

Luxembourg

The phenomenon

Luxembourg is situated in the middle of Western Europe. It is a very small country, lying between Germany, Belgium and France. The geographical position and the proximity to three border areas make it easy to use Luxembourg as a country of transit for human trafficking. Luxembourg has also been a country of destination for migrants for decades. Its favourable economic and social situations and its status as a member of the European Union make Luxembourg an attractive country of destination for regular, irregular and trafficked migrants.

Victims of human trafficking mainly come from so called third countries (African Countries, Asian Countries, South America). Few victims come from Eastern Europe (Romania, Bulgaria, Poland). Generally they are deceived about the nature of the job offered.

The main part of the identified victims are women trafficked for the purpose of sexual exploitation. There have been few cases of labour-related trafficking. Some of the identified victims have been minors. Very few men have been identified; however the police assume that there are probably more cases of trafficked men that have not been uncovered yet.

In some instances, trafficked persons have been exploited in some neighbouring countries and, in order to flee from their exploiters, escaped to Luxembourg.

National anti-trafficking legislation and institution

In Luxembourg, the first anti-trafficking law was adopted in August 2008. .

The anti-trafficking legislation is segmented into three parts.

Articles 92-98 of the Immigration Law adopted in 2008 by the Ministry of Foreign Affairs provide for the residence permit and the reflection period for victims of human trafficking (www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=33).

The second law adopted in 2009 by the Ministry of Justice provides for the criminal offence of trafficking in human beings and establishes the related punishment (www.legilux.public.lu/leg/a/archives/2009/0051/a051.pdf#page=2). It covers all forms of human trafficking, such as sexual exploitation (perpetrating the offence of procuring or of sexual aggression or offences against the victim), forces labour or services (the exploitation of the labour or the services of the victim in the form of forced or compulsory labour or services, of servitude, of slavery or similar practices and in general in conditions contrary to human dignity), organ removal or tissue against a person's will. Such law meets the minimum standards set by the Council of Europe Convention.

The third part of anti-trafficking legislation adopted by Ministry of Equal Opportunities in 2009, provides for the assistance, protection and security of trafficked persons (www.legilux.public.lu/leg/a/archives/2009/0129/a129.pdf#page=2).

Lots of requirements have still not been put into practice.

The Ministry of Equal Opportunities launched its National Action Plan for the period 2009-2014 that includes also anti-trafficking activities. Therefore, no action plan only focussing on human trafficking exists.

Still no National Reporter or any equivalent mechanism is currently in place in Luxembourg. However, the 2009 law

about assistance, protection and security for victims of human trafficking provides for the establishment of the *Comité de suivi de la lutte contre la traite des êtres humains*. The latter is designed as a coordination structure for the prevention and the assessment of the phenomenon of human trafficking; it should also serve as a mechanism to monitor and evaluate the implementation of the legislation.

Identification, protection of rights, and referral

The 2009 law on the assistance, protection and security of victims of human trafficking defines the “assistance services”, which comprises NGOs, civil society organisations and public or private services, whose main goal is to assist and counsel the presumed and identified trafficked person. In order to take part to this assistance system, such agencies need to be officially accredited in compliance with grand ducal regulation associated to the legislation. In practise, still none of the relevant NGOs, public or private organisations have got the official accreditation because the regulation is still pending. The finalisation of the regulation depends now on changes in the laws, which have to be adjusted to the new European directive. The grand ducal regulation should specify the referral procedures to follow whenever the concerned agencies will get in contact with a presumed trafficked person.

In Luxembourg, the only authority allowed to carry out the formal identification of presumed trafficked person is the police, which have always to inform the Criminal Investigation Department that is in charge of the cases of human trafficking. Presently, a formal identification procedure does not exist. However, the police have developed an interior identification procedure.

Once a victim is identified as such, the police have immediately to inform one of the assisting NGOs, which will provide and organise accommodation, social, psychological, financial, medical, linguistic and legal assistance. Special accommodation for victims of trafficking does not exist. Female victims are accommodated in women’s shelters and minors are placed in children’s houses. Minors can stay as long as necessary. They can be assisted until they are 18 or until the competent authority of their origin country, which shall act in their best interest, will take over. Officially, still no accommodation for trafficked men is available. However, men may be accommodated in an asylum for refugees.

