

**OSCE Special Representative on Combating Trafficking in Human Beings
OSCE Office for Democratic Institutions and Human Rights (ODIHR)**

Joint Statement on EU Anti-Trafficking Day (18 October 2009)

Vienna, Warsaw, 19 October 2009

Introduction

We welcome this third EU trafficking day and the upcoming EU Ministerial Conference ‘Towards Global EU Action Against Trafficking in Human Beings’ with its focus on the external dimension. The OSCE Special Representative on Combating Trafficking in Human Beings and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) wish to underscore the importance of the role of the EU in upholding human rights, freedom and dignity for all. We welcome this opportunity to highlight recent developments in the field of anti-trafficking and draw attention to important challenges in the ongoing and future cooperation with third countries outside of the European Union and their citizens.

The Impact of the Global Financial Crisis

The global financial crisis is having a marked impact on human trafficking. Its effects are felt within the EU, in other OSCE participating States and beyond. In countries of origin, economic and employment opportunities are dwindling, leading people to seek increasingly risky routes to migrate and look for work abroad. In destination countries, the demand for cheap labour opens up opportunities for exploitative practices to flourish. Migrant workers are often the first to lose their jobs, which in turn may lead to their becoming ‘undocumented’ and unwanted. At the same time bilateral labour migration agreements, which have long been seen as an effective tool to prevent trafficking, may be scaled down. As a result, opportunities for non-EU nationals to work safely and legally in the EU are diminishing.

We cannot and should not prevent people from striving for a better life for themselves. We need, however, to ensure that people are protected in the process, and not prevented from and safely migrating, whether seeking work abroad or in their own country. Therefore, our efforts have to be more squarely focused on preventing exploitation, promoting safe migration and ensuring respect for the human rights of migrants, irrespective of their immigration status.

Identification and Protection of Victims

It is widely recognised that irregular migrants are attractive to unscrupulous, exploitative employers and easy prey for traffickers. Marginalised and unprotected, they are vulnerable to the worst in working and living conditions. They are targets for criminals seeking to profit from them, yet because of their immigration status they may be unwilling to turn to official

authorities, such as the police, due to a fear of deportation. Action to step up the identification of victims of trafficking, especially amongst undocumented migrants, is therefore imperative. Without it there can be no justice for the victims and only impunity for the criminals. At the same time labour standards must not be allowed to slip and must be equal to those applied to nationals in order to avoid the unfair advantage that exploitative employers may enjoy and to prevent the deterioration of working conditions, with detrimental effects on social cohesion. But some governmental priorities may undermine these aims. Of particular note are developments in some countries to criminalise the irregular stay of migrants as part of the country's efforts to control irregular migration. This can lead both to the detention of vulnerable trafficking victims and their expulsion to countries of origin. Victims of trafficking are entitled to protection and assistance, as well as access to remedies. Where States systematically fail to identify them, or provide them with an opportunity to claim their status in proceedings to remove them or criminalise them, they are in breach of their obligations to protect these people.

Human rights protections cannot be compromised by immigration control. But often immigration control is the key concern of officials who may overlook other important details relevant to the situation. The recently adopted EU Directive (Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals) is important in this regard. It requires the payment of outstanding remuneration, taxes and social security contributions to third country nationals, the need for effective complaint mechanisms for such persons and the grant of residence permits to those who have been subjected to particularly exploitative working conditions and who cooperate in criminal proceedings against the employer. These measures provide important additional protections to third country nationals and it is hoped that they will be effectively utilised. States however need also to recognise that sometimes victims of trafficking may need to pursue civil proceedings to obtain justice and more efforts need to be made to ensure that such persons may remain in the country to do so.

Respecting the dignity and rights of migrants is a critical part of the fight against human trafficking. Gender-sensitive and child-friendly approaches to safe migration policies are key components of this. If we do not tackle discrimination against migrants, particularly female migrants, and their increased exploitation and society's tolerance for this exploitation, the dire effects of the global financial crisis will cast dark shadows on socio-economic development for decades to come, even after the recession has ended.

In this context, we welcome the innovative line of the recent EC Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims (hereinafter CFD proposal), which for the first time adopts a comprehensive approach encompassing not only measures to prosecute THB but also to prevent this crime, protect its victims and monitor the implementation of anti-trafficking measures. In particular, it is appreciated that the Proposal establishes that a person shall be treated as a victim as soon as there is an indication that he/she has been trafficked. Furthermore, we welcome the introduction of the "non-punishment clause", allowing for non-prosecution and the non-imposition of penalties on victims of trafficking as a direct consequence of being trafficked, as well as the specific provisions on protection of vulnerable victims in criminal proceedings, based on an individual assessment of circumstances. We attach great importance to providing victims of trafficking with unconditional assistance from the very first stage of identification, including legal counseling to assist the person in seeking

remedies These new measures not only contribute to enhancing protection of the rights of trafficked persons and to preventing secondary victimization, but also increase the likelihood of effective prosecution.

