

AUTHORISED FINAL VERSION 19TH AUGUST 2014

ANNEX 1 TO 7

INTRODUCTORY NOTE

FIZ Makasi, the specialised counselling and support centre for victims of trafficking in women, accompanies about 200 cases per year. Since the focus of the Council of Europe Convention on action against trafficking in Human Beings is on the victim, we would like to display the specific situation of trafficked women by means of seven cases. For reasons of protection names and details were made anonymous.

ANNEX 1

Article 4 b Definitions – Victim’s consent; article 30 – court proceedings

„Consent“ – qualification as „mild case“ of trafficking in human beings by the court: compensation measured accordingly

In order to be able to take care of her three children, Yuna¹ already earned some money in her country of origin with occasional sex work, since working in a factory did not generate enough to survive. One day she is offered the opportunity to do sex work in Switzerland with the prospect of high earnings. She decides to travel to Switzerland. For their “services” the agents demand about CHF 23’000 (EURO 18’911)². After having arrived in Switzerland, she is told that her debts amount to CHF 33’000 (EURO 27’133)³. During the next seven months she must pay them off – to quit her job and leave is not an option. Her passport and flight ticket home are taken from her. The brothel owner (Ihra)⁴ takes 50% of her earnings; the facilitator takes the other 50%. Yuna receives no salary, sometimes Ihra, according to her sole discretion, sends a little money to Yuna’s family in her country of origin.

The sex workers in the brothel are under permanent surveillance, obliged to live where they work and have to work every day; even during their menstruation. The rejection of clients or certain practices is not possible. Yuna is told exactly how to behave and what to say in case of police raids. After having paid off her debts Yuna is thrown out of the brothel and left on her own – with

¹ Name made anonymous.

² Official currency converter of the European Commission,
http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_de.cfm, rate of July 2014.

³ Cf. annot. 2.

⁴ Name made anonymous.

no money or knowledge of the language or the country. She is left with no other option than to continue working illegally in other establishments of this kind. Frightened and vulnerable she is exploited by most of her new employers – until she is arrested due to lack of valid residence and working permit.

Yuna is referred to FIZ and joins the FIZ Makasi program. Consequently she decides to make a report to the police. The offender Ihra is sentenced for trafficking in human beings for the purpose of sexual exploitation (only first-instance, an appeal is pending). The court assesses the victim's situation and states among other things, that the recruitment in the country of origin and the reason for travelling to Switzerland were influenced by providing false or incomplete information of the working conditions. Further the court states that the existence of dependency is not only given in cases where passports are confiscated or violence is experienced. It has to be taken into account that permanent discrimination against sex workers and societal double moral standards in this respect lead to isolation and render contacts outside the milieu difficult. The court concludes that, hence, a special dependency to the brothel owner has to be acknowledged. On the other part, the court discussed if the accused can be seen as a "real" trafficker in human beings, since she was acting somewhat imprudent and naive and did not apply physical violence. Additionally, the victims knew in advance about having to work as prostitutes – only they were not properly informed about the working conditions. In comparison with other cases of trafficking in human beings – so the court concludes – the current case is not seen as being too severe. This assessment also negatively impacts the level of compensation.

Considering that the offender kept the entire salary until full repayment of the debts, gave instructions on how to act in the event of police raids or dictated which clients by what practices for what price the women had to serve, it is questionable in our view why the offender's criminal potential is not acknowledged.

Yuna's situation is still very burdensome. Twice she was required to appear personally in front of court. Beside the shame about working in prostitution and the experienced exploitation, she feels frightened of the offenders. After her first appearance in court she had to be admitted to the hospital due to cardiac problems. Her exertions are not over yet – the judgement has been appealed.

ANNEX 2

Article 10 – Identification of the victims; article 28 – Protection of victims, witnesses and collaborators with the judicial authorities

Treatment after identification

Marina⁵ meets Blanco⁶. He introduces himself as being a student living in Belgium. He convinces her that universities as well as chances for her future are far better in Belgium and suggests she should go with him. Marina likes Blanco, she likes the idea and her parents agree. Blanco organises her travelling to Belgium and pays for the expenses. Once arrived, Blanco confiscates Marina's passport and her identity card and explains that she will work for him as a prostitute. Marina refuses. He then beats her until he has no more energy and leaves her injured lying on the floor. He returns the same evening and rapes her. He locks her away; he puts her in a brothel where from now on she has to work. After some time he takes her to Zurich, Switzerland and sends her to walk the streets. Again she tries to escape and again he beats and rapes her. This is what he always does if she tries to stand up to him. Repeatedly, he threatens to tell her family that she is a prostitute, that he will hurt her family. Walking the streets is very hard. She works every night, during the daytime she is locked in the apartment. When he leaves for Belgium one day, Marina runs away and in despair turns to the police for help. Without a passport and with no knowledge of German, the police regards her foremost as an illegal (sex) worker from Eastern Europe – and not as a victim. Marina and her luggage are searched and she is locked up in a cell. She is not given any explanation at any point of the procedure. It is only when she speaks to a (female) judicial officer that she was recognized as a victim of trafficking in human beings and referred to FIZ.

