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# **Trafficking in women: Bringing law and practice in Latvia into compliance with international standards**

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It is my pleasure to introduce this timely and significant paper, “Trafficking in Women: Bringing Law and Practice in Latvia into Compliance with International Standards.” This publication is based on Ms. Tallija’s excellent thesis, which she submitted in fulfillment of her Master’s Degree in International and European Law at the Riga Graduate School of Law.

Trafficking in women is a serious worldwide problem and a 21st century human rights challenge. Tackling this problem effectively is key to Latvia’s successful reemergence as an independent country and new European Union member demonstrating its commitment to principles of democracy, human rights and the rule of law.

The Riga Graduate School of Law takes pride in helping to produce lawyers who not only know the law, but who are also critical and analytical thinkers able to use the law to promote national and international interests. Ms. Tallija’s paper is a fine example of this approach, as she not only describes the problem of trafficking in Latvia, but more importantly she provides meaningful recommendations to bring law and practice into compliance with international and regional human rights standards.

I am therefore delighted to recommend this publication not only to legal and other scholars around the world interested in the topic of trafficking, but also to governmental leaders and human rights activists in Latvia who will shape future law and policy.

*Mary Hartnett*

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## Summary

Several thousands of women are trafficked every year from poorer to those more developed countries “for exploitative purposes and to conditions amounting to slavery”.<sup>1</sup>

This paper focuses on the issue of trafficking in women in Latvia by examining the scope of trafficking in the country, and analyzing the compliance of national legislation and practice with international and regional standards. The aim of the paper is to examine to what extent Latvian laws and practice correspond to international and regional standards, as well as to provide recommendations that might improve the current situation in Latvia.

Primarily, trafficking in women is a serious violation of fundamental human rights and freedoms, namely, the right not to be held in slavery or servitude, the right to liberty and security of the person, the right to be free from cruel or inhumane treatment, and the freedom of movement.

Trafficking in women is often not recognized as a serious crime. Instead, the victims of trafficking are labeled as prostitutes. There is still a great need for material resources and manpower, and most importantly, attitudes that encourage vital investigation, effective prosecution and punishment of traffickers, with due attention paid to the difficult and vulnerable position of the victims.<sup>2</sup>

Women from Latvia are sold into slavery for sexual exploitation in other countries. The most serious problem in Latvia is that practice in prevention of trafficking in women, as well as treatment of victims, fails to comply with national legislation and also with regional and international standards. To combat trafficking in women it is highly recommended to create policies and practices that would not only prevent trafficking, but also provide remedies for all human rights violations that are involved in the trafficking process. As a consequence, further abuses would be prevented, and victims would be encouraged to turn to law enforcement institutions when violations occur.

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<sup>1</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001, p. 89. Available on the internet at:

<http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 89.

<sup>2</sup> *Ibid.*, at p. 90.

## Introduction

The woman suggested that she could help me to get work somewhere abroad. She told me she had an acquaintance in Germany, a woman who could connect me with a family for whom I could be a housemaid. Upon arrival she said I owed her that money by providing sexual services to men. I was shocked.<sup>3</sup>

*Marsha, a trafficking survivor*

Marsha's situation is, unfortunately, not unique. Every day around the world women and girls are enticed with the promises of well paying jobs, bought from their families, or abducted outright and taken to a foreign country for the purpose of sexual exploitation.

Trafficking in persons is a multi-dimensional threat. It deprives people of their human rights and freedoms; it is a global health risk, as well as a serious problem of national and international security. Moreover, trafficking in people fuels the growth of organized crime<sup>4</sup>, and has without doubt become a serious global concern.<sup>5</sup> According to recent estimates provided by the United States Department of State 2006 Trafficking in Persons Report, 600,000 to 800,000<sup>6</sup> people are trafficked every year worldwide. The overall number of victims trafficked in the EU is still unknown, and only estimates are available. What is clear is the fact that the number of victims is much higher than the official statistics from investigated cases in Member States.<sup>7</sup> Estimates of cases of trafficking in persons from Latvia range from several hundred to a thousand per month.<sup>8</sup> The victims of trafficking are sold into "modern-day slavery"<sup>9</sup> by being forced, defrauded, or coerced into sexual or labor exploitation.

Both men and women may be victims of trafficking, but the primary victims worldwide are women<sup>10</sup> and girls, who are trafficked for the purpose of sexual

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<sup>3</sup> United States Department of State, Office to Monitor and Combat Trafficking in Persons. Available on the internet at: <http://www.state.gov/g/tip>.

<sup>4</sup> United States Department of State, *Facts about Human Trafficking*, Available on the internet at: <http://www.state.gov/r/pa/ei/rls/33109pf.htm>.

<sup>5</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 6.

<sup>6</sup> <http://www.state.gov/g/tip/rls/tiprpt/2006/65983.htm>.

<sup>7</sup> Laczko, F., Klekowski A. von Koppenfels, Barthel J. "Trafficking in Women from Central and Eastern Europe: A Review of Statistical Data", European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21<sup>st</sup> Century. September 2002. Available on the internet at: <http://www.belgium.iom.int/StopConference/Conference%20Papers/Trafficking%20in%20Women%20from%20Central%20and%20Eastern%20Europe%20A%20Review%20of%20Statistical%20Data.pdf>.

<sup>8</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 72. According to the information provided by the State Police, every month more than a hundred women leave the country for other European countries with the goal to become engaged in prostitution. However, there are no official statistics conducted on the number of trafficking victims in persons in Latvia.

<sup>9</sup> R. M. Rumpf, "The New Slavery: The United Nations Interregional Crime and Justice Research Institute's Global Program Against Trafficking in Human Beings", (2003) New York School Journal of Human Rights. Available at Westlaw database.

<sup>10</sup> Supra 6. According to the U.S. Department of State *Trafficking in Persons Report 2006*, eighty percent of trafficking victims are women.

exploitation.<sup>11</sup> Traffickers primarily target women because they are disproportionately affected by poverty and discrimination, factors that impede their access to employment, educational opportunities, and other resources.<sup>12</sup> Another important factor adding to the larger market of trafficked women is the high demand from heterosexual men, who are in a great majority in using the services that trafficked women are forced to provide.

According to the Declaration on Violence against Women adopted by the UN in 1993,<sup>13</sup> trafficking in women is one of the phenomena included in the concept of gender-based violence. Article 2 (b) of the Declaration proclaims the following:

Violence against women shall be understood to encompass, but not be limited to, the following: physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

The gendered nature of trafficking derives from the universal and historical presence of laws, policies, customs and practices that justify and promote the discriminatory treatment of women and girls, and prevent the application of the entire range of human rights law to them.<sup>14</sup> The Committee on the Elimination of Discrimination against Women<sup>15</sup> has reaffirmed that these practices are incompatible with the equal enjoyment of rights by women and with the respect for their rights and dignity, putting women at special risk of violence and abuse.<sup>16</sup> Thus, cultural and economic factors create conditions that make the trafficking of women easier, and more profitable.

Latvia, along with Estonia and Lithuania, as well as other post-Soviet countries, has had its share of the trafficking problem while going through an adjustment period after the ending of the Soviet era and reestablishing their independence in the early 1990s. A common feature to almost every country that emerged from the Soviet legacy is that the lack of new work opportunities in the transition market economy has affected more women than men.<sup>17</sup> In general, the lack of opportunities for women has made many look for possibilities to make money in the sex industry through prostitution, either in their home country or

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<sup>11</sup> General Recommendation No. 19 notes that poverty, unemployment, wars, armed conflicts, and the occupation of territories have led to increased opportunities for trafficking in women (source: General Recommendation No. 19 (11th session, 1992) Violence against women. Available on the internet at:

<http://www.un.org/womenwatch/daw/cedaw/recomm.htm#recom19> Last visited at August 10, 2004, para 14.

<sup>12</sup> United States Department of State, Office to Monitor and Combat Trafficking in Persons. Available on the internet at: <http://www.state.gov/g/tip>. Last visited at August 10, 2004.

<sup>13</sup> Declaration on the Elimination of Violence against Women (UN, 1993), G. Melander, G. Alfredsson, *The Raoul Wallenberg Compilation of Human Rights Instruments*, Martinus Nijhoff Publishers. 1997, at p. 249.

<sup>14</sup> Ibid.

<sup>15</sup> Hereafter CEDAW Committee.

<sup>16</sup> General Recommendation No. 19 notes that poverty, unemployment, wars, armed conflicts, and the occupation of territories have led to increased opportunities for trafficking in women (source: General Recommendation No. 19 (11th session, 1992) Violence against women. Available on the internet at:

<http://www.un.org/womenwatch/daw/cedaw/recomm.htm#recom19>. Last visited at August 10, 2004, para 14.

<sup>17</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001.

abroad. Some begin sex work voluntarily; some are deceived by traffickers with false promises of other work and later forced into commercial sex.<sup>18</sup>

An important perspective that has largely been neglected in the context of trafficking in women is the recognition and protection of the human rights of trafficked persons. Victims suffer human rights violations at all stages of the trafficking process.<sup>19</sup> Moreover, even after the victims are able to escape from traffickers and begin to seek assistance, instead of receiving protection and assistance, they are often criminalized and violations of their rights continue.

This paper examines trafficking in women in Latvia, identifies how the current situation in the country violates international legal norms, and proposes recommendations to improve the situation.

With these objectives in mind, the paper begins with Chapter 1 presenting background information on trafficking in women, and addressing the scope of the problem in Latvia, as well as examining the most common patterns and practices of trafficking in women.

Chapter 2 underlines State responsibilities in respect of the treatment of victims of trafficking in women. Within this Chapter the most crucial international and regional anti-trafficking laws are surveyed, namely, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others<sup>20</sup>; the 2000 UN Trafficking Protocol<sup>21</sup>, the CEDAW Convention<sup>22</sup>, the Convention against Torture<sup>23</sup>, as well as legal instruments of the Council of Europe and the European Union.

In Chapter 3, an analysis of Latvia's legal framework regarding trafficking in women is presented. Also, in order to evaluate how the laws actually operate in practice, the interaction and conflict between international anti-trafficking laws and national laws and practice is analyzed, and the case law of national courts is examined. Last, but not least, the Chapter describes those preventive anti-trafficking measures Latvia has established or is planning to introduce in the nearest future.

Since Latvia's law and practice is not in full compliance with international and regional legal standards, and in that regard improvements are needed,

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<sup>18</sup> Ibid.

<sup>19</sup> A. Kartusch, *Reference Guide for Anti-Trafficking Legislative Review*, Ludwig Boltzmann Institute of Human Rights, Vienna, September 2001. Available on the internet at: [http://www.osce.org/documents/odihr/2001/09/2120\\_en.pdf](http://www.osce.org/documents/odihr/2001/09/2120_en.pdf).

<sup>20</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Approved by the General Assembly resolution 317 (IV) of December 1949, Entry into force: 25 July 1951. Centre for Human Rights Geneva, *A Compilation of International Instruments*, Volume I Universal Instruments. United Nations New York and Geneva, 1994, at p. 233.

<sup>21</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001). Available on the internet at: <http://www1.umn.edu/humanrts/instree/trafficking.html>.

<sup>22</sup> Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women. G. Melander, G. Alfredsson, *The Raoul Wallenberg Compilation of Human Rights Instruments*, Martinus Nijhoff Publishers. 1997, at p. 237.

<sup>23</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN, 1984). M. D. Evans, *Blackstone's International Law Documents*, 4<sup>th</sup> Edition. 1991, at p. 346.

Chapter 4 provides recommendations concerning legislative changes, law enforcement mechanisms, social services, and public awareness campaigns.

## 1. Background information on trafficking in women

### 1.1. Definition

There is no international legal instrument providing for a separate definition for trafficking in women. The reason for this is that trafficking in women is one component of the larger phenomenon of trafficking in persons, including both male and female adults, and children.

However, at the regional level a definition for trafficking in women and forced prostitution is provided in COE Recommendation 1325 (1997)<sup>24</sup> as:

*any legal or illegal transporting of women and/or trade in them, with or without their initial consent, for economic gain, with the purpose of subsequent forced prostitution, forced marriage, or other forms of forced sexual exploitation. The use of force may be physical, sexual and/or psychological, and includes intimidation, rape, abuse of authority or a situation of dependence.*<sup>25</sup>

Yet, examining trafficking in women from the broader context of trafficking in persons, a historical background shows the term “trafficking in persons”<sup>26</sup> was already used in early twentieth-century treaties and conventions. However, until enactment of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereafter “the Trafficking Protocol”), there was no internationally agreed definition on trafficking in persons. Now the Trafficking Protocol represents a major development in international law, where for the first time a consensus definition of trafficking in persons has been achieved in a legally binding international instrument.

In the Trafficking Protocol, trafficking is viewed as a contemporary form of slavery involving a variety of acts, means and exploitative purposes.<sup>27</sup>

<sup>24</sup> Parliamentary Assembly Recommendation No. 1325 (1997) On Traffic in Women and Forced Prostitution in Council of Europe Member States Available on the internet at: <http://assembly.coe.int/Main.asp?link=http%3A//assembly.coe.int/Documents/AdoptedText/TA97/EREC1325.HTM>.

<sup>25</sup> Ibid., para 2.

<sup>26</sup> Frequently the term “trafficking” is confused with the term “smuggling”. Smuggling is the procurement of illegal entry by a person into a State assisted by a facilitator who has the objective of making a profit. Trafficking involves an additional element of coercion or other forms of violence (such as force, fraud, debt bondage or abuse of authority) aimed at holding or placing the migrant in slavery, forced labour or, servitude. Source: Definition and Elements of Trafficking. Available on the internet at: [www.legislationonline.org/index.opho?topic=76](http://www.legislationonline.org/index.opho?topic=76).

<sup>27</sup> The definition provided in the Trafficking Protocol restates existing international human rights standards prohibiting slavery-like acts. The Slavery Convention, Article 1(1), provides a definition for slavery describing it as “the status or condition of a person over whom any or all of the power attaching to the right of ownership are exercised.” In addition, the Supplementary Convention to the Slavery Convention, Article 1, calls for elimination of slavery-like conditions in which many trafficked women find themselves. Article 6.2 of the said Convention prohibits the act of “inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in Article 1”. Also the International Labour Organization condemns slavery-like practices by prohibiting the use of forced or compulsory labour in Article 2 of ILO NO. 29, defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Further, Article 4 of the ILO No. 29 holds that “the competent authority shall not impose or permit

Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of the use of force or other forms of coercion, or abduction, or fraud, or deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>28</sup>

Consequently, the definition captures wide range of practices and actors that can be seen to constitute or be involved in trafficking,<sup>29</sup> and points out the key elements of the act of trafficking as follows:

- the presence of deception,<sup>30</sup>
- coercion or debt bondage,
- the exploitative or abusive purpose for which the deception, coercion or debt bondage is employed.

The definition of trafficking in women as provided for in the Recommendation 1325 is narrower than the one of the Trafficking Protocol, as it associates trafficking in women with sexual exploitation. Furthermore, Recommendation 1325 defines trafficking as "a form of inhuman and degrading treatment and a flagrant violation of human rights"<sup>31</sup> and not only a criminal act. On the contrary the definition in the Trafficking Protocol scrupulously names all possible actors and practices of trafficking, and clearly shows that trafficking must be understood to constitute a separate offence. Though trafficking in general and trafficking in women in particular could be prosecuted separately under criminal provisions<sup>32</sup> criminalizing, e.g., rape, illegal deprivation of liberty, abduction, understanding of these crimes as the elements of trafficking would not only facilitate prosecution but also serve to establish trafficking as a serious, independent offence.<sup>33</sup>

Thus, respecting the internationally binding definition as provided in the Trafficking Protocol, and acknowledging the definition covers all of the most important elements of trafficking, as well as taking into account there are more States Parties to the Trafficking Protocol than the Recommendation in question,

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the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations”.

<sup>28</sup> The Trafficking Protocol, Article 3(a).

<sup>29</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 28.

<sup>30</sup> Typically the deception involves the working conditions or the nature of the work to be done. For instance, the victim may have agreed to work in the sex industry but not to be held in slavery-like conditions. In practice, the institutions that are responsible for calling perpetrators to liability do not treat trafficking victims who have agreed to work in the sex industry but end up being trafficked with due attention and respect. On the contrary, the victims are criminalized. The reason for such maltreatment is victim consent. However, victim’s consent is irrelevant to the intended exploitation (the Trafficking Protocol Article 3(b)).

<sup>31</sup> Para 3.

<sup>32</sup> *Infra*, Chapter 3.2 of this paper.

<sup>33</sup> *Supra* 29. At p. 28.

for purposes of this paper the author will use the definition contained in the Trafficking Protocol.

