



ASSESSMENT ON VICTIM ASSISTANCE AND SUPPORT

An analysis of the National Referral Mechanism in Turkey

Activity No. 3.1 of the EU Twinning Project "Strengthening Institutions in the Fight Against Trafficking in Human Beings"

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1 Introduction

1.1 Contents and aims of this report

The present report has been prepared in the framework of the EU Twinning Project “Strengthening Institutions in the Fight Against Trafficking in Human Beings”, which is jointly implemented by the Turkish National Police, the Berlin Criminal Police Agency (DE) and the Ludwig Boltzmann Institute of Human Rights (A). It is the result of Activity no. 3.1 (“Assessment of victim assistance and support”).

The report is based upon the definition of trafficking in human beings as established the UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and, supplementing the United Nations Convention against Transnational Organized Crime, 2000. This definition covers all forms of trafficking in women, men, and children.¹ This definition has been taken into consideration, with slight modifications, by the European Union’s Council Framework Decision of 19 July 2002 on the Combat of Trafficking in Human Beings. At the national level, it is reflected in Article 80 of the new Turkish Criminal Code.

The overall purpose of this report is to contribute to the development of a comprehensive victim assistance and protection system for trafficked persons (“National Referral Mechanism”/NRM)² in Turkey. Its findings and analysis will feed into the development of a revised National Action Plan in the framework of the Twinning project. The report provides an overview of existing services, actors and cooperation structures that offer assistance and support to trafficked persons in Turkey and identifies and analyses existing strengths, gaps and challenges.

This report is based on the assessment of three EU Member States short-term experts during their visits to Ankara (6-10 February 2006) and Istanbul (20-24 March 2006), where they met and discussed with a number of relevant actors. Many of the interviewed stakeholders are Project Partners in the EU Twinning Project. The following institutions and organisations were kindly devoting time to meet with the research team:³

¹ Article 3 of the Protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of 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.

² For an introduction into the concept of a National Referral Mechanism please see chapter 1.3.

³ The list of interviewees is comprised of all the institutions that were available for meetings with the research team during the assessment period in February/March 2006.

Turkish authorities:

Ministry of Interior

- Turkish National Police (TNP), Ankara
- Police Directorate, Istanbul
- Police Academy, Faculty of Security Studies, Ankara
- General Command of the Gendarmerie, Ankara
- Provincial Command of the Gendarmerie, Istanbul

Ministry of Foreign Affairs

- General Directorate for Consular Affairs, Ankara
- Department of Asylum and Migration, Ankara

Departments of the Prime Ministry

- General Directorate for Social Services and Child Protection, Ankara
- Provincial Department for Social Services and Child Protection, Istanbul
- General Directorate on the Status of Women, Ankara

Ministry of Health

- EU Coordination Department, Ankara
- General Directorate of Curative Services, Ankara
- Provincial Directorate of Ministry of Health, Istanbul

Ministry of Labour and Social Services

- Department on Working Permits for Foreigners, Ankara

Ministry of Justice

- General Directorate for Legislation, Ankara
- Training Department, Ankara

State Prosecutor's Office, Istanbul

Ankara Bar Association

Turkish NGOs:

- Association for Solidarity with Asylum Seekers and Migrants (ASAM), Ankara
- Foundation for Women's Solidarity (FWS/KGV), Ankara
- Helsinki Citizens Assembly, Istanbul
- Human Resource Development Foundation (HRDF/IKGV), Ankara and Istanbul
- International Blue Crescent Relief and Development Foundation, Istanbul
- International Catholic Migration Commission (ICMC), Istanbul

Universities

- Hacettepe University, Department of International Relations, Ankara
- Bilgi University, Istanbul

Delegations and international organisations

- Delegation of the European Commission, Ankara
- U.S. Embassy, Ankara
- International Organization for Migration (IOM), Ankara
- UNHCR - The UN Refugee Agency, Ankara

The information obtained during these interviews provides the main source of information for the present report. In addition, existing reports by governmental, non-governmental and international organisations available on the internet as well as materials provided by Turkish stakeholders were also taken into consideration.

This assessment report highlights selected areas that are of relevance for the analysis and review of the current referral system for trafficked persons in Turkey and focuses on Ankara and Istanbul. It does not claim to provide a comprehensive and country-wide assessment of this system.

Since there are victims of trafficking that currently are not identified and have no access to support services, the research team puts particular attention to the process of victim identification and victim referral as reflected in this report.

Chapter 1 of the report addresses the status of Turkey with regard to trafficking in persons and provides an overview of the concept of a National Referral Mechanism. Chapter 2 takes a closer look at the institutional anti-trafficking framework in Turkey and portrays relevant stakeholders, their activities and capacities. It addresses existing cooperation agreements between state authorities and non-governmental organisations (NGOs) and also looks at bilateral law enforcement protocols that were concluded between Turkey and selected countries of origin of persons trafficked to Turkey. These protocols will be dealt with in greater detail during Component 4 of the Twinning project, which will specifically address return and reintegration assistance and relevant bilateral protocols. Chapter 3 elaborates on relevant elements of the referral process, with a particular focus on identification of trafficked persons, access to shelter and other support and protection services, data protection and residence status. Those elements of the National Referral Mechanism that relate to the position of trafficked persons in criminal proceedings, such as legal aid, victim-witness protection and compensation will be scrutinised in the legislative review component of the Twinning project (Component 5). The concluding chapters of the report (chapters 4 and 5) identify a list of questions that result from the assessment and the needs identified by the stakeholders. These questions will serve as starting point for a workshop, which aims to bring relevant Turkish stakeholders together in Ankara in June 2006. One of the objectives for this workshop is to jointly develop recommendations and strategies on how to best strengthen the existing referral system. These will feed into all upcoming activities on victim assistance and support (Component 3) and return and reintegration assistance (Component 4), and ultimately into the national anti-trafficking strategy as foreseen in the framework of the Twinning project.

1.2 Trafficking in human beings in Turkey

1.2.1 Status of Turkey with regard to trafficking in human beings

As laid out in international treaties the legal definition of trafficking in human beings in Turkey also takes a comprehensive stance on the crime and encompasses all forms of exploitation exerted on women, children and men. Exploitation may occur in various fields including in the sex and entertainment industry, in textile production, agricultural and construction sectors, as well as in the informal labour market. Moreover, trafficking in organs is criminalised as a serious offence in Turkey.

It has been widely confirmed that Turkey is mainly a destination country for trafficking in human beings. The majority of documented cases involve women who were trafficked into forced prostitution. Most women trafficked to Turkey originally come from Moldova, Georgia, Ukraine, and the Russian Federation. Other countries of origin include Belarus, Bulgaria, Romania, Azerbaijan, Kazakhstan, Kyrgyzstan, and Turkmenistan.⁴ Anecdotal evidence suggests that trafficking in human beings in Turkey may not only take place into the sex industry but also into other sectors of the informal and unprotected economy.⁵

The research team learned about presumed cases of organ trafficking in Turkey. Since 2000 the Republic of Turkey took serious steps including the introduction of harsh punishment for organ trafficking. This led to a decrease of cases and the assumption that such illegal transactions moved out of Turkish territory. According to the Ministry of Health organ donors primarily have come from Moldova and Ukraine.⁶ There has also been anecdotal evidence that hinted at a combination of classical forms of human trafficking and organ trafficking such as the case of an Azeri woman, who was initially kidnapped and forced into prostitution in Istanbul. Upon her identification as trafficked victim a fresh scar led service providers to the suspicion that some of her organ parts may have been removed. The person returned home voluntarily without allowing for any further investigation of her case.

Whereas all forms of trafficking are punishable under the new Article 80 of the Criminal Code, law enforcement and prosecution have so far identified less cases of other forms of trafficking than for forced prostitution.

There is no concrete evidence indicating that Turkey is a country of transit. Many experts agreed that Turkey is a transit country for smuggling of migrants, rather than trafficking in persons. Irregular migrants may become victims of trafficking during the migratory process. Due to the complex nature of both of these crimes and the existing grey zones each case needs to be assessed individually and thoroughly. Few sources pointed out that Turkey may to some extent be also a transit country for trafficking.⁷

⁴ Source: Interviews, *HRDF*, Combatting Human Trafficking Programme, March 2006.

⁵ Sources: Interviews, *Tal Raviv, Alberto Andreani*, Changing Patterns and Trends of Trafficking in Persons in the Balkan Region. Assessment carried out in Albania, Bosnia and Herzegovina, the Province of Kosovo (Serbia and Montenegro), the Former Yugoslav Republic of Macedonia and the Republic of Moldova, published by the International Organization for Migration's Counter-Trafficking Service, July 2004 (hereinafter: *Raviv/Andreani*), http://www.iom.md/materials/balkans_trafficking.pdf

⁶ See also *Elaine Pearson*, Coercion in the Kidney Trade: A background study on the issue of organ trafficking worldwide, published by *Deutsche Gesellschaft für Technische Zusammenarbeit*, 2004.

⁷ Sources: Interviews; *CEDAW*, Combined fourth and fifth periodic reports of States Parties, State report of Turkey, *CEDAW/C/TUR/4-5*, 8 August 2003, p 18, *European Commission against Racism and Intolerance (ECRI)*, Third report on Turkey, *CRI (2005) 5*, 25 June 2004, p 17. See also Turkish National Police, Department of Foreigners, Borders, Asylum, A brief police approach on THB in Türkiye, 7 November 2003, p 1, *Raviv/Andreani*, p 49.

Most experts stated that Turkey is not a country of origin for trafficking. The research team, however, was also told about alleged cases of internal trafficking of women for the purpose of forced prostitution as well as of children for the purpose of forced labour and begging.⁸ It is suggested to continue monitoring these phenomena, since trafficking in Turkish citizens seems to be increasingly recognised as a problem.