Prevention of Trafficking

Without undermining the importance of the prosecution of criminals and the assistance to victims, prevention must go beyond this to address the root causes of trafficking by empowering people to find viable economic alternatives in their own countries or to migrate safely. This involves providing better opportunities for decent work and employment for both men and women, as well as the enhancement of good governance and the fight against corruption. We have to root out exploitative labour conditions and sexual exploitation by creating new partnership opportunities, promoting ethical codes of conduct in the public and private sector, as well as addressing exploitation in legislation and practice.

With regard to children, we must increase our efforts at the local and regional level to build a protective environment for all children and protect their best interests, ensuring sufficient capacity and resources for early interventions and protection services, to meet our overall responsibility.

Prevention of trafficking also involves ensuring the effective prosecution of criminals and effective victim assistance facilitating a victim's exit from exploitation and preventing re-trafficking. We need to put greater efforts into making trafficking less lucrative for the criminals, using all the tools at our disposal, including improved co-operation between participating States in fighting this transnational crime. Asset forfeiture, for example, deals a major economic blow to the traffickers and prevents them from continuing their business. At the same time compensation ordered against the trafficker to victims of trafficking supports the rehabilitation of the victim and serves to prevent re-trafficking.

Return

This year has also seen the adoption of the EU Return directive (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals), which despite its potential importance for victims of trafficking has not been widely discussed.

It is welcome, under the Return Directive, that victims of trafficking will not be the subject of re-entry bans but we are concerned about the fate of the presumably large numbers who have never been identified as trafficked, hence are treated as irregular migrants and expelled.

Acknowledging the difficulty of identifying victims of trafficking, there is a serious risk that the detention and removal procedures outlined in the Directive will also be applied, arguably frequently, to trafficking victims, leaving them possibly with inadequate access to health or legal assistance or appeal procedures for those in detention and the long periods of time that some must suffer these restrictions on their liberty. Access to immigration detention facilities by international organisations and civil society to allow for the counselling, legal assistance and possible identification of trafficking victims could diminish the risk of re-trafficking and improve identification of trafficking victims.

With respect to children, detention itself puts children at risk of different forms of exploitation and can never be in their best interest, not even in the interest of maintaining family unity, and therefore alternatives to detention need to be sought. At the same time, a decision of safe return must be made upon a process of best interest determination of the child, including participation of the child. Finally we recall the obligations under international law to ensure that the return of victims to countries of origin is safe and dignified and respects the status of any legal proceedings, related to the fact that the person is a victim.

In the processes of return of victims, it is essential to note that victims of trafficking can also have claims for international protection where there is a serious risk that a return to their country of origin could lead to their loss of life, torture, inhuman or degrading treatment, forced labour or undue interference with their family and private life. Independent risk assessments in cooperation with civil society could be a useful means of establishing whether the return of a victim of trafficking to a country of origin is in fact safe.

The Way Ahead

To combat human trafficking effectively we need to have a complete picture of the level and extent of the crime. Most importantly we need assessments of the results of our actions to make them more efficient. In the context of the global financial crisis, this is more necessary than ever. This is why the establishment of the National Rapporteur or equivalent mechanism is a crucial step. In this regard, we commend the added value of the EC CFD proposal with regard to the establishment of National Rapporteur or equivalent mechanisms to monitor the implementation of anti-trafficking measures. We also highlight and express our appreciation for the successful cooperation we enjoyed with the Czech Presidency of the EU in organising “Joint Analysis, Joint Action“ – the conference of EU National Rapporteurs on Trafficking in Human Beings“, which took place in Prague on 30-31 March 2009. In particular, we warmly welcome the Council conclusions on establishing an informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings. The establishment of national monitoring and reporting mechanisms will take us to the next level of more effective prevention of human trafficking.

Finally we have not mentioned here the plight of EU nationals who may be victims of trafficking in the EU, as the focus of this year’s EU Anti-trafficking Day is on external cooperation. However, research shows that EU citizens may often fall outside State trafficking programmes which are primarily designed for non-EU nationals. At the same time such citizens may be refused social assistance as they are not economically active, leaving them in a situation of poverty and destitution. States need to establish mechanisms to identify and assist EU nationals who may also have been trafficked.

The OSCE Special Representative on Combating Trafficking in Human Beings and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) place great value on co-operation with the European Union in combating human trafficking, both within the EU and in relations with third countries. The OSCE provides an excellent platform for cooperation between EU Member States, neighbouring countries and partners, and thus facilitates dialogue between countries of origin, transit and destination in a way which can complement and add value to the actions of the European Union in combating human trafficking. The EU has a key role to play in promoting human rights values in its wider neighbourhood. We look forward to continuous co-operation in these endeavours.