traumatisation of a victim. Generally, it seems that law enforcement professionals are aware of the potential negative effects of their interventions and interactions on victim's well-being. However, these effects are not always sufficiently taken into account and mitigated in practice.<sup>16</sup> Victim participation in criminal proceedings is often essential for the prosecution of human trafficking, but can be very demanding for victims. Currently it appears to be a challenge to find an adequate balance between providing protection and support to vulnerable victims and the burden of cooperation that is often placed on them. The aspects causing secondary victimisation, which have been identified in the empirical research are: lack of identification, lack of safety and trust during the criminal proceedings, victims are not believed, victims are subjected to multiple and intensive hearings, victims are treated disrespectfully especially during interviews with defence lawyers and victims lack knowledge about their rights. Below we further elaborate on these aspects.

#### 3.1. Secondary Victimization in the Identification Stage

In our study, interviewed victims mentioned the failure of stakeholders to identify them as victims of trafficking and failure to intervene

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<sup>15</sup> M Hupperetz et al, 'The Correlation Between Trauma and the Accuracy of Statements' in González Beilfuss (n 10) 309.

<sup>16</sup> A Farrell, C Owens and J McDevitt, 'New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases' (2014) 61 *Crime, Law and Social Change* 139-168; D Patterson, 'The Linkage Between Secondary Victimization by Law Enforcement and Rape Case Outcomes' (2011) 26(2) *Journal of Interpersonal Violence* 328-347; U Orth, 'Secondary Victimization of Crime Victims by Criminal Proceedings' (2002) 15 *Social Justice Research* 313-325.

on various instances.<sup>17</sup> Retrospectively, a number of victims wished they had been made aware of the situation of exploitation they were in. They cannot understand why law enforcement and service providers did not intervene and interact more directly at the time of their exploitation. Even if they declined assistance or did not tell about their exploitative situation, eg due to a lack of knowledge about available services and support, they would have expected relevant stakeholders to take action to end the situation they were in. In some cases these professionals were aware of the situation but did not act.

*Hungarian victim: 'The police actually knew that my ex was smart about these things. I did not know what he was doing to me and that it was not right. They should have helped me then. They did not give me enough information and the Hungarian translator was talking to me in a demeaning way.'*

In cases where a more direct approach was taken by the professionals this was positively evaluated by the victims.

*Dutch victim: 'That woman told me that my options were simple. I would either choose to be with my boyfriend and I would be separated from my child or I would choose for myself and I would be in a safe location together with my child and we could be happy together. The choice is yours, she said. I was happy she said it in such a direct way because it actually got through to me this way. She made me realise that these were the only options. That same day my child and I went to a safe shelter.'*

Law enforcement officers told us they are not able and mandated to intervene if victims do not cooperate or do not want any assistance. Hence, there is a discrepancy between the victim's expectations and police's perception on what they can do. Victims tell that they are not used to taking decisions on their own, they are used to a situation in which decisions are made for them, even the smallest decisions like what to eat, what to wear, etc. They have to learn again to think for themselves and to rely on themselves. Confronted with the questions posed by law enforcement, eg whether they want to file a complaint, and where they want to stay, are too complicated for them.<sup>18</sup> Some even said they want someone else to make these decisions for them.

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<sup>17</sup> A Brunovskis and R Surtees, 'Out of Sight? Approaches and Challenges in the Identification of Trafficked Persons' (Fafo Report 2012).

<sup>18</sup> See also C Rijken, 'Trafficking in Persons: A Victim's Perspective' in R Piotrowicz, C Rijken and B Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 239-250.

Victim identification is further complicated by victim biases, offender strategies, negative association with the police and victim blaming.<sup>19</sup> Interviewed victims experienced mistrust from the police and lacked information about police protection. Some also experienced a lack of knowledge of their school teacher or general practitioner. Another problematic aspect is that victims often do not self-identify as a victim, which is often instigated by the fact that they blame themselves for ending up in a situation of trafficking.<sup>20</sup> Many interviewed victims said they felt personally responsible for their sexual exploitation and blamed themselves for what happened.

In the empirical study West African participants were more often exploited in underground prostitution during which they were unable to communicate with the police or other people. Those who did report were able to self-identify as victims but were not identified as such by police or other professionals because they had not been in contact with them. Furthermore, across all three groups of victims there was a lack of awareness with regard to the available services for support. One of the Dutch victims was invited to the police station for a conversation about the suspicion of sexual exploitation. However, they failed to inform her of the provided safety she could benefit from when disclosing that she was being exploited. Consequently, the victim felt too afraid to inform the police about her situation as she felt that she may face severe repercussions.