Another pattern of trafficking-related cases that has been mentioned during the interviews concerns foreign women, who, even though they have not been trafficked to Turkey, have experienced a trafficking situation abroad where they were lured into false job promises and were forced to work as domestic servants without pay. Some managed to escape and come to Turkey. While current anti-trafficking measures can facilitate the voluntary return of these women to their countries of origin, they are not eligible to apply for humanitarian visa in Turkey, as they were not trafficked to Turkey; and in most cases do not qualify for refugee status under the Geneva Convention. Due to their illegal status and the lack of support services available to them, this group of women is especially vulnerable to exploitation.

1.2.2 Perception of trafficking in human beings among the interviewees

Several interviewees stressed the importance to distinguish between the concepts of trafficking and smuggling as well as between trafficking and voluntary prostitution. It was also noted that further awareness among law enforcement, judges and prosecutors needs to be created in order to ensure that these distinctions are consistently applied in the every day work of these professional groups.

Some interviewees expressed the view that trafficked women were not real “victims” because they had come to Turkey on a voluntary basis. It is not quite clear whether this attitude stems from a conceptual or terminological confusion of trafficking and voluntary prostitution or whether it simply fails to recognize that women who originally agreed to engage in prostitution but have later-on been subjected to deception or force and exploitation may also become victims of trafficking.

Some interviewees noted common elements among advocating for the rights of trafficked persons, migrant and asylum seekers and found that there was little understanding in society for the rights and needs of these vulnerable groups.

A public television campaign that was recently launched by the International Organization for Migration (“Have you seen my mother?”) is based upon the fact that a large number of identified women trafficked into Turkey are mothers. This campaign looks at trafficking as a family issue from the perspective of the women’s children left behind. It was noted that this campaign reaches a broad audience and that its focus is well-chosen, given the importance of the institution of the family in Turkish society. However, questions were raised as to whether this focus was not too one-dimensional. The research team positively notes that targeting a campaign towards a country’s specific beliefs and traditions is likely to create a good entry point for effective awareness-raising. By portraying trafficked women as mothers of children, as persons “like you and me”, rather than as the commonly quoted “Natashas”, it creates empathy for the situation of victims. At the same time the message seems somewhat narrow-focused. It runs the risk of portraying trafficked women as being in need of support merely because they are mothers of children, rather than as individual bearers of rights. It may also

⁸ The research team was informed about a recent TV documentary on trafficking in children from Eastern Anatolia into sweat shop work at the South coast.

contribute to create a distinction among the "good" victims, who left because of the need to support their children, and the "bad" ones, who do not have children and left their home countries out of own interests.

1.3 The concept of the National Referral Mechanism

The National Referral Mechanism (NRM) is a governance tool that has been developed on the basis of existing best-practice models throughout Europe.⁹ Existing components like cooperation agreements between law enforcement agencies and civil society, different models of shelters and a variety of counselling concepts for trafficked persons have been compiled and systematised for the general adoption by governmental and non-governmental organizations throughout the OSCE region.

The concept of a National Referral Mechanism has been adopted by the OSCE Permanent Council in the framework of the OSCE Action Plan to combat trafficking in human beings.¹⁰ It has also been taken on by the EU Experts Group report (2004), the Communication of the European Commission to the Council and to the European Parliament (2005) and is part of the EU Action Plan to combat trafficking in human beings (2005).¹¹

The concept of NRMs has been developed to set up sustainable anti-trafficking structures that harmonize human rights protection of victims with effective prosecution of traffickers. The original idea was to foster a process-oriented and practical approach when developing anti-trafficking strategies while safeguarding agreed-upon principles and standards.

The creation of an NRM should aim at the comprehensive inclusion of all presumed trafficked person into a support and assistance structure. It enables law enforcement agencies to respond rapidly to new trends and practices of traffickers and at the same time to keep the threshold low in order for presumed trafficked persons to receive appropriate treatment.

The core components of a National Referral Mechanism are identification procedures for victims and the elaboration and implementation of cooperation models between law enforcement agencies and civil society. The concept builds upon existing national infrastructure. Institutionally, its components are secured by setting up:

- ⇒ shelters
- ⇒ specialized services
- ⇒ returning and social inclusion programs
- ⇒ data protection provisions
- ⇒ victim - witness protection
- ⇒ compensation of victims
- ⇒ residence regimes .

At the same time national and local stakeholders should assess, monitor and evaluate existing components of NRMs by establishing an institutional anti-trafficking framework.

⁹ Such good practice examples for National Referral Mechanisms can be found in Germany (cooperation agreements between law enforcement and counselling centres), Italy (identification and residence permit), the Netherlands (reflection period) and the Czech Republic (drop-in centres and referral).

¹⁰ OSCE Permanent Council Decision No.557, Action Plan to Combat Trafficking in Human Beings, 2003 (PC.DEC/557).

¹¹ Commission of the European Communities: Communication from the Commission to the European Parliament and the Council, Fighting trafficking in human beings - an integrated approach and proposal for an action plan. COM(2005) 514 final.

2 The institutional anti-trafficking framework in Turkey

2.1 National coordination structures

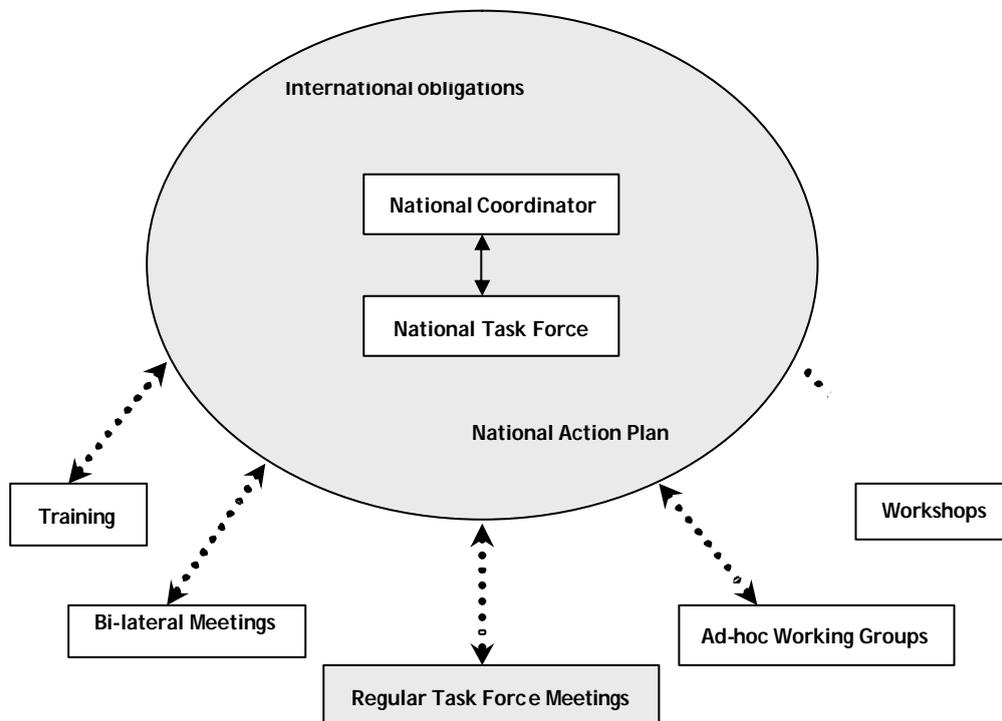
The institutional framework¹² of the National Referral Mechanism provides a forum for coordination and cooperation among relevant state authorities and non-governmental organisations. One successful model for such a coordination structure comprises the following institutions: National Coordinator and National Task Force, who continuously shape and review their anti-trafficking strategy (National Action Plan).

The main aims of an institutional framework are to:

- ⇒ coordinate anti-trafficking work on the national level,
- ⇒ monitor the implementation of the national anti-trafficking strategy,
- ⇒ review and adapt the national anti-trafficking strategy.

Regular meetings allow all actors within the institutional framework to work in a concerted and effective manner. These meetings may be of different nature: bi-lateral meetings or ad-hoc working groups should be conducted in order to discuss unresolved or acute topical issues. Certainly the National Task Force should meet on a regular basis.

All partners in such a multi-disciplinary and cross-sector forum take on tasks and responsibilities according to their mandates. Experience shows that vigorous interaction between all relevant entities leads to good results in the fight against trafficking in human beings.



¹² More detailed information on the institutional anti-trafficking framework see OSCE ODIHR, National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook, 2004 (hereinafter: OSCE ODIHR, NRM Handbook), pp 47 ff.

Tailor-made trainings and workshops for all stakeholders either according to their professional groups or on a topical basis will reinforce their ability to adequately respond to current requirements and adapt to new trends. Needs for training should be assessed and brought to the attention of the National Task Force.

In order to facilitate monitoring efforts it is broadly recommended to gather disaggregated and anonymous data and information about all aspects of the National Referral Mechanism. The European Union called upon Member States to install an independent office (National Rapporteur) that would compile such information and regularly report to Government and Parliament. In a first step it could also be the National Task Force, who assumes the role of compiling information about the situation and trends regarding various aspects of trafficking in human beings from its members and presenting the findings in form of a situation analysis to the public.

Taking its international obligations seriously Turkey significantly stepped up its efforts against trafficking in human beings as of 2002¹³. Under the auspices of the Ministry of Foreign Affairs a National Coordinator for international cooperation and national coordination has been appointed. The National Task Force composed of experts from various ministries and non-governmental organisations was established and convened for the first time in October 2002.

2.1.1 National Coordinator

The Head of the General Directorate for Consular Affairs within the Turkish Ministry of Foreign Affairs is appointed National Coordinator. Currently Ambassador Derya Kanbay holds this position. Together with the Ministry's Department for Asylum and Migration the National Coordinator organises the meetings of the National Task Force.

