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FIZ MAGAZINE

● Advocacy and support
for migrant women and
victims of trafficking



Protection.
Law.
Justice?

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Dear Reader

Hard facts: in 2021 there were just 13 convictions for human trafficking in Switzerland. In the same year, 207 new victims were identified by the four Swiss victim protection organizations of Plateforme Traite, which specialize in human trafficking. This did not include the figures from the cantonal victim support offices. In other words, less than six percent of cases result in a guilty verdict - and the verdict is usually quite mild. What is going wrong here? Twelve years after our last newsletter on the subject of justice, and in view of the next evaluation of Switzerland by the Council of Europe, which will focus on the topic of “access to justice”, we deal in this year’s magazine with criminal proceedings for trafficking in human beings. In the introduction we look at the question of what has changed in judicial practice and in the work of FIZ over the past twelve years. In the following interview, Adriana, a former FIZ client, tells us how she experienced the criminal proceedings and whether she would choose to testify in court again. Three practitioners involved with different aspects of the law enforcement then examine the issue from their own perspective: a police officer specializing in human trafficking, an experienced victim protection lawyer, and a renowned criminal law professor and human rights lawyer explore the question of what justice or success means in the context of criminal proceedings against human traffickers. A summary of the requirements resulting from this concludes the topic. At the end we give you some exciting insights into the work of FIZ: our long-standing employee Eva Danzl, who retired this year, looks back over 27 years and explains why the linking of counsel and policy work is so important, and why she hopes that FIZ will continue to push the boundaries and perform its pioneering work for a long time to come. We also look at a new FIZ project supporting migrant women who experience violence and exploitation in marriage or at work. Due to the current legal situation, they are at risk of losing their residence permit in Switzerland if they separate from their spouse. We examine how FIZ is campaigning for the law to be changed imminently.

We hope you enjoy reading this edition.

Lelia Hunziker and Doro Winkler

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The right decision?

“Didn’t you understand the question correctly?” Felicia* looks as white as a sheet, drops of sweat shine on her forehead. What was the weather like that day? When she was first questioned five years ago, she said it was rainy, but today she says she can’t remember properly. You would recall such a dramatic event, wouldn’t you? Felicia feels sick. She wants to get out of there. She lets all further questions pass her by. As the court closes the case, she goes to the toilet and vomits. She had known it would come to this. She wanted to put it all behind her and had been so happy when the initial questioning was over and she was able

to go home to her children. And then, years later, she was asked to come back to Switzerland, this time to testify in court. Weeks before that, the flashbacks had started again. How long she had tried to get rid of them, not to remember anymore. And now she had to recall it all again. But she did not succeed well enough, as she was clearly made to understand in the courtroom. And yet, the

sentence was massively increased after her new statements. Her lawyer told her that this “could be considered a great success”. Cases such as Felicia’s will be repeated umpteen times in the future. A Federal Supreme Court ruling supports the approach of bringing victims back into the courtroom even years later (see box). To say that criminal proceedings are always in the interest of victims and that they always empower victims, is whi-

“To say that criminal proceedings are always in the interest of victims, is whitewashing.”

tewashing. What if the questioning and later the cross-examination in the courtroom are so upsetting that they create more trauma? And what about the danger of becoming a victim of retaliation afterwards? Often, the victims are then left without protection, especially once the proceedings are over, or are even suspended without a guilty verdict. What if the victim returns to her home country and

the perpetrator, having served his (usually short) sentence, is free again and is deported from Switzerland? Then, a few years later, victim and perpetrator may find themselves living in the same town or city again. Perhaps the victim wanted to go back to her children as soon as possible. Or her situation was not considered dramatic enough by the Swiss authorities to rule that she could stay in Switzerland as a hardship case. Until recently, the latter was only possible if criminal proceedings actually took place in Switzerland (see box). FIZ supports victims impartially, to help them make the best decision for themselves. The right to victim protection and information exists, irrespective of whether someone decides to testify in criminal proceedings. The best solution is as individual as each case constellation. FIZ staff therefore inform victims about rights, about the chances and risks involved in legal proceedings, stabilize them and build trust. This is the only way to assist victims in making a truly informed decision that takes all eventualities into account and puts victim protection first.