## 1.2. Scope

### 1.1.1 Extent of Problem

„I will never be a normal person again. It will always tremble inside of me” - tells Diana, a Latvian woman, who was sold to a bordello in the Czech Republic in 2002. She managed to escape from sex slavery after she suffered humiliations for almost half a year, and she recalls that time as a continuous nightmare. Before this happened, Diana had worked in the Czech Republic as a waitress in a bar, and she returned to the Czech Republic to resume her waitressing job. Instead, the owner of the bar sold her to human traffickers. She was injected with drugs, locked up in a bordello, beaten and forced to provide sexual services. Now Diana is 30, and she says: “I have gone through everything; I will need to undergo different treatments for the rest of my life”. She can continue her life only relying on various medicines she takes.<sup>34</sup>

After 1990 the three Baltic States saw an unprecedented growth of the sex and entertainment industry in general, and of female employment in that sector in particular. In very recent years, trafficking has become even more active,<sup>35</sup> and has a tendency to grow due to the open borders of the European Union.

According to the information provided by the State Police<sup>36</sup>, every month more than a hundred women leave Latvia for European countries with the goal to become engaged in prostitution.<sup>37</sup> In contrast, international organizations and local non-governmental organizations estimate that cases of trafficking from Latvia range from several hundred to a thousand per month.<sup>38</sup>

Still, there are no official statistics either on the number of trafficking cases nor trafficking victims.<sup>39</sup> Significant numbers of women die or are killed as a result of being trafficked: the corpses of several hundred unidentified women are found

<sup>34</sup> G. Nagle, “It is a trauma that will never heal”, *Sestdiena*, 30 November 2002, p. 5.

<sup>35</sup> Committee on the Elimination of Discrimination against Women. Consideration of reports submitted by States parties under article 18 of the CEDAW Convention. Combined initial, second and third periodic report of States parties: Latvia. Available on the internet at: <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/422/51/PDF/N0342251.pdf?OpenElement>.

<sup>36</sup> A. Vaisla, Head of the Department of Trafficking in Human Beings at the State Police, personal interview, taken on June 2004.

<sup>37</sup> The law enforcement institutions when referring to trafficking frequently use the term *consented prostitution abroad*. Most trafficking cases occur with the woman’s consent to work abroad as a prostitute but not to end up being trafficked. However, the relevant institutions neglect to use the term *trafficking* here. The fact that the law sees the organized sex business and the process of human trafficking on equal terms makes it very difficult to combat trafficking in human beings.

<sup>38</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 4.

<sup>39</sup> Laczko, F., Klekowski A. von Koppenfels, Barthel J. “Trafficking in Women from Central and Eastern Europe: A Review of Statistical Data”, European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21<sup>st</sup> Century. September 2002. Available on the internet at: <http://www.belgium.iom.int/StopConference/Conference%20Papers/Trafficking%20in%20Women%20from%20Central%20and%20Eastern%20Europe%20A%20Review%20of%20Statistical%20Data.pdf>. There is no systematically collected and scientifically reliable statistics on the scale of trafficking in EU Member States. States are able to provide considerable data on illegal border crossing and people smuggling, but often do not segregate the data by gender, and sometimes not even by nationality.

each year under suspicious circumstances.<sup>40</sup> Europol thinks that many more bodies are never found.<sup>41</sup>

It is difficult to determine the extent of trafficking in women because of three reasons:

- a. it remains to a large extent an activity carried out by organized crime groups,
- b. in most cases missing women remain unreported, and
- c. victims who return to their home countries are afraid or ashamed to admit having been trafficked.

Even if we take into consideration these reasons for difficulties in maintaining the data on trafficking, none the less the responsible institutions do not carry or gather any official statistics, but use only estimates. In this regard, the CEDAW Committee has expressed great concern about the lack of sufficient information and data on trafficking in persons in Latvia.<sup>42</sup>

Latvia is a source country for women trafficked to Poland, Ireland, Israel, Spain, Germany, and Scandinavia for the purpose of sexual exploitation. Organized crime groups from Poland, Ukraine, and Israel reportedly control the main trafficking networks in cooperation with Latvian criminal groups, who recruit the victims.<sup>43</sup> “Young and inexperienced girls are sent from Latvia and sold to Turks. The fee is 500-700 USD”.<sup>44</sup> According to various sources, people who traffic in women in Latvia receive between 1,000 and 7,000 USD for each victim, depending on the age and looks of the woman.<sup>45</sup> The length of the time that women are forced to spend in slavery is very different. One woman managed to escape the bordello where she was locked up after being there for a half a year, another one suffered humiliations for three years, until she found her way home.<sup>46</sup>

Latvia has also become a place of transit and destination for victims of trafficking.<sup>47</sup> State Police estimates that large numbers of women from Belarus, Russia, Ukraine, and Lithuania are brought into the country for the purposes of sexual exploitation in Latvia, often as part of sex trade to foreign men. Moreover, victims are also trafficked internally, from rural areas of high unemployment to Riga and other urban centers,<sup>48</sup> thus supporting sex tourism to Latvia.

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<sup>40</sup> Speech by A. Diamantopoulou Commissioner for Employment and Social Affairs, Information event on trafficking in women to mark 8 March, International Women's Day, "Poverty to slavery: the misery behind the fantasy". Available on the internet at: [http://europa.eu.int/comm/employment\\_social/speeches/2001/010308ad.pdf](http://europa.eu.int/comm/employment_social/speeches/2001/010308ad.pdf).

<sup>41</sup> Ibid.

<sup>42</sup> CEDAW Committee's Thirty-first session July 6-23, 2004. Concluding comments: Latvia. Available on the internet at: <http://www.ohchr.org/tbruce/cedaw/Latvia.pdf>.

<sup>43</sup> United States Department of State, *Trafficking in Persons Report 2004*. Available on the internet at: <http://www.state.gov/g/tip/rls/tiprpt/2004/>.

<sup>44</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 230.

<sup>45</sup> Ibid., p. 231.

<sup>46</sup> D. Arāja. „There are three people sentenced in Latvia”. *Sestdiena*. 30 November 2002, p. 5.

<sup>47</sup> A. Bergmanis, Prosecutor of the Specialized Prosecutors Office of the Organized Crime and Other Crimes, personal interview, taken on July 2004.

<sup>48</sup> Supra 43.

Unfortunately, the traffickers hardly ever get prosecuted, and when they do, “they rarely see the inside of a jail.”<sup>49</sup> Analysis of the national case law in Chapter 3 of this paper will focus on the issues of sentences imposed on perpetrators.

### 1.1.2 Causes

Two major factors can be held potentially responsible for a growing female involvement in the sex business,<sup>50</sup> namely: “feminization of poverty”<sup>51</sup> in the Baltic States, and strong demand for foreign labour in that sector in certain western countries.<sup>52</sup> Of course, lack of enforcement of anti-trafficking provisions is a significant factor in persistence of trafficking problem in Latvia too.

Obviously the strongest cause is the desperate economic situation, which impacts the availability of satisfactory employment in many countries for women more severely than men.<sup>53</sup> The head of Department of Trafficking in Human Beings of the State Police Mr. Vaisla reaffirms such statement, claiming that money is a key word for women who leave Latvia to work abroad.<sup>54</sup>

Trafficked women reveal a number of distinct characteristics. Relatively often they have a troubled personal history, which comprises sex abuse in childhood or adolescence, early initiation to alcohol, drinking or drug taking habits, poor motivation to be educated, bad performance at school and work, misfortune in family life, and poverty.<sup>55</sup>

### 1.1.3 Methods of trafficking

Trafficking in women is accomplished through a variety of methods. Common elements found in all trafficking patterns are:

- a) lack of consent,
- b) brokering of human beings,

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<sup>49</sup> D. Johnson, “Trafficking of Women into the European Union”, *New England International & Comparative Law Annual* 1999. Available on the internet at: <http://www.nesl.edu/intljournal/vol5/johnson.htm>.

<sup>50</sup> A. Mong-Haug, “Trafficking in Women in the Baltic Sea Region: Perspectives of the Challenge and Remedies”, speech at Regional Seminar “Trafficking in Women in the Baltic States: The Extent of the Challenge and Search for Effective Remedies”, 15-16 October 2001, Vilnius, Lithuania. Available on the internet at:

<http://www.focus-on-trafficking.net/pdf/Vilnius%20trafficking%20seminar%20REPORT.pdf>. at p. 23.

<sup>51</sup> Prof. M. Okolski, “Major Findings of the IOM Research on Trafficking in Women in the Baltic States: Patterns and the Problem”, speech at Regional Seminar “Trafficking in Women in the Baltic States: The extent of the Challenge and Search for Effective Remedies”, October 15-16, 2001, Vilnius, Lithuania. Available on the internet at:

<http://www.focus-on-trafficking.net/pdf/Vilnius%20trafficking%20seminar%20REPORT.pdf>. At pp. 32-38, at p. 32.

<sup>52</sup> Ibid.

<sup>53</sup> For example, in Latvia in 2004, same as in the past years, average wages of men exceeded women's wages: in last October average wage was LVL 1.03 per hour. Men were paid LVL 1.12 an hour, while women - LVL 0.94. Men's wages exceeded women's in almost all professions. Source: Central Statistical Bureau.

<sup>54</sup> D.Araja. „There are three people sentenced in Latvia”. *Sestdiena*. 30 November 2002, p. 5.

<sup>55</sup> A. Mong-Haug, “Trafficking in Women in the Baltic Sea Region: Perspectives of the Challenge and Remedies”, speech at Regional Seminar “Trafficking in Women in the Baltic States: The Extent of the Challenge and Search for Effective Remedies”, 15-16 October 2001, Vilnius, Lithuania. Available on the internet at:

<http://www.focus-on-trafficking.net/pdf/Vilnius%20trafficking%20seminar%20REPORT.pdf>. At pp. 22-25, at p. 34.

- c) transport, and
- d) exploitative or servile conditions of work or relationships.<sup>56</sup>

It is important to point out that many women who are trafficked do not realize what awaits them when they accept the recruiter's offer. Women may become victims of trafficking when they seek assistance to obtain employment, work permits, visas and other travel documents. Traffickers use women's vulnerable circumstances and may lure them into crime networks through deceit and false promises of decent working conditions.<sup>57</sup>

In some cases women go abroad knowing they will work in the sex industry, but without awareness of the working conditions, violence and lack of autonomy and slave-like conditions that accompany the traffickers' business. Other women answer job advertisements for positions abroad, such as dancers, waitresses, and nannies, only later to find themselves held against their will and forced into prostitution and sexual slavery.<sup>58</sup> Traffickers often use fake employment contracts and false visas to mislead women and their families about the type of work they will undertake.<sup>59</sup> In the destination countries, women are subjected to physical violence, sexual assault and rape, battery, imprisonment, threats, and other forms of coercion.<sup>60</sup>

In order to control trafficked women, traffickers often subject their victims to debt bondage, a slavery-like practice banned under customary international law, and defined as:

The status or condition arising from a pledge by a debt of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.<sup>61</sup>

The head of Department of Trafficking in Human Beings in Latvia tells that his work experience shows most of trafficking victims have been aware they will have jobs in a sex industry.<sup>62</sup> Opposite to his statement the director of the

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<sup>56</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44E/CN.4/2000/68, February 2000. Available on the internet at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2000.68.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2000.68.En?Opendocument) at p. 10.

<sup>57</sup> Stop Violence against Women. *Trafficking in Women*. Available on the internet at: [www1.umn.edu/humanrts/svaw/trafficking/index.htm](http://www1.umn.edu/humanrts/svaw/trafficking/index.htm).

<sup>58</sup> L. Chang, *Trafficking in Women*, Volume 1 of Women and International Human Rights Law, Transnational Publishers, Inc., 1995, at p. 322.

<sup>59</sup> A. Mong-Haug, "Trafficking in Women in the Baltic Sea Region: Perspectives of the Challenge and Remedies", speech at Regional Seminar "Trafficking in Women in the Baltic States: The Extent of the Challenge and Search for Effective Remedies", 15-16 October 2001, Vilnius, Lithuania. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Vilnius%20trafficking%20seminar%20REPORT.pdf> at pp. 22-25, at p. 21.

<sup>60</sup> Stop Violence against Women. *Trafficking in Women*. Available on the internet at: [www1.umn.edu/humanrts/svaw/trafficking/index.htm](http://www1.umn.edu/humanrts/svaw/trafficking/index.htm). At p. 10.

<sup>61</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1957). Available on the internet at: <http://www.unhchr.ch/html/menu3/b/30.htm> at October 1, 2004, Article 1 (1).

<sup>62</sup> A. Vaisla, Head of the Department of Trafficking in Human Beings at the State Police, personal interview, taken on June 2004.

Women's Centre „Genders” Mrs. Kurova claims, that in most cases women are unaware they will work in sex business.<sup>63</sup> They are promised jobs as dancers, waitresses or models. Often women do not check the offers, and sign work agreements without reading them.<sup>64</sup>

In Latvia traffickers most commonly lure women by first establishing a friendly relationship with the victims. The women trust in an agent and believe in his or her<sup>65</sup> promises concerning job legality, employer's renown and the “artistic” character of the work. Often it is made clear during the recruiting process that the woman will not be expected to prostitute herself.<sup>66</sup> Yet, the final outcome is similar as above described - after arrival at the place of destination, recruited women become enslaved in various sex and entertainment industry units and are immediately forced into prostitution.<sup>67</sup> There the women are held in conditions equivalent to slavery.<sup>68</sup> Victims suffer physical and emotional abuse, rape, threats against themselves and their family, passport theft, and physical restraint.<sup>69</sup> They have no power to negotiate the terms of their sexual encounters and may suffer serious beatings if they refuse. They are at high risk of drug addiction, infertility, and sexually transmitted disease, especially AIDS.<sup>70</sup>

## 2. The international and regional legal framework

### 2.1. Evaluation of trafficking measures: prosecution of traffickers and protection of victims

It is universally recognized that trafficking in women constitutes a grave human rights violation.<sup>71</sup> An important perspective that has largely been neglected is the recognition and protection of the human rights of trafficked persons. Women who are forced into situations where they are sexually exploited for the profit of a third person have their basic rights, as guaranteed by numerous international instruments,<sup>72</sup> violated. The perpetrators subject their victims to physical, psychological and sexual violence, hold them in captivity and deny them the right to control over their own bodies, fail to provide a safe and healthy working

<sup>63</sup> D. Arāja. „There are three people sentenced in Latvia”. *Sestdiena*. 30 November 2002, p. 5.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Supra* 62. In Latvia recruiters are often women, who are frequently trafficking victims themselves and are working off their debts.

<sup>66</sup> *Ibid.* In some cases women go abroad knowing they will work in the sex industry, but without awareness of the working conditions and violence that accompany the traffickers' business.

<sup>67</sup> *Ibid.*

<sup>68</sup> A particular form of contemporary slavery which affects women is forced prostitution. Source: K. Tomasevski, *Women and Human Rights*, London, Zed Books Ltd, 1995, at p. 13.

<sup>69</sup> United States Department of State, Office to Monitor and Combat Trafficking in Persons. Available on the internet at: <http://www.state.gov/g/tip>.

<sup>70</sup> D. Johnson, “Trafficking of Women into the European Union”, *New England International & Comparative Law Annual* 1999. Available on the internet at: <http://www.nesl.edu/intljournal/vol5/johnson.htm>.

<sup>71</sup> J. Cerone, “The Human Rights Framework Applicable to Trafficking in Persons and its Incorporation into UNMIK Regulation 2001/”, *Human Rights Brief*, Fall, 2003, Available at Westlaw database, at p.4.

<sup>72</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 4(1) “no one shall be held in slavery or servitude”, Article 4(2) “no one shall be required to perform forced or compulsory labour.” International Covenant on Civil and Political Rights, Article 1 “all peoples have the right of self determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.”

environment, and confiscate their wages and generally subject them to inhuman and degrading treatment, forced labour, slavery-like practices or slavery.<sup>73</sup> But traffickers are not the only ones who violate laws. States also violate the human rights of the victims by not enacting or enforcing appropriate laws. In addition, after the act of trafficking has happened, frequently the state further violates the rights of victims, when it arrests, detains and punishes the victims, and “fails to provide means for victims to receive compensation from the assets of the traffickers.”<sup>74</sup> Many governments, in fact, re-victimize the victim.<sup>75</sup>

Trafficking in women has been recognized as an international offence since the late 19<sup>th</sup> century.<sup>76</sup> In 1904 the first binding international legal instrument in this area was adopted, i.e., the International Agreement for the Suppression of the White Slave Trade. This treaty focused more on the protection of victims than on punishment of perpetrators of trafficking, thus proving itself ineffective.<sup>77</sup> It was followed by the International Convention for the Suppression of White Slave Traffic in 1910, bounding thirteen ratifying countries to punish procurers.<sup>78</sup> Further, under the auspices of League of Nations the 1921 Convention for the Suppression of Traffic in Women and Children and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age, were concluded. These four conventions on trafficking were eventually consolidated by the United Nations in the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.<sup>79</sup>

However, the first major development in international law regarding treatment of trafficked persons and punishment of traffickers occurred, with adoption of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children supplementing to UN Convention against Transnational Organized Crime was adopted in 2002. The Trafficking Protocol defines “trafficking in persons” and addresses involvement of transnational organized criminal groups. For the first time international treaty combines traditional crime control measures for investigating and punishing offenders with measures for protecting trafficked persons.<sup>80</sup>

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<sup>73</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 13.