The Turkish Ministry of Interior plays a crucial role in coordinating operational issues with regard to identification, referral of victims and investigation of traffickers. The Turkish National Police and the Gendarmerie work closely together with non-governmental and international organisations.

2.1.2 National Task Force to Combat Trafficking in Human Beings

The National Task Force to Combat Trafficking in Human Beings meets twice a year. It is a multi-disciplinary and cross-sector forum, which monitors and reviews the implementation of anti-trafficking action in Turkey. If particular issues require special attention, ad-hoc working groups are convened to discuss and resolve the issues in question (e.g. shelter modalities, health issues, etc.)

¹³ *Permanent Mission of Turkey to the OSCE*, Updated Country Report of Turkey on Trafficking in Human Beings, HDIM No. 232, 10 October 2003, p 4.

The Task Force comprises of representatives from following institutions:¹⁴

- Ministry of Foreign Affairs
- Ministry of Interior
 - General Directorate of Security
 - General Command of Gendarmerie
 - Turkish Coast Guard Command
- Prime Minister's Office
 - General Directorate for Social Services and Child Protection
 - General Directorate on the Status and Problems of Women
 - Human Rights Board
 - State Planning Organization
- Ministry of Justice
- Ministry of Finance
- Ministry of Labour and Social Security
- Ministry of Health
- General Directorate of Social Assistance and Solidarity
- Human Resource Development Foundation (NGO)
- Foundation for Women's Solidarity (NGO)
- Observer status:
 - International Organization for Migration

The research team held discussions with the majority of the members of the National Task Force. All interviewees commended the establishment and work of the Task Force. However, there appears to be a need for more in-depth discussion and concrete action in the fields of victim identification, capacity-building and training of various professional groups.

2.1.3 National Action Plan

Due to the complex and ever-changing nature of the crime of trafficking in human beings National Action Plans should be treated as dynamic tools. Anti-trafficking strategies that successfully facilitate effective and innovative responses in the fields of prevention, protection and prosecution remain open for continuous review and amendments.

Adopted in 2003 the Turkish National Action Plan comprises twelve points of action to prevent and combat trafficking in human beings. In the following a brief reflection of the current responses to the respective points of action based on the assessment of the research team¹⁵:

¹⁴ List provided by the Turkish Ministry of Foreign Affairs, 8 February 2006.

¹⁵ A more detailed analysis of current anti-trafficking responses can be found in chapter 3 of this assessment report.

1. Establishment of shelters by the magistrates of Kars, Ardahan, Van, Trabzon, Istanbul, Adana, Antalya, Artvin, Ankara, Rize, Giresun, Ordu, Samsun and Ziti. To this end, the State Planning Organization will be asked to make a study and allocate the financial resources required for the establishment of shelters; implemented by **the Ministry of the Interior**,

So far, only the cities of Istanbul and Ankara have supported the establishment of a shelter in their respective municipalities. The shelter in Istanbul became operational in November 2004 and is run by the Human Resource Development Foundation, while the shelter in Ankara opened in September 2005 and is run by the Foundation for Women's Solidarity in close cooperation with the International Organization for Migration. The municipalities of Istanbul and Ankara cover the rent and parts of the running costs of the shelters as well as they contribute to the supply of nutrition. Currently, victims of trafficking identified throughout Turkey are referred to either of these shelters according to a referral map. Interviewees repeatedly emphasised that the capacity of 20-30 beds at a time is insufficient.

2. After the cure and rehabilitation, ensuring the safe return of victims of trafficking in human beings who stayed in shelters; implemented by the **Ministry of the Interior**,

The Turkish Ministry of Interior has signed bi-lateral agreements with the Ministries for Internal Affairs of Belarus, Georgia and Ukraine, which promote "the return and acceptance of victims of trafficking in human beings in the states of their citizenship without unreasonable delays". The Turkish Ministry of Interior, additionally, works closely with the International Organization for Migration, whose mandate encompasses facilitating the voluntary return of trafficked persons. Even though there is no administrative limitation for the duration of a victim's stay in the shelter, the current time span for a trafficked person waiting for her return averages 10-20 days. According to international treaties and experts a minimum time period of 30 days is needed for recovery and reflection. Traumatic experience including exploitation and violence take extensive time to overcome.

3. Studying the possibilities of establishing emergency "Hot Line" services working 24 hours free of charge for victims of trafficking in human beings; implemented by **the Ministry of the Interior**,

In June 2005 the International Organization for Migration started the 157 helpline, which is operated 24 hours a day, seven days a week by Turkish, Russian, Romanian, Kazakh, Kyrgyz, Ukrainian, Uzbek and English speaking operators. Until February 2006, 61 presumed trafficked victims were detected through the helpline, which is closely coordinated with the Turkish National Police and the Gendarmerie. Even though there was a call for NGOs to run the helpline no organisation has yet come forward to take on this project under the auspices of the International Organization for Migration. Calls concerning the whereabouts of victims have also come through 155, the general police helpline, and 156, the general gendarmerie helpline.

4. Foreigners (women) may acquire Turkish citizenship immediately upon request after marrying a Turkish National. With the amendment to the Article 5 of the Citizenship Law (no: 403)¹⁶ a probation period of 3 years will be required for application for acquiring Turkish citizenship. Accordingly, those who have a job incompatible with the marriage and do not share the same home with the husband/wife, will not be accepted for Turkish citizenship. The amendment to the said law will be sent to the General Directorate of Law and Decision within the Prime Ministry; implemented by the **Ministry of the Interior**,

This provision helps to prevent traffickers from abusing the Citizenship Law for their purposes. According to the Turkish National Police the number of faked marriages decreased significantly since 2003.

¹⁶ The Law has been approved by Parliament on 6 June 2003.

5. Participation of law enforcement bodies in the anti-trafficking training projects on the methods of determining a victim of trafficking and obtaining testimonies of the victims before the hearings; implemented by the **Ministry of the Interior**,

Both, the Turkish National Police and the Gendarmerie, have set up in-house trainings as well as they have participated in external trainings provided by organisations such as the Human Resource Development Foundation, the International Organization for Migration, the International Centre for Migration Policy Development and the UN Refugee Agency. Both law enforcement bodies are currently in the process of developing and piloting guidelines for the identification and referral of victims.

6. Completion of the works on providing protection for foreigners in position of victims/witnesses during lawsuits filed in accordance with Article 201/b of the Turkish Penal Code; implemented by the **Ministry of the Interior**,

Since the new Turkish Criminal Code¹⁷ entered into force in June 2005, Article 80 deals with the criminal offence of trafficking in human beings. Interviewees reiterated that it was still too early to assess the impact of the new legislation. A special law on witness protection, which also includes trafficked victim-witnesses, is currently under preparation and will be adopted in the upcoming months.

7. The "Law on Work Permits for Foreigners"¹⁸ was sent for approval to the Prime Ministry. The Ministry of Labour and Social Security will be assigned as the sole authority to issue work permits for foreigners in Turkey. The Law will regulate effective employment policy measures in Turkey. The finalization of the process of approval of the said Law^{**}; implemented by **the Ministry of Labour and Social Security**,

This piece of legislation regulates the application of foreigners for work permits in Turkey. Model contracts for employers and applicants include detailed information about work conditions. Persons, who were identified as victims of trafficking in Turkey and received a humanitarian visa, can also apply for a work permit. However, none of the 35 victims, who have received humanitarian visa, seems to have applied for work permits so far.

8. NGOs will be encouraged to deal with the fight against trafficking in human beings; implemented by the **Ministry of Labour and Social Security [now: General Directorate on the Status of Women]**,

The limited capacity on part of non-governmental organisations to provide direct services and get actively involved in preventive and lobbying work has been cause of wide concern. At the current stage, there are two specialised NGOs working on trafficking issues, the Human Resource Development Foundation runs a shelter for trafficked persons in Istanbul and the Foundation for Women's Solidarity runs a shelter for trafficked persons in Ankara. Some other NGOs signalled interest in getting more engaged in the fight against trafficking in human beings.

9. Detailed statistics must be recorded by the General Directorate of Statistics and Criminal Record of the Ministry of Justice, regarding sentenced criminals and victims under Article 201/b of the Turkish Penal Code; implemented by **the Ministry of Justice**,

This provision is also relevant for the new Turkish Criminal Code, where data now has to be collected under Article 80 and Article 227. There is no central and independent body that would collect disaggregated and anonymous data from all relevant stakeholders. Various Ministries collect trafficking-related information, such as the Ministry of Justice gathers statistics on criminals and the Ministry of Interior on victims of trafficking. This data is made available to the National Task Force.

¹⁷ Law No: 5237. The Law entered into force on 1 June 2005.

¹⁸ Law No. 4817. The Law has been approved by Parliament on 27 February 2003.

10. The treatment and rehabilitation of victims of trafficking; implemented by the **Ministry of Health,**

The Ministry of Health advocated for the release of a decree¹⁹ that would exempt trafficked persons from paying charges for medical examinations and treatment in Turkish hospitals. Currently victims of trafficking are granted free-of-charge medical services in hospitals throughout Turkey.

11. The Law on Fund of Encouragement of Social Aid and Solidarity defines the Turkish citizens and persons in need of help who entered Turkey or accepted to Turkey. Supporting of the victims of trafficking under the said Law; implemented by **the Social Aid and Cooperation Fund within the Prime Ministry,**

This Fund is administered by District Governors, who decide whether the applicant receives support. There was no information whether this fund has been made use of in order to support trafficked persons individually. The Human Resource Development Foundation and the Foundation for Women's Solidarity have applied and received support for their programmes from this fund.

12. Preparation of special informative placards on trafficking in human beings in order to create awareness; implemented by **Human Rights Office within the Prime Ministry.**

Various awareness-raising events have been carried out in the last three years. The General Directorate for the Status on Women has convened two panels in 2002 and 2003, with their results having been published and disseminated broadly. The International Organization for Migration carried out a broad awareness-raising campaign promoting the 157 helpline in Turkey and abroad as well as it launched a broad media campaign titled "Have You Seen My Mother?" in early 2006.