The jurisdiction of the Federal Supreme Court: what’s new?

Appear in court again

Federal Supreme Court judgment 6B_1087/2019 of 17 February 2021 states that in the case of “one person’s word against another”, the court may require the injured party to appear in court again, even years later. This may make sense from the point of view of judicial gathering of evidence, but the repercussions for those affected and the risk of becoming a victim again are not given sufficient weight.

Residence is not necessarily linked to criminal proceedings

What the Council of Europe Convention on Action against Trafficking in Human Beings has always provided for, is now finally enshrined in Swiss law: Federal Supreme Court judgment 2C_483/2021 of 14 December 2021 recognizes that a victim may have a right to remain in Switzerland due to her personal situation, regardless of whether criminal proceedings have taken place here.

* Changed for reasons of anonymity.

Discussion

“My thought was to help other women”

Adriana* went through criminal proceedings in Switzerland and is now back in her country of origin, Hungary*. We talked to her about how she experienced the criminal proceedings and how she is doing today.

Adriana, did you know from the start that you wanted to testify against the perpetrators?

Yes. I wanted him to atone for what he did to me. Of course, I had my doubts too. Every woman – no matter what her background - is afraid and thinks about her future. She is worried about what will happen if she testifies and fears revenge from the perpetrators. Women like me don't have the confidence to begin with. It's important to work on enabling women to open up and build trust; reassuring them so they feel protected. FIZ gave me a lot of help. I felt supported thanks to FIZ, and they gave me the courage to continue on this path and not to give up.

What did you think of the criminal proceedings?

The criminal case left me a bit disappointed, to be honest. In the end, the sentence the perpetrator received was too soft. And it took a long time. I had to wait a very long time.

Can you remember when you were first questioned? What was that like for you?

The very first questioning was conducted at the police specialized in human trafficking. I already knew them as they were always with us on the street, in plain clothes. They observed everything and took an interest in us. We didn't have to be afraid of them and that's why I decided to talk to them.

What was it like in the courtroom? How did you experience having to testify there again?

On the one hand, I was pleased to be making a statement against the perpetrator, knowing that he would be punished. On the other hand, it was difficult for me. I was pregnant, it was cold, and I had to walk a long way to get there. At that time, I lived in a very small room. I didn't have it that easy. But in the courtroom, there was always someone at my side who gave me strength and calmed me down. There was consideration for me when I needed a break. At first, it was pretty hard having to recall all the painful stuff. Then the counsellor suggested consulting a psychologist, but I felt I didn't need to because everyone gave me strength and supported me.

Would you have wished anything to be different in these proceedings?

I would have preferred it if he had received a harsher penalty and I had received higher compensation. Because I hoped to be able to do something for my children with this money. I had suffered for so many years.

You were disappointed with the verdict?

Yes, because I think Switzerland is one of the best countries. But he got pretty lenient sentence considering everything he did to me over the years. And this, although there was a great deal of solid evidence. All monetary transactions and border crossings were documented. And in the end, he was barely punished, and he is a free man again today. If I had been told that he would only be in prison for a few years, I wouldn't have left Switzerland in the first place. Here in Hungary, I can never feel safe again.

Now that you know the outcome – the low sentence, the low level of compensation and the lack of protection in Hungary – would you still have reported the whole thing?

Yes. I didn't do it for the money. I would have testified against him in any case. The prosecutor told me that if I could have kept the earnings, I would be a millionaire today. But my thought was to help other women. Others who work for him or for other perpetrators. Also, I wanted him to suffer too, so I'm disappointed that he spent such a short time in prison. It would feel better if he'd had to serve the same length of time that I had to work for him. But at least he got a few years. I think he realized that he shouldn't treat other people as he did, and that he did something wrong. If I had reported him to the police in Hungary, nothing would have happened. He'd have paid someone off and he'd have got away with it all. This was why I wanted to report him in Switzerland. I knew that people couldn't be bought off and that law enforcement do a good job. I wouldn't have been given the same protection in Hungary. I had a belief in people here. They put in a great deal of effort to help me. And I knew this perpetrator had to be punished.

