

# BALKANS ACT NOW!

## Comparative study on National Rapporteurs on Trafficking in Human Beings and Equivalent Mechanisms

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## 1. Introduction

According to the 2011 EU Directive on Preventing and Combating Trafficking in Human Beings<sup>1</sup> EU member states are obliged to establish a National Rapporteur on Trafficking in Human Beings or an equivalent mechanism. More precisely, Art. 19 states:

*Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.*

The basis for this article was laid by the The Hague Ministerial Declaration on European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation, which was adopted in 1997 following a ministerial conference on trafficking in women organised by the Netherlands in the framework of the EU. One of the recommendations made in the Declaration was that Member States should:

- *Provide or explore the possibilities for the appointment of national rapporteurs, who report to Governments on the scale, the prevention and combating of trafficking in women.*
- *Develop criteria for reporting on the scale, nature and mechanisms of trafficking in women and the effectiveness of policies and measures concerning this phenomenon.*
- *Encourage the cooperation of national rapporteurs on a regular basis.*

The need for reliable data and cooperation is reflected in the European Council's Conclusions of June 2009,<sup>2</sup> which established an informal EU network of National Rapporteurs and/or Equivalent Mechanisms. The aim of the network is to improve the understanding of the phenomenon of trafficking and to provide the EU and its member states with objective, reliable, comparable and up-to-date strategic information. The network meets twice a year under the coordination of the European Commission to discuss the latest developments in the field of combating trafficking. EU institutions and other relevant international institutions are invited to participate in the network as observers. It should provide the Union and its Member States with objective, reliable, comparable and up-to-date strategic information in the field of trafficking in human beings.

For a long time, The Netherlands were one of the few countries that actually appointed a national Rapporteur. However, since 2011 almost all EU member states established a National Rapporteur, although most countries opted for an equivalent mechanism to a National Rapporteur.

This report discusses the various models of the National Rapporteur on human trafficking or equivalent mechanism in the EU member states. The research was carried out in the framework of the third phase of the EC funded project *Balkans Act Now!* One of the aims of the project is to promote the systematic monitoring of anti-trafficking policies through the establishment of a National Rapporteur.

The report starts with a short overview of how the various EU members states have organised the institution of National Rapporteur or equivalent mechanism, based on a desk research. It then more closely examines the models of four countries: The Netherlands, Finland, Belgium and Portugal. These four countries were selected for both principle and practical reasons: they all subscribe the value of a National Rapporteur (or equivalent mechanism) but opted for a different model. They all have considerable experience in working with a National Rapporteur. On the practical side: It was possible to organise an interview with (the bureau of) the National Rapporteur in these countries, either face-to-face or through skype, and information on the work of the Rapporteur was available in English and easily accessible.

The report finishes with a set of conclusions and recommendations, based on the interviews with the National Rapporteurs in the countries mentioned. All four Rapporteurs were asked what they see as the added value of a Rapporteur, how they assess the influence of their reports and work, and what they consider to be preconditions for a National Rapporteur.

Other sources for this study were the website on trafficking in human beings of the European Commission, the national websites of EU member states and of the various national institutions, the annual reports of National

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<sup>1</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

<sup>2</sup> Council conclusions on establishing an informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings 2946<sup>th</sup>, Justice and Home Affairs Council meeting Luxembourg, 4 June 2009.

Rapporteurs, governmental documents, and reports from GRETA, the supervisory Committee of the Council of Europe Convention on Action against Trafficking in Human Beings.

## 2. Overview of National Rapporteurs or equivalent mechanisms in EU member states

Since the 2011 Directive on Trafficking almost all EU member states established a National Rapporteur or equivalent mechanism.<sup>3</sup> An exception are Austria, Bulgaria, Cyprus, Denmark, Germany, Ireland, Slovenia and the UK. Austria and Slovenia, however, have a National Coordinator who, according to their information, *de facto* fulfils the role of National Rapporteur. In Bulgaria the National Commission for Combating Trafficking in Human Beings (NCCTHB), established in 2004, *de facto* fulfils the role of National Rapporteur. The same applies to Cyprus, where the Multidisciplinary Coordinating Group *de facto* fulfils the role of National Rapporteur until the projected appointment of a National Rapporteur. In Slovenia the National Coordinator *de facto* acts as National Rapporteur.

Most EU countries (15), though, opted for a mechanism equivalent to a National Rapporteur. In 7 EU countries the National Coordinator exercises the role of National Rapporteur (or the National Rapporteur exercises the role of National Coordinator): Croatia, Estonia, Greece, Hungary, Latvia, Malta, Portugal and the Czech Republic.

In another 8 countries the role of National Rapporteur is fulfilled by a government body, varying from the Ministry of Interior (Lithuania; Poland; Slovakia; Spain; Romania) and the police/Ministry of Justice (Sweden) to the Department for Equal Opportunities of the Presidency of the Council of Ministers (Italy).

In 4 countries the function of National Rapporteur is assigned to an independent body: MYRIA, Federal Migration Centre (Belgium); the Commission nationale consultative des droits de l'homme/National Human Rights Institute (France; Luxembourg); and the Ombudsman for Minorities (Finland).