The points of action as lined out in the Turkish National Action Plan of 2003 have partly been responded to as shown in the comparison above. There were major changes, especially in the legislative field, as well as new actors entered the anti-trafficking arena.

It is important to note that the 2003 Action Plan covers some important parts of the current referral mechanism. However, the last years also indicate that activities needed to go beyond this strategy resulting for instance in institutionalised cooperation agreements between authorities and non-governmental organisations. New circumstances and changed trends call for new responses.

The EU Twinning Project "Strengthening Institutions in the Fight Against Trafficking in Human Beings" aims to support the Turkish project partners in reviewing and amending the existing Turkish National Action Plan so that it will cover all areas of prevention, protection of victims and prosecution of traffickers, relevant in the Turkish context and based on international commitments.

Experience shows that action plans without timeline and budget are likely to remain plans without action. Any future National Action Plan should foresee appropriate timelines and estimated budgetary figures for the proposed activities as well as mechanisms for monitoring and evaluation for its implementation.

¹⁹ Decree 2003/6565.

2.2 Cooperation agreements

2.2.1 Basic principles

Cooperation agreements between state and non-state structures help harmonise criminal prosecution with protecting the human rights of victims. In practice, cooperation agreements often come into being as a result of a directive under which presumed trafficked persons are transferred from police custody to support and protection services operated by NGOs, or through formal memoranda of understanding. Such agreements are a basic component of every NRM.²⁰

The following principles need to be taken into consideration when enter into cooperation agreements:

- Smooth communication channels are vital for any successful cooperation, with cooperating partners committed to uphold professional values such as transparency, accountability and confidentiality.
- A clear delineation of responsibilities and tasks based on the respective mandates of all cooperating partners and in compliance with agreed-upon standards should build the framework for institutionalised anti-trafficking action.
- Cooperation agreements and the implementation thereof need to be regularly reviewed and evaluated and should be seen as “work in progress”.
- Cooperation especially between law enforcement bodies and service providers are effective and successful when all presumed victims are detected and have access to support services and when perpetrators are detected and are being held accountable for their crimes.
- Experience shows that target oriented co-operation or even any exchange of information only leads to positive results when the cooperating partners have confidence in and respect for each other. To this end it proves useful to appoint contact/focal persons in each institution.

However, the underlying principle of any anti-trafficking action, but especially also of cooperation agreements, is to put the well-being of the victim at the core.

2.2.2 Cooperation agreements in Turkey

2.2.2.1 Cooperation agreements between law enforcement and NGOs

The General Directorate of Police of the Turkish Ministry of Interior entered two protocols, one with the Human Resource Development Foundation²¹ and one with the Foundation for Women's Solidarity²². In addition, the General Command of the Gendarmerie entered a cooperation agreement with the Human Resource Development Foundation²³.

²⁰ OSCE ODIHR, NRM Handbook, p. 65.

²¹ Protocol between the Ministry of Interior (General Directorate of Police) and the Human Resource Development Foundation, 4 September 2003.

²² Protocol between the Ministry of Interior (General Directorate of Police) and the Foundation for Women's Solidarity, 31 October 2005.

²³ Cooperation Agreement between the Human Resource Development Foundation and the General Command of the Gendarmerie, 14 June 2004.

The objective of all these agreements is to “determine the responsibilities of the partners within the framework of the ‘Human Trafficking’ Program”. The roles of the partners have been defined for the law enforcement bodies as “institutions supporting the program” and for the NGO service providers as “implementing agencies of the program”.

Depending on the financial resources available, the responsibilities of each NGO cover the following areas of the “Human Trafficking Program”:

- awareness-raising and advocacy
- training for Turkish civil servants
- capacity-building of Turkish NGOs
- national and international networking with international organisations and other NGOs
- direct assistance (incl. psychological, medical and legal assistance as well as sheltering) for trafficked persons in compliance with Turkish law

The General Directorate of Police in return pledges to uphold the following principles:

- support each NGO in its anti-trafficking work
- ensure for trafficked persons to have access to direct social support services
- guarantee safe repatriation of trafficked victims
- provide security for NGO personnel
- process information from NGO sources adequately
- ensure support for and participation in training initiatives
- participate in anti-trafficking strategy review and development
- support swift communication and cooperation between operational branches of law enforcement and social services providers

According to the respective mandates the General Command of Gendarmerie does not take any active role in facilitating security for NGO personnel or repatriating victims of trafficking. For this reason these points are omitted in the protocol between the Gendarmerie and the Human Resource Development Foundation.

Another noteworthy point is that in the protocols with the Human Resource Development Foundation both, Police and Gendarmerie, commit themselves to inform the service provider “as soon as possible about the investigation, trial and custody and return process upon the identification of a trafficking victim.” This provision is not included in the protocol with the Foundation for Women’s Solidarity. It is assumed that the International Organization for Migration notifies the service provider in Ankara about the victim identification.

Besides preventive (awareness-raising, advocacy, etc.) and capacity-building measures (training, NGO networking, etc.), the cooperation agreements between law enforcement and NGOs focus on victim identification, referral and return of foreign victims of trafficking. The aim of this victim referral is the safe repatriation of foreign citizens, who became victims of trafficking in Turkey. The protocols do not comprise any provisions for situations, where the victim would stay in Turkey for a longer period of time. Such situations may entail necessary victim-witness protection measures in case the victim wants to actively cooperate with the judiciary to bring the perpetrators to justice or to seek legal redress such as compensation claims.

Given the fact that a few interviewees suggested that Turkish citizens may also fall prey to trafficking gangs it would make sense to expand the existing cooperation agreements to also explicitly cover Turkish citizens.

It is important to highlight that in the course of the interviews all cooperation partners commended the cooperation with each other showing a great level of respect for each others work and responsibilities.

2.2.2.2 Cooperation agreements between municipalities and NGOs

Istanbul

The Human Resource Development Foundation entered a protocol with the Metropolitan Municipality of Istanbul²⁴. Its objective is “to determine the responsibilities of the partners within the framework of ‘Opening and Operating Shelters for Women’.”

The Municipality of Istanbul commits itself to cover the rental costs of the NGO shelter hosting 10-12 victims at a time. It furthermore contributes to repairs incurred, monthly running costs and nutrition for victims upon the request of the Human Resource Development Foundation.

The Human Resource Development Foundation in return furnishes the shelter, takes on the management and administration of the shelter and provides medical, psychological, legal and social assistance to victims of trafficking. In case of security threats the General Directorate of Police will be requested to provide protection for the trafficked victims in the shelter.

The Human Resource Development Foundation operates the shelter in Istanbul since November 2004. The cooperation with the Metropolitan Municipality of Istanbul works well. However, the modus operandi for the non-governmental shelter provider to conclude renewable one-year lease contracts with the Municipality may put additional pressure on the NGO with regard to ensuring the sustainability of its anti-trafficking programme.

Ankara

The International Organization for Migration facilitated the opening of the shelter in Ankara by sub-contracting an NGO to run its shelter programme. In September 2005, the International Organization for Migration signed a cooperation agreement²⁵ with the Foundation for Women’s Solidarity in order to regulate each others responsibilities and obligations. It is for this reason that the Foundation for Women’s Solidarity has not entered a direct cooperation agreement with the Municipality of Ankara, which provides the facilities for the shelter.

This agreement stipulates that both parties have to adhere to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons as well as to a number of human rights documents and IOM standards. Within the framework of victim referral and support the Foundation for Women’s Solidarity commits itself to “provide assistance and service to the beneficiaries of the shelter” and to “refer victims of trafficking to IOM for Return and Reintegration Assistance” upon request of its project partners. The International Organization for Migration in return agrees to “support advise and monitor FWS in providing Direct Assistance to victims of trafficking” in close cooperation with the Foundation for Women’s Solidarity.

²⁴ Protocol between the Metropolitan Municipality of Istanbul and the Human Resource Development Foundation, 29 June 2004.

²⁵ Agreement between the International Organization for Migration (IOM) and the Foundation for Women’s Solidarity (FWS) on Technical and Operational Cooperation, 1 September 2005.

Similarly to the shelter in Istanbul the agreement runs for a limited period of time (9 months) giving little perspective on whether the contract is going to be renewed. This may also put a lot of pressure on the NGO shelter provider.