*Dutch victim: 'One time, I needed to come to the police, because they could tell that something was not right. But they never told me that if I told them what was happening to me that I could go to a safe shelter, or a women's refuge. They never said anything like that, so I was far too scared to admit anything. Because in my head I was thinking, soon I will walk back to them, and then I will have a massive problem. So, I would have really liked it if they had said to me that "they would immediately remove me from the situation".'*

In the interviews with stakeholders it was mentioned that due to the normalisation of prostitution, victims might think their situation is normal because they find it difficult to make a distinction between prostitution and sexual exploitation. In many countries victims also run the risk of being prosecuted

<sup>19</sup> Farrell (n 16); J van Doorn and NN Koster, 'Emotional Victims and the Impact on Credibility: A Systematic Review' (2019) 47 *Aggression and Violent Behavior* 74-89; Brunovskis and Surtees (n 17).

<sup>20</sup> C Zimmerman and N Pocock, 'Human Trafficking and Mental Health: My Wounds are Inside: They Are Not Visible' (2013) 19(2) *Brown Journal of World Affairs* 265-282; A Pascual-Leone, J Kim and M Orrin-Porter 'Working with Victims of Human Trafficking' (2017) 47 *Journal of Contemporary Psychotherapy* 51-59; HJ Clawson and N Dutch, 'Addressing the Needs of Victims of Human Trafficking: Challenges, Barriers and Promising Practices' (US Department of Health and Human Services 2008).



(eg if prostitution is illegal).<sup>21</sup> Farrell et al found in their study that 35% of the victims identified in the cases included in their study were prosecuted and imprisoned, sometimes on the pretext of providing safety to the victims or as ‘an incentive for the victims to provide information about the trafficking situation’.<sup>22</sup> Language barriers, use of interpreters and cultural factors are other barriers to the identification reported by the stakeholders. However, the willingness to report is also very low among Dutch victims. Law enforcement professionals mentioned that the way prostitution controls are currently conducted is highly ineffective because they take place in a routine manner and are executed in the presence of others, including potential traffickers. Furthermore, there is a lack of coordinated actions with other stakeholders.

How the victim entered into contact with the police differs a lot, but for each encounter it is important for the police to know how to approach the victim. When a person self-identifies as a victim, needs are different from another who is discovered during a raid and in denial of victimhood. In the latter case the police needs to make an effort to ‘open the eyes’ of the victim. Yet, a dilemma shared by the police is how much information they are allowed to provide to a victim about the trafficker, who might happen to be her boyfriend.

*Romanian victim: ‘I didn’t trust the police when they were saying that my boyfriend was using me. They made me realise that my boyfriend was always only interested in the money and never asked me if I was okay. Then I thought: the police are right. Maybe I was blind because I was in love with him.’*

### 3.2. Lack of Safety and Trust

As mentioned by the stakeholders, just after escaping exploitation, victims continue to experience fear of the traffickers. Victims rarely step forward with their trafficking situation due to fear of reprisals, mistrust in the police, lack of confidence in the ability of the police to protect them and the lack of advantages of participating in criminal proceedings.<sup>23</sup> Law enforcement professionals acknowledge that a criminal investigation is not necessarily in the best interest of the victim, as it may have negative consequences or may increase the risk of retaliation from the trafficker, as the trafficker will know he is under investigation.

*‘Imagine that you are a human trafficker and have five women working for you. Suddenly, one of them does not show up the next day and you also find out that*

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<sup>21</sup> Farrell et al (n 16); Brunovskis and Surtees (n 17).

<sup>22</sup> Farrell et al (n 16).

<sup>23</sup> Farrell et al (n 16).

*charges have been filed against you. There is no point in allowing victims to file charges anonymously in that case because he will know who it was. Instead, we should be focusing on guaranteeing their safety.* – Public prosecutor

Generally stakeholders mentioned that criminal procedures have a severe psychological impact on victims of human trafficking as they often relive their trauma by being continuously confronted with information related to their experiences.<sup>24</sup> During the procedures victims feel a constant insecurity and lack of transparency and knowledge as to what the next steps will entail. This is especially significant for those victims who have additional fear of being returned to their country of origin due to their residency being linked to the criminal procedure. During this period, it is difficult to stabilise and build up a new life post-victimisation.<sup>25</sup> Victims also reported feeling unsafe during the proceedings due to fear of the perpetrator. Various law enforcement stakeholders and assistance providers have mentioned that victims should receive more time to reflect upon whether they want to participate in the informative conversation and provide the police with information upon which an investigation can be started. Both law enforcement stakeholders and mental health professionals mention that victims are not sufficiently mentally stable in the period after their escape and should be given time to gain stability. Assistance stakeholders have mentioned that, in their opinion, law enforcement professionals too often pressure victims to report.

*‘Every single conversation between victims and authorities is a new brick being laid in the building of trust. This is something that needs to be done very delicately. Therefore a screening should be done to assess whether a victim is capable of providing a statement. Additionally, there is a need for a risk assessment.’* – National Coordination Centre against Human Trafficking.

### 3.3. Not Being Believed

When victims decide to come forward with their narrative, they often experience bias, victim blaming (eg for abusing the system, ending up in exploitation, or being irregular in the country) and not being taken seriously by (law enforcement) authorities.<sup>26</sup>

<sup>24</sup> D Bogner, J Herlihy and S Turne, ‘Impact of Sexual Violence on Disclosure During Home Office Interviews’ (2007) 191 *British Journal of Psychiatry* 75-81.