The table below provides an overview of the way the different EU member states have organised the National Rapporteur or equivalent mechanism and its tasks.

No (official) National Rapporteur: Austria, Bulgaria, Cyprus, Denmark, Germany, Ireland, Slovenia, UK (8)		
Austria	The NC (2009) <i>de facto</i> acts as NR. The NC is based at the Federal Ministry for European and International Affairs and also serves as the Head of the Austrian Task Force against trafficking.	One of the priorities of the Task Force is to improve data collection on THB, including the identification of victims.
Bulgaria	The National Commission on THB (NCCTHB) (2004) <i>de facto</i> fulfils the role of NR. The NCCTHB is a collective body of the Council of Ministers, composed of high-level officials from twelve ministries and institutions.	Annual reports on the activities of the Secretariat of the Commission and the relevant institutions that are members of the Commission.
Cyprus	Law 60(I)/2014 provides for an independent external evaluator as NR, but he/she is not yet appointed. Until then the Multidisciplinary Coordinating Group <i>de facto</i> fulfils the function of NR. The Group is chaired by the National Coordinator, a function held by the Minister of Interior. Members include representatives from the competent ministries and Non-Governmental Agencies.	Responsibilities of the Multidisciplinary Coordinating Group include the drafting of annual reports on the implementation of the trafficking legislation, and the domestic and international situation on THB. Reports are submitted to the House of Representatives after it has been approved by the Council of Ministers.
Denmark	Denmark has not appointed a NR. However, the National Centre of Investigation (NCI) of the Danish National Police and the Danish Centre against Human Trafficking (CMM) monitor activities and the impact of anti-trafficking efforts in Denmark.	
Germany	Germany has not established a NR.	The Federal Criminal Police (BKA) publishes an annual <i>Situation Report Trafficking in Human</i>

<sup>3</sup> The information in this section is mainly based on the website on trafficking in human beings of the European Commission: [https://ec.europa.eu/anti-trafficking/national-rapporteurs\\_en](https://ec.europa.eu/anti-trafficking/national-rapporteurs_en) (accessed 16 Aug 2018). The information on the EC website, however, may be outdated. The information on Spain comes from the 2018 GRETA Report on Spain, <https://www.coe.int/en/web/anti-human-trafficking/-/greta-publishes-second-report-on-spain>.

		<i>Beings</i> since 1994. Cases of forced labour investigated by labour inspectors are also included in this situation report. The purpose of the situation report is to provide a compact summary of current information on developments within the field of human trafficking. The report enables police and political decision-makers to assess the extent of the problem and plan accordingly. The situation report is also an important basis for the work of the Federal Working Group on Trafficking in Women.
Ireland	Ireland has only recently established new anti-trafficking structures and does not consider a NR at this stage.	
Slovenia	The NC (2002) <i>de facto</i> acts as NR (2012). The NC is based at the Ministry of Interior.	The NC prepares annual reports and strategic documents that are submitted to the Government.
UK	The UK has not appointed a NR. The role of NR is primarily exercised by the Inter-Departmental Ministerial Group (IDMG). The IDMG is supported in this by the UK Human Trafficking Centre (UKHTC), the UK Border Agency and the NGO Stakeholder Group.	The IDMG has responsibility for strategic oversight and monitoring of UK policy on human trafficking, as well as data collection and analysis. Data collection, however, is a key responsibility of the UKHTC in conjunction with law enforcement agencies. The UKHTC also acts as a central point of coordination for intelligence, analysis and operational activities around human trafficking. It works very closely with law enforcement agencies throughout the country and with non-governmental organisations as well as the Home Office.
<b>NC exercises the role of NR/ NR exercises the role of NC: Croatia, Estonia, Greece, Hungary, Latvia, Portugal, Czech Republic (7)</b>		
Croatia	The NC exercises the role of NR. NC is director of the Government Office for human rights and rights of national minorities	
Estonia	The NC (2006) exercises the role of NR. The position is held by a senior adviser of the Ministry of Justice	NC gathers information on the progress of the implementation of the National Action Plan: collects statistical data from various stakeholders. Provides annual reports to the Government.
Greece	The NR (2013) is appointed under the Ministry of Foreign Affairs; The NR is Head of the Office to Monitor & Combat Trafficking in Human Beings, that is staffed by Foreign Ministry Experts.	The Office to Monitor & Combat Trafficking coordinates the Network of competent State and NGO stakeholders that are collaborating on the implementation of the national Action Plan. Provides annual reports.
Hungary	The NC (2008) exercises the role of NR. Position is held by the Deputy State Secretary for EU and International Relations of the Ministry of Interior.	Main responsibilities of the National Coordinator include the annual reporting to the Government on the steps taken during the year and on remaining challenges.
Latvia	The NC exercises the role of NR. Based at the Ministry of Interior.	The NC has been assigned the task of gathering and analysing data from different state institutions and NGOs. NC reports annually to the Cabinet of Ministers on the implementation of the National Action Plan. Complementary, the Latvian State Police prepares an annual report for internal use on the activities in the field of combating THB.
Portugal	The NC (2008) exercises the role of NR. The NR/NC is appointed under the Commission for Citizenship and Gender Equality (CIG). The CIG is part of the Presidency of the Council of Ministers and falls	NR drafts annual implementation reports of the National Action Plan and reports accordingly to Government members. In addition to the NR, the Observatory on THB is mandated to