2.2.3 Bi-lateral cooperation agreements with other Governments

In the course of the last two years the Turkish Ministry of Interior signed the following Memoranda of Understanding with Ministries of Interior from the following countries:

- Additional Protocol on Implementation of the Article 1 to the Cooperation Agreement against Crime between the Government of the Republic of Turkey and the Government of Ukraine, 7 June 2005
- Memorandum of Understanding between the Ministry of Interior of the Republic of Turkey and the Ministry of Internal Affairs of the Republic of Belarus on Cooperation in the Field of Combating Trafficking in Human Beings and Illegal Migration, 28 July 2004
- Protocol between the Republic of Turkey and Georgia on the Implementation of the Ninth Article of the Agreement on Combating Terrorism, Organized Crime and Other Major Crimes Between the Republic of Turkey, Georgia and the Republic of Azerbaijan, 10 March 2005
- Protocol between the Government of the Republic of Turkey and the Government of the Republic of Moldova on Cooperation in the Field of Trafficking in Human Beings in the Framework of the Agreement on Fighting Against International Illicit Drug Trafficking, International Terrorism and Other Organized Crime, 8 February March 2006

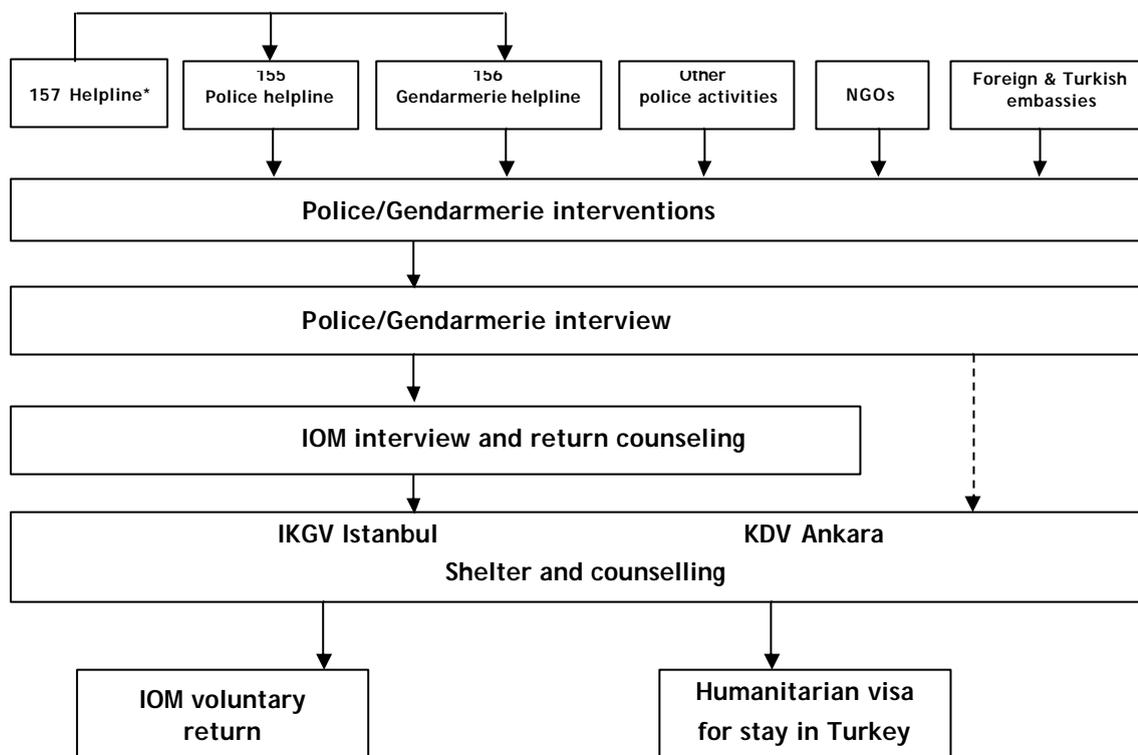
These agreements include provisions facilitating the following areas:

- information exchange on both, traffickers and victims
- investigative procedures including joint operations
- entitlement of victims to support services and facilitation thereof, as well as
- general awareness-raising, and
- information about the developing legislative framework in the field of trafficking in human beings and related areas

In the framework of Component 4 “Developing return and reintegration assistance” (Activity 4.1), another research team will take a closer look at the implementation of these bi-lateral agreements.

3 The current referral mechanism in Turkey

The current referral mechanism in Turkey can be illustrated in the following way:



* started and managed by IOM

3.1 Identification

The identification of trafficked persons is a crucial component in each National Referral Mechanism. If identification procedures are not in place or do not reach the target group, trafficked persons have no access to assistance and support structures, and the crime of trafficking will neither be documented nor prosecuted. Therefore, comprehensive identification procedures are recommended to reach out to all presumed trafficked persons and create a network among the stakeholders of an NRM.²⁶

Even though law enforcement agencies play a central role in identifying victims, they are not the only agencies that come across the target group:

According to analytical research in one Western European country more than 40 per cent of all trafficked persons are now identified through outreach work by non-governmental organisations, local authorities, and hotlines. Clients of prostitutes and other citizens identify more than 22 per cent of trafficked persons. Only 13,9 per cent of trafficked persons qualified for assistance are being identified and referred by the police.²⁷

²⁶ OSCE ODIHR, NRM Handbook, p 59.

²⁷ OSCE ODIHR, NRM Handbook, p 59, the aforementioned Western European country refers to Italy.

3.1.1 Reflection period

In order to establish comprehensive and all-encompassing identification channels, the establishment of a reflection period has been proven as a useful tool in a number of EU member states. A reflection period should immediately be granted to all those, where there is reason to believe that they have been trafficked:

The purpose of the reflection period includes enabling identification of whether a person is trafficked, as well as granting the possibility for the trafficked person to begin to recover and make an informed decision about her/his options, including the decision on whether to assist in criminal proceedings and /or to pursue legal proceedings for compensation claims. [...] A period of three months is a minimum time frame in which to ensure that presumed trafficked persons receive appropriate assistance and support, such as secure housing, psychological counselling, medical and social services and legal consultation.²⁸

Some EU Member States such as Germany, the Netherlands, Belgium or the Czech Republic have implemented a reflection period in their national law. European States are required to establish reflection periods due to the EU "Directive 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" and the Council of Europe Convention on action against trafficking in human beings". For recommendations on the reflection period in Turkey, please see chapter 3.5.2.

3.1.2 Identification channels

The identification of trafficked person in Turkey is almost exclusively carried out by law enforcement agencies. Police and Gendarmerie identify the majority of trafficked persons through the following channels:

- The anti-trafficking helpline (157). This helpline is managed by the International Organization for Migration and works 24 hours a day and 7 days a week. It is operated by Turkish, Russian, Romanian, Kyrgyz and English speakers. Queries include also calls from family members and friends of victims. Relevant calls are reported directly to the Turkish National Police or to the Gendarmerie by phone or email in the respected geographical area. The law enforcement agencies rescue the concerned persons.
- The general police (155) and gendarmerie helpline (156). These helplines are primarily used by clients of prostitutes to report trafficked persons.
- Persons are being identified as trafficked victims during police interventions, including raids.
- Cases of trafficking are also reported to law enforcement agencies by domestic and foreign NGOs.
- Cases are also reported by foreign embassies and by Turkish consular offices abroad through the Ministry of Foreign Affairs.

The Gendarmerie developed guidelines for the identification of trafficked persons.

²⁸ Opinion of the European Experts Group on Trafficking in Human Beings of the European Commission of 18 May 2004 on reflection period and residence permit for victims of trafficking in human beings. http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm# .

The identification is not solely based on the victim's testimony but police investigates also other evidence in order to constitute the crime of trafficking. The authorities, however, need a self-identifying statement from the victim in order to start the investigation. As a means of trust- and confidence-building, law enforcement agencies inform presumed trafficked persons about their possibilities and legal rights.

Following organisations and actors are not part of the identification mechanism for trafficked persons in Turkey:

- The referral support mechanisms for asylum seekers and refugees are not interlinked with the referral mechanisms for trafficked persons. Such a connection, however, would enable all presumed trafficked persons to access support and protection services. This is particularly relevant since some cases had been reported where persons in the asylum seeking process became victims of trafficking. Therefore, interconnections should be established between the asylum regime and the anti-trafficking structures.
- Doctors in hospitals and preventive hygienic inspectors may get in contact with presumed target groups, including prostitutes, patients for organ transplantation and service staff in the entertainment industry, restaurants and hotels. Action guidelines could be distributed to doctors and civil servants in order to provide them with clear instructions on how to handle presumed trafficking cases.
- Labour inspectors from the Ministry of Labour and Social Services are likely to meet presumed trafficked persons during checking sites of migrant labour, including domestic work (see chapter 3.5.1). The Ministry could take on a more active role in the Turkish referral mechanism.
- NGOs that provide counselling for irregular migrants, prostitutes and asylum seekers are so far not integrated into the current referral mechanism. The establishment of drop-in centres supporting trafficked persons in Istanbul and Ankara would allow for low threshold counselling of presumed trafficked persons. As a result, a broader variety of identification procedures for trafficked persons will be in place.

In order to establish a comprehensive system that would facilitate identification on a broad level, interviewees recommended developing and/or expanding training and capacity-building for all relevant professional groups.

3.1.3 Interviews

- The Turkish National Police and Gendarmerie conduct first interviews with trafficked persons and determine the status of a person as a victim. During this time the trafficked person is accommodated in a police guest house (in Ankara and Istanbul 1-2 days, in other areas up to 14 days).
- In case the trafficked person will be referred to the International Organization for Migration, a second interview will be conducted to determine the eligibility for its program. The criteria to participate in the program are fulfilled when the status of a victim is confirmed according to a questionnaire and the victim's explicit willingness to return.

Repeated interrogations of and interviews with a trafficked person might have a re-victimizing and traumatising effect on her/him. A sound approach could be found by sharing relevant information between all stakeholders (law enforcement agencies, International Organization for Migration, shelter providing NGOs).

3.2 Victim assistance and protection

3.2.1 Shelter

A trafficked person is referred to either the shelter in Istanbul or in Ankara by police authorities. A Ministerial Order regulates to which shelter the trafficked person will be referred to once s/he is identified outside of Istanbul and Ankara.

Both shelters have secret addresses that are only known to a very limited number of stakeholders. In general, shelter staff accompanies the trafficked person from police authorities to the shelter.

The Human Resource Development Foundation (HRDF) is a Turkish NGO promoting reproductive health, family planning education and the empowerment of human resources.²⁹ It runs the shelter for trafficked women in Istanbul. This shelter was opened in November 2004 and has a capacity of 10 beds. The staff includes four Turkish and Russian speaking counsellors, who work part-time in the shelter. The stay of victims in the shelter averages 10-15 days, even though some cases stayed for a longer period of time (up to 6 months). For their own security, victims are not allowed to leave the building once they are brought to the shelter and agreed to participate in the voluntary return program.

If the return program is refused by the trafficked person, s/he can apply for a renewable humanitarian residence permit in order to stay in Turkey for the period of 6 months (see chapter 3.5.1).