A real-life example: in the courtroom

Each of our clients* experienced the criminal proceedings differently: for Felicia it was traumatic, and for Adriana it was a way to make her perpetrator think about his actions. But days spent in the courtroom are nerve-racking for all of them. Our counsellors consider the following precautions to be particularly helpful and important:

- At all costs it must be avoided that victims and perpetrators meet in front of, around or in the courtroom.
- Sufficient consideration must be given to the psychological and health situation of the victim - e.g., with breaks during triggers/dissociations.
- An open attitude towards the victim and an understanding of how traumatized people give evidence are vital.
- The gender of the interviewer and the interpreter can play a decisive role. It is important that victims have a choice of choosing the gender of the person interrogating them.



*Changed for reasons of anonymity.

Statements

Criminal proceedings for victims of human trafficking: three perspectives

Parosha Chandran

Lawyer and professor at King's College London

"Justice has its own meaning for each person who has been trafficked. In my experience, the two most important elements are: being heard and receiving protection. For many victims, it is difficult to even say what was done to them. They are often not aware they have become a victim of human trafficking. This is especially true because the perpetrators manipulate them and tell them it is their own fault or that they've given their consent. In addition, there's the fear of retaliation by perpetrators against the victims themselves or their families. And sometimes there's still hope that the promised payment of wages might come at some point. The fear of being criminalized for illegal entry in Switzerland also weighs heavily. Unfortunately, this is a well founded fear; migration regulations are designed to protect borders rather than people. It is even worse when victims actually had to commit criminal acts during exploitation: they may then come under the scrutiny of law enforcement agencies, but as criminals rather than victims. In most countries there is a lack of knowledge about the right to 'non-punishment' for criminal acts committed by victims under the influence of the perpetrator. When the victim is criminalized, the actual perpetrators remain at large. Criminalizing their victims is therefore often part of the perpetrator's 'business plan'. The obligations under the anti-trafficking conventions require states to take measures to protect victims, to investigate and prosecute, but also to adopt preventative strategies. When there is evidence that human trafficking is occurring and no steps are taken to prevent it, then the state is failing to protect. Often, trafficked persons want to prevent what happened to them from happening to someone else. That is their motivation for giving evidence. Protection means justice for the victims. Justice can only be served if all those involved give priority to this concept of protection."

Regula Müller

Attorney for victims of human trafficking with extensive experience

"As a legal counsellor to victims, I realize how much depends on the attitude and awareness of the prosecutor and the court. If the injured party feels that they are being taken seriously and that they are in good hands, they are more willing and better able to give evidence. It takes a great deal of strength and courage to decide to testify in the court. But if a victim also feels that there is distrust and resentment, then understandably, they are completely put off. Unfortunately, this happens again and again. Just recently, a prosecutor wanted to prevent proceedings from taking place at all because he asserted: 'This is a foreign prostitute who now wants to make a nice life for herself here in Switzerland. She herself admitted that the accused was her sugar daddy before.' The prosecutor made no mention of the fact that the accused pretended to be in love with her and then sexually exploited her. It takes will and awareness to be able to really unravel the complex facts of human trafficking and to ask the right questions about the personal background, the coercive situation, and the means of coercion, and all the psychological aspects. It is often the fine nuances that make the difference, for example the term 'voluntary': for one victim, 'voluntary' meant that she did not resist the second time she was raped; out of hopelessness and fear that otherwise something worse would be done to her. That is why in the initial questioning, she said she'd taken part 'voluntarily'. It was only during the main hearing and enquiries that it became clear what she defined as 'voluntary'. From a criminal law point of view, 'voluntary' was by no means a given. Such insights require time as well as the victim's trust in the lawyer, in those supporting them, and also in the prosecutor, to enable them to talk openly. I see a certain dilemma here: the victims want the hearing to take place as quickly as possible and the perpetrators put behind bars. But after years of experience, it is becoming increasingly clear to me that the victims need significantly more time to present their statements in such a way that these provide sufficient evidence of a human trafficking offence."