	under the authority of the Secretary of State of Citizenship and Equality.	produce, collect, analyse and disseminate information on THB and other kinds of gender violence.
Czech Republic	The role of NR is assigned to the Ministry of Interior, Security Policy Department (2003). This department is also responsible for coordinating trafficking policies.	Information gathering, analysis and monitoring; coordination of anti-trafficking policies; submission of reports and policy papers to the government.
<b>Function of NR is part of a ministry: Italy, Lithuania, Malta, Poland, Romania, Slovakia, Spain, Sweden (8)</b>		
Italy	The function of NR is fulfilled by the Department for Equal Opportunities (DEO) of the Presidency of the Council of Ministers, the central authority responsible for the promotion and coordination of policies and actions against THB.	The DEO also acts as the national observatory on THB. It gathers documents and reports on THB, information on the national and international legal framework, as well as reference documents and judgments on a secured website to which registered NGOs and local authorities have access to enter information on trafficked persons assisted within the national assistance programmes. DEO uses a special database (SIRIT) for the collection of information on THB to monitor the phenomenon.
Lithuania	The function of NR is held by an official of the Ministry of Interior (2016).	The NR collects statistical data and other relevant information on THB and counter-THB activities and actions; conducts data analysis and evaluates trends and the results of counter-THB activities and actions; issues recommendations and presents them to the Minister of the Interior, the Commission of Coordination of the Fight against THB and the public. The Minister of the Interior informs the Government on the recommendations by the NR.
Malta	The function of NR is fulfilled by the Anti-Human Trafficking Monitoring Committee, chaired by the Ministry for Home Affairs and National Security. Members include the Permanent Secretary of the Ministry for the Family and Social Solidarity, the Attorney General, the Commissioner of Police, and the Permanent Secretary of Ministry for Home Affairs and National Security.	The Committee is responsible to monitor the implementation of the National Action Plan; act as NR and coordinate data collection and report to the EU Commission; review policy and practice including in relation to the application of Dir 2011/36/EU. Next to the NR Malta has a separate anti-trafficking coordinator.
Poland	The Ministry of the Interior acts as equivalent mechanism. No further information.	Poland has a separate national anti-trafficking coordinator.
Romania	The function of NR is assigned to the National Agency against Trafficking in Persons (ANITP), based at the Ministry of International Affairs (2011).	ANITP coordinates, evaluates and monitors the implementation of THB policies by the responsible authorities and drafts annual reports. It is also responsible for maintaining the Integrated System for Monitoring and Evaluation of Victims of Trafficking (SIMEV) on victims of human trafficking and plays a key role in the referral mechanism. SIMEV is an important tool to identify trends and make them available for stakeholders in the framework of implementation of the National Strategy on THB.
Slovakia	The function of NR is fulfilled by the Information Centre for Crime and Human Trafficking Prevention (ICCHTP), which is part of the Ministry of Interior (2009).	The ICCHTP was established with the aim of collecting information on victims of trafficking, providing analysis and evaluation of activities, and sharing information at the national and international level. Next to the NR Slovakia has an AT coordinator (2005).
Spain	The Director of the Private Office of the Secretary of State for Security is appointed as National	Tasks of the NR include supervision, monitoring and control of the anti-trafficking activities of all

	Rapporteur (2014). The NR is supported by the Intelligence Centre against Terrorism and Organised Crime (CITCO) as focal point in the field of THB. The Office of the NR has a total of three staff, including a focal point official at CITCO.	state institutions; assessment of trends in THB; measuring results of actions; collection and analysis of information; identification and exchange of good practices; and development of common indicators to facilitate comparison and consistency of information. It also focuses on creating co-ordination among stakeholders, establishing collaboration mechanisms and providing a greater role to NGOs.
Sweden	The function NR is fulfilled by the National Police Board (1998), assisted by the National Criminal Investigation Department (NCID).	The duty of the NR/NCID is to collect and process information about trafficking to within and through Sweden and to evaluate the effectiveness of law enforcement actions as well as legal, policy and practical measures and initiatives. The NR/NCID issues annual monitoring reports to the Government. Information is collected through the 7 police regions, the County Administrative Board (National coordinator), the Migration Agency, social service and NGO's within the Swedish Civil Society Platform.
<b>Function of NR is part of an independent body: Belgium, Finland, France, Luxembourg (4)</b>		
Belgium	The function of NR is combination of Myria, Federal Migration Centre, as independent rapporteur (2014) and the Interdepartmental Coordination Unit on THB (ICU) as coordination body and the rapporteur of the State.	Myria is an independent public body. Its mission is to ensure protection of fundamental rights of migrants; Inform public authorities about nature and extent of migration flows; and stimulate the fight against human trafficking and smuggling. Myria has the power to take legal action and act as civil party in trafficking cases. The main task of the ICP is coordinating, presenting and introducing a policy.
France	The Commission Nationale Consultative des Droits de l'Homme (National Human Rights Institute) is assigned as independent NR (2014)	Next to the Commission as NR, France has a separate National Coordinator.
Luxembourg	The Commission Nationale Consultative des Droits de l'Homme (National Human Rights Institute) is assigned as independent NR (2014)	The national rapporteur determines the trends in human trafficking and evaluates the results of the actions undertaken to combat this phenomenon, including the collection of statistics in close collaboration with relevant civil society organizations active in this area, and draws up at least every two years reports for the Chamber of Deputies.
Finland	The Ombudsman for Minorities acts as NR (2009);	The NR collects and analyses data on trafficking, monitors the impact and effectiveness of national policies, and has the right to intervene in individual cases. The NR is an independent authority with her own office. The NR reports annually to the government and 4-yearly to the parliament. Next to the NR Finland has a separate governmental structure for the coordination of action against trafficking, consisting of several actors.
<b>NR is separate independent agency (1)</b>		
Netherlands	National Rapporteur on trafficking in human beings (2000) and (since 2011) Sexual Violence against Children)	The NR collects information on nature and scale of trafficking in human beings and sexual violence against children. The NR is an independent authority with her/his own office, who reports to the government.