The operation of the shelter is based on three administrative agreements (see chapter 2.2.2):

- Protocol between the Ministry of Interior (General Directorate of Police) and the Human Resource Development Foundation, 4 September 2003
- Cooperation Agreement between the Human Resource Development Foundation and the General Command of the Gendarmerie, 14 June 2004
- Protocol between the Metropolitan Municipality of Istanbul and the Human Resource Development Foundation, 29 June 2004

The shelter only accepts internationally trafficked persons. So far, only two trafficked persons from the Istanbul shelter have applied for and were granted humanitarian visa.

The shelter in Ankara is operated by the Foundation for Women's Solidarity (KDV). This women's NGO is rooted in the feminist activist movement and had operated two shelters for victims of domestic violence in Ankara in the past. The shelter in Ankara was opened in September 2005 in cooperation with the International Organization for Migration. It has a capacity of 11 beds. The staff of the shelter comprises of a psychologist, four social workers, a coordinator and a social service expert. Only internationally trafficked persons are accepted as clients. Trafficked persons staying in the shelter cannot leave the facility on their own. The average duration of the stay is between 14 days up to one month. So far, none of the clients applied for a humanitarian visa.

²⁹ Human Resource Development Foundation, mission statement taken from http://www.ikgv.org/ing_index.html.

The modus operandi of the shelter is regulated in an agreement between the International Organization for Migration and the Foundation for Women's Solidarity (see chapter 2.2.2).

The majority of interviewees expressed the view that more local NGOs should be involved in providing shelter and counselling for trafficked persons by also taking into consideration a geographical balance. Moreover, the transfer of expertise from one NGO to another has been articulated as a need. It was noted that Turkish municipalities could be more systematically involved in the creation of shelters in Turkey, including through provisions of facilities, and cooperation with local NGOs.

3.2.2 Health care

Trafficked persons participating in the shelter program have free access to medical services. A cabinet decree (2003/6565) has been issued by the Ministry of Health enabling the provisions of free medical services at any hospital. The respective shelter organisation refers the trafficked person to the hospital once the application of the victim to visit a doctor has been approved by the District/Provincial Governor.

A comprehensive filing system carried out by the Ministry of Health documents information on health diagnosis and medical treatment of the victim. According to the Ministry of Health, it is upon the victim's free will and decision whether s/he wants to obtain medical care. In case a trafficked person refuses medical examination in the hospital, s/he has to sign a waiver.

According to Turkish criminal law, abortions may be performed until the tenth week of pregnancy with the consent of the spouse. In case of a pregnancy resulting from sexual violence a woman may, on the basis of a court decision, legally access abortion until the twentieth week. These procedures appear to be not clarified enough for trafficked women, who wish to terminate an unwanted pregnancy resulting from sexual violence.

Prior to her/his return to the country of origin, another medical dossier is created under the management of the International Organization for Migration. The form "Fit for travel" should confirm the physical and psychological ability of a victim to begin the return journey.

3.2.3 Information and counselling

A trafficked person participating in the shelter program receives social, psychological and legal counselling in Turkish, Romanian and Russian. Legal counselling at a very early stage of the referral process is an important service for trafficked persons. It enables them to consider and reflect their legal options, including on residence status and legal remedies. At present it may, however, be put into question whether and by who such counselling is provided to victims on a systematic basis, in particular as regards the humanitarian residence permit. Victim support NGOs, the General Directorate of Social Services and Child Protection could play a pivotal role in establishing and building the capacity of low-threshold drop-in centres.

Counselling should already at the very early stage include information about:

- procedures within the anti-trafficking support and assistance program in Turkey,
- available counselling services on medical, social, psychological and legal issues including access to justice,

- possibilities to apply for financial support with public funds,
- the duration of stay, regulations and conditions for trafficked persons accommodated in the secure shelters in Istanbul and Ankara,
- possibilities to receive alternative housing,
- possibilities to apply for humanitarian visa and work permits,
- possibilities to review personal data, including the right to rectify one's files,
- the participation in the return programme and its preconditions and consequences, including all information related to medical examinations, the protection of personal data, and available services in the country of origin,
- judicial procedures after filing a complaint against the alleged trafficker, including the standing of a victim-witness in a trial and access to witness protection and its implication on the autonomy and privacy of the trafficked person both, in Turkey and in the country of origin,
- possibilities to apply for refugee status and relevant procedures, including the services covered within this framework, if applicable.

As the number of issued visas remains relatively small, the extension of legal counselling may be expedient. The access to information about a person's legal rights is not only an obligation under international human rights law but facilitates investigation and prosecution due to testimonies that a stable trafficked person might provide.

The enhancement of social and legal counselling in Turkey may be facilitated by linking up with following existing organisations. Notwithstanding their specialization on different target groups, reality has often proved many grey areas between trafficked persons, asylum seekers and refugees:

- The Association for Solidarity with Asylum Seekers and Migrants (ASAM) operates a centre for psycho-social support to asylum seekers in Kayseri.
- The General Directorate for Social Services and Child Protection oversees a wide network of different institutions aiming at supporting and assisting disadvantaged groups.
- The International Catholic Migration Commission (ICMC) carries out a social orientation programme for asylum seekers.
- The UN Refugee Agency implements legal counselling for refugees and asylum seekers throughout Turkey and operates a network of non governmental stakeholders providing counselling (Gender and Children Team).
- The Helsinki Citizens Assembly runs a legal aid and support program for refugees.

3.2.4 Psychological and social assistance

Psychological and social assistance is only available for trafficked persons participating in the shelter program. There is not yet a low-threshold counselling centre, as for instance a drop-in centre that could provide individual counselling to trafficked persons. However, the General Directorate of Social Services and Child Protection runs some 30 drop-in centres that could be involved in the development of low-threshold counselling services.

Trafficked persons can apply for financial support with the Fund of Encouragement of Social Aid and Solidarity under the umbrella of the Office of the Prime Minister. The research team, however, has not been informed about successful applications.

3.2.5 Risk assessment

Trafficking in human beings is in many cases perpetrated by well organised groups operating in countries of origin and destination.³⁰ Upon arrival in the country of origin, the trafficked person can be in high danger. Therefore a risk assessment should be carried out before returning a person.

The European Experts Group on Trafficking in Human Beings of the European Commission recommends the following procedure:

“Member States should be obliged to carry out an individual risk assessment prior to the return or deportation of a trafficked person, including children, to his/her home country. Factors that should be taken into account are among others

- the risk of reprisals by the trafficking network against the trafficked person and/or her/his family,
- the capacity and willingness of the authorities in the country of origin to provide protection from possible violence or intimidation,
- the social position of the trafficked person on return,
- the risk of the trafficked person being arrested, detained or prosecuted by the authorities in the country of origin for offences related to her/his situation as a victim of trafficking, such as prostitution, the use or possession of false documents of illegal exit,
- the availability of and actual access to social assistance programmes, including safe accommodation, medical, legal and psychological aid,
- the opportunities for long term sustainable employment.”³¹

According to the Turkish National Police, risk assessments are carried out. However, both, the Turkish National Police and direct service providers see a need to strengthen their cooperation in this regard.

³⁰ Commission of the European Communities: Communication from the Commission to the European Parliament and the Council, Fighting trafficking in human beings - an integrated approach and proposal for an action plan. COM(2005) 514 final, p 4.

³¹ *European Commission, Directorate-General Justice Freedom and Security, Report of the European Experts Group on Trafficking in Human Beings. Brussels, 22 December 2004, p 117.*

3.3 Victim-witness protection

According to the National Referral Mechanism, victim-witness protection is not limited to classical protection of the safety of threatened witnesses in court or by police. It is a broader concept that aims to protect the rights of trafficked persons in criminal proceedings and also covers issues such as legal aid, sensitive interrogation techniques, active participation of victims in trials and the protection of her/his privacy.³² The most relevant legally binding standard in the EU context is the Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings.

According to Turkish criminal procedural law, the responsibility to take procedural measures to protect the rights of victims who participate as witnesses in criminal proceedings lies with the prosecutor. The research team was informed about measures such as interviewing the victim-witness in a secret place, keeping her/his identity confidential, interrogating her/him behind a mirror in order to avoid confrontation with the accused or by means of video equipment. The latter technique may also, on the basis of bilateral protocols, be used for obtaining witness statements from victims abroad, including for trafficked persons who have returned to their home country. It seems, however, that this technique has so far never been applied in trafficking cases. A draft law on witness protection, which also applies to trafficked victim-witnesses, is currently being discussed in Turkey.

Whereas a more detailed analysis of procedural measures under the Criminal Procedural Code will be undertaken during Component 5 of the Twinning project, a few points regarding the practical application of these provisions that have been noted during the interviews shall be raised in the following:

From the interviews the research team concludes that existing provisions regulating the status of victims in criminal proceedings have rather limited practical relevance in trafficking cases. Several interviewees stated that trafficked persons in practice do not participate in court proceedings, due to the fact that they already returned to their home countries. Victims usually testify at the very beginning of the investigation process while they are still in Turkey. If this is not possible, because the victim already returned, or if further statements are needed for the prosecution of the case, statements may be recovered by using channels of international cooperation. While existing bilateral cooperation agreements (e.g. with Ukraine or Belarus) allow for taking the statement of the witness abroad and transmitting it to Turkish courts, this procedure has not been applied in practice yet. Sometimes it is also impossible to find the victims in their respective home countries.

The importance of international law enforcement cooperation with regard to the protection of victims and their family members can also be illustrated in a case that was reported to the research team: An Azeri woman had been trafficked to Turkey. Her son who lived in Baku was threatened by the traffickers. With the support of Interpol and Azeri police colleagues the boy was taken to a safe environment and the woman did no longer shy away from cooperating with Turkish police.

Although victims' statements given to the police may be read out during the trial and used as evidence in court, the defendants' lawyers, in order to delay proceedings, often argue that the victims' statements are inconsistent. Due to the repatriation of the victim, it is no longer possible to clarify these issues directly with the victim-witness.