<sup>25</sup> M Tankink, I Verhaak and I Bosch, ‘Door Angst Gedreven: Psychosociale Gevolgen van Seksuele Uitbuiting bij Minderjarige Slachtoffers en Barrières bij het Doen van Aangifte’ (2018) 8 *Trema* 12.

<sup>26</sup> Farrell et al (n 16); E Sleath and R Bull, ‘Police Perceptions of Rape Victims and the Impact on Case Decision Making: A Systematic Review’ (2017) 34 *Aggression and Violent Behavior* 102-112; K Parrat and A Pina, ‘From “Real Rape” to Real Justice: A Systematic Review of Police Officers’ Rape Myth Belief’ (2017) 34 *Aggression and Violent Behavior* Volume 68-83.

### 3.3.1. Victim Bias

Victim bias appears to be another factor contributing to secondary victimisation in both the phase of identification and during participation in criminal proceedings.<sup>27</sup> As a consequence of victim bias, victims are less likely to be identified and understood with sufficient empathy if they do not meet the stereotypical image of the innocent victim.<sup>28</sup> Police and law enforcement perspectives on victims of human trafficking often include a stereotypical image of victims being helpless, innocent and naïve.<sup>29</sup> If there is a mismatch between their image of a victim's behaviour and the way the victim portrays herself, this may reduce the credibility of the victim's story.<sup>30</sup> Not only law enforcement but also victims 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.<sup>31</sup>

### 3.3.2. Psychological Well-being and Ability to Make a Statement

Inconsistent testimonies are often interpreted as signs of untruthfulness. In the stakeholder interviews two categories of explanations for the inconsistent and (partly) untruthful initial testimonies that are provided by victims were given. The first category concerns victims who knowingly tell a different version of the truth. These victims often behave according to the instructions they received from their traffickers and tell law enforcement that they are working voluntarily. However, other reasons include their fear of the trafficker or social consequences (eg exclusion or threat of relatives), embarrassment about their story or certain cultural factors such as voodoo. The second category includes victims who are unable to provide a consistent testimony that fully corresponds with the actual facts that took place. Generally, human trafficking is a crime that takes place over a longer period of time, which makes it more difficult to remember the sequence of events that occurred in that period

<sup>27</sup> Van Doorn and Koster (n 19); K Lens, J van Doorn, A Pemberton and S Bogaerts, 'You Shouldn't Feel That Way! Extending the Emotional Victim Effect Through the Mediating Role of Expectancy Violation' (2014) 20 *Psychology, Crime & Law* 326-338; Srikantiah (n 3).

<sup>28</sup> Sleath and Bull (n 26); Brunovskis and Surtees (n 17) 28.

<sup>29</sup> BCM Oude Breuil, D Siegel, P van Reenen, A Beijer and YB Roos, 'Human Trafficking Revisited: Legal, Enforcement and Ethnographic Narratives on Sex Trafficking to Western Europe' (2011) 14 *Trends in Organized Crime* 30-46; P Campana and F Varese, 'Exploitation in Human Trafficking and Smuggling' (2016) 22 *Eur J Crim Policy Res* 89-105.

<sup>30</sup> Lens et al (n 27).

<sup>31</sup> A Brunovskis and R Surtees, 'Identifying Trafficked Migrants and Refugees Along the Balkan Route: Exploring the Boundaries of Exploitation, Vulnerability and Risk' (2019) 72 *Crime Law Soc Change* 73-86.

of time.<sup>32</sup> Contradicting opinions have been found within the group of law enforcement stakeholders with regard to the influence of trauma on the accuracy of a statement. Some mentioned that traumatic stress severely influences the ability to report, whereas others mentioned that it depends more on the questioning techniques used by law enforcement officers.

Scholars are also divided about the impact of trauma on memory and ability to make an accurate statement. The decision to prosecute or not is very much based on victim's perceived credibility and victim's credibility is linked to stereotypes, perceptions and expectations.<sup>33</sup> Victims of trafficking, in particular victims of trafficking for sexual exploitation, display a higher number of mental health problems than victims of most other crimes.<sup>34</sup> These mental health issues such as depressive symptoms and symptoms of post-traumatic stress such as impaired memory and concentration, 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 victims' testimonies and may make it objectively more difficult to establish facts and derive a coherent testimony from their stories.<sup>35</sup> On the other hand, these mental health problems may increase victims' vulnerability and sensitivity in general, even in non-stressing situations. This puts trafficking victims in a highly vulnerable position during criminal justice procedures and makes them prone to secondary victimisation. The presence of a lawyer then helps to prevent secondary victimisation.<sup>36</sup>

In relation to testimonial trustworthiness three elements are relevant: accuracy, completeness and consistency.<sup>37</sup> *Accuracy* means that what is being told is in line with what happened. This aspect is often confused with correctness but incorrect memories of some isolated parts of the event is not or at least not necessarily an indicator for inaccuracy.<sup>38</sup> The attitude of a person influences

<sup>32</sup> Hupperetz et al (n 15) 311-313.