<sup>74</sup> *Ibid.*

<sup>75</sup> The Trafficking Protocol binds States to protect victims of trafficking in persons, especially women and children, from re-victimization (Article 9.1.(b)).

<sup>76</sup> J. Chuang, “Redirecting the debate over trafficking in women: definitions, paradigms, and contexts”, (1998), *Harvard Human Rights Journal*. Available at Westlaw database. Last visited at May 30, 2004. At p. 4.

<sup>77</sup> A. Mong-Haug, “Trafficking in Women in the Baltic Sea Region: Perspectives of the Challenge and Remedies”, speech at Regional Seminar “Trafficking in Women in the Baltic States: The Extent of the Challenge and Search for Effective Remedies”, 15-16 October 2001, Vilnius, Lithuania. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Vilnius%20trafficking%20seminar%20REPORT.pdf>. At pp. 22-25, at p. 10.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> Previous attempts to deal with this issue from a one-sided perspective have not been successful. For example, human rights measures aim to protect victims, but they lack effective law enforcement mechanisms in order to apprehend and prosecute traffickers. Source: Trafficking in

Nevertheless, protection of trafficked persons' human rights does not confine to the Trafficking Protocol. States have a responsibility to provide protections to victims of trafficking pursuant to numerous international and regional instruments they have ratified. Such protections are provided for in the CEDAW Convention, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,<sup>81</sup> and International Labour Organization Conventions.<sup>82</sup>

The above mentioned international human rights instruments impose a duty upon states to respect human rights law, including duty to prevent and investigate violations, to take appropriate action against the violators, to provide effective legal remedy, legal protection, non-discriminatory treatment and restitution, compensation and rehabilitation of trafficked persons.<sup>83</sup> Moreover, States must not only respect the rights, but also must "take positive steps to ensure that individuals are able to enjoy these rights."<sup>84</sup> It includes the concept that human rights cover not only states' obligations to respect and protect, but also their obligation to make available the means which would ensure the realization of rights possible by each person.<sup>85</sup> In addition, it includes the duty to take appropriate measures<sup>86</sup> to protect individuals against human rights infringements by private persons. This obligation is set out by the CEDAW Convention outlining that States must "to take positive measures to eliminate all forms of violence against women."<sup>87</sup> Further it is stated that this provision is not restricted to

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Persons: the New Protocol. Available on the internet at: [http://www.unodc.org/unodc/en/trafficking\\_protocol\\_background.html](http://www.unodc.org/unodc/en/trafficking_protocol_background.html).

<sup>81</sup> The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others Centre for Human Rights Geneva, *A Compilation of International Instruments*, Volume I Universal Instruments, United Nations New York and Geneva, 1994, at p. 208.

<sup>82</sup> Convention (No. 29) concerning Forced Labour, Adopted on 28 June 1930 by the General Conference of the International Labour Organization at its fourteenth session. Entry into force: 1 May 1932. (Source: Centre for Human Rights Geneva, *A Compilation of International Instruments*, Volume I Universal Instruments, United Nations New York and Geneva, 1994, at p. 216), and Convention (No. 105) concerning the Abolition of Forced Labour. Adopted on 25 June 1957 by the General Conference of the International Labour Organization at its fortieth session. Entry into force: 17 January 1959. (Source: Centre for Human Rights Geneva, *A Compilation of International Instruments*, Volume I Universal Instruments, United Nations New York and Geneva, 1994, at p. 229.)

<sup>83</sup> Global Alliance against Trafficking in Women, Foundation against Trafficking, International Human Rights Law Group, "Human Rights Standards for the Treatment of Trafficked Persons", January 1999. Available on the internet at: <http://www.aretusa.net/download/centro%20documentazione/02documenti/4-orga/internazionali/D-04-INT-01en.pdf>. Last visited at: September 27, 2004, at p. 2.

<sup>84</sup> A. Kartusch, *Reference Guide for Anti-Trafficking Legislative Review*, Ludwig Boltzmann Institute of Human Rights, Vienna, September 2001. Available on the internet at: [http://www.osce.org/documents/odhr/2001/09/2120\\_en.pdf](http://www.osce.org/documents/odhr/2001/09/2120_en.pdf). At p. 13.

<sup>85</sup> Supra 83. At p. 5.

<sup>86</sup> South Eastern European Anti-Trafficking Ministerial Declaration of 13 December 2000, OSCE Ministerial Council Decision of 28 November 2000, Article 9.

<sup>87</sup> General Recommendation No. 19 notes that poverty, unemployment, wars, armed conflicts, and the occupation of territories have led to increased opportunities for trafficking in women (source:

violence by state actors: “States may also be responsible for private acts, if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”<sup>88</sup>

Consequently, this paper further discusses the major international and regional provisions below.

## 2.2. The Trafficking Convention<sup>89</sup>

In attempting to consolidate prior treaties on trafficking, the United Nations promulgated in 1949 the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The Trafficking Convention was the first international agreement to conceive of trafficking in gender-neutral terms, and to penalize procurement, irrespective of consent, in both international and domestic trafficking.<sup>90</sup> Most notably, the Trafficking Convention was the first international instrument that considered forced prostitution as a matter of international law, “rather than strictly an issue of domestic jurisdiction”.<sup>91</sup> Latvia is a party to the Trafficking Convention since 13 July 1992.

The Trafficking Convention does not provide a “trafficking” definition; however, it defines actions that are prohibited by the convention, penalizing any person who, “to gratify the passions of another”:

- 1) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
- 2) exploits the prostitution of another person, even with the consent of that person.<sup>92</sup>

The Convention allows States to punish women who have been subjected to international trafficking by sanctioning their expulsion.<sup>93</sup> Article 19 (2) allows States to deport trafficked women who do not have legal residence in the country. In the process of deportation, trafficked women may be subjected to detention (protective or punitive) and/or forced rehabilitation. Another weak point of the Convention is the lack of effective enforcement mechanisms. No independent treaty body has been established to monitor the implementation and enforcement of the treaty.<sup>94</sup> The Trafficking Convention has proved to be ineffective in protecting the rights of trafficked women and combating trafficking.<sup>95</sup>

General Recommendation No. 19 (llth session, 1992) Violence against women. Available on the internet at:

<http://www.un.org/womenwatch/daw/cedaw/recomm.htm#recom19>, para 4.

<sup>88</sup> Ibid., para 9.

<sup>89</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *Approve by the General Assembly resolution 317 (IV) of December 1949, Entry into force: 25 July 1951*. Centre for Human Rights Geneva, *A Compilation of International Instruments*, Volume I Universal Instruments, United Nations New York and Geneva, 1994.

<sup>90</sup> J. Chuang, “Redirecting the debate over trafficking in women: definitions, paradigms, and contexts”, (1998), *Harvard Human Rights Journal*. Available at Westlaw database. At p. 4.

<sup>91</sup> Ibid.

<sup>92</sup> Articles 1-2.

<sup>93</sup> Article 19.

<sup>94</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44E/CN.4/2000/68, February 2000. Available on the internet at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2000.68.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2000.68.En?Opendocument). At p. 10, at .p. 12, para 23.

<sup>95</sup> Ibid., at p. 11, para 22.

### 2.3. The Trafficking Protocol

A large step forward in combating of trafficking in women, and, especially, protection of trafficking victims, was the adoption of the new UN Trafficking Protocol, i. e., Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, drafted by an *ad hoc* committee of the UN as a supplement to the Convention Against Transnational Organized Crime.<sup>96</sup> The Trafficking Protocol provides the international framework and the tools for a two-fold approach: one, a human rights response, namely, to protect the rights of trafficked persons, two, an anti-crime response, namely, to prevent the crime and punish the trafficker. Latvia ratified the Trafficking Protocol in 24 June 2004, thus expressing the will to bring both legislation and practice concerning trafficking in persons in compliance with the standards provided in the Protocol.

The Trafficking Protocol is intended to serve as an international strategy against human trafficking. The main objectives are to prevent and combat trafficking in persons, paying particular attention to women and children, to protect and assist victims of trafficking, with full respect for their human rights, and to promote cooperation among States in order to meet these objectives.

The Trafficking Protocol represents a new approach to trafficking in international law. It serves as a legal framework for national legislation, setting standards on criminal characterization of conduct constituting crime of trafficking and the severity of punishment, and providing benchmarks on anti-trafficking preventive policies, and effective human rights measures to protect the victims. The Protocol contains provisions intending to secure that trafficked persons are not treated as criminals but as victims, and therefore, regardless of their origin, race, religion, occupation or other characteristics, are entitled to human rights protections such as temporary resident status and shelter, medical and psychological services, access to justice, compensation or restitution.<sup>97</sup>

Because the Protocol has set focus on the humanitarian aspects of trafficking, not only penal law issues, it has a potential to function as a broad common frame of reference both for making comparable analyses on the status of measures that have to be taken.<sup>98</sup>

### 2.4. CEDAW Convention<sup>99</sup>

The international treaty that is of a great importance in addressing trafficking in women's issues is the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women. The issue of trafficking in this document is addressed by creating international standards for women's human rights and providing a blueprint for nations to improve women's lives by protecting them

<sup>96</sup> United Nations Convention of 15 November 2000 Against Transnational Organized Crime, in force from 29 September 2003. Available on the internet at: [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf).

<sup>97</sup> Article 6.

<sup>98</sup> A. Mong-Haug, "Trafficking in Women in the Baltic Sea Region: Perspectives of the Challenge and Remedies", speech at Regional Seminar "Trafficking in Women in the Baltic States: The Extent of the Challenge and Search for Effective Remedies", 15-16 October 2001, Vilnius, Lithuania. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Vilnius%20trafficking%20seminar%20REPORT.pdf>. At pp. 22-25, at p. 23.

<sup>99</sup> Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women. G. Melander, G. Alfredsson, *The Raoul Wallenberg Compilation of Human Rights Instruments*, Martinus Nijhoff Publishers, 1997, at p. 237.

from violence and trafficking.<sup>100</sup> Latvia is a Party to CEDAW Convention since 14 May 1992, but has not yet ratified the Optional Protocol which provides an individual complaint mechanism.<sup>101</sup>

Article 6 requires all States Parties to take appropriate measures, including legislation, to suppress all forms of trafficking in women and the exploitation of prostitution of women.<sup>102</sup> This obligation goes beyond that in the Trafficking Convention by requiring States Parties to address the root causes of trafficking and the exploitation of prostitution, not simply to punish trafficking in women after the fact.<sup>103</sup> General Recommendation No.19<sup>104</sup> defines violence against women as a form of discrimination, and notes that:

Gender based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination.<sup>105</sup>

Recommendation No. 19 stresses and lists the above mentioned rights and freedoms:

- the right to life,
- the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment,
- the right to equal protection according to humanitarian norms in time of international or internal armed conflict,
- the right to liberty and security of person,
- the right to equal protection under the law; the right to equality in the family,
- the right to the highest standard attainable of physical and mental health,
- the right to just and favourable conditions of work.<sup>106</sup>

## 2.5. Convention against Torture<sup>107</sup>

The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>108</sup> is a legally binding international human rights instrument that entered into force in 1987, and is in effect in Latvia since 14 May

<sup>100</sup> N. O’Connell, R. Sharma, “Treaty for the Rights of Women Deserves Full U.S. Support. Human Rights”, Winter 2000. Available at Westlaw database. At p. 1.

<sup>101</sup> Optional Protocol to the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Available on the internet at: <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm>.

<sup>102</sup> Article 6.

<sup>103</sup> Assessing the Status of Women: A Guide to Reporting Under the Convention on the Elimination of All Forms of Discrimination against Women. Available on the internet at: <http://iwwraw.igc.org/publications/assessing/englishoptions.htm>.

<sup>104</sup> General Recommendation No. 19 notes that poverty, unemployment, wars, armed conflicts, and the occupation of territories have led to increased opportunities for trafficking in women (source: General Recommendation No. 19 (11th session, 1992) Violence against women. Available on the internet at: <http://www.un.org/womenwatch/daw/cedaw/recomm.htm#recom19>. At para 14.

<sup>105</sup> Ibid., Article 7.

<sup>106</sup> Ibid.

<sup>107</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN, 1984). G. Melander, G. Alfredsson, *The Raoul Wallenberg Compilation of Human Rights Instruments*, Martinus Nijhoff Publishers, 1997, at p. 549.

<sup>108</sup> Hereafter CAT.

1992. However, Latvia has not ratified the Optional Protocol providing for the mechanism of individual complaints.

The CAT protects individuals against severe physical or mental pain or suffering intentionally inflicted for punishment, intimidation, coercion or any reason based on discrimination of any kind at the instigation of or with the consent or acquiescence of a public official or a person acting in an official capacity.<sup>109</sup> The CAT also protects individuals from other acts of cruel, inhuman or degrading treatment or punishment at the instigation of or with the consent or acquiescence of a public official or a person acting in an official capacity.<sup>110</sup>

Trafficking in persons often involves torture and cruel, inhuman or degrading treatment or punishment thus violating the rights granted by the CAT. To prevent such situation the CAT requires States to criminalize torture, attempts to commit torture, and complicity or participation in torture.<sup>111</sup> For that purpose States are obliged to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction,”<sup>112</sup> and to ensure that competent authorities “proceed to a prompt and impartial investigation, whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”<sup>113</sup> Moreover, CAT is calling on States to ensure that any individual who alleges he has been subject to torture must have the right to complain to, and to have her/his case promptly and impartially examined by, the relevant authorities.<sup>114</sup>

The CAT takes a strong position also in protection of victims and witnesses, providing that States must take steps to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.<sup>115</sup> In that relation the CAT requires States to provide in their legal systems that the victims of torture may obtain redress and have an enforceable right to fair and adequate compensation, “including the means for as full rehabilitation as possible.”<sup>116</sup> A very important aspect provided by the CAT is that States are asked to prevent such acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as provided in the definition of torture under the CAT, “when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>117</sup>

The provisions pointed out above are of high importance in the period when criminal investigations are started and charges are brought against perpetrators. In order to provide the best assistance to victims and witnesses, it is essential to take into account the CAT provisions when national Criminal Procedure Laws are drafted.

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<sup>109</sup> Article 1.

<sup>110</sup> Article 16.1.

<sup>111</sup> Article 4.1.

<sup>112</sup> Article 2.

<sup>113</sup> Article 12.

<sup>114</sup> Article 13.

<sup>115</sup> Ibid.

<sup>116</sup> Article 14.

<sup>117</sup> Article 16.

## 2.6. ICCPR<sup>118</sup> and ICESCR<sup>119</sup>

The ICCPR obliges State Parties to protect individuals against trafficking for sexual exploitation providing, that “no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.”<sup>120</sup> In addition, the ICCPR deals with more rights closely related to the trafficking issues, e.g., the right to life,<sup>121</sup> liberty and security of the person.<sup>122</sup> The ICCPR also prohibits all forms of slavery and the slave-trade,<sup>123</sup> as well as provides that no one shall be required to perform forced or compulsory labour.<sup>124</sup> Further, the ICCPR provides that every State Party must ensure the rights elaborated in the ICCPR without discrimination based on sex.<sup>125</sup> Additionally to this general non-discrimination clause the ICCPR obliges States “to ensure the equal right of men and women to the enjoyment of all civil and political rights”.<sup>126</sup> Under ICCPR all persons must be able to be “equal before the law”<sup>127</sup> and are “entitled without any discrimination to the equal protection of the law”.<sup>128</sup> It is important to note that the rights provided by the ICCPR, e.g., such as the right to be free of slavery, allow individuals to rely on them directly before courts, and also before the body overseeing the ICCPR, the Human Rights Committee.<sup>129</sup>

Unlike the ICCPR, the rights elaborated in the ICESCR mainly create obligations to states to formulate certain public policies.<sup>130</sup> Many of these rights are highly relevant to trafficking issues, as state failure to provide them often exposes women to trafficking and sexual exploitation. Poverty, including lack of social security, renders people more vulnerable to trafficking.<sup>131</sup> Article 1(1) of the ICESCR guarantees the right of all people to “freely pursue their economic, social and cultural development.”<sup>132</sup> Trafficking in persons interferes with the ability to realize that right. The ICESCR also provides for the right to work,<sup>133</sup> the right to “just and favourable conditions of work”,<sup>134</sup> women’s right to equal pay for equal work,<sup>135</sup> the right to “an adequate standard of living”,<sup>136</sup> the right to “the highest attainable standard of physical and mental health”,<sup>137</sup> and the right to

<sup>118</sup> International Covenant on Civil and Political Rights. M. D. Evans, *Blackstone’s International Law Documents*, 4<sup>th</sup> Edition, Blackstone Press Limited, 1991, at p. 109.