NR=National Rapporteur / NC=National Coordinator

In almost all countries the National Rapporteur is part of the government. In the 7 countries where the National Coordinator exercises the role of Rapporteur, the Coordinator falls under resp. the Ministry of Interior (3), the

Ministry of Foreign Affairs (1) and the Ministry of Justice (1). Only in 2 countries the Coordinator falls under a human rights-oriented governmental body: in one case under the Government Office for Human Rights and Rights of National Minorities (Croatia), in the other case under the Commission for Citizenship and Gender Equality (Portugal).

In the 8 countries where the National Rapporteur is part of a ministry, the Rapporteur falls under the Ministry of Interior (6) or the police (Ministry of Justice) (1). In 1 country the Rapporteur falls under the Department of Equal Opportunities (Italy).

In 4 countries the National Rapporteur is part of an independent body: in 2 countries of the National Human Rights Institute, in 1 country of the Ombudsman for Minorities and in 1 country of the Federal Migration Centre. In just 1 country the National Rapporteur is a separate independent body.

National Rapporteur falls under:	
Ministry of Interior (Czech Republic; Hungary; Latvia; Lithuania; Malta; Poland; Romania; Slovakia; Spain)	9
Ministry of Foreign Affairs (Greece)	1
Ministry of Justice/police (Estonia; Sweden)	2
Government body on Human rights/Gender Equality/Dep of Equal Opportunities (Finland; Italy; Portugal)	3
Human Rights Institute (France; Luxembourg)	2
Ombudsman for Minorities (Finland)	1
Federal Migration Centre (Belgium)	1
Separate, independent office (Netherlands)	1
Total	20

Looking at the positioning of the National Rapporteur the major focus seems to lie on cross-border trafficking and human trafficking as a security/criminal offence, and less on domestic trafficking and trafficking as a human rights violation.

### 3. The Netherlands<sup>4</sup>

The basis for the appointment of the first National Rapporteur on Trafficking in Women in 2000, Ms. Anna Korvinus, was laid by the 1997 The Hague Declaration. The Rapporteur was established within the framework of Emancipation policy as an independent body. It was expected that integrated research into the phenomenon of trafficking and the resulting recommendations would contribute significantly to improving the fight against trafficking. Following the broadening of the definition of trafficking in the Dutch Penal Code in 2005 after the adoption of the UN Trafficking Protocol, the mandate of the National Rapporteur was adapted to include trafficking in women, men and children in all its forms.

In 2009, the mandate of the Rapporteur was expanded to include child pornography. This development was dictated by a widespread sense of urgency after several organisations had observed an increase in the volume of digital images of sexually abused children. Various agencies called for the creation of a 'national authority' and proposed that the investigation or monitoring of efforts to combat child pornography could be added to the responsibilities of the National Rapporteur on Trafficking in Human Beings (BNRM 2010, p. 22). In 2011, the mandate of the Rapporteur was further broadened to include sexual violence against children in general.

#### Independent position

At the time of the establishment of the National Rapporteur, the choice for an independent position was explicitly made. As argued in 1999 by the minister of Justice in his letter to the Parliament:

*"As soon as this official is in some kind of fixed relationship to one of the bodies that (can) have an interest in the outcomes of the research and its conclusions, the rapporteur might unintentionally be influenced by this. The positioning of the bureau therefore also needs to guarantee this independence"* (Letter of the Minister 29 June 1999, TK 26 206, no. 15).

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<sup>4</sup> Sources: Interview with Ms. Corinne Dettmeijer, National Rapporteur 2006-2017, 31 May 2018; Website of the National Rapporteur <https://www.nationaalrapporteur.nl/>; TK 26 206, no 15, Emancipation Policy 1999, Letter of the Minister of Justice, 29 June 1999; National Rapporteur on Trafficking in Human Beings, 'Trafficking in Human Beings. 10 years of independent monitoring', The Hague: BNRM 2010. [https://www.nationaalrapporteur.nl/binaries/8e-rapportage-nrm-eng-web-tcm64-310472\\_tcm23-34822.pdf](https://www.nationaalrapporteur.nl/binaries/8e-rapportage-nrm-eng-web-tcm64-310472_tcm23-34822.pdf).