<sup>33</sup> L Hackett, A Day and P Mohr, 'Expectancy Violation and Perceptions of Rape Victim Credibility' (2008) 13 *Legal and Criminological Psychology* 323-334; Farrell et al (n 16); Sleath and Bull (n 26); Parrat and Pina (n 26).

<sup>34</sup> Klerx-van Mierlo (n 12).

<sup>35</sup> J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers' (2001) 13(3) *International Journal Refugee Law* 293-309; AE van Giezen, E Arensman, P Spinhoven and G Wolters, 'Consistency of Memory for Emotional Arousing Events: A Review of Prospective and Experimental Studies' (2005) 25 *Clinical Psychology Review* 935-953.

<sup>36</sup> ML Schuster and A Proppen, *Victim Advocacy in the Courtroom: Persuasive Practices in Domestic Violence and Child Protection Cases* (Boston: Northeastern University Press 2011); Campbell and Raja (n 1); Hupperetz et al (n 15).

<sup>37</sup> MJ Dubelaar, *Betrouwbaar Getuigenbewijs: Waardering en Totstandkoming van Strafrechtelijke Getuigenverklaringen in Perspectief* (Kluwer 2014).

<sup>38</sup> Hupperetz et al (n 15); K Hohl and M Conway, 'Memory as Evidence: How Normal Features of Victim Memory Lead to the Attrition of Rape Complaints' (2017) 17(3) *Criminology & Criminal Justice* 248-265; RP Fisher, N Brewer and G Mitchell, 'The Relation Between Consistency and Accuracy of Eyewitness Testimony: Legal Versus Cognitive Explanations' in R Bull, T Valentine

one's perception of accuracy. If emotions shown are in line with what is being told or what is expected, one is more inclined to perceive the statement accurate.<sup>39</sup> On *completeness* of memories Hohl and Conway state that the memory in a common situation only reproduces some details of an event and not the whole event nor all details.<sup>40</sup> Therefore, it is often difficult to reproduce a complete story of an event. *Consistency* relates to the coherency of the different parts of a story. According to Hupperetz and colleagues, inconsistencies can be omissions, additions, and contradictions. If victims make additions at a later stage they are often not believed and considered untrustworthy but in literature there is no justification for this reasoning.<sup>41</sup> Contradictions in a statement are problematic per se as both are mutually exclusive. Consistency is often seen as proof of reliability but the correlation between consistency and trustworthiness is weak, according to Dubelaar. Again, inconsistencies are part of a normal functioning memory. According to Hohl and Conway, these misconceptions have serious consequences in criminal cases on rape and sexual assault they have researched, because of the dependency of the victim's complaint.<sup>42</sup> This is equally true for trafficking cases in which the testimony of the victim is often crucial for the prosecution. Furthermore, there might be good explanations for inconsistent statements such as lapse of time, influences on the memory, for example through medical therapy or psychological dysfunction and high level of stress.

The impact of trauma on memory is also relevant when making a judgement on a victim's ability to give a statement. In a traumatic or shocking event a person remembers the central aspect of that event but not the more peripheral details. This phenomenon is called the weapon focus effect.<sup>43</sup> Thus when focusing on details during interviews, the victim will often not be able to provide such details.

Because many victims of trafficking are diagnosed with PTSD or Complex PTSD<sup>44</sup> the question is about the impact of PTSD on the memory. It is generally accepted that stress has a positive impact on the memory, however if stress is

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and T Williamson (eds), *Handbook of Psychology of Investigative Interviewing: Current Developments and Future Directions* (Wiley Blackwell 2009) 121-136.

<sup>39</sup> Hackett et al (n 33); Lens et al (n 27).

<sup>40</sup> Hohl and Conway (n 38).

<sup>41</sup> Hupperetz et al (n 15); Dubelaar (n 37).

<sup>42</sup> Hohl and Conway (n 38); Hackett et al (n 33); MK Takarangi, D Strange and DS Lindsay, 'Self-report May Underestimate Trauma Intrusions' (2014) 27 *Consciousness and Cognition* 297-305; and on the contrary T Meyer, H Otgaar and T Smeets, 'Flashbacks, Intrusions, Mind-wandering – Instances of an Involuntary Memory Spectrum: A Commentary on Takarangi, Strange, and Lindsay (2014)' (2015) 33 *Consciousness and Cognition* 24-29; Van Giezen et al (n 35).

<sup>43</sup> See also Giezen et al (n 35).