Saskia Rieder

Deputy Head of the Human Trafficking / People Smuggling Unit, Zurich Cantonal Police

"Of course, as a law enforcement officer, I seek a trial. But not at any price. It's very important that protecting victims is a priority. Successful proceedings require cooperation between the victim and us, as we conduct the criminal proceedings, and with FIZ as a specialized victim assistance center. Only when a victim feels safe and has built up trust in how things work in Switzerland does an interview or a discussion with us make any sense at all. Human trafficking is not just any crime. Since there is usually little physical evidence, the victim's statement is the most important part of the chain of evidence. It forms the basis of criminal proceedings, and almost everything depends upon it. This increases the pressure and makes the procedure so stressful for the victim - not to mention the length of the proceedings. We know that questioning is stressful for victims because they have to describe their experiences in detail. And because this means reliving the violence, it is all the more important for us to have the questioning carried out by a specialized service with trained staff. It takes the necessary social skills, empathy, and willingness to deal with the issue of victimhood in and of itself in order to be able to carry out the questioning in a way that is as sensitive as possible for the victim. This also means scheduling and allowing for adequate breaks and sufficient time. When it comes to prosecuting human trafficking, you must think bigger. For me, it's not only a success when criminal proceedings are actually conducted. It is just as much a success for me if, thanks to our efforts, we've had the opportunity to free someone from an exploitative situation, regardless of whether proceedings ensue."



Victim protection – also during criminal proceedings

The experiences of FIZ and the people who have spoken in this magazine clearly show that human trafficking can only be combated successfully if trafficked persons receive the necessary protection before and during criminal proceedings.

Low-threshold access for trafficked persons is a key factor, e.g., via other counselling centres, labour inspectors or a non-repressive police force that specializes in human trafficking. Victims must feel they are being taken seriously and should have quick access to victim protection measures. Confidence building and support are necessary, as well as information provided by a specialized victim protection organisation, so that the person can calmly make the decision as to whether to testify. This „calm“ presupposes a secure stay over a longer period of time, especially if someone decides against giving evidence because of the risk of reprisals or threats from the perpetrators, or due to their personal condition. If the public prosecutor's office interrogates a person, it requires the necessary knowledge and the will to identify the elements of human trafficking, to listen very carefully and to ask questions. Support from a trusted person is essential and can provide the necessary sense of security during interrogations. It is also important to consider the victim's helplessness and vulnerability, because vulnerability is one of the reasons why someone comes under pressure. Human trafficking does not necessarily require physical violence. It is enough for the powerlessness of a victim to be exploited. It is also important to look at whether the victim has been accused of a crime. The application of the non-punishment principle, i.e., the rule that no one may be found guilty of acts committed under the influence of the perpetrator, must be considered. An attitude of sensitivity towards the victim during interviewing is just as crucial.

What is needed:

- Early access to specialized victim protection, irrespective of whether there is cooperation with the police.
- Secure residence for victims of human trafficking before and after criminal proceedings, irrespective of whether criminal proceedings are initiated. Residence provides security and protection.
- Non-repressive police units specialized in human trafficking in all cantons as well as appropriately trained labour inspectors.
- The risk of trafficked persons becoming victims again due to the need to make multiple statements must be considered.
- Increased awareness of the crime of human trafficking in all its forms, e.g., labour exploitation or coercion to commit criminal acts.
- Training on the issue of consent, exploitation of vulnerability and the non-punishment rule.
- Appropriate level of punishment because human trafficking is a serious breach of human rights, which severely violates the psychological, physical and/or sexual integrity of victims over a long period of time.
- The types of harm that are suffered, as mentioned above, deserve appropriate compensation.
- Victims are entitled to recompense, even if profit was derived from forced activities such as criminal acts or sexual services, and even if the person did not have a work permit.

A look back with Eva Danzl

The courage to dare the extraordinary

After 27 years at FIZ, Eva Danzl retired in March 2022. A conversation with her about what makes FIZ tick, milestones during her time, and the importance of internal and external collaboration.

As a counsellor you were often confronted with powerlessness and despair. How did you bear up against it for so long?