<sup>119</sup> *Ibid.*, at p. 127.

<sup>120</sup> Article 8 (1).

<sup>121</sup> Article 6.

<sup>122</sup> Article 9.

<sup>123</sup> Article 8.1.

<sup>124</sup> Article 8.3.

<sup>125</sup> Article 2.

<sup>126</sup> Article 3.

<sup>127</sup> Article 26.

<sup>128</sup> *Ibid.*

<sup>129</sup> Optional Protocol to the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Available on the internet at: [http://www.unhchr.ch/html/menu3/b/a\\_opt.htm](http://www.unhchr.ch/html/menu3/b/a_opt.htm).

<sup>130</sup> Although these rights can also contain justiciable elements. Source: *Supra* 1.

<sup>131</sup> ICESCR provides that States must recognize the right of everyone to social security, including social insurance (Article 9).

<sup>132</sup> Also Article 1(1) of ICCPR provides for the same right.

<sup>133</sup> Article 6.

<sup>134</sup> Article 7.

<sup>135</sup> Article 7(a)(i).

<sup>136</sup> Article 11.

<sup>137</sup> Article 12.

education.<sup>138</sup> The ICESR, the same as the ICCPR, contains a non-discrimination clause, stating that States Parties shall ensure the above listed rights without discrimination.<sup>139</sup> The implementation of the ICESR is conducted by the Committee on Economic, Social and Cultural Rights.

Latvia is a party to the ICCPR and the ICESCR since 14 July 1992. Latvia is also a State Party to the First Optional Protocol to the ICCPR providing for mechanism of individual complaints to be submitted before the Human Rights Committee.

## 2.7. COE<sup>140</sup> obligations

At the current moment there are two COE treaties outlining human rights obligations of its Member States:<sup>141</sup>

- Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>142</sup>
- COE Convention on Action against Trafficking in Human Beings,<sup>143</sup>
- The European Social Charter.<sup>144</sup>

Trafficking in women violates several legal principles of the COE treaties that are named above. The Convention for the Protection of Human Rights and Fundamental Freedoms is the most important European human rights instrument,<sup>145</sup> which sets forth a number of fundamental rights and freedoms that are relevant to the problems of trafficking. Trafficking entails such human rights violations listed in the Convention as the right to life,<sup>146</sup> the right to be free from torture and inhuman or degrading treatment or punishment,<sup>147</sup> the right to liberty and security of the person,<sup>148</sup> as well as the right to respect for her private and family life.<sup>149</sup> Additionally, the Convention sets forth a woman's right to an effective legal remedy before a national authority if her human rights are violated, a remedy that is generally not available to victims of trafficking.<sup>150</sup> Moreover, it is provided that the enjoyment of all rights under the Convention shall be secured without discrimination on any ground, including gender.<sup>151</sup> States agree to secure these rights and freedoms to everyone within

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<sup>138</sup> Article 13.

<sup>139</sup> Articles 2.(2) and 3.

<sup>140</sup> Council of Europe.

<sup>141</sup> Latvia became a member of the COE on February 10, 1995.

<sup>142</sup> Hereafter the Convention. Latvia ratified the European Convention on Human Rights and recognized the right of individual petition on June 27, 1997. Protocol Nr 6 to the European Convention on Human Rights, abolishing death penalty was ratified on May 7, 1999.

<sup>143</sup> Available at [http://www.coe.int/T/E/human\\_rights/trafficking/PDF\\_Conv\\_197\\_Trafficking\\_E.pdf](http://www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf)

<sup>144</sup> Hereafter the Charter. Latvia ratified the Charter on 31 January 2002. The Charter entered into force: on March 2, 2002.

<sup>145</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 39.

<sup>146</sup> Article 2.

<sup>147</sup> Article 3.

<sup>148</sup> Article 5.

<sup>149</sup> Article 8.

<sup>150</sup> Article 13.

<sup>151</sup> Article 14.

their jurisdiction, arguably even those who have entered the state by illegal means, and they can be held responsible for not fulfilling their obligations.<sup>152</sup>

The enforcement mechanism of the Convention is the European Court of Human Rights in Strasbourg that has a mandate to deal with individual and inter-State petitions.<sup>153</sup> However, up to now there are no trafficking in women-related cases examined by the Court under the relevant articles of the Convention.

In May 2005, the COE Committee of Ministers adopted a COE Convention on Action against Trafficking in Human Beings that is aiming at focusing on human rights and victim protection and incorporating a gender perspective. The Convention is based on recognition of the principle already stated in Recommendation No. R (2000)11<sup>154</sup> that trafficking in human beings constitutes a violation of human rights and is an offence against the dignity and integrity of the human being. The goal of the Convention is to have a reasonable balance between the human rights of the victims of trafficking, and the requirements relating to criminal prosecution. Among the purposes of the Convention, Article 1(b) should be stressed out, which points out the importance of effective investigation and prosecution. The Convention offers a very strong approach in prevention of trafficking in persons, among other measures, stipulating that the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking, should be discouraged.<sup>155</sup> Important requirement to Parties of this Convention is “to provide for possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”<sup>156</sup> Latvia has signed the Convention on May 19, 2005, although, the Convention is not ratified so far.

The practice of trafficking is also in violation of the European Social Charter. The European Social Charter<sup>157</sup> guarantees nineteen fundamental social and economic rights, which are also related to trafficking problems. The Charter guarantees the right to work, including the equal right to work,<sup>158</sup> the right to just working conditions<sup>159</sup> and the right to safe and healthy work conditions,<sup>160</sup> as well as the right to social and economic protection.<sup>161</sup>

In addition to the COE treaties, Recommendations by the Committee of Ministers and the Parliamentary Assembly also have the force of law for Member

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<sup>152</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 39.

<sup>153</sup> Following the entry into force of Protocol No. 11 (in November 1998), allegations of violations against the rights guaranteed by the Convention are referred directly to the Court.

<sup>154</sup> Recommendation No. R (2000)11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation (adopted by the Committee of Ministers on 19 May 2000, at the 710th meeting of the Ministers' Deputies). Available at: <http://cm.coe.int/ta/rec/2000/2000r11.htm>.

<sup>155</sup> COE Convention on Action against Trafficking in Human Beings, Article 6.

<sup>156</sup> Article 25.

<sup>157</sup> The Revised European Social Charter (1996) strengthens the existing protection of social and economic rights by embodying the rights guaranteed by the Social Charter and its Additional Protocol, and adding new rights, such as the right to dignity at work and the right to protection against poverty and social exclusion.

<sup>158</sup> Article 4.3.

<sup>159</sup> Article 2.

<sup>160</sup> Article 3.

<sup>161</sup> Article 12.

States. Both the Committee of Ministers and the Parliamentary Assembly have issued specific recommendations on the issue of trafficking in women, which express the COE policy. The Council of Europe restates many of the standards provided by UN on trafficking, and also provides specific recommendations. Accordingly, regarding trafficking in women there are three important Recommendations that should be highlighted:<sup>162</sup>

- Recommendation 1545 (2002)<sup>163</sup> articulates that trafficking in women is a phenomenon which is a violation of human rights and the basic principles of rule of law and democracy.<sup>164</sup> It is stressed out that trafficking is a human rights issue as it entails the violation of women's dignity and integrity, their freedom of movement and, their right to life,<sup>165</sup> and trafficking should be considered a crime against humanity.<sup>166</sup> The Recommendation is calling on Member States to "develop common policies and actions covering all aspects of this problem: comprehensive statistics and research into the causes and mechanisms of trafficking, law enforcement, prevention, protection of victims, repression and awareness-raising and information campaigns."<sup>167</sup>

- Recommendation R (2000)11<sup>168</sup> includes a definition of trafficking, and sets forth specific measures related to such areas of concern as: prevention, assistance to and protection of victims, penal legislation and judicial cooperation, coordination and cooperation. Member States are urged to take coordinated action using a multidisciplinary approach<sup>169</sup> and to encourage cooperation between national authorities and NGOs, in countries of origin, transit and destination.<sup>170</sup>

- Recommendation 1325 (1997)<sup>171</sup> is a response to a "dramatic increase in recent years in the traffic in women and forced prostitution in Council of Europe member states . . . (and) the deterioration of the treatment of trafficked women, bordering on slavery, which has resulted from this development."<sup>172</sup> The Recommendation calls on Member States to take specific actions, including

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<sup>162</sup> Other relevant COE recommendations include: Recommendation No. R (97)13 Concerning Intimidation of Witnesses and the Rights of the Defense; Recommendation No. R (96)8 on Crime Policy in Europe in a Time of Change; Recommendation No. R (91)11 on Sexual Exploitation, Pornography and Prostitution of, and Trafficking in, Children and Young Adults; Recommendation; Recommendation No. R (87)21 on Assistance to Victims and the Prevention of Victimization; Recommendation No. R (85)11 on the Position of the Victim in the Framework of Criminal Law and Procedures EU Obligations; Recommendation No. R (80) 10 on Measures against the Transfer and the Safekeeping of Funds of Criminal Origin.

<sup>163</sup> Recommendation 1545 (2002) Campaign against trafficking in women. Available on the internet at: [http://www.coe.int/T/E/human\\_rights/trafficking/1\\_Overview/Rec1545\(2002\)en.asp](http://www.coe.int/T/E/human_rights/trafficking/1_Overview/Rec1545(2002)en.asp).

<sup>164</sup> Para 1.

<sup>165</sup> Para 2.

<sup>166</sup> Ibid.

<sup>167</sup> Para 9.

<sup>168</sup> Recommendation No. R (2000)11 of the Committee of Ministers on action against trafficking in human beings for the purpose of sexual exploitation. Adopted by the Committee of Ministers on 19 May 2000, at the 710<sup>th</sup> meeting of the Ministers Deputies. Available on the internet at: <http://cm.coe.int/ta/rec/2000/2000r11.htm>.

<sup>169</sup> Para 50.

<sup>170</sup> Para 7.

<sup>171</sup> Parliamentary Assembly Recommendation No. 1325 (1997) On Traffic in Women and Forced Prostitution in Council of Europe Member States Available on the internet at: <http://assembly.coe.int/Main.asp?link=http%3A//assembly.coe.int/Documents/AdoptedText/TA97/EREC1325.HTM>.

<sup>172</sup> Para 1.

conducting awareness-raising campaigns,<sup>173</sup> training immigration staff,<sup>174</sup> creating dedicated police structures,<sup>175</sup> granting residence permits to victims of trafficking,<sup>176</sup> organizing legal, medical and psychological assistance for trafficking victims,<sup>177</sup> granting non-governmental organizations access to court to increase the effectiveness of prosecution efforts.<sup>178</sup>

## 2.8. EU obligations

The European Union law acknowledges that trafficking in human beings is a fundamental violation of human rights. Consequently, the Charter of Fundamental Rights of the European Union<sup>179</sup> states: "trafficking in human beings is prohibited."<sup>180</sup> The Constitution of the EU<sup>181</sup> itself refers to the issue of trafficking when defining serious crimes with cross-border dimensions, including trafficking in human beings and sexual exploitation of women.<sup>182</sup>

Title IV "Provisions on Police and Judicial Cooperation in Criminal Matters" of the Amsterdam Treaty<sup>183</sup> contains an explicit reference to trafficking in persons.<sup>184</sup> The objective of the area of Police and Judicial Cooperation in Criminal Matters is to "provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters (...)".<sup>185</sup> Accordingly, EU work in addressing the area of trafficking has focused on creating common definitions, criminal penalties and sanctions for trafficking offenses to be implemented by Member States, as well as increasing law-enforcement cooperation among Member States, funding of anti-trafficking initiatives, and the adoption of Council and Commission decisions and Parliament resolutions.

The most important legal instrument regarding combat of trafficking in persons was issued in July 2002, i.e., Council Framework Decision 2002/629/JHA<sup>186</sup> on Combating Trafficking in Human Beings. The Decision establishes a comprehensive EU approach to combating trafficking in human beings by setting out minimum requirements for Member State action. In particular, Member States are called on to punish all acts related to trafficking in human beings,<sup>187</sup> as well as "instigation of, aiding, abetting or attempting to commit"<sup>188</sup> such acts. Under this Decision, the importance of effective punishment is stressed, stating the

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<sup>173</sup> Para 6.i.

<sup>174</sup> Para 6.ii.

<sup>175</sup> Para 6.iii.

<sup>176</sup> Para 6.v.

<sup>177</sup> Para 6.vi.

<sup>178</sup> Para 6 x.

<sup>179</sup> Charter of Fundamental Rights of the European Union. Available on the internet at:

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/c\\_364/](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/c_364/).

<sup>180</sup> Article 5.3.

<sup>181</sup> Treaty establishing a Constitution for Europe. Available on the internet at:

<http://www.eurotreaties.com/constitutiontext.html>.

<sup>182</sup> Part III, Article 267.

<sup>183</sup> The Treaty on European Union (OJ 2002, C 325).

<sup>184</sup> Article 29.

<sup>185</sup> Article 29 (ex art. K.1) TEU.

<sup>186</sup> This decision replaces and repeals Council Joint Action 97/154/JHA, insofar as it concerns trafficking in human beings.

<sup>187</sup> Para 1.

<sup>188</sup> Para 1.

punishment for violations must be "effective, proportionate and dissuasive."<sup>189</sup> Further, the Decision introduces the necessity of criminal and civil liability for legal persons.<sup>190</sup> As far as concerns jurisdiction issues, to ensure that crime is punished, the Decision establishes three criteria on jurisdiction. Consequently, a Member State shall have jurisdiction where: an offence is committed on its territory, the offender is a national of the state, or the offence is committed for the benefit of a legal person established in the territory of the Member State.

Regarding protection of and assistance to victims,<sup>191</sup> the Decision puts an obligation on Member States to "establish that investigations into or prosecution of offences ... shall not be dependent on the report or accusation made by a person subjected to the offence."<sup>192</sup>

The EU has also addressed the issue of trafficking from the point of immigration policy and asylum law by approving a Council Directive 2004/81/EC of 29 April 2004 "On the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities."<sup>193</sup> The purpose of the Directive is to introduce a residence permit for victims of trafficking or illegal immigration who are third-country nationals and who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration. The scope of the application is rather broad stipulating that the Directive shall be applied to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, "even if they have illegally entered the territory of the Member States."<sup>194</sup> The Directive sets force certain requirements concerning treatment of victims before and after the issue of the residence permit providing excessive list of services that Member States shall make available to the third country nationals who are subjects of the Directive.

Lastly, Resolutions of the Council of the European Union call on EU Member States to ensure the safety of witnesses in the fight against organized crime. Thus, the Resolution of 23 November 1995 lists a number of protective measures EU Members States must guarantee concerning the proper protection of witnesses during and after trials, as well as the extension of protection to close relatives of witnesses.<sup>195</sup> The Resolution of 20 December 1996 urges EU Member States to adopt measures that encourage individuals who have connections with criminal organizations to cooperate with the judicial process.<sup>196</sup>

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<sup>189</sup> Article 3.1.

<sup>190</sup> Article 4.

<sup>191</sup> Article 7.

<sup>192</sup> Article 7.1.

<sup>193</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Available on the internet at: [http://europa.eu.int/eur-lex/lex/en/dossier/dossier\\_05.htm](http://europa.eu.int/eur-lex/lex/en/dossier/dossier_05.htm).

<sup>194</sup> Article 3.1.

<sup>195</sup> Resolution of the Council of 23 November 1995 on the protection of witnesses in the fight against international organized crime (OJ 1995, C 327).

<sup>196</sup> Council Resolution of 20 December 1996 on individuals who cooperate with the judicial process in the fight against international organized crime (OJ 1997, C 010).