<sup>44</sup> Complex PTSD involves the core symptoms of PTSD plus additional groups of symptoms in the affective, interpersonal and self-concept. See M Ramos, 'Psychopathological Evaluation of Female Victims of Human Traffic for Sexual Exploitation' in González Beilfuss (n 10) 177-180.

long term and extreme, it will hurt the memory.<sup>45</sup> In general, stress levels are high after the traumatic event, for instance when a person has just left a situation of exploitation. It is generally accepted that PTSD symptoms negatively impact the reliability of the memory and can lead to inconsistent statements.<sup>46</sup> Furthermore, PTSD increases the risk for source confusion, problems with short term memory and concentration. However, according to Hupperetz et al, people with PTSD are able to testify about traumatic or shocking events, although it is debated whether amnesia exists with people with PTSD.<sup>47</sup> Spiegel et al indicate a link between dissociative disorders and traumatic history.<sup>48</sup> In her research among trafficking victims, Zimmerman found that the interviews that took place within seven days after arrival in the service centre (often after coming out of the situation of exploitation) victims had concentration difficulties, forgot, had chaotic memories and had difficulties reproducing details about the situation of exploitation.<sup>49</sup> In the interviews with law enforcement they expressed that increased knowledge on the difficulties in sustaining attention and memory problems of traumatised victims could facilitate their understanding of victims.

### 3.4. Repetition and Intensity of Hearings

Stakeholders also reported the sensitivity of the questions as a difficulty for victims to report, especially if they are subjected to repeated hearings. In the file study victims were interviewed by the police four times on average, one victim even had to tell her story nine times to the police. In addition, they are often questioned by the prosecutor, the investigating judge (again multiple times in some cases), defence lawyers as well as judges. The way they are questioned, eg repeated questioning about small details, often makes them feel blamed, criminalised, confronted with intimidating questions and question-

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<sup>45</sup> C Brewin, 'Autobiographical Memory for Trauma: Update on Four Controversies' (2007) 15(3) *Memory* 227-248; Hupperetz et al (n 15).

<sup>46</sup> Van Giezen et al (n 35); I Sotgiu and ML Rusconi, 'Why Autobiographical Memories for Traumatic and Emotional Events Might Differ: Theoretical Arguments and Empirical Evidence' (2014) 148(5) *The Journal of Psychology: Interdisciplinary and Applied* 523-547. SA Moore and LA Zoellne, 'Overgeneral Autobiographical Memory and Traumatic Events: An Evaluative Review' (2007) 133(3) *Psychol Bul* 419-437; M Jelicic and H Merckelbach, 'Traumatic Stress, Brain Changes, and Memory Deficits: A Critical Note' (2004) 192(8) *The Journal of Nervous and Mental Disease* 548-553.

<sup>47</sup> Hupperetz et al (n 15).

<sup>48</sup> D Spiegel, J Loewenstein, R Lewis-Fernández, V Sar, D Simeon, E Vermetten, E Cardeña and P Dell, 'Dissociative Disorders in DSM-5' (2001) 28(12) *Depression and Anxiety* 119; Brewin (n 45).

<sup>49</sup> C Zimmerman, M Hossain, K Yun, B Roche, I Morison and C Watts, *Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe* (2006); Giezen et al (n 35).

ing and they are traumatised again.<sup>50</sup> The file study, victim interviews and stakeholder interviews confirm what has been identified in literature, namely, that participating in criminal proceedings has a severe psychological impact on victims which complicate recovery and therapeutic progress.<sup>51</sup> Victim hearings with the police are done by a specialised trained police officer; this, however, is not the case for investigating judges and judges in court. The same questions are asked time and time again by the police and the investigating judges and the defence lawyers. It appears from the file study that even though an additional hearing might be detrimental to the psychological well-being of the victim, the investigating judge generally agrees to the hearing requested by the defence lawyer. During court procedures, judges seem to be a bit more reluctant to agree. If a case has multiple suspects, the victim is confronted by multiple defence lawyers at the hearing with the investigating judge, which they experience intimidating and traumatising if they try to blame the victim for the exploitation. What follows from the file study is that the hearings with the investigating judges and defence lawyers are characterised by suspicion and victim blaming, contributing to secondary victimisation and violating provisions of the EU trafficking directive, more specific Article 12(4).<sup>52</sup> Stakeholders stated that defence lawyers appear to abuse the victims' vulnerabilities such as mental instability and (mild) intellectual disabilities to make them appear untrustworthy and undermine the credibility of their testimony in the courtroom, which can lead to secondary victimisation and cause psychological damage in general.

During hearings the interviewer determines what aspects and topics are important and what aspects will be focused on.<sup>53</sup> Other important aspects might be disregarded. Law enforcement often focus on details which increases the risk of errors in the memory. This is also the case if pressure is put on the person. Hearings are stressful for victims for several reasons, eg they are afraid of reprisals, afraid of not being believed or are afraid they are seen as a perpe-

<sup>50</sup> Also JL Herman, 'The Mental Health of Crime Victims: Impact of Legal Intervention' (2003) 16(2) *Journal of Traumatic Stress* 159-166.

<sup>51</sup> Zimmerman et al (n 49); Herman (n 50); Hohl and Conway (n 38).