Three things are central for me: first, identification with the organization; an essential feeling that you are there because you want to work for more justice in the world. This is possible at FIZ thanks to the interlinking of advisory work with political and legal considerations. This close connection has always motivated me a great deal. I'm not sure I'd have stayed for 27 years if it had "only" been about counseling. It's just great to know that if I see a structural impediment while counseling a client, I can report it to the Expertise and Advocacy department and something will be done about it. Second, it is vital for me to see each individual as a whole person and not as

a victim. They eat, drink, laugh, clean, and get angry and bored, just like everyone else. Of course, there are differences in living circumstances and life experiences - for instance, what people have experienced in childhood or under which structural conditions they live. By the way, there are extremely humorous clients, and laughing together is simply very liberating. And third, you need to have curiosity for people and their stories. You must want to understand why something doesn't work and look for creative solutions. When the system doesn't work, I don't just say, "okay, sorry, that's the way the law works". Instead, I say "let's

keep on finding a way!". And that's exactly what FIZ does. Ultimately, we all benefited greatly from the experience of having the courage to try something extraordinary.

Trying the extraordinary – would you say that characterises FIZ?

Yes, it always has. In 1999 we realized there was a great deal still missing: how could we finance the hotel room we organized for a trafficked woman? Where would she live afterwards? These were absolute basics, which are victims' rights but didn't yet exist in Switzerland. We

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then submitted the first petition at federal level. An initial report was drafted regarding the human trafficking situation in Switzerland, and this was followed by the setting up of a federal coordination unit. At the same time, we began to establish round tables on human trafficking in the cantons. We developed strategies with the aim of improving victims' rights. First and foremost, this meant not treating trafficked persons like criminals. That was the foundation for the first victim protection program and later also for the housing services provided to victims of trafficking in Switzerland, which was one of the greatest milestones for FIZ.

Is there a success or a client that you're particularly proud of?

It depends on what you mean by success. I want to win, of course. I want the law to be enforced; it's great when a hardship application is approved, for example. But success is never mine alone. It always comes from collective work. This cooperation with different parties is absolutely central. Whether it was in the early days with groups who, for example, also occupied houses. Or working with volunteer doctors, gynaecologists, and psychiatrists. At that time, there were no Sans-Papiers counselling centers. But I wouldn't say it's about any one client, as that would mean comparing their experiences and I wouldn't want to do that. It makes me immensely happy when clients find their way through all the problems, when they develop

and no longer see themselves as a victim. Then I think: Wow! Say, if I see someone ten years later, working as a chef, or as head of a day-care centre, or in a management position at a call center. But it may also be the case that a client can simply express for the first time: I am enjoying a few happy moments in my life. These things stay with you. It's wonderful.

Has there ever been any situation that pushed you to your limits or overwhelmed you?

There was a cross-examination that affected me greatly. It involved a small child. The story had such an effect on me that I suffered from secondary trauma in my advisory capacity. It haunted me for a long time, but I was able to talk to my colleagues at FIZ about it. We discussed it in supervisions and my colleagues were there for me. That's what keeps you going. Otherwise, a story such as this could really break you.

What was the craziest thing you experienced in your 27 years at FIZ?

One "campaign" in the 1990s has stayed with me in particular. A sex worker, a FIZ client, had illegal status and was heavily pregnant. Her supposed boyfriend, a former suitor, had assured her of his

love. However, when she became pregnant, she found out that he'd been using a fake name all those years, then he just disappeared. Her dream of a life together was shattered. Other sex workers who were also in and out of FIZ were furious at him because they were very aware of the precarious situation of their pregnant colleague. In addition, he was very well-known to everyone "on the streets". In a joint meeting at FIZ, her colleagues decided to look for the man together. When he was spotted again sometime later in the milieu, they secretly tracked him, noted his license plate number and passed it to FIZ. In this way, I was able to find out his identity and follow up on all measures, such as recognition for the child, child support, Swiss citizenship for the child, etc. In other words, I was able to demand at least a few basic rights. This was only possible thanks to the solidarity

of the sex workers. In the everyday life of the harshness of the milieu they were competitors, but they showed solidarity here.

What do you wish for the future of FIZ?

I would like government agencies to realize: Victim protection costs money. It is not just a matter of taking the lowest-priced offer; it is about the professionalism and quality of the support. For FIZ, I would like to see the partisan attitude, persistence, tenacity, constructive criticism, and solution-orientated approach remain at the advisory level as well as at the policy level. They should continue to work innovatively and creatively in the best sense of the word, fighting the gaps in the political system for trafficked persons, and bring them to public attention.