³² OSCE ODIHR, NRM Handbook, pp 92ff.

The research team received the following information on the preconditions for victims of crime in general and victims of trafficking in particular, who cannot afford a lawyer, to receive free legal representation:

- Unlike for persons, who are accused of having committed crimes that carry a certain level of punishment, legal representation is not arranged automatically for victims of crime.
- According to Article 234 of the Criminal Procedure Code, state-paid legal aid is available only to child victims who cannot afford a lawyer themselves.
- There is a special Department of Foreigners within the State Prosecutor's Office in Istanbul that is in charge of arranging legal aid for victims.
- A person, who cannot afford a lawyer may also receive state-paid legal representation through the bar association. At the Ankara Bar Association, victims of alleged human rights violations as well as service providers can submit a request for legal assistance. Within the Bar Association a Human Rights Centre has been established, which deals with such cases and accompanies the victim throughout the proceedings as long as it is needed. The Foundation for Women's Solidarity started working with the Ankara Bar Association in order to provide legal assistance to trafficked persons.

Some interviewees were sceptical about whether legal representation has ever been provided in practice to victims of trafficking, as they usually return home or are too afraid to testify.

Some NGOs that work with asylum seekers are cooperating with lawyers who are willing to provide pro bono legal assistance, or are in the process of establishing such cooperation. For instance, the International Catholic Migration Commission has identified lawyers who are willing to provide legal aid to their clients. These lawyers are meeting in an informal working group and have received training from the UN Refugee Agency.

Practice shows that trafficked persons rarely participate in the criminal proceedings against the trafficker and benefit from existing procedural protection measures. While not all trafficked persons might be willing to testify in court, this should be an option available to them, also against the background of the rights of the victim to actively participate in proceedings as one of the corner stones of the Council Framework Decision on the Status of Victims in Criminal Proceedings. Furthermore, the absence of victims means that the prosecution lacks important witness statements – a factor that was identified during the interviews as possible explanation for the low number of convictions of traffickers.

Current practice also reveals the lack of connection between criminal procedural law on the one hand, and law and practice with regard to residence status and repatriation on the other hand. For recommendations on the residence status, please refer to chapter 3.5. Existing bilateral agreements that regulate international cooperation in the field of victim protection and taking their testimonies should be applied into practice.

A legal aid scheme for victims of crime, including trafficked persons, should be set up. In this context it seems worthwhile to further investigate whether and how the experience of NGOs working with refugees may be used as a model to set up legal aid programmes for trafficked persons.

3.4 Compensation

Law and practice should ensure that trafficked persons have full access to compensation already during criminal proceedings, as foreseen by the European Union Council Framework Decision on the Standing of Victims in Criminal Proceedings of 2001 and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000. This should also include the establishment of a state fund providing subsidiary compensation to victims of crime, including victims of trafficking. This fund should also be accessible to non-Turkish citizens. Whereas the new Code of Criminal Procedure allows for confiscation of property, confiscated assets should be used for the purposes of this fund.

3.5 Residence status and access to labour market

3.5.1 General regulations on labour migration

Foreigners, who want to migrate to Turkey for work purposes have to apply for a working visa and work permit from abroad.³³ When processing the application, Turkish authorities also check whether the person is vulnerable to become a victim of exploitation in Turkey. This procedure aims to work as a control mechanism: If the authorities find that such vulnerability exists, they refuse the entry of the potential victim, in order to prevent potential problems, such as underpayment.

In 2004, the Ministry of Labour and Social Services issued a model work contract for Turkish employers and foreign employees. In case of a violation of the working conditions stated in the contract, the person can complain with the Ministry and the police. The form also provides the phone number of the Human Resource Development Foundation in order for the employee to request assistance in case of exploitation. Whereas this approach is innovative, because it opens an alternative channel for identifying potential victims of trafficking as well as it facilitates their access to counselling and support services, it has not proven effective in practice. Arguing that limited resources and infrastructure do not allow for appropriate services to be rendered to migrant workers, the Human Resource Development Foundation does not feel comfortable with its phone number on this model contract. So far, the Human Resource Development Foundation has not received a call that was instigated by a working contract of the Ministry.

The Ministry monitors job advertisements in the media and carries out regular inspections in work places for which work permits were issued, in order to examine issues such as salaries, social insurance or over-time payments. Inspectors may also visit private households where domestic workers are employed, even though they are not included in the minimum wage scheme. Periodical inspections to detect unregistered labour are also carried out in sectors such as agriculture or entertainment. In case of illegal work, both, the employee and the employer are fined. Employees have to pay only minor amounts and often leave the country before paying. Employers are fined with higher amounts and are also obliged to cover the costs of accommodation of the employees and their family members, as well as the costs relating to the return of these persons to their home countries and arising health expenses.

³³ Law No. 4817 on the Work Permit of Foreigners of 27 February 2003.

Labour inspections and model contracts which provide contact information about support services may provide useful opportunities to identify potential victims. It is particularly positive that private households are not exempted from the labour inspection system. At the same time, there is still room for improvement. Improving communication channels between authorities and service providers as well as expanding support infrastructures for trafficked persons and migrant workers are necessary preconditions.

3.5.2 Humanitarian residence permits for trafficked persons

The residence status of trafficked persons in Turkey is closely linked to the return and reintegration/social inclusion process. The latter issues will however be addressed only very briefly in the present report, as they will be covered more in-depth by a distinct assessment in Component 4 of the Twinning project.

Legalising the residence status of trafficked persons is a crucial component of any effective anti-trafficking strategy. Due to fear of prosecution and deportation, trafficked persons are usually reluctant to request assistance from law enforcement and service providers in destination countries. Not only this fear but also actual deportations deprive victims from the possibility of seeking assistance and redress. Therefore, a regularised status is a necessary precondition for the victim's access to assistance and protection measures. It also serves the interest of prosecution because it enables victims to testify in court against the traffickers. As part of the National Referral Mechanism,³⁴ the residence status of trafficked persons should comprise the following components:

- A recovery and reflection period that is available for all presumed trafficked persons and during which victims shall be protected from detention and deportation and have access to safe accommodation, counselling and assistance. This period lasts 90 days in the Netherlands which seems an appropriate duration, as it has also been recommended by the European Expert Group on Trafficking.³⁵ The Council of Europe Convention on Action against Trafficking in Human Beings, which is not yet in force but offers a yardstick for a European standard, states that the period must be long enough as for the victim to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities, but in any case at least 30 days.³⁶

This period should be followed by the following elements, as foreseen in Italy:

- Short-term humanitarian residence permits for victims of at least 6 months that may be renewed
- Short-term residence permits for witnesses, who wish to cooperate, at least for the duration of criminal proceedings
- Long-term or, in appropriate cases, permanent residence permits that are based on humanitarian grounds

³⁴ OSCE ODIHR, NRM Handbook, pp 88ff.

³⁵ Opinion of the European Experts Group on Trafficking in Human Beings of the European Commission of 18 May 2004 on reflection period and residence permit for victims of trafficking in human beings, http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm#

³⁶ See also Article 6 of the legally binding 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. Article 6 provides for a reflection period, however without specifying its duration.

In appropriate cases, granting refugee status should also be considered.

Persons trafficked to Turkey may apply for a renewable 6-months humanitarian residence permit, which is issued by the Turkish National Police Department for Foreigners, Borders and Asylum. The victim's willingness to cooperate with the authorities in the investigation and prosecution of the criminals is not a precondition for receiving such a permit.

Some interviewees suggested that it would be desirable to clarify the criteria for eligibility of the residence permit and the number of possible extensions and recommended a closer analysis. This and other legal questions will however be addressed in more in-depth during Component 5 of the Twinning Project.

Holders of a humanitarian residence permit are eligible to work in Turkey. For this purpose they may apply for a work permit with the Ministry of Labour and Social Security.

- So far, 35 humanitarian temporary residence permits were issued from 2003 to 2005, including estimated 10-15 permits in Istanbul. In one of these cases, the residence permit was renewed.
- According to the Turkish National Police, the majority of victims returned home within the six month period.
- Since the opening of the Ankara shelter in September 2005, none of the clients has applied for a humanitarian residence permit as of February 2006. Two applications for a humanitarian residence status have been brought forward by women during their stay in the Istanbul shelter, of whom one woman eventually married a Turkish citizen, and the other one was reported to have disappeared.³⁷
- Apparently, most victims applying for humanitarian residence status receive the permit.
- In 2004 and 2005, the Ministry of Labour and Social Services issued a total of 16.760 work permits to foreigners. No statistics were provided on the number of work permits issued to trafficked persons who hold a humanitarian residence permit. According to the Turkish National Police, none of the previously mentioned 35 persons has so far applied for a work permit.
- Apart from humanitarian residence permits, the research team was informed about a case in which the status of a trafficked person was regularised under the asylum law: An Iranian woman, who had fled to Turkey, became a victim of trafficking in Turkey after having been refused refugee status. The UN Refugee Agency and NGOs took up her case. Due to threatening danger and stigmatisation back in Iran, she was eventually granted refugee status by the UN Refugee Agency and resettled to a third country.

Separating the residence status from the readiness to cooperate, as foreseen in Turkey, focuses on the victim's need for assistance and protection, rather than what s/he has to offer to the authorities. This approach is positive, not only from the perspective of the protection of victim's rights but also from the perspective of law enforcement, as it helps to create an environment in which the victims may feel stable and secure enough to share information with law enforcement, which in turn has a positive impact upon the quality of her/his testimony. Also the opening of the labour market to trafficked persons is an important step.

³⁷ This information was provided by the specialized non-governmental organisations running shelters in Ankara and Istanbul.

The interviewees have, however, mentioned several obstacles that in practice limit the access of trafficked persons to an unconditional regular residence status and, as a consequence, to assistance and protection services.