<sup>52</sup> This article states:

(4) Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

(a) unnecessary repetition of interviews during investigation, prosecution or trial;  
(b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;  
(c) the giving of evidence in open court; and  
(d) unnecessary questioning concerning the victim's private life.

<sup>53</sup> Dubelaar (n 37).

trator. If they don't know the details it affects the trustworthiness of the victim.<sup>54</sup> Hohl and Conway describe that law enforcement should be more aware of the lack of details in a normal functioning memory and the risk of inconsistencies when focusing on details. Furthermore, focusing on details and repetition of questions makes a victim feel not believed.

A public prosecutor mentions that the implementation of specialised human trafficking courts has been beneficial. This improvement is partly due to increased knowledge among the specialised public prosecutors and judges regarding inconsistent testimonies and the role of pressure and trauma. However, problems arise when these cases are eventually taken to the Court of Appeal, where this specialisation is often lacking.

Stakeholders argue that it is unrealistic to expect victims to deliver a complete and detailed chronological testimony about traumatic and embarrassing events to a stranger. This was indeed confirmed in the victim interviews. The filing of charges can be quite difficult for the victim, and is partially dependent on the questions asked, the way in which they are posed and the knowledge and expertise of the police officer conducting the questioning. Various stakeholders seem to have the idea that victims are often able, yet unwilling to provide answers to a question. Interviews with stakeholders revealed that due to low willingness to fully disclose about the exploitation to the police, law enforcement officers are often inclined to ask suggestive questions that may steer a victim into a certain direction. Furthermore, they may also be inclined to ask too specific questions.<sup>55</sup> Due to the fact that many law enforcement stakeholders have the investigation in mind and try to anticipate further stages in the proceedings, they try to eliminate all inconsistencies in the testimony. As they do not want the defence lawyer to encounter and abuse elements in the testimony that can be twisted, this sometimes leads to thorough and critical questioning.

*'The questions that are asked often contain specific details and have to be told multiple times. When something happened three years ago, victims cannot precisely retell that story. However, this does seem to be expected of them.'* – Social worker

These detailed and repeated questions are often interpreted by victims interviewed as a sign that they are not believed by the police and they feel as though they have to prove and defend their story.

Since in practice criminal investigations largely depend on a victim's testimony, victims become centralised in the criminal procedure and are subjected to repeated and detailed questions. Interviewed victims found it difficult to provide evidence which they did not have.

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<sup>54</sup> Hohl and Conway (n 38).

<sup>55</sup> Also Hohl and Conway (n 38).



*Nigerian victim: 'I did not know anything. I could not tell them from which place I fled because I did not know anything in the Netherlands. I also could not tell them how I exactly came to the Netherlands. I did not know what was going to happen to me and additionally I was very stressed so I did not pay attention to all the details during this period.'*

Victims often feel a pressure to file a report due to fear of deportation or imprisonment.<sup>56</sup> As Farrell mentions, this fear is justified by practices of imprisonment of trafficking victims.<sup>57</sup>

In several studies with trafficking victims, reports have been made on the fact that victims have to repeat their story, are being confronted with intimidating questions and questioning, are discredited by defence lawyers and anonymity is not guaranteed.<sup>58</sup> In an earlier study on trafficking victims in the Netherlands it was found that victims experience a psychological relapse after each time they have been subjected to a hearing.<sup>59</sup> Repeated hearings increase the chance of differences between the testimonies, eg because questions are asked differently, the focus is different and the memory has changed.

### 3.5. Disrespectful Treatment and Lack of Empathy

Stakeholders from various professional backgrounds have highlighted the importance of a personal approach in the interaction with victims, although law enforcement respondents differ on the need to show empathy. On the one hand, law enforcement stakeholders mention that they should empathise more with the victim, should have more understanding of the psychological consequences of trafficking as well as the psychological consequences of interacting with law enforcement. On the other hand, law enforcement stakeholders mention that law enforcement professionals should remain neutral and objective and should avoid becoming too emotionally attached to the victim.

*'I have seen police staff who empathised so much with the victim and placed themselves in her shoes completely. That is also not good.'* – Public prosecutor

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<sup>56</sup> C Helfferich, B Kavemann and H Rabe, 'Determinants of the Willingness to Make a Statement of Victims of Human Trafficking for the Purpose of Sexual Exploitation in the Triangle Offender-Police-Victim' (2011) 14 Trends in Organized Crime 125-147.

<sup>57</sup> Farrell et al (n 16).

<sup>58</sup> Klerx-van Mierlo (n 12); Goodey (n 6).

<sup>59</sup> Rijken (n 18).

The latter group states that the police should always keep alternative scenarios in mind besides the narrative provided by the victim.

Helfferich et al report that victims often feel that police officers are treating them as suspects rather than victims.<sup>60</sup> 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 safety and certain appropriate (legal) services such as protection from offenders. In the stakeholders interviews some law enforcement officers seemed to be well aware of their position.