In addition, it was argued that the National Rapporteur should be someone with great personal authority, who disposes over the necessary expertise and has affinity with the topic: "not only because of the importance of the topic but also to facilitate access to the institutions whose information and cooperation will be indispensable". As of November 2013, the independent position of the National Rapporteur is preserved by a formal Dutch law: 'The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (Establishment) Act'.<sup>5</sup>

### **Mandate & office**

The task of the National Rapporteur is to annually report on the nature and scale of trafficking in human beings, mechanisms that play a role in trafficking, developments and the effects of anti-trafficking policies. The Rapporteur does not have executive tasks at operational level.

The official duties of the Rapporteur, as laid down in the 2013 Act establishing the Rapporteur, are:

- to conduct research into developments in the scale and nature of trafficking in human beings and sexual violence against children, as well as the effects of policy measures taken to tackle trafficking in human beings and sexual violence against children;
- to provide advice to the government on policies to prevent and suppress trafficking in human beings and sexual violence against children;
- to report periodically to the government by sending reports relating to trafficking in human beings and to sexual violence against children to our Minister of Security and Justice.

The Act furthermore stipulated that reports should at least contain:

- an explanation of the research methods;
- the results of the research that has been carried out and the conclusions based on that research;
- recommendations for improvements in policies to prevent and suppress trafficking in human beings and sexual violence against children. Recommendations may be addressed to the central government, local authorities and other administrative bodies, to international organisations and non-governmental organisations and to other relevant parties.

The term of office for the National Rapporteur is four years and can be extended once for another 4 years. An evaluation of the functioning of the institution takes place every 4 years.

From the beginning on the Rapporteur has been supported by its own office. Currently the Rapporteur is assisted by a team of 14 staff members who together constitute the Bureau of the National Rapporteur (BNRM). The staff members of the bureau are exclusively accountable for their work to the National Rapporteur.

### **Reports**

The National Rapporteur submits annual reports to the Minister of Justice, often focusing on a specific theme, e.g. the application of the non-punishment principle. The recommendations may cover a wide range of issues and may be directed at various key actors, including the national government, local governments and NGOs.

The government responds to the reports and informs the Parliament of its conclusions. Generally, the government publishes a reaction to reports by the Rapporteur, which is then the subject of a plenary debate in Parliament. The reports and other publications of the National Rapporteur are public and can be found on the website of the Rapporteur: <https://www.nationaalrapporteur.nl/publicaties/>

### **Data collection & the right to obtain information**

The Office of the National Rapporteur (BNRM) collects both quantitative and qualitative data. This is done through its own research, secondary analysis of existing databases, by organising meetings and by attending regular consultations. BNRM also takes part in review commissions for studies into trafficking or related subjects and participates in international forums, e.g. on EU policy to combat trafficking.

According to its original mandate the Rapporteur is authorised to approach all bodies or institutions which may dispose over relevant information. On their turn these bodies or institutions are obliged to cooperate and provide the information requested (unless this is in violation of any legal regulation). This may also include personal data of victims. If the Rapporteur, however, wants to use this data, they must be processed in such a

<sup>5</sup> For a translation of the Act that established the National Rapporteur on Trafficking in Human Beings see: [https://www.dutchrapporteur.nl/binaries/Act%20establishing%20the%20National%20Rapporteur\\_tcm24-56570.pdf](https://www.dutchrapporteur.nl/binaries/Act%20establishing%20the%20National%20Rapporteur_tcm24-56570.pdf).

way that they cannot lead to identifiable individuals. The Rapporteur does not need to restrict her or himself to already available data but is authorised to initiate investigations on her or his own initiative. The Rapporteur has no criminal investigative powers and cannot handle individual complaints.

While quantitative data is important, they can also give a distorted image of the actual situation. As stressed in several reports, the Rapporteur therefore considers qualitative research essential for a more in depth-insight into trafficking. The Rapporteur may recommend conducting research on specific subjects but can also carry out her or his own research. Studies of the Rapporteur involved e.g. exploitation outside the sex industry, the need for financial investigations, an analysis of the case-law on human trafficking in the sex industry in the period 2009-2012,<sup>6</sup> the role of medical professionals in the identification of victims, municipal policies on trafficking, and the application of the reflection period.

For data on the number and background of (possible) victims, the sectors in which they were exploited, etc. the Rapporteur makes use of the databases of CoMensha, the national Coordination Centre on Human Trafficking. CoMensha is the focal point for initial assistance and registration of (possible) victims of human trafficking. All agencies that come in contact with a (possible) victim are obliged to notify CoMensha, including the police, labour inspection, shelters, service providers, etc. All data that CoMensha provides to the BNRM are anonymised. CoMensha does not provide data about individual victims.