For instance, the research team learned that although cooperation is not a precondition for obtaining a residence permit,

Furthermore, the number of residence permits issued so far (35) is relatively low, if compared to the number of trafficked persons identified by law enforcement (according to the Turkish National Police: 491 women in 2004 and 2005).³⁸ No work permits have apparently been issued so far to trafficked persons who hold humanitarian residence permits. Some interviewees suggest that these facts are due to a low number of applications and offered the following explanations:

- Apart from regularising the victim's residence status, the residence permit does not offer much: At present, there are no options for long-term assistance and integration. In practice it is also difficult for trafficked persons to access the labour market, as the Turkish law regulating work permits for foreigners gives preference to its own citizens at the labour market, like in other countries. Furthermore, this application procedure requires a substantial amount of paperwork, and the applicant needs to find a company to raise the application on her/his behalf.
- The overall approach of the present assistance system is oriented towards repatriating the victims and offers hardly any medium- or long-term assistance in Turkey. In fact, the research team learned that whereas some victims stay in the two shelters for a period of up to 1-6 months, many stay for 10-15 days only, until the International Organization for Migration has prepared their travel documents and they are being voluntarily repatriated. The research team was told that in some cases in which victims prefer not to receive assistance from the International Organization for Migration, police facilitate return via direct contacts with the countries of origin. This may happen on the basis of existing bilateral protocols (e.g. with Belarus or Ukraine), but also with countries where no such protocols exist. These protocols also aim to facilitate the access of law enforcement to victims after repatriation, but so far victims have not been brought back to Turkey to give testimony during criminal proceedings.
- The identification process has significantly improved since the establishment of the 157 helpline. However, it was reported that persons, who have not been identified as presumed trafficked persons, were deported to their respective countries of origin or in some cases just to the nearby harbour of Odessa.
- Some victims do not want to stay in Turkey but rather return home as soon as possible. This rationale has been put into question by some interviewees, taking into account the stigma attached to the victim and the lack of economic perspectives upon their return back home.

Even though Turkey possesses a progressive regulatory basis and Turkish stakeholders appear very flexible in applying anti-trafficking measures some areas could still be expanded and improved. According to the Turkish National Police as soon as there is the slightest suspicion of a person to have been trafficked, they refrain from deporting her/him. Still, the majority of identified victims express the wish to immediately return to their countries of origin

³⁸ *Turkish National Police*, Trafficking in Human Beings (THB), document distributed at the Starting Conference of the Twinning project, Ankara, 6 January 2006.

resulting in an average stay of 10-20 days in an assistance programme. Experience from other European countries, however, shows that victims recover best and come to informed decisions when they have appropriate time to reflect upon their situation and future. This leads to the assumption that current victim support measures could be reviewed in light of creating an environment that encourages victims to pause and reflect upon their possibilities while being in Turkey. This may be of importance also for prosecutorial efforts where so far, victims have rarely participated in person in criminal proceedings.

The following cornerstones of a residence regime could be useful in order to respond to the identified shortcomings:

- A reflection and recovery period for all victims of trafficking of at least 30 days or in appropriate cases of a longer duration should be established, irrespective of their willingness to cooperate. During this period, victims should neither be deported nor pressured to cooperate. They should receive unconditional support, protection and independent counselling.

This period should be supplemented by the following options:

- Residence permits at least for the duration of criminal and civil compensation proceedings for victims who participate in such proceedings
- Renewable humanitarian residence permits for a period of at least 6 months, irrespective of the victim's willingness to cooperate
- Long-term/permanent residence permits that are based on humanitarian grounds or transformed into general residence and work permits for foreigners
- Voluntary and safe return for those victims, who wish to return or whose residence permit has expired.
- In appropriate cases, where the criteria of the refugee definition according to the Geneva Refugee Convention are fulfilled, refugee status should be granted to trafficked persons.

Additional measures are recommended in order to facilitate the access of trafficked persons to residence permits and work permits, in particular the provision of independent counselling and information on legal options already during the recovery and reflection period, the establishment of medium- and long-term support and reintegration programmes. In addition, trafficked persons, who received a humanitarian residence permit, should also have the possibility to easily access support and counselling services.

Some of the above mentioned provisions are already in place in Turkey, at least on a legislative level. However, the implementation of legislation frequently proves to be rather difficult.

4 Conclusions

The vast majority of interviewees confirmed that substantial progress has been made in Turkey in the development of anti-trafficking responses throughout the last two years. A number of new stakeholders took on active roles in preventing and combating trafficking in human beings. While most actors feel comfortable in their designated roles it was apparent that there is a major need to build and expand overall capacities throughout the country, especially in the areas of direct assistance for trafficked victims and training initiatives for professional groups.

Institutional framework

Turkish stakeholders have put in place a structure that facilitates regular exchange and institutionalises roles and responsibilities through cooperation agreements. The National Coordinator together with the members of the National Task Force coordinate and overview the implementation of the National Action Plan. The current anti-trafficking strategy is going to be reviewed and revised in the framework of the EU Twinning Project "Strengthening Institutions in the Fight against Trafficking in Human Beings". It will be important to pay particular attention to all forms and aspects of trafficking in human beings, including the development of a comprehensive national referral mechanism. Stakeholders are called upon to bring clear visions concerning needs, resources and timelines for the development of the National Action Plan to the table.

Cooperation agreements

Within the last two years governmental bodies, especially law enforcement, and non-governmental service providers identified the need for institutionalised cooperation and signed protocols with each other. These cooperation agreements regulate a broad range of activities with a particular focus on the identification of and assistance to trafficked persons and their safe and swift repatriation. A next step may be to scrutinise the possibility of expanding these protocols with regard to effectively providing medium- and long-term support services to all target groups.

Identification

While there is a specialised mechanism for victim identification and support in place, consideration should be given to the issue of how to best expand the identification mechanism in order to enable all target groups to access support services. For instance, labour inspections and model contracts, which offer contact information about available support, may provide useful opportunities to identify presumed victims.

Shelter

So far, two non-governmental organisations in Istanbul (since 2004) and Ankara (since 2005) provide direct assistance and run shelters for trafficked persons in Turkey. More local NGOs should be involved in providing shelter and counselling for trafficked persons by also taking into consideration a geographical balance. Shelter regulations may be reassessed in light of granting trafficked persons the opportunity to fully exercise their rights such as freedom of movement.

Information and Counselling

Comprehensive counselling should be provided from the very early stages of the identification and referral process. The existing structure to provide information and counselling for trafficked persons is still not systematised throughout the country. It may prove useful to connect counselling efforts for trafficked victims with service providing mechanisms for asylum seekers and refugees. Due to the smooth transition between the target groups of trafficked persons and refugees/asylum seekers, more presumed trafficked persons would access information and counselling.

Psychological and social assistance

Psychological and social assistance is only available for trafficked persons participating in the shelter program. The creation of a drop-in center providing low-threshold counselling may enlarge the services to a broader target group.

Risk assessment

In many cases trafficking in human beings is perpetrated by well-organised groups operating in countries of origin and destination. The Turkish National Police and non-governmental service providers have articulated the need to cooperate more closely when conducting a risk assessment before a trafficked person will be returned to the country of origin.

Victim-witness protection & compensation

Whereas a number of legal provisions regulating the status of victims in criminal proceedings, including protection measures and legal aid, exist, trafficked persons rarely participate in criminal proceedings against their perpetrators. Consequently, they hardly benefit from existing procedural protection measures or enforce claims for compensation. This is due to the fact that they often return to their home country very promptly and/or are too afraid to testify. This in return also deprives the prosecution of important witness statements.

A legal aid scheme for victims of crime, including trafficked persons, should be set up. It seems worthwhile to assess whether and how the experience of refugee NGOs that have established cooperation with lawyers providing pro bono legal assistance may be used as a model for setting up such legal aid schemes.

Residence status

Turkey has established a humanitarian residence status regime which is not conditional upon the readiness to cooperate with the authorities. It focuses on the victim's needs for assistance and protection rather than on what s/he has to offer to the authorities. The practical application of this regime could benefit from the establishment of medium- and long-term assistance programmes. In addition, a reflection and recovery period for all victims of trafficking should be established, irrespective of their willingness to cooperate, in order to improve the access of all presumed trafficked persons to support, protection and independent counselling.

5 Questions for further consideration

1. National Task Force:
 - a. How regularly should the National Task Force convene?
 - b. What should be the role and responsibility of the various stakeholders?
 - c. Which limitations have been hindering the anti-trafficking work so far, if any?
2. Which aspects need to be included in the review of the National Action Plan?
3. Where are the strengths of the current referral mechanism?
4. Which additional support services should be offered to victims, if any?
5. How can sustainability best be fostered in the area of victim support?
6. Which additional provisions could be included into existing cooperation agreements?
7. How can cooperation between relevant stakeholders be improved, if at all?
8. How can information flows between the different actors during the identification process be optimised and repeated interviews of victims be avoided?
9. Which instruments are in place to detect trafficking cases in sectors other than the sex industry (such as domestic work, agricultural labour or work in factories)? Which new methods for detection and identification could be introduced?
10. How can funding for shelters be secured?
11. What are the possibilities to establish open shelters for trafficked persons, if any?
12. Which support and protection services could be offered to Turkish citizens, who may become victims of trafficking?
13. How can the access of trafficked persons to legal assistance and aid be ensured? How may the experiences of NGOs implementing legal aid projects for asylum seekers may be used as a model for setting up legal aid programmes for trafficked persons?
14. Which criteria can indicate a situation of potential exploitation in the context of issuing work permits for migrant workers?
15. How can the established “control mechanism” effectively contribute to the monitoring of exploitative employers and holding them accountable?
16. What measures are needed to foster the practical application of the present residence status regime of trafficked persons?

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