## 2.9. Summary of provisions regarding protection of victims

Thus, taking into account the above mentioned international and regional obligations, and the most common practices, States must adopt and implement legislation, and comply the practice with legislation not only to eliminate trafficking but, most importantly, protect all rights of victims of trafficking. Accordingly, as the minimum, States must provide the following:

1. Access to remedies - States shall ensure that trafficked persons, “irrespective of their immigration status or the legality or illegality of the work they perform”,<sup>197</sup> are given access to effective and appropriate legal remedies<sup>198</sup> in order to press criminal charges against traffickers and others who have exploited or abused them. Additionally, States must also adopt mechanism for promptly informing the victims of such rights.<sup>199</sup> The right to remedies is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation.<sup>200</sup> Besides, it must be recognized, that trafficking is only one of the crimes committed against the victim of trafficking. Therefore, in addition to charging defendants with the crime of trafficking, they must be charged also with rape, sexual assault and kidnapping<sup>201</sup>, also torture, cruel, inhumane or degrading treatment,<sup>202</sup> as well as slavery or slavery-like practices, involuntary, forced or compulsory labour,<sup>203</sup> and forced marriage, forced abortion, forced pregnancy.<sup>204</sup>

2. Principle of non-discrimination - Trafficking in persons and measures to combat trafficking in persons often involve discrimination based on gender, national or social origin, poverty or other factors. For instance, people are trafficked because of their gender, skin color, nationality or social status.<sup>205</sup> Also

<sup>197</sup> Global Alliance against Trafficking in Women, Foundation against Trafficking, International Human Rights Law Group, “Human Rights Standards for the Treatment of Trafficked Persons”, January 1999. Available on the internet at: <http://www.aretusa.net/download/centro%20documentazione/02documenti/4-orga/internazionali/D-04-INT-01en.pdf>. At p. 8.

<sup>198</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council. E/2002/100.Substantive session 2002 New York, 1-26 July 2002 Social and human rights questions: human rights. Available on the internet at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument). At p. 4, para 18.

<sup>199</sup> ICCPR 2.3., International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Hereafter ICPMW). Adopted by General Assembly resolution 45/158 of 18 December 1990. Enters into force on 1 July 2003. Available on the internet at: [http://www.unhcr.ch/html/menu3/b/m\\_mwctoc.htm](http://www.unhcr.ch/html/menu3/b/m_mwctoc.htm). 16.2., Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA res. 40/34 (29 Nov. 1985). (hereafter Declaration on Basic Principles) Available on the internet at: <http://www.un.org/documents/ga/res/40/a40r034.htm> At para 4-5.

<sup>200</sup> Supra 197. At.p. 13.

<sup>201</sup> CEDAW 2(f), 6; ICCPR 6; Recommendations No. 19 on Violence against Women.

<sup>202</sup> CAT, ECHR, Article 3.

<sup>203</sup> ILO No. 29 and 105 (Latvia has not ratified), ICCPR 8; ICPMW 11.

<sup>204</sup> ICESCR 10.1; ICCPR 23; CEDAW 16;

<sup>205</sup> United Nations Economic and Social Commission for Asia and the Pacific. Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices, 2003. Available on the internet at: <http://www.unescap.org/esid/GAD/Publication/Trafficking-File1.pdf>. At p. 68.

decisions to assist a victim of trafficking may be based on discriminatory grounds.<sup>206</sup>

UN Secretary-General Kofi Annan has made the connection between discrimination and trafficking:

... Because the overwhelming majority of trafficked persons are female, trafficking is usually considered to be the result of discrimination on the basis of sex. However, there is increasing evidence that racial and social marginalization constitute significant risk factors for trafficking, and also determine the treatment that trafficked women experience in countries of destination. ... In addition, racist ideology and racial, ethnic and gender discrimination underlie the demand for the products of trafficking.<sup>207</sup>

In order to eliminate discrimination, and ensure everyone has the right to equality before the law and equal protection of the law,<sup>208</sup> States must review their legislation and practices and implement the measures that are necessary in order to eliminate discrimination against women in all fields.<sup>209</sup> For example, States should prohibit discrimination by both public and private actors in such areas as employment, education, political activities and the provision of accommodation, goods and services.<sup>210</sup> “States parties should report on all these measures and provide information on the remedies available to victims of such discrimination.”<sup>211</sup> By doing this, women will be less subject to the discrimination that causes vulnerability to trafficking.

3. Safety and fair treatment - It frequently happens that trafficked women are victimized twice: first by the traffickers themselves and secondly during legal procedures when they are detected. Women who were lured or forced to foreign countries for the purpose of sexual exploitation are in a particular vulnerable position. “They are separated from their families, they find themselves in an environment they do not know, and they are usually ignorant of their rights.”<sup>212</sup>

States should ensure that trafficked persons are not treated as criminals but as victims of crimes who have suffered serious human rights abuses. For example, victims of trafficking cannot be detained, imprisoned or prosecuted for offences related to being a victim, including for lack of a valid visa, prostitution, illegal stay and/or the use of a false visa or false travel or other documents; and not hold trafficked persons in a detention centre, jail or prison, at any time, prior to, during and after all civil, criminal or other legal proceedings.<sup>213</sup> They must be

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<sup>206</sup> Ibid.

<sup>207</sup> Smuggling and trafficking in persons and the protection of their human rights, Note by Secretary-General, Economic and Social Council, Commission on Human Rights, Subcommittee on the Promotion and Protection of Human Rights 5 July 2001 (E/CN.4/Sub.2/2001/26)

<sup>208</sup> ICCPR, Article 26.

<sup>209</sup> UN Human Rights Committee, General Comment 28 (68) on Article 3 of the ICCPR, Adopted on March 27, 2000. Available on the internet at: [http://sim.law.uu.nl/SIM/CaseLaw/Gen\\_Com.nsf/0/b2c129fb938e9e74c12568b9004e7ec5?OpenDocument](http://sim.law.uu.nl/SIM/CaseLaw/Gen_Com.nsf/0/b2c129fb938e9e74c12568b9004e7ec5?OpenDocument). Last visited at August 15, 2004, para 31.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Speech of Mr Vitorino. Information Event in the European Parliament to mark the International Women’s Day on the theme trafficking in women 8 March 2001. Available on the internet at: [http://europa.eu.int/comm/employment\\_social/equ\\_opp/violence/vitorino.pdf](http://europa.eu.int/comm/employment_social/equ_opp/violence/vitorino.pdf). At p. 2.

<sup>213</sup> ICPRMW 16.4.

protected from further exploitation and harm, and have access to adequate physical and psychological care.<sup>214</sup>

It is important to stress out that the measures of protection and care performed by States cannot be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.<sup>215</sup> They are aimed at ensuring that trafficked persons are not treated as criminals but as victims of crimes who have suffered serious human rights abuses.

4. Access to private action and reparations - Trafficking in women brings major economic, emotional, psychological and physical consequences for the victims.<sup>216</sup> These consequences are not accommodated by criminal investigation and prosecution of the offender.<sup>217</sup> In order to assist victims of trafficker and strengthen their position, as well as to serve a deterrent to traffickers, adequate financial compensation should be provided to trafficked persons. States must take all necessary steps to ensure that all trafficked persons, irrespective of their immigration status or the legality or illegality of the work they perform,<sup>218</sup> have the right to bring a civil or other action against traffickers and others<sup>219</sup> who may have exploited or abused them, and have access to other legally enforceable forms of compensation (including lost wages), restitution and rehabilitation for economic, physical and psychological damages.<sup>220</sup> Non-wage compensation, restitution and rehabilitation shall be proportionate to the gravity of the violations and resulting harm.<sup>221</sup>

In conclusion, under international human rights law states have the obligation to act with due diligence in order to prevent, investigate and prosecute cases of trafficking in women and to afford remedies and reparation to victims of

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<sup>214</sup> ICPRMW 28; Declaration of Basic Principles 14-15, 16.

<sup>215</sup> Supra 197. At p.3, para 8.

<sup>216</sup> Global Alliance against Trafficking in Women, Foundation against Trafficking, International Human Rights Law Group, "Human Rights Standards for the Treatment of Trafficked Persons", January 1999. Available on the internet at: <http://www.aretusa.net/download/centro%20documentazione/02documenti/4-orga/internazionali/D-04-INT-01en.pdf>. At p. 12.

<sup>217</sup> Ibid.

<sup>218</sup> E.g., in most countries sex work is not legal.

<sup>219</sup> Global Alliance against Trafficking in Women, Foundation against Trafficking, International Human Rights Law Group, "Human Rights Standards for the Treatment of Trafficked Persons", January 1999. Available on the internet at: <http://www.aretusa.net/download/centro%20documentazione/02documenti/4-orga/internazionali/D-04-INT-01en.pdf>. At p. 11. Including public officials and, when possible, persons having diplomatic immunity.

<sup>220</sup> ICCPR 2.3; ICC 75; ICPRMW 22.6 and .9, 68.2; COE Convention on Action against Trafficking in Human Beings Article 15 (3); Declaration of Basic Principles 8-11; Model Strategies 10(c); (Draft) Basic Principles and Guidelines on the Right to Reparation for Victims of [Gross] Violations of Human Rights and International Humanitarian Law, Commission on Human Rights, UN (E/CN.4/1997/104, April 1997), which formed the basis for the Commission's examination of the matter.

<sup>221</sup> Global Alliance against Trafficking in Women, Foundation against Trafficking, International Human Rights Law Group, "Human Rights Standards for the Treatment of Trafficked Persons", January 1999. Available on the internet at: <http://www.aretusa.net/download/centro%20documentazione/02documenti/4-orga/internazionali/D-04-INT-01en.pdf>. At p. 11.

trafficking. Measures to be taken are not only of legal, but also of a political and administrative character.<sup>222</sup>

### 3. National law and practice

#### 3.1. Constitution

Chapter Eight of the Satversme<sup>223</sup> (Constitution) provides for Fundamental Human Rights to every individual residing in Latvia, acknowledging that the State recognizes and protects fundamental human rights in accordance with the Satversme, laws and international agreements binding upon Latvia.<sup>224</sup>

Under Chapter Eight of the Satversme, everyone has the right to liberty and security of their person, and no one may be deprived of or have their liberty restricted, otherwise than in accordance with law.<sup>225</sup> Further, the Satversme puts an obligation on the State to protect human honour and dignity, and prohibits torture or other cruel or degrading treatment of human beings, as well as stating that no one shall be subjected to inhuman or degrading punishment.<sup>226</sup> Furthermore, the Satversme holds a strong position on prohibiting forced labour,<sup>227</sup> which directly reflects trafficking issues, as forced labour is one of the main elements of trafficking in persons.

By adopting Chapter Eight of the Satversme, Latvia introduced its attitude that is aimed against any restrictions on individual freedoms and violations of human rights, including such gross violations of individual freedoms and human rights as trafficking in persons.

#### 3.2. The Criminal Code<sup>228</sup>

The first anti-trafficking provision<sup>229</sup> in the Latvian Criminal Code was adopted by the Parliament in May 2000. This provision criminalizes the sending of persons to a foreign country for the purpose of sexual exploitation. Such activities against a juvenile or a minor are punishable by deprivation of liberty up to fifteen years, depending on whether they are committed for the purpose of commercial sexual exploitation. Within the meaning of Article 165<sup>1</sup>, *sending* is construed as any action that encourages legal or illegal departure from the State or entry into the State, transit or residence in a foreign state.<sup>230</sup>

In order to comply with the requirements of the Trafficking Protocol, in 2002 a new chapter on Trafficking in Persons in the Criminal Code was developed. Thus Article 154<sup>1</sup>, providing for penalties for acts of human trafficking, and Article 154<sup>2</sup> providing for definition on human trafficking was inserted. Consequently,

<sup>222</sup> A. Kartusch, *Reference Guide for Anti-Trafficking Legislative Review*, Ludwig Boltzmann Institute of Human Rights, Vienna, September 2001. Available on the internet at: [http://www.osce.org/documents/odhr/2001/09/2120\\_en.pdf](http://www.osce.org/documents/odhr/2001/09/2120_en.pdf). At p. 14.

<sup>223</sup> The Constitution of the Republic of Latvia (Satversme). Adopted by the people of Latvia on March 21, 1933. 21 March 1933.

<sup>224</sup> Article 89.

<sup>225</sup> Article 94.

<sup>226</sup> Article 95.

<sup>227</sup> Article 106.

<sup>228</sup> Criminal Code of Latvia, Adopted by Latvian Parliament, came into force on April 1, 1999, Latvijas Vēstnesis No.199/200.

<sup>229</sup> Article 165<sup>1</sup> "Sending a Person for Sexual Exploitation".

<sup>230</sup> Latvian Criminal Code, Article 165.<sup>2</sup> "Sending to a Foreign State".

Article 154<sup>1</sup> as a minimum penalty to perpetrators of trafficking provides for imprisonment not less than five years with or without confiscation of liberty, and the maximum penalty not exceeding imprisonment not exceeding fifteen years with confiscation of property.<sup>231</sup>

The Latvian Criminal Code, Article 154<sup>2</sup> “Meaning of Human Trafficking” of Criminal Code defines trafficking in persons as:

...the recruitment, conveyance, transfer, concealment or reception of persons for the purpose of exploitation, committed by using violence or threats or by means of fraud, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness, or by the giving or obtaining of material benefits or benefits of another nature in order to procure the consent of such person, upon which the victim is dependent.

Within the meaning of the above Article, exploitation should be understood as the involvement of a person in prostitution or in other kinds of sexual exploitation, compelling a person to perform activities or to provide services, holding a person in slavery or other similar forms thereof (debt slavery, serfdom or the compulsory transfer of a person into dependence upon another person), and holding a person in servitude, or unlawful removal of a person’s tissues or organs.<sup>232</sup>

The definition of trafficking provided in the Latvian Criminal Code in general corresponds with International standards for the purposes of describing in detail the nature of this serious crime. However, the Latvian definition does not concentrate on such means as coercion, abduction and deception, which are not the core elements of the definition of trafficking in persons in national legislation. The “means” used to move someone into a trafficking situation are not of such great importance. What really matters to establish the crime for the purpose of sentencing the perpetrators, is the process of moving people from one place to another in order to hold them in forced, labor or slavery like conditions.

Yet, the national definition lacks a crucial element that should be a part of definition of trafficking in persons: that is, domestic trafficking. The Latvian Criminal Code looks upon trafficking entirely from the transnational perspective. Article 165.<sup>2</sup> “Sending to a Foreign State” proclaims the following:

Within the meaning of this Article, sending shall be construed as any action that encourages legal or illegal departure from the State or entry into the State, transit or residence in a foreign state.

Even though most cases of trafficking have a cross-border element, “internal trafficking is a problem in many countries, and should not be excluded from the definition of trafficking”.<sup>233</sup> It should be noted that the understanding of trafficking need not necessarily involve the crossing of international borders. From the perspective of the victims, the violations and harms suffered by in-country victims are no less than for cross-border victims,<sup>234</sup> and governments must adopt

<sup>231</sup> However, The European Council Framework Decision of 19 July 2002 2002/629/JHA mandates that European countries provide penalties for trafficking at least eight years imprisonment.

<sup>232</sup> Article 154<sup>2</sup>3.

<sup>233</sup> M.Y. Mattar, “A Comparative Analysis of the Anti-Trafficking Legislation in origin Countries: Towards a Comprehensive and Effective Legal Response to Combating Trafficking in Persons”, (2003).

<sup>234</sup> Global Alliance against Trafficking in Women, Foundation against Trafficking, International Human Rights Law Group, “Human Rights Standards for the Treatment of Trafficked Persons”,

laws ensuring that the crime applies to every person who commits it.<sup>235</sup> Under the Trafficking Protocol there is an obligation to States parties to adopt a trafficking law that covers both internal and cross-border trafficking.<sup>236</sup>

As discussed above, the Latvian Criminal Code looks upon trafficking issues from the transnational point of view, providing only for “sending abroad”,<sup>237</sup> and excluding domestic trafficking. Although national legislation does not have a clause on domestic trafficking, such action can be criminalized under Chapter fifteen of the Criminal Code “Criminal Offences against Personal Liberty, Honour and Dignity”, and under laws outlawing pimping.<sup>238</sup>

Respectively, for compelling a person to become engaged in prostitution, the Criminal Code provides for deprivation of liberty for a term up to six years, or custodial arrest, or a fine up to sixty times the minimum monthly wage.<sup>239</sup> Further, for living on the avails of prostitution, The Criminal Code provides for deprivation of liberty for a term up to four years, with or without the confiscation of property.<sup>240</sup>

The Regulation No. 210 approved by the Cabinet of Ministers in 22 May 2001 “On Restriction of Prostitution”<sup>241</sup> was passed not only to prevent persons from engaging in prostitution, but, most importantly, punish third parties who derive profit from exploiting prostitutes. According to the Regulation,<sup>242</sup> any third party action encouraging prostitution is prohibited. Violation of the Regulation is a subject to administrative liability.