Marina is placed in the FIZ's protective shelter and receives intensive care and support. Again and again she hears about Blanco's threats against her and her family. He contacts her family and tells them "bad things" about her and threatens to kill her sister if she refuses to go back to him. Since no agreement exists between Switzerland and her country of origin, the police cannot do anything to help protect her family. Only when Blanco kidnaps one of her close family members local police can finally intervene. Marina has a nervous breakdown and needs to be hospitalised. Still the prosecuting authorities see no need for her to enter the witness protection program. Without

⁵ Name made anonymous.

⁶ Name made anonymous.

their initiative it's not possible. Despite this very difficult situation Marina decides to press charges against Blanco.

ANNEX 3

Article 10 – Identification of the victim

Detention pending deportation – too late for identification

Mulan⁷'s 19-year-old daughter is studying. When the little business she was running went bankrupt, Mulan decides to look for work abroad. Through an acquaintance she gets into contact with an agency offering the opportunity to work as a seamstress in Eastern Europe. The whole family saves up for the voyage and pays the agency 3000 Dollars. Mulan travels to Europe together with 20 other people. From the point of arrival her fellow passengers and she are sent to various countries within Europe. Mulan is placed with a family in Switzerland. She works illegally as a cleaning lady and does not receive the promised salary.

In Switzerland Mulan is arrested for shoplifting. During police questioning she refuses to give details about her documents, where she lives, date of entry or persons she is in contact with. The authorities blame her of unwillingness to give evidence, even though the check-list for identification of victims of trafficking in human beings led to a positive result. She is then convicted for unlawful stay in Switzerland as well as petty theft and is consequently placed in detention pending deportation.

She perceives detention as very burdensome, especially since she is always alone. When FIZ is finally informed, Mulan is not willing to testify or press charges anymore. All she wants is to leave Switzerland as soon as possible. Two days later she is deported. FIZ only had time for one (clarifying) meeting: some of Mulan's statements indicate without doubt her being a victim of trafficking in human beings. But the long stay in custody and detention has crushed her will. She doesn't want to stay in Switzerland any longer. Indebted and without any repatriation support program she returns to her country of origin.

⁷ Name made anonymous.

ANNEX 4

Article 10 – Identification of the victim

Asylum, no identification, state monopoly on identification

Xia⁸ works in a shopping mall. A senior official and regular customer offers her his help in case she faces trouble. One day she gets back on his offer and visits him in his office. Instead of helping her he rapes her. Xia presses charges against him, which worsens the situation: the perpetrator threatens and terrorises her and her family to a point where they have to leave their hometown. Xia sees no other option than to seek work abroad. With the help of an agency and by paying about CHF 15'000 (EURO 12'333)⁹ she obtains a job in an agricultural holding in Eastern Europe. She works there in slave-like conditions and without payment. After about one year she is brought back to the airport, given her passport and a total of CHF 5000 (EURO 4'111)¹⁰. Being afraid to return to her country of origin she decides to run away and arrives in Spain.

In Spain she survives by working in alternating households for low wages or by taking care of children. After a few months she is referred to an agency, which supposedly applies for asylum in return for a fee. It exploits asylum seekers' lack of knowledge, their mostly poor language skills and hopeless situation by writing unfounded asylum applications. Consequently all these applications are turned down.

Through an advertisement on a website Xia learns about a job in a massage salon in Switzerland. They are looking for masseuses and pretend to pay a salary of up to Euro 4'000. Xia's language skills are poor, so she does not understand what the job is really about. Once she arrives in the salon she realises that working conditions are different from what she expected. She has to live within the facilities and work a minimum of 12 hours every day. Duration, price and nature of her services are arranged between her boss and the client. The owner of the salon claims 75 % of her income. Xia is not aware that this salon advertises its services on erotic websites.

Before Xia starts working a police control takes place and she gets arrested. Her boss threatens her. She instructs Xia not to say anything that could harm her or the business. Xia is scared.

⁸ Name made anonymous.

⁹ Cf. annot. 2.

¹⁰ Cf. annot. 2.

Xia is arrested because of illegal stay. During detention she applies for asylum in Switzerland. At the same time, police officers, responsible for the control and arrest of Xia, inform FIZ that her story has elements of trafficking. A FIZ counsellor identifies Xia as a victim of trafficking. But the public prosecutor in charge does not consider the facts of the case adding up to human trafficking. There's no way to stop asylum proceedings. Since an asylum application in her name is pending in Spain, she is – according to Dublin – not interrogated by migration authorities about her actual reasons for asylum. FIZ's request for a case of hardship is not approved. The refusal is based on the prosecutor's point of view. Subsequently, Xia does not obtain victim's support but is deported to Spain. Efforts by FIZ to at least get her into contact with a local organisation specialised on trafficking in human beings fail due to the authorities' unwillingness to inform FIZ about where the woman was brought to. After deportation FIZ lost all contact.