A presumed trafficked person is granted a reflection period of 90 days. According to Article 93 of the Immigration Law, during the reflection period a presumed victim of trafficking cannot be expelled, regardless his/her willingness to cooperate with the competent authorities. During the reflection period, the authorities are required not to interview the presumed victims about possible crimes that they or others may have committed.

According to Article 95 of the Immigration Law, an identified victim who decides to testify against the perpetrator(s) shall be granted a six-month residence permit. The latter can be extended for other 6 month whenever:

- The victim filed a complaint or submitted a statement to the Luxembourg authorities against his/her perpetrators;
- The victim must cooperate with the authorities responsible for the investigations;
- The presence of the victim in Luxembourg is necessary for the investigation;
- The victim cut all connections with the perpetrators;

- The victim is not a menace to the public order.

Article 98 of the same law established that, after the expiration of the residence permit, the concerned person may receive a residence permit for private reasons.

Regarding to long-term assistance and social inclusion, children have access to education. Adult victims have access to vocational training and education. The residence permit also grants the access to labour market.

The International Organisation for Migration (IOM) may assist the victims from third countries who wish to go back to their own countries. In January 2010, IOM and the Luxembourgish Government signed a memorandum of understanding to co-operate in this field. Nevertheless, no return programmes for trafficked persons have been officially implemented. Furthermore, no bilateral agreements with EU Member States or third countries have been signed to govern the process of return. If necessary, trafficked persons who wish to go back to their country of origin can be accompanied by the police for their return journey.

Access to justice

By law the assistance service has to promptly inform the victim about his/her rights, the relevant judicial and administrative proceedings and the available services. Victims of human trafficking can be assisted by a translator so that they can fully counselled and informed on their legal rights. They also have the right to legal assistance through a free lawyer.

Victims, witnesses, family members and friends are granted safety measures as well as protection from potential retaliation or intimidation. In case of the latter, the

president of the district court may issue against the perpetrators the interdiction:

- To betake to certain places;
- To contact the person under protection;
- To be in possession or to wear a gun and the mandamus to hand it out to the police.

Relocation is not mentioned in the law but, in practise, it is already implemented. Because Luxembourg is a very small country, victims can be relocated abroad within a witness-protection programme. A formal agreement about the relocation abroad does not actually exist. However, a formal agreement with Germany is in progress. An identity change is not possible in Luxembourg. Within the witness protection programme, a victim may be brought to Germany, where an identity change can be executed.

Since the adoption of the anti-trafficking law in 2009, no court case against suspected traffickers has taken place. Finally, a law called “*Victimes d’Infractions Pénales*” (Victims of criminal offence), enacted in March 1984, provides for victim compensation from the perpetrators. A fund for victim compensation has also been established.

Prevention

Still, no prevention activities are in place and no official information for potential and presumed victims of trafficking is available.

In general, the Luxembourgish population is not aware of the phenomenon of human trafficking existing in Luxembourg. Only recently, the policy makers have started to acknowledge the phenomenon of human trafficking and its complexity.

As far as training is concerned, few have been delivered for professionals working for anti-trafficking NGOs in the last years.

The police, though, regularly participate in training programmes delivered by the State Office of Criminal Investigation in Germany (LKA).

Monitoring and evaluation system

The 2009 law about the assistance, protection and security of victims of human trafficking provides for the establishment of a national coordination structure called “*Comité de suivi de la lutte contre la traite des êtres humains*”. One of the tasks of such committee should be monitoring and evaluation of human trafficking related issues. The committee should be composed of representatives of public authorities (from the Ministry of Equal Opportunities) and anti-trafficking accredited NGOs. To date, though, the *Comité de suivi* has still not been set up, since the related grand ducal regulation is still not completed yet.

Recommendations

Actually the situation in Luxembourg has not really changed since 2010. The anti-trafficking policy has been stagnating for the last one and a half year. The same recommendations persist.

- The grand ducal regulation must finally be enacted as soon as possible in order to establish the standard operating procedures for the identification and referral of trafficked persons that will be adopted by the relevant public and private accredited agencies;
- The grand ducal regulation must finally be enacted as soon as possible also to set up the “*Comité de suivi de la lutte contre la traite des êtres humains*” so that it can finally carry out the monitoring and evaluation as to the phenomenon, the legislation and the policies to fight human trafficking and protect the rights of trafficked persons;

- Prevention measures aimed at the potential victims and the population at large must be developed;
- Accommodation facilities for men need to be implemented in order to meet the needs of male victims trafficked to Luxembourg.