In addition, Articles 152 and 153 provide for criminal liability for Unlawful Deprivation of Liberty and Kidnapping. Both Articles can also be invoked in trafficking in women cases. Thus, if a person commits illegal acts depriving a person of the possibility to freely determine where he or she may be, depending whether such illegal acts were committed in a manner dangerous to the life or health of the victim, or have been committed repeatedly, or they have been committed by a group of persons pursuant to previous agreement, or serious consequences are caused thereby, such acts are punishable by deprivation of liberty up to ten years.<sup>243</sup> For a person who commits seizure, using violence or threats, or abduction by fraud of a person (kidnapping) for purposes of vengeance, acquisition of property or blackmail, depending whether such illegal acts are

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January 1999. Available on the internet at:

<http://www.aretusa.net/download/centro%20documentazione/02documenti/4-orga/internazionali/D-04-INT-01en.pdf>. At p. 3.

<sup>235</sup> Article 34.2 of the Convention against Transnational Crime states that certain crimes, e.g., belonging to an organized crime group (Article 5), money laundering (Article 6), corruption (Article 8), and obstruction of justice (Article 23), do not need to be transnational or part of an organized criminal group. This same provision applies to the crime of trafficking in order to ensure that all traffickers can be prosecuted under domestic laws.

<sup>236</sup> Article 1 of the Trafficking Protocol states that relevant Convention provisions (see footnote 38) are incorporated into the Protocol, which includes aforementioned Article 34.2.

<sup>237</sup> Latvian Criminal Code, Article 165.<sup>2</sup> “Sending to a Foreign State”.

<sup>238</sup> Namely, Article 164 “Compelling Engaging in Prostitution” and Article 165 “Living on the Avails of Prostitution” of the Criminal Code, as well as the Regulation No. 210 “On Restriction of Prostitution”.

<sup>239</sup> Latvian Criminal Code, Article 164.

<sup>240</sup> *Ibid.*, Article 165.

<sup>241</sup> The Regulation No. 210 “On Restriction of Prostitution”, Approved by the Cabinet of Ministers on May 22, 2001, Latvijas Vēstnesis No. 80, May 24, 2001.

<sup>242</sup> Article 11 of the Regulation No. 210.

<sup>243</sup> Latvian Criminal Code, Article 152 “Unlawful Deprivation of Liberty”.

committed repeatedly or serious consequences are caused thereby, the applicable sentence is deprivation of liberty up to fifteen years, with confiscation of property.<sup>244</sup>

### 3.3. The Criminal Procedure Code<sup>245</sup>

During the investigation process most victims do not cooperate with police. Typically trafficked persons fear authority and are unwilling to trust the police. They also fear revenge and are worried to be socially stigmatized by society. It follows that effective prosecution of traffickers is a very important factor in protection of victims.<sup>246</sup> As trafficking victims are often the only available witnesses against trafficking networks, they face a great risk when they escape and agree to provide information about their traffickers. Wrongly, but some sources consider victims of trafficking as meriting assistance and protection only when they are ready to act as witnesses in judicial proceedings against the perpetrators.<sup>247</sup> The recognition of the victim of trafficking as a victim of a crime, would entitle that person to basic rights such as rights to privacy, the right to legal representation, the right to seek residence, the right to return to her country of origin.

Taking into account the above discussed, it is important that the Criminal Procedure Code can ensure full and speedy discovery of crimes, learn who the guilty persons are, and ensure the protection of victims and witnesses.<sup>248</sup>

In consequence, the Latvian Criminal Procedure Code<sup>249</sup> defines victim as a person who has suffered moral, physical damage or damage to her property that has occurred as a result of criminal activity conducted against her.<sup>250</sup> The Procedure Code allows the victim to act as witness in the criminal case, and also to request protection.<sup>251</sup> Council Framework Decision 2001/220/JHA offers a more sensitive definition than the Procedure Code, thus allowing to apply the term in a broader sense. For instance, while the Procedure Code covers only moral damage, the Framework Decision includes also harm, mental injury, and emotional suffering.<sup>252</sup>

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<sup>244</sup> Ibid., Article 153.

<sup>245</sup> The Criminal Procedure Code of Latvia. Adopted by Supreme Council of the Republic of Latvia at August 22, 1991, Valdības Ziņotājs, No. 33./34

<sup>246</sup> Global Alliance against Trafficking in Women, Foundation against Trafficking, International Human Rights Law Group, "Human Rights Standards for the Treatment of Trafficked Persons", January 1999. Available on the internet at: <http://www.aretusa.net/download/centro%20documentazione/02documenti/4-orga/internazionali/D-04-INT-01en.pdf>. At p. 2.

<sup>247</sup> International Organization for Migration, *Trafficking in Women: Social and Legal Aspects*, International Organization for Migration, Regional Office for the Baltic and Nordic Countries, 2001. Available on the internet at: <http://www.focus-on-trafficking.net/pdf/Trafficking%20Book.pdf>, at p. 81.

<sup>248</sup> In most cases victims of trafficking act also as witnesses. Taking that into account in the analysis of the Criminal Procedure Code when the author of this paper refers to witness, this will cover also victim, and *vice versa*.

<sup>249</sup> Hereafter the Procedure Code.

<sup>250</sup> The Procedure Code, Article 95 (1).

<sup>251</sup> Ibid.

<sup>252</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) Recommendation 1545 (2002). Article 1.(a) "victim shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State."

In general the national definition is satisfactory, nonetheless, if the notion to concentrate more on emotional damages would be followed, it might serve as a basis to acknowledge non-pecuniary damage to be as serious as pecuniary.

Both international and regional standards emphasize the necessity to ensure that trial proceedings are consistent with the physical and psychological safety of trafficked persons. In that respect the Trafficking Protocol requires States to take appropriate measures to provide effective protection “from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning trafficking, and, as appropriate, for their relatives and other persons close to them.”<sup>253</sup> Furthermore, the Trafficking Protocol provides for the protection of witnesses including their “relatives and other persons close to them”<sup>254</sup> before and during the trial.

The Procedure Code enables witnesses to apply for special protection<sup>255</sup> granting such protection also to victims, suspected persons, accused persons, sentenced persons, who participate as witnesses in cases of severe crimes.<sup>256</sup> It follows, irrespective of international standards, that national legislation excludes a victim’s relatives and other persons close to her from special protection. For instance, COE Convention on Action against Trafficking in Human Beings states that State Parties “shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators”<sup>257</sup> not only to victims but also to family members of victims and witnesses.<sup>258</sup> In fact, the Convention goes even beyond protection of victims and witnesses as well as their family members by noting that national legislation shall provide for protection of “members of groups, foundations, associations or non-governmental organizations which carry out the activities set out in”<sup>259</sup>.

Regarding the length of protection, it must be taken into account that danger may not end with the trial. This means that protection should extend beyond the end of legal proceedings.<sup>260</sup> It is often the case that traffickers or their friends are not captured and they remain free to threaten witnesses.<sup>261</sup> Under the Procedure Code it is provided that the basis for termination of special protection is a decision carried out by the prosecutor general, or the court in cases when there is no more basis for protection, person has refused to have special protection or person with her action has made impossible to have special protection applied.<sup>262</sup>

One of the most crucial aspects in protection of victims under international and regional standards is protection of their privacy. Therefore, the Convention

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<sup>253</sup> Article 24(1).

<sup>254</sup> Article 24.1.

<sup>255</sup> The Criminal Procedure Code, Chapter IV “Special Procedural Protection”.

<sup>256</sup> Article 299.

<sup>257</sup> COE Convention on Action against Trafficking in Human Beings, Article 28 (1).

<sup>258</sup> Ibid.

<sup>259</sup> Ibid., Article 28 (4).

<sup>260</sup> For example, as pointed out in the above paragraph cited from Article 28 (1) of COE Convention on Action against Trafficking in Human Beings.

<sup>261</sup> International Human Rights Group, “The Annotated Guide to the Complete UN Trafficking Protocol”, International Human Rights Group. Available on the internet at: <http://www.walnet.org/csis/papers/UN-TRAFFICK.PDF>. At p. 23.

<sup>262</sup> Article 310 (1).

against Transnational Crime provides for non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of witnesses and persons close to them.<sup>263</sup> At the EU level it is articulated that States must guarantee that “it is possible to adopt, if necessary, as part of the court proceedings, appropriate measures to protect the privacy and photographic image of victims and their families or persons in a similar position.”<sup>264</sup> COE Convention on Action against Trafficking in Human Beings is developing the notion even further by noting that State Parties must adopt measures<sup>265</sup> aimed at encouraging the media to protect the private life and identity of victims.<sup>266</sup>

The Procedure Code does correspond to the most of the privacy requirements and provides that protected person’s identity cannot be disclosed and cannot be mentioned in the files of the case.<sup>267</sup> To protect identity, the Code provides to assign and use a pseudonym in all documents related to the case.<sup>268</sup> Nevertheless there are no special provisions regarding the media and its involvement in protection of privacy.

Another serious aspect concerning protection of privacy relates to evidentiary rules. Accordingly, the Convention against Transnational Crime stresses to ensure the safety of witnesses and permit to give the testimony “through the use of communications technology such as video links or other adequate means.”<sup>269</sup> The same line is followed and offered in the Appendix to Recommendation No. R (97)13.<sup>270</sup> The Recommendation provides for “alternative methods of giving evidence which protect them from intimidation resulting from face to face confrontation with the accused”,<sup>271</sup> suggesting to allow witnesses to give evidence in a separate room.<sup>272</sup> This is because witnesses are too frightened to speak openly in court in the presence of their persecutors. The provision on evidentiary rules allows them to give testimony from a location different than the court, and yet “permit defendant’s attorneys to cross-examine the witnesses.”<sup>273</sup>

The above International standards regarding evidence are well incorporated into the Procedure Code, thus providing for several alternatives to give evidence.<sup>274</sup> The Procedure Code goes even further than that, and states that if there is basis to believe that person’s safety is under danger, she has the right not

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<sup>263</sup> Article 24.2 (a)

<sup>264</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) Recommendation 1545 (2002). Article 1.(a) “victim shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.” Article 8 (2).

<sup>265</sup> “In accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights,” COE Convention on Action against Trafficking in Human Beings, Article 11 (3).

<sup>266</sup> COE Convention on Action against Trafficking in Human Beings, Article 11 (3).

<sup>267</sup> The Procedure Code, Article 303 (3).

<sup>268</sup> Ibid. Article 303 (4).

<sup>269</sup> Article 24.2(b).

<sup>270</sup> Recommendation No. R (97)13 of the Committee of Ministers to the Member States Concerning Intimidation of Witnesses and the Rights of the Defence Adopted by the Committee of Ministers on 10 September 1997, at the 600<sup>th</sup> Meeting of the Ministers’ Deputies. Available on the internet at: <http://www.legislationline.org/view.php?document=56662&ref=true>.

<sup>271</sup> Para 6.

<sup>272</sup> Para 6.

<sup>273</sup> *Supra* 256. At p. 24.

<sup>274</sup> The Latvian Procedure Code, Article 309.

to witness in criminal proceedings and will not be called to criminal liability for that.<sup>275</sup> Thus, in order to protect the victim court cannot use the evidence that was provided by the person during pretrial investigation.<sup>276</sup> On the one hand, such provision might not be of benefit for the positive outcome of the case, but on the other hand the protection of the victim is well guaranteed.

For the victims to feel protected and be confident about their role in both investigation and judicial proceedings in which they are about to participate, awareness of their rights is vital. For that reason, the Procedure Code obliges the court, the prosecutor or the investigator to explain to the participant in the case her rights and ensure she can realize those rights. The Procedure Code does not name those rights in detail. According to regional standards<sup>277</sup> the obligation to explain to the victim her rights is more expanded. The minimum information that should be provided to victims is named as follows: the type of services or organizations to which victims can turn for support; the type of support which they can obtain, where and how they can report an offence, procedures following such a report and their role in connection with such procedures, how and under what conditions they can obtain protection, to what extent and on what terms they have access to legal advice or legal aid, what are the requirements for them to be entitled to compensation.<sup>278</sup>

None of the above provisions are incorporated in the Procedural Code. According to the information received from prosecutor who wanted to stay anonymous, during his professional experience of participating in trials, there has been no single case where a victim would have had an attorney. He mentioned two reasons: firstly, victims do not have financial resources to hire an attorney, and the State does not have an obligation to assign one,<sup>279</sup> and secondly, victims do not realize they might need an attorney.

Another significant issue for trafficking victims is the right to claim and receive compensation for their sufferings. Trafficked persons' right to compensation and restitution is recognized by the Trafficking Protocol.<sup>280</sup> At the Regional level CEO Convention on Trafficking in Human Beings stipulates that State Parties shall provide in their national legislations for the right of victims to compensation from perpetrators. CEO Recommendation (2002)5 orders Member States to ensure that, "in cases where the facts of violence have been established, victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred,"<sup>281</sup> and "envisage the establishment of

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<sup>275</sup> Article 309 (3).

<sup>276</sup> Ibid.

<sup>277</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) Recommendation 1545 (2002). Article 1.(a) "victim shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State." Article 24(1).

<sup>278</sup> Ibid., Article 6.1.

<sup>279</sup> Article 475 (2), 1. and 2 provides that the presence of an attorney is mandatory if a person is under-aged or deaf, blind, or due to other physical or psychological disabilities unable to realize her rights.

<sup>280</sup> Article 25.2.

<sup>281</sup> Para 36.

financing systems in order to compensate victims.”<sup>282</sup> Further, under EU obligations States are urged to take appropriate measures to encourage the offender to provide adequate compensation to victims.<sup>283</sup>

The Procedure Code follows international and regional requirements and provides for pecuniary and non pecuniary damages for moral invasion, physical sufferings and material losses,<sup>284</sup> stipulating to confiscate illegally acquired property and in case the compensation is requested, to use the property to compensate the victim.<sup>285</sup> Moreover, in June 2006 the Law “On State Compensations to Victims”<sup>286</sup> came into effect enabling victims of crime to ask for and receive compensation from the state when person has suffered moral invasion, physical sufferings and material losses. It is of great importance that the law allows to ask for compensation even in those cases when the perpetrator cannot be identified or he/she are not called to criminal liability.

It should be noted, that since the latest amendments to Latvian Criminal Procedure Code came into effect as of 1 October, 2005, the aforementioned Code does meet several of the international and regional standards regarding protection of victims and witnesses, as well as provides for pecuniary and non pecuniary damages.<sup>287</sup> However, there is much work to be done until well formulated legal norms will be applied in practice, and victims and witnesses will be confident that their rights will be protected in a real life situation.

### 3.4. National courts: Analysis of case law

The national legislation provides for the maximum penalty to perpetrators of trafficking imprisonment of fifteen years including confiscation of property.<sup>288</sup> Yet, there is no single judgment found, where the maximum penalty has been imposed by the national courts.

The most important trafficking case in Latvia so far, and the only one in respect to the severity of the imposed sentence, was the conviction and sentencing of a trafficker to thirteen years in prison in 2003.<sup>289</sup> The case was examined by Kurzeme Regional Court and the sentence included not only deprivation of liberty, but also confiscation of property.<sup>290</sup> Still, there were some prosecutors and judges who did not consider trafficking in persons a serious crime, and reduced the sentences in part on appeal.<sup>291</sup>

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<sup>282</sup> Para 37.

<sup>283</sup> Supra 270. Article 9.

<sup>284</sup> Article 22 and Section 26.

<sup>285</sup> Section 27.

<sup>286</sup> The Law “On State Compensations to Victims”, 6 June 2006, Latvijas Vēstnesis No. 87 (3455).

<sup>287</sup> As of September 2006 the author of this paper was unable to find a single judgment providing for compensation to victim of human trafficking.

<sup>288</sup> Article 165.<sup>1</sup>(3) „Sending a Person for sexual Exploitation”.

<sup>289</sup> Supra 47.

<sup>290</sup> The perpetrators were sentenced pursuant to the Latvian Criminal Code, Articles 165<sup>1</sup>(3),<sup>290</sup> 159(3)<sup>290</sup>, and 164(3).

<sup>291</sup> Shadow Report to the United Nations Committee on the Elimination of Discrimination against Women Shadow Report to the Combined Initial, Second and Third Periodic Report of Latvia on the Implementation of Convention of 18 December 1979 on Elimination of All Forms of Discrimination against Women in the Republic of Latvia. Available on the internet at: <http://www.politika.lv/index.php?id=5287>

As discussed in Chapter 3.2 of this paper, along with deprivation of liberty, the Latvian Criminal Code provides also for confiscation of property.<sup>292</sup> Yet, confiscation of property is imposed very rarely. Frequently, if the lower court imposes that sentence, it is cancelled on appeal. For example, in 2004 and 2005 none of the judgments sentenced perpetrators with confiscation of property.<sup>293</sup>

In 2003 twenty people were sentenced under Article 165<sup>1</sup> "Sending a Person for Sexual Exploitation".<sup>294</sup> Among them one person was sentenced to imprisonment for up to five years, six persons were sentenced to imprisonment for one to three years, and thirteen persons had a suspended sentence imposed. With respect to Article 154<sup>1</sup>,<sup>295</sup> since 2002 until 2005 when this provision became effective there was no judgment passed where the Article in question would be applied.<sup>296</sup>

In 2004 there were four persons sentenced under provisions of Article 165<sup>1</sup>: one person was sentenced to imprisonment for one to three years and three had suspended sentence applied.