*‘As a police officer you really have to prove yourself once you have made steps to gain their trust. That means you should sometimes call the victim, visit them in the shelter, show up at hearings, and let them know that they can contact you if they have any questions. We realise very well that it is difficult to file charges and participate in the criminal proceedings. They should not have to carry this burden alone.’*

Some law enforcement officers interviewed had problems understanding motives and choices 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 them wrong. Victims often deny being a victim of human trafficking or decline assistance or possibilities to escape.<sup>61</sup> Law enforcement staff expects them to accept assistance when offered and to leave the trafficker when given the opportunity.<sup>62</sup> However, these relationships are more complex for several reasons. Aside from this being difficult for law enforcement personnel to evaluate from their own perspective, these behaviours are also often used as a strategy by the defence lawyers to prove voluntariness on behalf of the victim and to deny a trafficking situation. It is recognised by the police that these inconsistencies can easily be used by the defence attorney to completely bring a victim down in court.

*‘What makes these kinds of cases difficult is that the suspect constructs a completely different image of himself. With that, they also label the victim as a liar and a fraud. That alone is very difficult for the victim to process. In addition to that, very hurtful questions are asked by the suspect’s lawyer. Do you like anal sex? How often do you have sex? Did you have sex yesterday? Really, more shameful questions are not possible, so this also contributes to the idea of the victim that she is not believed.’ – Public prosecutor*

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<sup>60</sup> Helfferich et al (n 56); see also Farrell et al (n 16).

<sup>61</sup> Brunovskis and Surtees (n 31).

<sup>62</sup> Srikantiah (n 3); Sleath and Bull (n 26).

One of the Dutch victims mentioned that she had been told her whole life that people would never believe her if she ever told them about the things that happened to her. When she finally arrived at the police station, she felt like the officers asked questions in a condescending way, which confirmed her internalised beliefs of not being believed.

*Dutch victim: 'They really asked me 'how did YOU end up in this situation? Why were you there? What were you doing? It really felt like they were blaming me for what happened.'*

Law enforcement personnel seems to be aware of the burden that is placed on victims when they have to cooperate with criminal proceedings. Law enforcement indicated they sometimes consider whether or not to convince a victim to file a report if she is psychologically unstable. They seem to be aware that traumatised victims often experience several problems which may lead to inconsistencies in their testimonies. They fear that the process of reporting and the intensity and duration of lawsuits will require too much energy and realise that only a very small percentage will result in a conviction and eventually punishments are low.

*'If it does lead to a conviction, the sentence is so low that the victim says, "I had to relive this hell through the procedure for two years, and the perpetrator receives a 1 year sentence. If I could do it again, I wouldn't file charges."' – Policy officer Ministry of Justice*

### 3.6. Victim's Lack Knowledge about their Rights

Victims often lack information about their rights which can lead to fear and denial of victimhood.<sup>63</sup> This is one of the reasons for victims not to reach out to law enforcement. Prostitution or anti-trafficking raids, that are often executed by (armed) law enforcement personnel, may lead to victims experiencing intense fear fostered by the fact that victims are often not aware of their legal rights.<sup>64</sup> A lack of knowledge about the legal system and victim rights are further obstacles to decide whether the victim wants to file a report or not. Victims often report experiencing a lack of information about procedures, possibilities and assistance.<sup>65</sup>

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<sup>63</sup> M Ditmore and J Thukral, 'Accountability and the Use of Raids to Fight Trafficking' (2012) 1 Anti-Trafficking Review 134-148.

<sup>64</sup> *ibid.*

<sup>65</sup> Rijken (n 18); Brunovskis and Surtees (n 31).

Foreign victims interviewed were or had been in the specific procedure for foreign trafficking victims and were provided assistance. It seems that different procedures (eg asylum and specific procedures for trafficking victims) are confusing for most of the West African participants and cause a lot of stress. A Nigerian victim was informed about her case being discontinued via a letter, which was very unsettling for her because she did not understand what the next steps would be. The need for psychological support was specifically articulated by Dutch and Eastern European victims but not by West African victims. West African victims reported the police being unfamiliar with their culture (eg voodoo rituals), being unable to understand the fear this raised for the victim.<sup>66</sup> Some of the Dutch victims interviewed mentioned a lack of specialised institutions and support services for national female victims of trafficking. Additionally, a lack of specific facilities for victims with multiple problems have been reported by stakeholders.

Police officers seem to make an effort to make victims feel at ease, however cultural sensitivity is sometimes lacking. In some cases the police did not give a realistic picture of what was going to happen in the criminal procedure, which can jeopardise trust in the police. The participation in the criminal proceedings causes a lot of stress for victims, because procedures are long, they cannot proceed with their lives and because they are not decently informed about the proceedings:

*Romanian victim: 'These criminal investigations and proceedings are moving too slowly. I understand that the judge is busy, but this is taking a lot of time. I hardly ever get answers to my questions. What is going to happen to the guy? What is going on? Why is it taking so much time? What is going to happen next? I have a lot of questions and not even my lawyer can answer me.'*

A multitude of complex information is often given verbally during first contact with a victim.<sup>67</sup> 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, traumatic experiences or by possible (undiagnosed) psychopathologies.<sup>68</sup> 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

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<sup>66</sup> LC Garro, 'Cultural Knowledge as Resource in Illness Narratives' in C Mattingly and LC Garro (eds), *Narrative and the Cultural Construction of Illness and Healing* (University of California Press 2000) 70-87.