Eva Danzl (right) handing over the FIZ petition for a protection programme for trafficked persons to the Federal Council (15 March 2000). Everyone present wore masks to protect the trafficked persons present at the site. © Photo: Carminha Pereira

Insights

The best protection against violence: independent residence status

An important parliamentary initiative is currently in the consultation phase. It is intended to give better protection to migrant women who are victims of domestic violence, and to ensure greater independence in terms of residence law. This is an old issue, and the demands have been the same for decades.

Beatriz* sits in a meeting room at FIZ and listens to the counsellor who translates the letter from the migration office into Portuguese. She freezes at the following paragraph: "Your husband claims that you bore him three children so you could stay in Switzerland. Please comment on this." Beatrice begins to cry; she is devastated and has to leave the room. Is it the disrespectful tone of the letter that upsets her so much? Or is it the assumption that the migration office believes her violent husband rather than her? After a coffee and a deep breathe, she says: "My children were born as a result of being raped by my husband." Beatriz sought counselling for migrant women because she wanted to separate from her husband. She finally decided to take this step after years of psychological and physical violence and manipulation, powerlessness, and silence. It is risky – in case of separation, she faces deportation to Brazil*. Her residency is tied to her violent husband, and she is not an isolated case.

"In the event of domestic violence, guaranteeing treatment as a hardship case in accordance with Article 50 of the Federal Act on Foreign Nationals and Integration (FNIA)" – a parliamentary initiative is currently being discussed under this title. The state policy commissions of both chambers of parliament have decided unequivocally in favour of them. It is a demand that has been around for decades. As early as 1996, FIZ, other organisations and the then member of the National Council Christine Goll fought for a residence permit for migrant women that is independent of civil status. To date, the legislation and legal practice relating to Article 50, "Dissolution of the Family Community" of the current Act on Foreign Nationals and Integration (FNIA) is highly problematic, because a certain level of psychological and physical violence in marriage is currently considered to be normal. There must be a "certain intensity" and "systematic occurrence" in the spouse's use of violence, and this must be proven. According to the Federal Supreme Court, a slap in the face or the occasional insult would not be enough to call upon a case of hardship. Subtle forms of domestic violence are igno-

red - e.g., prohibiting social contact, intimidation, threats, etc. Producing evidence is another issue. The victim must "make it credible" that she was a victim. This is extremely difficult for an offence that occurs in private. The attacks are difficult to document, and in addition to this, victims are often deliberately kept in isolation by the violent spouse. The integration requirements – including language skills, financial independence, etc. – that are needed for an independent residence permit according to legislation, can therefore not be met. For the migration authorities, there is a very wide scope of discretion when deciding on cases of hardship. It seems like a lottery: either you are lucky or not. Applications are not transparent and are assessed in very different ways. Without the support of a specialized agency or victim counselling, the bureaucratic hurdles are almost impossible to overcome. Reports from specialized agencies are sometimes ignored, although they are the ones

"A certain level of psychological and physical violence in marriage is currently considered to be normal."

who have expertise in the mechanisms of violence in situations of dependency under residence law. The consequence of the current practice is that it supports the continued existence of violent marriages. The forthcoming change in the law offers an opportunity to change this. In the meantime, the **FIZ project "An independent life"** is helping women affected by violence in these life situations. It enables comprehensive case management with sufficient resources. In this way, Beatriz and other migrant women who find themselves in similar situations can be supported in asserting their rights and integrating and can gain more independence and self-determination.

¹ Former Federal Act on Foreign Nationals (FNIA).

² See Art. 50 para. 2 of the Federal Act on Foreign Nationals and Integration (FNIA).

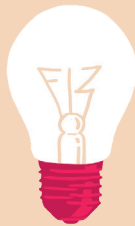
³ See Federal Court Decision 136 II 1 E. 5.

*Changed for reasons of anonymity.

Knowledge is precious.



We help stabilize victims during criminal proceedings.



We train prosecutors and police officers.



We also support victims when the crime occurred abroad.


Thank you for supporting FIZ.


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