In 2005 there were 22 persons sentenced for the crime of human trafficking. However, only one person was sentenced under provisions of Article 154<sup>1</sup> and received suspended sentence.<sup>297</sup> Other persons were sentenced under provisions of Article 165<sup>1</sup>: four persons were sentenced to imprisonment of one to three years, two persons were sentenced to imprisonment for three to five years, and the rest had suspended sentence applied. As stated above, in none of the cases, courts considered it necessary to confiscate perpetrators' property.

For the purpose of this paper, the case law consisting of nine judgments handed down in 2002 and 2004 in the Regional and Supreme Courts, and examined under Article 165<sup>1</sup>, were studied.<sup>298</sup>

In 2002 the Kurzeme Regional Court examined a trafficking in women case and sentenced two perpetrators.<sup>299</sup> Buks was sentenced to three years and confiscation of property.<sup>300</sup> Harcenko was sentenced to two years and six months and confiscation of property.<sup>301</sup> The vehicles that were used to bring victims out of the country were impounded by order of the prosecutor. However, the case was appealed to the Supreme Court,<sup>302</sup> which mitigated the sentence for Buks, thus reducing the prison term to two years, although confiscation of property remained. However, the impoundment on the vehicles was cancelled.

In 2003 the Kurzeme Regional Court sentenced one person for a crime provided for in the Latvian Criminal Code Article 165<sup>1</sup>(3), and imposed up to four

<sup>292</sup> Article 165.1 (2).

<sup>293</sup> Source: Ministry of Justice, Department of Courts' Statistics.

<sup>294</sup> Ibid.

<sup>295</sup> Section 154<sup>1</sup> "Human Trafficking".

<sup>296</sup> Nevertheless, under this Article from 2002 *bis dato* three criminal cases (in 2003 - 2, and in four months of 2004 - 1) were registered. (Source: The Information Centre of the Ministry of the Interior).

<sup>297</sup> Source: Ministry of Justice Department of Court Statistics.

<sup>298</sup> Not only that there are no cases examined under Article 154<sup>1</sup> of Criminal Code, also, according to data provided by the Ministry of Justice Department of Courts Work Organization no domestic trafficking cases have been brought to court; thus there are no judgments where articles 152 and 153 would be examined in the context of trafficking in women.

<sup>299</sup> Case No. K02-46/02, 2507007501, 04.08.2002. Kurzeme's Regional Court.

<sup>300</sup> Pursuant to the Latvian Criminal Code Articles 159(2), 164(2), and 165<sup>1</sup>(2).

<sup>301</sup> Pursuant to the Latvian Criminal Code Articles 164(2), 165(2) and 165<sup>1</sup>(2).

<sup>302</sup> Case No. PAK - 730, No. 2507007501, 26.11.2002. Supreme Court, Division of Criminal Cases.

years imprisonment by virtue of Article 49 providing for determination of a lesser sentence than the sentence provided for by law.<sup>303</sup>

In 2003 the Latgale Regional Court examined a case analogous<sup>304</sup> to the one in the Kurzeme Regional Court.<sup>305</sup> The judgment sentenced one perpetrator to deportation from the Republic of Latvia, and the other two had suspended sentences imposed, along with a term of probation. In the same year, the Latgale District Court examined another analogous case.<sup>306</sup> In this case the accused persons had organized sending women abroad for the purposes of sexual exploitation and received money from the people who received the women in the destination country. The sentence imposed on one of the perpetrators was prison for one year and seven months and confiscation of property. The sentence imposed on another perpetrator was two years and confiscation of property.

In 2003 the Latgale Regional Court examined a case under Article 165<sup>1</sup>(2)<sup>307</sup> The accused person (Vanaga) had sent to a foreign state three women, including a juvenile, for sexual exploitation with the goal of profiting from such illegal acts.<sup>308</sup> The juvenile did not have a valid passport. Vanaga provided her with a false passport where her identity data, including age, was changed. In the destination country, the women were all placed in one apartment, and had to provide sexual services. The money they made was all taken away. The Court sentenced Vanaga to two years imprisonment along with confiscation of property. Vanaga appealed to the Supreme Court,<sup>309</sup> which cancelled the sentence imposed by the Regional Court, instead imposing a suspended sentence of two years with a probation period of 2 years. The confiscation of property was cancelled.

During 2002 and 2003, five identical trafficking in women cases under Articles 165<sup>1</sup>(1) and 165<sup>1</sup>(2)<sup>310</sup> were examined in the Daugavpils District Court.<sup>311</sup> All five cases were alike in terms of the facts, reasoning, and sentence imposed. The judgments reflected a tendency of pointing out the victims' consent "to be sent abroad for sexual exploitation."<sup>312</sup> In one case, imprisonment for one year and confiscation of property was imposed,<sup>313</sup> in two cases suspended sentence to

<sup>303</sup> Case No. 1814000702/K02-87/03 of 15 October 2003, Kurzeme Regional Court.

<sup>304</sup> Pursuant to the Latvian Criminal Code Article 165<sup>1</sup>(3).

<sup>305</sup> Source: A.Bergmanis. Doctoral paper: University of Latvia, Law Faculty.

<sup>306</sup> Pursuant to the Latvian Criminal Code Article 165.<sup>1</sup>(3) Case No. 1814007201/K29-719/02, K29-133/03, Latgale's District Court.

<sup>307</sup> Case No. 2003. K03-129/03 No. 1180004403. of 04.06.2003. Latgale's Regional Court.

<sup>308</sup> Ibid., p.3.

<sup>309</sup> Case No. PAK-522, 1180004403, 7 October 2003.

<sup>310</sup> Article 165. <sup>1</sup>"Sending a Person for Sexual Exploitation": (1) For a person who sends a person with his or her consent to a foreign state for sexual exploitation - the applicable sentence is deprivation of liberty for a period of up to four years. (2) For a person who commits the same criminal activities (see point 1), with the aim of profiting or with respect to a minor - the applicable sentence is deprivation of liberty for a period of up to ten years, with or without confiscation of property. (3) For a person who commits the criminal activities provided in Paragraphs one or two of this Section, if these criminal activities have been performed in organized groups with respect to a juvenile - the applicable sentence is deprivation of liberty from eight to fifteen years, with confiscation of property."

<sup>311</sup> Case No. 1180082302. Same reasoning can be found in Cases Nr. 1180119102, K12-100/03. 21 January 2003.; Case No. k12-361/03 (1190066802). 27 May 2003, Case No. K12-571/03. 1180106603 30 September 2003, No. K12-605/02, 1180043401. 01 November 2002.

<sup>312</sup> E.g., Case No. 1180082302, Nr. 1180119102, K12-100/03 of 21 January 2003. Daugavpils' District Court; Case No. K12-44/03, 1180060601 of 15 January 2003. Daugavpils' District Court;

<sup>313</sup> Case No. 1180082302, Nr. 1180119102, K12-100/03 of 21 January 2003, Daugavpils' District Court.

one year<sup>314</sup> and to two years<sup>315</sup> was imposed, in one case deprivation of liberty to two years<sup>316</sup> was imposed, and in the other - to one year.<sup>317</sup>

Nonetheless, the data above shows the unpleasant tendency of courts to impose the lightest sentences the law offers. The judgments analyzed illustrate that in practice trafficking in women is not considered a serious crime. Although the maximum penalty for the crime described in Article 165<sup>2</sup> is imprisonment of fifteen years, as well as it is encouraged to impose confiscation of property on perpetrators, the most severe sentence so far is imprisonment for three to five years only, and the most common practice is to apply suspended sentence. It is very obvious, that the charges brought against traffickers do not account for all abuses suffered by the victims and the punishments are uncertain, ineffective and they are not commensurate with the severity of the offence.

In contrast to such criminal activities as trafficking in drugs, trafficking in women is considered to be a minor offence.<sup>318</sup> Moreover, during training seminars that the author of this paper has conducted for judges during 2004 and 2005 on the importance of application of human rights norms when examining trafficking in persons cases, it became obvious that quite a few judges as well as policemen do not consider victims of human trafficking real victims, instead, there is a tendency to re-victimize them, considering as prostitutes who have had bad luck to find themselves in a helpless situation.<sup>319</sup> Same attitudes were expressed by quite a few policemen. Consequently, it is not surprising that officials hold the position that trafficking is not a serious problem for Latvia.<sup>320</sup>

### 3.5. Latvia: Preventive measures

The Trafficking Protocol calls for State Parties to establish policies, programmes and other measures to prevent and combat trafficking in persons<sup>321</sup> through research, information and mass media campaigns, and social and economic initiatives.<sup>322</sup> Same tactics are demonstrated in CEO Convention on Action against Trafficking in Human Beings.<sup>323</sup>

For Latvia, probably, the most vital action aimed at prevention of trafficking was adoption of a four-year programme on Elimination of Trafficking in Human Beings by the government of Latvia in March 2004.<sup>324</sup> The Programme

<sup>314</sup> Case No. K12-605/02, 1180043401. of 1 November 2002, Daugavpils' District Court.

<sup>315</sup> Case No. K12-44/03, 1180060601 of 15 January 2003, Daugavpils' District Court.

<sup>316</sup> In Case No. k12-361/03 (1190066802) of 27 May 2003, Daugavpils' District Court.

<sup>317</sup> In Case No. K12-571/03. 1180106603 of 30 September 2003, Daugavpils' District Court.

<sup>318</sup> For instance, in 2004, under the Latvian Criminal Code, Article 253 "Unauthorized Manufacture, Acquisition, Storage, Transportation and Conveyance of Narcotic and Psychotropic Substances " 24 persons were sentenced and the average sentences imposed were 5-10 years prison (Data provided by Ministry of Justice Courts Statistics Department).

<sup>319</sup> Even if the victim is prostitute, the attitudes demonstrated by some Latvian judges and policemen are contrary to international standards proposing that women in prostitution must not be viewed as criminals, but as victims of crime.

<sup>320</sup> On the contrary, surveys conducted by IOM, NGO's and the US Department of State show the opposite trend.

<sup>321</sup> Article 9.1. (b).

<sup>322</sup> Article 9.2.

<sup>323</sup> Article 5.

<sup>324</sup> Committee on the Elimination of Discrimination against Women. Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Combined Initial, Second and Third Periodic Report of States

provides for the introduction of the necessary amendments in Latvian legislation to bring it in compliance with the international standards, addresses the issues of the development of rehabilitation system to victims of trafficking in persons, as well as aims at awareness raising in society on the issues related to the trafficking in human beings, and training of professionals working in the above sphere. It was estimated to implement the four year programme 2,162,220 Latvian Lats would be needed. However, practically no budget has been allocated so far, except for 28,000 Lats that were allocated to Ministry of Welfare in 2005.<sup>325</sup>

In order to improve the protection of witnesses in the criminal procedure, in October of 2005 the Law "On Special Protection of Persons"<sup>326</sup> came into effect. The goal of the law is to protect life, health and legal interests of persons who participate in investigation or witness in cases of discovering severe crimes. Consequently, the law provides special protection to victims, witnesses, under-aged persons, also persons who participate in investigation process and judicial procedures. It should be noted, that the Law overlooks the international recommendation providing for inclusion of relatives of victims and persons close to them under special protection.

There is a special police force at State Police dealing with crimes regarding trafficking in human beings. One positive aspect is that police cooperates with NGOs in providing training for policemen working with trafficking victims, and directing trafficking victims to obtain psychological assistance at NGOs.<sup>327</sup>

In summer of 2004 the government of Latvia submitted with the CEDAW Committee its Combined initial, second and third periodic report,<sup>328</sup> which included the information on the current developments of legislative and enforcement mechanisms aimed at prevention of trafficking in women. Parallel, NGOs submitted their Shadow Report<sup>329</sup> highlighting the situation regarding trafficking in women from their experience and observations. This shadow report drew Committees attention, and served as a good alternative source of information thus helping to realize what is the real situation in the country.

In sum, despite some promising indications about preventive measures it seems there is a lack of strong policies and the political will to implement and fund necessary measures.

## 4. Recommendations

As demonstrated in the first three sections of this paper, in last two years Latvia has made serious efforts to ensure the national law complies with several international and regional trafficking mandates. Nevertheless, there is a reluctance to apply the existing legal norms and ensure the practice complies with national and international as well as regional standards. Thus trafficking in Latvia remains a serious problem. This fact has been acknowledged by international institutions and organizations. For instance, in *Trafficking in Persons Report*

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parties: Latvia. Available on the internet at: <http://ods-ddsny.un.org/doc/UNDOC/GEN/N03/422/51/PDF/N0342251.pdf?OpenElement>.

<sup>325</sup> Information obtained from Ministry of Interior Affairs of the Republic of Latvia. Available at: <http://www.iem.gov.lv/iem/2nd/?id=3444&cat=34>

<sup>326</sup> The Law "On Special Protection of Persons", 31 May, 2005 Latvijas Vēstnesis 85 (3243)

<sup>327</sup> Supra 315.

<sup>328</sup> Ibid.

<sup>329</sup> Ibid.

2006<sup>330</sup> the US Department of State recognized that the Government of Latvia does not fully comply with the minimum standards<sup>331</sup> for the elimination of trafficking, and places Latvia in Tier 2.<sup>332</sup> Also, the CEDAW Committee has expressed concern at the increase in trafficking in women and girls, as insufficient information that is given as to the actual size of the problem, as well as lack of rehabilitation and reintegration services for victims of trafficking.<sup>333</sup>

This paper proposes the following recommendations to bring Latvian law and practice into compliance with international human rights norms and to provide realistic assistance to Latvian trafficking victims.

#### 4.1. Legislative changes

In order to improve the prevention and combat of trafficking in women in Latvia, certain amendments to the legislation must be made that would be in compliance with international and regional standards examined throughout this paper.

##### i. Protection of victims

Although Latvian government has taken steps to bring the national legislation in accordance with international human rights standards, there are several issues that have not been addressed. For instance:

Protection of victims' relatives: once victims become involved in criminal proceedings as witnesses, the special protection that under current national law applies only to victims and witnesses, must be extended also to their relatives and persons close to them. In order to prevent the victim to act as witness in the case, perpetrators can blackmail the victim by endangering her relatives. That is why the protection of persons close to the victim is so important.

Obligation to explain victims' rights: the Procedure Code does not contain strong and precise provision that is obliging court, prosecutor or investigator to explain to victim her rights in detail.<sup>334</sup> This provision should be amended, and the rights that need to be explained must be listed, e.g., right to special protection, right to attorney, right for the interpreter during criminal proceedings, right to claim for compensation etc.

Social rehabilitation: In January 1, 2006 the amendments to the Law "On Social Services and Social Rehabilitation"<sup>335</sup> came into effect providing for free social rehabilitation of victims of human trafficking for period of six months. In

<sup>330</sup> <http://www.state.gov/g/tip/rls/tiprpt/2006/65989.htm>

<sup>331</sup> The U.S. Department of State has set certain Minimum Standards for eliminating trafficking that governments should comply with. Thus, to achieve the Minimum Standards States are required: to prohibit trafficking and punish acts of trafficking, prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault, for the knowing commission of trafficking in some of its most reprehensible forms (trafficking for sexual purposes, involving rape or kidnapping, or that causes a death), prescribe punishment that is sufficiently stringent to deter and that adequately reflects the offense's heinous nature for the knowing commission of any act of trafficking; as well as make serious and sustained efforts to eliminate trafficking (infra 340). Trafficking in Persons Report 2006. Available on the internet at <http://www.state.gov/g/tip/rls/tiprpt/2006/>

<sup>332</sup> <http://www.state.gov/g/tip/rls/tiprpt/2006/65985.htm>

<sup>333</sup> CEDAW Committee's Thirty-first session July 6-23, 2004. Concluding comments: Latvia. Available on the internet at: <http://www.ohchr.org/tbruce/cedaw/Latvia.pdf>. Last visited at October 1, 2004.

<sup>334</sup> Infra p. 30 of this paper.

<sup>335</sup> Law "On Social Services and Social Rehabilitation", Latvijas Vēstnesis No. 168, November 19, 2002.