#### **Added value of a National Rapporteur on human trafficking, impact & preconditions**

Over the years the recommendations of the National Rapporteur have had an important role in shaping Dutch anti-trafficking policies. The Rapporteur can use the expertise and information that has been build up over the years to draw attention to specific subjects, accelerate changes, promote good practices, expose bottlenecks, make suggestions and, occasionally, actually intervene in an individual case. Many of her recommendations, have been endorsed by the government, and have led, directly or indirectly, to improvements in policy, among others through their inclusion in National Action Plans on Human Trafficking. An evaluation of 10 years National Rapporteur and its results can be found in the 8<sup>th</sup> annual report 'Trafficking in Human Beings. 10 years of independent monitoring' (available at [https://www.nationalrapporteur.nl/binaries/8e-rapportage-nrm-eng-web-tcm64-310472\\_tcm23-34822.pdf](https://www.nationalrapporteur.nl/binaries/8e-rapportage-nrm-eng-web-tcm64-310472_tcm23-34822.pdf)).

Based on her extensive experience as National Rapporteur Ms. Dettmeijer lists the following preconditions for the effective functioning of a National Rapporteur or equivalent mechanism.

##### **Independence**

The National Rapporteur should be independent in decisions on what he or she will investigate. The Rapporteur should be able to respond to developments in the field, develop a sense of what the field needs and take that up. Statistics are needed but to analyse data and find out what requires further investigation is as important and not predictable.

##### **Access to the authorities**

The Rapporteur should have a certain distance from the governmental authority, but at the same time sufficient and easy access to the authorities. At the other hand, as remarked by Ms Dettmeijer, in some countries it can be an advantage to be part of the government, or at least have access to persons high in the government hierarchy. One of the advantages could be easier access to data, e.g. to link data from different sources. This will be the more important under the new European data protection law (GDPR). The answer to what the best position is also depends on the national system. The Netherlands, for example, are quite focused on self-criticism, but that does not apply to all countries. What works is highly dependent on the national context.

##### **Personal authority**

The National Rapporteur should be someone with authority. She or he should have sufficient authority to be critical (without having to fear losing his or her position) and critique from her or him should be accepted. Also in the case of an equivalent mechanism, it is good to have a figurehead.



Corinne Dettmeijer

<sup>6</sup> The latter study is also published in English. It is available at [https://www.nationalrapporteur.nl/binaries/national-rapporteur-on-trafficking-in-human-beings-and-sexual-violence-against-children.case-law-on-trafficking-2009-2012-interactive-def\\_tcm23-34764.pdf](https://www.nationalrapporteur.nl/binaries/national-rapporteur-on-trafficking-in-human-beings-and-sexual-violence-against-children.case-law-on-trafficking-2009-2012-interactive-def_tcm23-34764.pdf)

#### Access to data

The National Rapporteur should have a good access to data from several sources. This applies not only to data of perpetrators but also of victims.

#### Legal basis & a broad mandate

The position of the Rapporteur should have a legal basis, including the legal regulation of access to data. This is especially important when working with sensitive data. A legal framework is also important to ensure the continuity of the institution. Best is to have a broad mandate that allows for flexibility and makes it possible to respond to new developments.

#### Human rights-based approach

There are different focusses possible for National Rapporteurs and there are clear differences among them. The focus of the Dutch Rapporteur, though, has always been on the protection of victims, rather than the protection of borders. Moreover, the focus has not only been on cross-border trafficking, much attention is also devoted to domestic trafficking.

#### Access to all departments and 'linking pin'

The Rapporteur should have access to all departments and be able to act as a bridge between the different departments and ministries.

#### A well-developed civil society

Civil society needs to be well-developed, otherwise the Rapporteur is just an extension of the government. The Rapporteur should serve as a focal point and have a kind of 'helicopter' view and connecting function.

#### Accountable to the government or Parliament?

In the Netherlands the Rapporteur is accountable to the government, but the choice should also depend on the national context. Both is possible. An advantage of reporting to Parliament might possibly be more transparency.

## 4. Finland<sup>7</sup>

The first National Rapporteur on Human Trafficking in Finland was appointed in 2009. The decision to appoint a National Rapporteur on Trafficking in Human Beings was made following a recommendation of the Finnish Coordination Committee on Trafficking in Human Beings, chaired by the Ministry of the Interior, to the Finnish government.

### **The Ombudsman for Minorities as the National Rapporteur on Trafficking in Human Beings**

According to the first Rapporteur, Johanna Suurpää, when the decision was taken to establish an independent National Rapporteur, the first preference was establishing the position as part of an existing organisation. The most important criterion was that the Rapporteur should be assigned to an independent governmental organisation. The Ombudsman for Minorities met that criterion (BNRM 2010, p. 20). The task of the Non-Discrimination Ombudsman is to promote equality and to prevent discrimination. The Non-Discrimination Ombudsman is an independent and autonomous authority, administratively situated within the Ministry of Justice.

The mandate of the Rapporteur was broadly formulated, including both human trafficking and related subjects such as pimping and certain serious forms of discrimination. Its position as part of a human rights institution, allows the Rapporteur to approach trafficking first and foremost as a human rights problem. A special feature is that the National Rapporteur has the right to intervene in individual cases.