ANNEX 5

Article 12 – Assistance to victims

Threats made by the police that the victim will go to jail if she does not co– operate

Single mother Yung¹¹ earns her money by working in a massage salon. From an acquaintance she receives a lucrative offer to work as a masseuse in Switzerland. Flight, travel and false visa documents are organised on her behalf. She pays CHF 30'000 (EURO 24'000)¹² for these arrangements, which she's supposed to pay off once in Switzerland. She enters Switzerland via Germany and is forced to work in prostitution. She is locked in a room where she has to live and also work. The owner of the salon confiscates her passport and determines who she has to serve sexually, as well as how and under what conditions. The owner keeps all the earnings for herself.

After a police raid Yung is arrested. During questioning she is identified as a victim of trafficking in human beings. After she decides to cooperate with the police she is referred to FIZ. She enters FIZ's Makasi programme and is sheltered in its emergency shelter for several months. After this period she is placed in an assisted living apartment within the canton where she was exploited. She cannot benefit from any integrative measures such as German courses, since these are meant for long term residents. Finally, she decides to return to her country of origin and to her child with the help of the Swiss programme for repatriation.

¹¹ Name made anonymous.

¹² Cf. annot. 2.

Only shortly before her departure Yung tells us that the police had given her a choice after having been questioned for the first time: either she could go to prison for illegal stay and illegal work as a prostitute or testify against the offender. If she gave a statement she would receive help and not have to go to prison. The menace of having to face a prison sentence for illegal stay and illegal work had been used by the offenders in order to pressure her into keeping quiet about her situation. The police neither informed her of her rights as a victim nor of the possibility of a reflection period.

ANNEX 6

Article 12 – Assistance to victims

Return to the canton of exploitation, disregard of victims rights

Still a minor, Lara¹³ is brought to Switzerland by her pimp for the first time, where she works as a prostitute for some weeks. A few months later she again agrees to work for him as a prostitute in Switzerland. But this time he locks her away and abuses her. She has to work seven days a week and has to serve ten to 20 clients per day. The only payment she receives is a pack of cigarettes and some money for food. During wintertime she has to offer herself standing in an open window despite frosty temperatures. Her very step is watched, phone calls are forbidden.

Only after months she manages to escape. One of her former clients is waiting with a car. He takes her to another city and drops her off at a police station. Lara tells the police her whole story. They suspect a case of human trafficking and contact FIZ. She joins the FIZ Makasi program and decides to press charges. She gives birth to her child.

After some months Lara has to return to the canton in which she was exploited because she is only entitled to social aid if she is a resident of the canton. The canton requires her to stay in the same community in which she was exploited. This practice has devastating consequences. The young mother has to return to the very same place where she had become a victim of trafficking. She is scared and locks herself in her apartment. She arranges her whole day according to what she knows about the pimps' day structure: She only leaves home when she assumes them to be asleep. Many streets and areas in town are taboo to her. She stops her sessions with a psychiatrist out of fear to come across a former client or even her former pimps on the way there. Indeed, she keeps on being recognised and approached by former clients. She is very embarrassed and ashamed, especially when this happens while her child is with her. The same problems arise while

¹³ Name made anonymous.

she is looking for a job. During a trial workday at a shop she is recognised and revealed by a former client. After he learns that she was a sex worker, the owner of the business is no longer willing to hire her.

Lara tries to be strong for her child. The return to the same town in which she was exploited and constant confrontations with her painful past are bad for her rehabilitation and she wishes she could move away from this place.

ANNEX 7

Article 14 – Residence permit

Reflection period – state monopoly on identification of victims

Katrin¹⁴ grows up in a little village. After graduating from school, she moves to the capital where she falls into the hands of well-organised pimps. She is sold several times until she ends up being forced to work as a prostitute for Lomar¹⁵. He determines which clients she has to serve, as well as when, how and to what price. He keeps the entire money and controls all of her movements. He constantly beats her up. At some point he takes her and other women to a sauna club in Switzerland, where they continue to work for him as prostitutes. When Lomar returns to his country of origin he is arrested for membership in a criminal organisation in the context of a judicial proceeding and is sentenced to a long term in prison. Within the same proceeding, Katrin is sentenced in absence, as well. After Lomar's arrest Katrin is sent to walk the streets by one of Lomar's friends – everything stays as it was. When she learns about what happened to him, she finds the courage to escape their control.

Except for a few visits to her family in her country of origin, Katrin stays in Switzerland. Despite the fact that she has no residency permit, she feels safer here than in her country of origin, where Lomar, even though in prison, still has great influence. He keeps calling her from prison, threatening to tell her family about her being a prostitute. Some years later, Katrin is arrested during a police control of her work place for illegal stay and working without permit. After being released on the condition of leaving the country she gets into touch with FIZ. Since there are well-founded indications for trafficking in human beings, FIZ requests a reflection period on her behalf.

¹⁴ Name made anonymous.

¹⁵ Name made anonymous.

The migration authorities responsible for the request contact the cantonal and federal police to hear their view of the case. According to them there are no indications for human trafficking. Following their recommendation, migration authorities turn down Katrin's request and allege that she made false claims to be a victim of trafficking in human beings. Authorities did not question or hear her once about her trafficking story.

FIZ, 19. August 2014.