January 1, 2006 the Regulations of the Cabinet of Ministers No. 882 “On the Procedure to Receive Social Rehabilitation Services for Victims of Human Trafficking and Requirements to Providers of Social Rehabilitation Services”<sup>336</sup> came into effect stipulating the procedure to be followed in order to apply for the needed assistance. It follows, the victim can ask for state sponsored social rehabilitation only after she has obtained from State Police a decision acknowledging she is a victim of the crime.<sup>337</sup> From the interview with a social worker specializing in human trafficking cases, it became obvious that the provision in question discourages victims of human trafficking to ask for rehabilitation. As many victims have felt they are re-victimized by law enforcement officials (or have actually been re-victimized), they are reluctant to ask for the document necessary to apply for social rehabilitation services. Thus, the law must be amended so that victims would have easier access to rehabilitation services.

#### ii. Punishment of customers

To foster the prevention of trafficking in women in Latvia, the adoption of provision in the Criminal Code is needed that would punish not only traffickers of women, but also their customers. If the demand would reduce the extent of trafficking would decrease as well.<sup>338</sup>

#### iii. Non - punishment of victims

As discussed earlier in this paper, on many occasions victims fear to cooperate with police as they have resided in the country illegally or have illegally obtained their travel documents etc. Thus it is essential that national law provides for possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.<sup>339</sup>

## 4.2. Increased enforcement

In order to enforce the existing legal norms, it is not sufficient only to pass law in accordance with international standards. These laws must be implemented, which requires more resources devoted to human rights protection measures and investigation, stronger law enforcement capabilities and also judicial expertise.

#### i. Effective punishment of traffickers

First of all, it must be ensured that the laws and law enforcement institutions take all efforts to hold traffickers accountable for their crimes. So far the tendency of the severity of applicable sentences to perpetrators of trafficking in women is upsetting. From the analyses of the case law<sup>340</sup> it became apparent the prosecution of perpetrators is not efficient, and does not serve as a threat to them nor expresses the respect to victims’ sufferings. However, prosecution is the

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<sup>336</sup> Regulations of the Cabinet of Ministers No. 882 “On the Procedure to Receive Social Rehabilitation Services for Victims of Human Trafficking and Requirements to Providers of Social Rehabilitation Services”, Latvijas Vēstnesis No. 189, November 25, 2005.

<sup>337</sup> Article 4; Article 5.

<sup>338</sup> COE Convention on Action against Trafficking in Human Beings calls Parties to criminalize the use of services of a victim (Article 19).

<sup>339</sup> Article 25.

<sup>340</sup> Infra p. 31 of this paper.

recognition and protection of the human rights of trafficked persons, and also serve as important factor in protection of victims.

The relevant authorities must be encouraged, in appropriate cases, to freeze and confiscate the assets of perpetrators of trafficking in women. It is highly recommended to use the confiscated assets for victims compensation fund and rehabilitation programmes.

#### ii. Enforcement of non-pecuniary and pecuniary damages

The recent changes in national legislation providing not only for pecuniary but also non pecuniary damages for victims of crime ensures victim's rights for just compensation for sufferings she has encountered. As this is relatively new legal institute in national legislation, the responsible bodies must inform and encourage victims on their rights victims on the right to access courts and seek compensation from the traffickers' assets or Victim's Compensation Fund.<sup>341</sup>

Moreover, with regard to compensation policies, it is highly recommended that Latvia accedes to the 1983 European Convention on the Compensation of Victims of Violent Crimes.<sup>342</sup> The Convention provides that states must make available a scheme to compensate victims of violent offences who have suffered bodily injury or death.

#### iii. ECHR

The European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>343</sup> protects individuals against violations of their rights by the State, but cannot be used to redress violations by individuals. Nonetheless, under the ECHR, the state is bound not only by negative obligations, but also by positive obligations. As regards trafficking in women issues, Latvia has a positive obligation to protect women from the criminal acts of another private person.<sup>344</sup>

Taking into account there is a wide practice in avoidance of imposing adequate sentences to perpetrators of trafficking in Latvia, also during court proceedings perpetrators are not always under the custody, thus putting at risk trafficking victims to be re-victimized by their traffickers, the criminal cases that were examined in this paper should be brought to the European Court of Human Rights.

Firstly, the claims can be brought to the Court by virtue of Article 2<sup>345</sup> of the ECHR. It can be argued that law enforcement institutions had to be aware of severity of trafficking crime, and what consequences can be if perpetrators are not sentenced adequately or are released. In such a case victims' health and life can be put at danger, as their traffickers can seek for revenge after the criminal proceedings are over. If follows, the relevant institutions have failed to take

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<sup>341</sup> Supra 256.

<sup>342</sup> European Convention on the Compensation of Victims of Violent Crimes Strasbourg, 24.XI.1983 Available on the internet at <http://conventions.coe.int/Treaty/EN/Treaties/Html/116.htm>.

<sup>343</sup> Hereafter ECHR.

<sup>344</sup> European Court of Human Rights, *X and Y v. Netherlands*, HUDOC Reference No. 16/1983/72/110, Judgment of 26 March 1985. Available on the internet at: <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=508248&skin=hudoc-en&action=request..>

<sup>345</sup> The Right to Life.

measures within the scope of their powers which might have been expected to avoid the risk.<sup>346</sup>

Further, taking into consideration that trafficking in women is closely linked to gender based discrimination, as women are trafficked for sexual exploitation because they are females, Article 14<sup>347</sup> can be invoked. Latvia has an obligation to ensure the effective enjoyment of non-discrimination protection, and must take steps to protect against private acts of discrimination that affect the enjoyment of the rights and freedoms set force in the ECHR. Accordingly, Article 14 can be invoked in conjunction with Article 1 that requires State Parties to „secure to everyone within their jurisdiction the rights and freedoms” contained in the ECHR. Correspondingly, as trafficking restricts women’s right to liberty and security, their right to human dignity, physical and moral integrity, and violates the prohibition of forced labour and protection of health, etc.,<sup>348</sup> Article 14 can be invoked in conjunction with the relevant articles providing for the above stated rights and freedoms.

#### iv. Using the reporting procedure

The CEDAW Convention, ICCPR and ICESCR provide for periodic reporting mechanisms that NGOs can use to press governments to fulfill their treaty obligations, thus stopping the trafficking in women.

- CEDAW Convention: even though CEDAW Convention is a powerful women’s human rights treaty, Latvian women and NGO’s have not taken a full advantage of it. CEDAW Committee in its thirty-first session after reviewing Latvia’s first National report concluded:

Although international human rights treaties are directly applicable, the Committee is concerned that neither women in general, nor the judiciary or law enforcement personnel in particular, are sufficiently familiar with the Women’s Convention and the opportunities for its application by domestic courts.<sup>349</sup>

It has so far proved impossible to trace a single judgment of the national court containing any reference to the CEDAW Convention. Thus, in appropriate cases<sup>350</sup> women and their advocates should bring forward the CEDAW Convention before national courts in cases where practices and norms are contested as discriminatory against women. Not only the representation of women’s rights would benefit, but also it would serve as educational tool for judges in applying the Convention.

Secondly, NGOs should more actively use reporting procedure with CEDAW Committee, and outline the deficiencies in legislation and enforcement mechanisms in their shadow reports. NGOs should also follow up the

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<sup>346</sup> European Court of Human Rights, *Osman v. United Kingdom*, HUDOC Reference No. 87/1997/871/1083, Judgment of 28 October 1988. Available on the internet at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=7&portal=hbkm&action=html&highlight=Osman%20%7C%20v.%20%7C%20United%20%7C%20Kingdom&sessionid=508257&skin=hudoc-en>. Last visited at October 1, 2004.

<sup>347</sup> Non-discrimination clause.

<sup>348</sup> Infra p. 18 of this paper.

<sup>349</sup> Supra 42. At p. 3, para 19.

<sup>350</sup> Not only trafficking in women cases, but also, e.g., discrimination at work place, violence in the family cases etc. It would also be educating for judges and promote the application of the CEDAW Convention.

recommendations stated in Concluding Comments prepared by the CEDAW Committee, as well as monitor the implementation of them. Although the CEDAW Committee can not impose sanctions, the process of naming the country, pointing out the wrong-doings and providing recommendations, is a mechanism that could lead to considerable improvement concerning women's rights.

Unfortunately, as Latvia has not ratified the Optional protocol of the CEDAW Convention, Latvian women do not have a possibility to bring individual complaints to the Committee. NGOs are the ones that must encourage the government to ratify CEDAW's Optional Protocol, which would open the door for individual complaints.

- ICCPR: under the ICCPR Latvia has an obligation to protect women against trafficking for sexual exploitation.<sup>351</sup> This obligation does not limit itself only to state participation. According to Article 2 of the ICCPR, States are in violation of the Covenant if they fail to exercise due diligence to end slavery and the slave trade by private actors within their jurisdiction. It is provided that States are obliged to ensure to all individuals within their territory the rights recognized in the Covenant without discrimination.<sup>352</sup> Thus, women and NGOs should use the remedy provided by the ICCPR, i.e., Human Rights Committee, and bring to the Committee their claims under similar scheme of allegations as discussed above under the ECHR.

- ICESCR: although ICESCR does not directly address trafficking in women issues, it contains important rights that are vital for women. If women are deprived of certain rights contained in the ICESCR, they are made vulnerable to trafficking. Non-discrimination clause embraced in Article 2(2) provides for any allocation of resources to be made with any kind of discrimination. NGOs should inform ECOSOC on state's failure to guarantee the rights in the Covenant without discrimination.<sup>353</sup> Trafficking in women expands where gender discrimination delays the exercise of woman's right to health, work etc. Thus NGOs, when addressing the Committee should explicitly make the close link between discrimination based on the gender and trafficking in women. Moreover, NGOs must stress out to the Committee that State's excuses on lack of sufficient financial resources cannot be used for failing to ensure the rights contained in the Covenant.<sup>354</sup>

#### v. Monitoring

In Latvia more serious attention must be paid to monitoring of trafficking. It can be developed by using data from the police and travel agencies. As at the current moment there is a lack of official statistics on the scope of trafficking and trafficking victims, monitoring would well serve in collecting official statistics too.

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<sup>351</sup> Article 8: "no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited".

<sup>352</sup> Article 2.

<sup>353</sup> Articles 2 and 3.

<sup>354</sup> In Article 2, the Covenant provides that the existing resources must be made available in a non-discriminatory manner. In General Comment No. 3 it is emphasized that "even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints." Para 11.

### 4.3. Social services

Effective anti-trafficking legislation should not only punish the perpetrators of trafficking, but also provide comprehensive services to victims of trafficking. For women who return home, prostitution often carries with it a social stigma, “thus making them a pariah.”<sup>355</sup> First of all, victims of trafficking must be treated as victims of crime, not criminals. Thus, the law enforcement institutions, social workers, and other professionals working with victims of trafficking shall be informed and trained to treat victims with due regard and not to criminalize them. Also, social service agencies and NGOs must be encouraged to address protection of the human rights of victims and to provide measures for the physical, psychological, and social recovery of victims of trafficking.

#### i. Healthcare

Trafficking victims must be provided with free healthcare services that would include access to emergency medical treatment. In addition, these services should include confidential and voluntary testing and treatment for HIV/AIDS and other sexually transmitted diseases.

#### ii. Shelters

It is a must for Latvian government to set up a sufficient number of shelters in Latvia. As to now there are only couple of shelters in the country which cannot meet the needs of victims.<sup>356</sup>

#### iii. Employment opportunities

Trafficking victims should be provided with employment training and opportunities. It would assist trafficked women to reintegrate in society, and start the new life. At the present moment the assistance for victims of trafficking (psychological) is provided mainly by few non-governmental organizations,<sup>357</sup> without little financial support from the government.

### 4.4. Education and public awareness

As preventive measures might well serve education programmes in schools and public awareness campaigns in mass media. Such measures shall be aimed at change of stereotypes and attitudes concerning the roles and status of men and women.

#### i. Education programmes in schools

At primary and secondary schools within their study curricula students should be introduced with a concept of equality between women and men, and on respect for human rights and individual dignity. The attention should be focused on “the unacceptable nature of discrimination based on sex, (...) and the importance of

<sup>355</sup> General Comment by CCPR No. 28 (68), Adopted on March 27, 2000, at para 31. Available on the internet at: [http://sim.law.uu.nl/SIM/CaseLaw/Gen\\_Com.nsf/0/b2c129fb938e9e74c12568b9004e7ec5?OpenDocument](http://sim.law.uu.nl/SIM/CaseLaw/Gen_Com.nsf/0/b2c129fb938e9e74c12568b9004e7ec5?OpenDocument).

<sup>356</sup> The CEDAW committee has stressed out the need to establish special shelters for women victims of trafficking (Committee’s Thirty-first session July 6-23, 2004. Concluding comments: Latvia. Available on the internet at: <http://www.ohchr.org/tbruce/cedaw/Latvia.pdf>.)

<sup>357</sup> Resource Centre for Women “Marta”, “Genders”.

gender equality and the dignity and integrity of every human being.”<sup>358</sup> Also, students should be informed on the risks of trafficking in persons and sexual exploitation.

ii. Informative campaigns with particular emphasis on rural areas and vulnerable groups

Taking into account that the largest number of trafficking victims come from rural areas, a broad informational and educational campaign must be initiated exactly in those places of the country. Also, since most trafficking victims leave Latvia with the goal to work as prostitutes abroad, thus hoping to improve their financial situation, public awareness campaigns should inform not only on risks to be trafficked but also wrong perception of easy money to be made abroad.

iii. Training of judges, prosecutors and police officers

It is essential to train the above listed professionals on human rights standards related to treatment of victims and specifically victims of trafficking in human beings. It should be ensure the victims human rights would be respected, and they would get the most assistance. Serious attention shall be paid that victims are not re victimized during investigation and court proceedings.

iv. Education on the CEDAW Convention

It is obvious that Latvia must take measures to disseminate information about the CEDAW Convention at the domestic level. This could be done by awareness-raising campaigns, targeting women and non-governmental organizations working on women’s issues, as well as including the CEDAW Convention on the agenda of training courses for judges and attorneys, as well as prosecutors. Knowledge of this international legal instrument would encourage and equip women “to avail themselves of procedures and remedies for violation of their rights under the Convention.”<sup>359</sup> It must be made possible to invoke the CEDAW Convention before the national courts of Latvia.

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<sup>358</sup> COE Convention on Action against Trafficking in Human Beings calls Parties to criminalize the use of services of a victim (Article 6. d).

<sup>359</sup> Ibid. At p. 4, para 19.

## Conclusion

Trafficking in women for the purpose of sexual exploitation is a widespread phenomenon that is increasing at a frightening rate. Even though there are no official statistics conducted on the extent of trafficking in women in Latvia, estimates of State Police and NGOs show that every month there might be from one to several hundred trafficking victims brought from Latvia to other European countries.

Trafficking embraces the principle of the equal dignity of all human beings, and constitutes a modern form of slavery, as well as calling into question the rule of law and fundamental democratic values.

Since the restoration of independence, Latvia has assumed international commitments in preventing sexual exploitation, and is a party to several international agreements regarding combating trafficking in human beings. By ratifying the relevant international legal instruments, Latvia agreed to bring both legislation and practice in compliance with international standards concerning trafficking in persons. Nonetheless, the legislation to rather large extent corresponds to international requirements, there is a considerable room for improvement. Moreover, there are legal instruments that enable prevention and combat in trafficking in women, the enforcement is lacking.

In order to prevent trafficking and protect, and rehabilitate trafficking victims, the government, first of all, must allocate funding to implement the Programme on Elimination of Trafficking in Human Beings 2004-2008. A proper database of the scale and scope of violence against women must be created, to include the compilation of statistics and research on the extent, causes, and effects of violence. Currently, when there are no official statistics on trafficking in women cases in Latvia, and the relevant authorities does not express enough concern for that, it is obvious that trafficking in persons issues are not among priorities of the government.

As a long-term action for prevention of trafficking would be the improvement of the economic situation in the country. As discussed in this paper, the root cause of trafficking in women is poverty linked to the inequalities between economically developed countries and those that are less developed. When the social status of women will be improved, they will be less subject to discrimination that causes vulnerability to trafficking.

Further, it is necessary to have increased rescues of trafficking victims and prosecutions of traffickers. Much of the success in combating trafficking in women will depend on active prosecution policy of traffickers where sufficient sentences are applied. The charges brought against traffickers must account for all abuses the victims have suffered.

Significant role in prevention of trafficking is belongs to NGOs and human rights activists. They must bring the current circumstances regarding trafficking in women before international organizations and tribunals. There is no government that is willing to be embarrassed before international community repeatedly, thus recommendations issued by the relevant international bodies, as well as judgments made in favor of applicants would force the government to take positive action for the improvement of the current situation.

While regional and international standards and guidelines are serious mechanisms to combat trafficking in women, they can only be effective if at the governmental level trafficking in women will be recognized as a serious human rights problem that is essential in Latvia. Secondly, a strong political will must follow that would address the problem, while adequate funding would be allocated.