#### **Mandate**

According to the 2008 government proposal, the duties of the National Rapporteur include collecting data on

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<sup>7</sup> Sources: Interview with Ms. Venla Roth, sr officer National Rapporteur on Human Trafficking, 28 June 2018; website of the Finnish Rapporteur <https://www.syrjinta.fi/web/en/rapporteur-on-trafficking>; Interview with Johanna Suurpää in: National Rapporteur on Trafficking in Human Beings (2010), *Trafficking in Human Beings. 10 years of independent monitoring*, The Hague: BNRM; The Finnish National Rapporteur on Trafficking in Human Beings (2010), *Report 2010: Trafficking in human beings, phenomena related to it, and implementation of the rights of human trafficking victims in Finland*, Helsinki 2010; National Rapporteur on Trafficking in Human Beings (2014), *Report 2014: Assessment of the current state of action against human trafficking and of the fulfilment in criminal proceedings of the rights of victims of human trafficking subjected to sexual exploitation* Ombudsman for Minorities, Grano: Ombudsman for Minorities.

human trafficking from the authorities and on certain conditions from service providers, and analysing these data (2014 Report, p. 13). They further include monitoring action against human trafficking in order to identify problem points, human trafficking at large, compliance with international obligations and the effectiveness of national legislation. The Rapporteur may issue suggestions, recommendations, statements and advice and monitors the realisation of the rights of victims.

The Rapporteur is authorised to monitor the situation in regard to human trafficking over a broad range, including not only actual human trafficking offences but also offences related to human trafficking, particularly extortionate work discrimination, aggravated procuring and aggravated facilitation of illegal entry.

The duties and powers of the National Rapporteur are laid down in the 2001 Act on the Ombudsman for Minorities and the National Discrimination Tribunal (660/2001). According to this Act the Ombudsman acting as National Rapporteur

- monitors phenomena relating to human trafficking, the fulfilment of international obligations and the effectiveness of national legislation,
- issues proposals, recommendations, opinions and advice relevant to the fight against human trafficking and to the realisation of the rights of victims, and
- keeps contact with international organisations in human trafficking issues
- provides legal advice and assists victims as necessary
- reports regular to the Government and Parliament.

Contrary to the Dutch Rapporteur, the Finnish Rapporteur may also provide legal counselling to victims and, in exceptional cases, assist victims in court cases. As stated under section 4 of the 2001 Act, the National Rapporteur may

*"assist, or appoint a subordinate official to assist, a victim of ethnic discrimination or a possible victim of human trafficking in securing the person's rights or, if necessary, obtain legal assistance for the person for this purpose if she considers that the matter is of considerable importance for preventing ethnic discrimination or for securing the rights of a possible victim of human trafficking"* (Report 2014: p. 13).

This includes the right to issue expert opinions on specific client cases on request. The Rapporteur may also give legal or other advice to victims of human trafficking, to parties assisting them en to the authorities. In addition, the National Rapporteur may, on her own initiative, address any shortcomings observed in the investigation of human trafficking offences and the treatment of victims.

This means that the Rapporteur can be consulted by individuals, NGOs, police, prosecutors etc. The Rapporteur can give statements to the court, call municipalities for clarification why a victim does not receive certain services, etc. If services are refused NGOs, for example, can call upon the Ombudsman, which in itself already helps. As stated by Ms. Venla Roth, senior expert Office of the National Rapporteur:

*"NGOs perceive this as very helpful, to know that there is an authoritative institution that can intervene. We don't do it very often, but we do it in cases where nothing else helps. Then we intervene".*

The right to intervene in individual cases is based on the right to get classified information and to take up drawbacks and shortcomings in the system. It is considered to be an important part of the mandate of the National Rapporteur. As expressed by Ms. Roth:

*"Reporting is important but to really know what happens on the ground in relation to victims and in the system, information from grassroots level is crucial. We are able to report and discuss problems because we know what happens".*

The Rapporteur does not have the authority to take up individual complaints, but there is an ongoing discussion whether they should have the right to handle complaints on the legality of actions of the government. However, this would require much more funds.

Next to contributing to the prevention and suppression of trafficking, advancing the identification and assistance of victims and raising public awareness, an important part of the work of the National Rapporteur is supporting officials and NGOs engaged in addressing trafficking and assisting its victims.

Another essential aspect of her work is the fulfilment of the rights of victims and the obstacles that may hinder this, whether legislative or administrative. The Rapporteur seeks to highlight the victims' point of view and the impacts of legislation, current practices or non-intervention on victims of human trafficking and the fulfilment of their rights.

The Rapporteur works from a strong human rights perspective. This is also reflected in the methodology they use: the first step is to identify the problem based on data and their analysis. They then compare the situation to national, EU and international obligations: is the situation in accordance with the law? If not, they try to give a recommendation how the situation could be improved. This can be a change of the law or a change in the interpretation or implementation of the law. For example, the number of identified victims of sexual exploitation is extremely low. Research from the Rapporteur indicated as one of the causes that victim assistance and police are so narrowly connected that victims do not dare to go to the police. This led to a recommendation on the need to separate the criminal justice system and the victim assistance system.