<sup>67</sup> Brunovskis and Surtees (n 31); Rijken (n 18).

<sup>68</sup> Brunovskis and Surtees (n 31).

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.<sup>69</sup>

#### 4. Conclusion and Way Forward

To conclude, literature supports the main findings of the empirical research on the elements that increases risks of secondary victimisation. However, little has been written about multiple hearings, which has been one of the main stressors reported by respondents in the empirical study. Furthermore, scholars are divided about the impact of trauma on memory. The complexity of factors that influences the assessment of the reliability of a statement or testimony has become prominent in literature and actually shows the difficulty of the work of law enforcement and judges. The tension between a victim-centred approach to trafficking and the interest of law enforcement to convict perpetrators is indeed problematic. This becomes more problematic as law enforcement is situated 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 is often not the case.<sup>70</sup> Neither literature nor the empirical research give clear indications for the best moment to interview a victims. Right after the trafficking occurred seem to be the best moment because then the memory is fresh. But, based on the negative impact of PTSD, the high stress level and trauma on the memory it should not be done until the victim has recovered from PTSD. Additionally, Zimmerman found that within a week after a person arrived at the health centre (often seven days after coming out of the trafficking situation) memories are chaotic and hectic.<sup>71</sup> Nevertheless, insights from both literature and the empirical study on this complexity, the impact of trauma, the false conclusions in relation to inconsistency and reliability could be taken into account to better understand the victim and to be more aware of biases. This could be an important first step to reduce the risk of secondary victimisation as raising awareness for victim biases reduces risk of secondary victimisation.<sup>72</sup>

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<sup>69</sup> Rijken (n 18); N Schwarz, 'Feelings as Information: Implications for Affective Influences on Information Processing' in LL Martin and GL Clore (eds), *Theories of Mood and Cognition* (Lawrence Erlbaum Associates 2001) 159-176.

<sup>70</sup> J Shapland, J Willmore and P Duff, *Victims in the Criminal Justice System* (Aldershot 1985); J Wemmers, *Victims in the Criminal Justice System* (Kugler 1996).

<sup>71</sup> Zimmerman et al (n 49).

<sup>72</sup> Van Doorn and Koster (n 19).

#### 4.1. Lack of Trust in Criminal Proceedings

Victims often display a lack of trust in the system as they believe that the police do not possess sufficient resources to counteract human trafficking practices and ensure their safety.<sup>73</sup>

The same experience is felt by law enforcement officials, who perceive the current measures to be insufficient to effectively combat human trafficking practices and that they are not able to guarantee safety. The protection measures provided by law enforcement may not be sufficient to adequately ensure the safety of a victim and her loved ones. Therefore, it is not always in the interests of the victim to cooperate with authorities, also given the lengthy proceedings and stress during the proceedings.<sup>74</sup> Stakeholders indeed acknowledge that participating in the criminal proceeding is not always in the best interest of the victim, an assessment should be made in each trafficking case in which the best interest of the victim prevails. This, however, should not impact a victim's access to assistance and residency in states in which victim assistance and residency for foreign victims of trafficking is linked to the victim's cooperation in a criminal procedure. Thus, if the best interest of the victim requires the victim not to cooperate (eg because the trafficking network is too violent, or because it is psychologically too demanding) this should not have negative consequences for access to assistance and residency. Only then we can make progress in a victim-centred approach to human trafficking.

#### 4.2. To Intervene or Not to Intervene

What has not been reflected on in literature but what came out of the empirical study is the call by some of the victims for interventions from police in situations of trafficking. One of the novel findings from the empirical research is the contradictory expectations between law enforcement and victims regarding direct interventions. While law enforcement says they cannot intervene if the victim doesn't want, victims expect law enforcement (as well as other stakeholders) to intervene if they are in a situation of exploitation even if they decline assistance or deny victimhood. Furthermore, law enforcement wants victims to make their own decisions after trafficking, while victims express difficulties to make decisions because the trafficker decided for them. They need more time to get used to taking decisions themselves. However, the findings in the empirical study take this discussion a step further. It points at situations where it is known to the authorities that there is a situation of human trafficking or they have strong indications of trafficking, but still no action is

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<sup>73</sup> Helfferich et al (n 56).

<sup>74</sup> Brunovskis and Surtees (n 31).

taken. Retrospectively, victims had expected the police to inform them about the situation and to take them out of the situation even if they denied victimhood and declined assistance. Because the number of victims interviewed is limited and forced interventions are a delicate matter, we should be careful in drawing far reaching conclusions and recommendations but, it is worth to do more research on (forced) interventions and decision-making by stakeholders to get victims out of a trafficking situation even if victims decline assistance or deny victimhood.