Final aim is the advancement of action against trafficking. This is done through a variety of means, e.g. participating in projects to improve legislation; providing training on trafficking to lawyers, criminal investigation authorities, prosecutors and court personnel; issuing recommendations; participation in (international) seminars and public debates; providing advice; interviewing victims about their experiences in Finland, etc.

#### **Cooperation with NGOs**

The National Rapporteur maintains close contact with the relevant NGOs through meetings, discussions, regular consultations, etc. When drafting a statement, they usually also consult with NGOs.

#### **Staff**

One of the problems the Rapporteur faced from the beginning is the limited resources. The office of the Ombudsman has 16 permanent staff members, of whom one full time expert is assigned to human trafficking. The latter is sometimes supported by temporarily hired staff if additional funding is available.

#### **Reports**

The National Rapporteur submits annual reports to the Government and 4-yearly more extensive reports incl. recommendations to Parliament, i.e. once in every electoral period. One of the key purposes of reporting is to make use of the collected and analysed information to pinpoint shortcomings in action against human trafficking and to address them, and to issue recommendations for the development of action against human trafficking (2014 report: p. 18).

The report to Parliament contains an extensive evaluation of the current state of Finland's action against human trafficking, including recommendations for improvement. The annual report submitted to the Government generally is a review of the previous year's operations or a thematic report on a specific issue in the area of human trafficking. Through the annual reports also the implementation of the recommendations of the reports to the Parliament are monitored.

The 4-yearly reports are discussed by the Parliamentary Committees and the Rapporteur gives a statement to the plenary meeting of the parliament. The primary commission for the Ombudsman and the Rapporteur is the Employment and Equality Commission.

When adopted, the government is supposed to follow-up the recommendations. This is how they changed legal provisions, e.g. the penal provisions. An example is a recent interim report on Nigerian women. They were sent back under the Dublin treaty to Italy where they were exploited, without an individual assessment whether they were safe. The Rapporteur considered this to be in contravention of the obligation of Finland under art. 16 of the CoE Convention on Action against Trafficking. This has led to a change in the application of the law.

The reports and other publications of the National Rapporteur are public and can be found on the website of the Rapporteur <https://www.syrjinta.fi/web/en/rapporteur-on-trafficking>. All reports are available in Finland's official languages and are translated into English.

#### **Data collection & the right to obtain information**

The National Rapporteur has the right (confidentiality provisions notwithstanding) to receive information from the authorities, from providers of support services for victims of human trafficking and from bodies that receive government assistance for action against human trafficking. As stated in the 2001 Act, the Ombudsman has the right to obtain free of charge from other authorities any information necessary to carry out the duties laid down for her in this Act and the Aliens Act (301/2004), notwithstanding secrecy provisions.

As noted in the 2014 report of the Rapporteur, in practice obtaining information proves to be a challenging task (p. 14). This is particularly the case in situations where the National Rapporteur considers it important to find out whether in ongoing criminal cases on trafficking the rights of potential injured parties have been ensured,

and whether potential victims have been referred to the assistance system. To address this problem special instructions were issued by the National Police Board. The instructions state that when the Rapporteur requests specific information from the police, such information must be disclosed without delay unless this would potentially compromise the investigation. When a criminal investigation or a police investigation is in progress, it is up to the head of the investigation to decide the extent of disclosure. The instructions also advise the head of the investigation to notify the Rapporteur of any criminal investigation on human trafficking at the latest when the police begin interviewing the (alleged) victims. Finally, they recommend to send copies of the criminal investigation records to the Rapporteur once the criminal investigation has been completed at the same time as they are sent to the parties to the matter and the prosecutor.

The Rapporteur has the right to obtain information from service providers referred to in the Act on the Integration of Immigrants and Reception of Asylum Seekers or who receive state aid aimed at combating human trafficking. This includes personal data of individual victims if such information is necessary to perform her duties.

The Rapporteur does not systematically collect personal details. In practice this only happens when she is requested to undertake action in an individual case. Their focus is on how rights are met in the system, how the system works and how it can secure the rights of victims.

Like the Dutch Rapporteur the Finnish Rapporteur stresses the importance of qualitative research and evidence-based studies. Currently they have very little possibilities to conduct this kind of research due to lack of time and resources, but they consider this as a serious shortcoming. Only in the case of special issues they collect data themselves, e.g. for the report on Nigerian victims. The Rapporteur works together with HEUNI, the European regional institute in the UN Criminal Justice and Crime Prevention Programme Network, which functions under the auspices of the Finnish Ministry of Justice as independent research and policy-making institute. This, however, does not remedy the lack of means to do their own, independent research.

The Rapporteur does not gather statistics. They are not a statistical information centre, as there are other agencies who are better qualified to do so, e.g. the National Coordinator. Their priority lies with qualitative analysis.

#### **Added value of a National Rapporteur on human trafficking, impact & preconditions**

Like the Dutch Rapporteur the Finnish Rapporteur stresses the importance of an independent position. According to the first Rapporteur, Johanna Suurpää, this is a precondition for a National Rapporteur to have any added value:

*“...the added value of a Rapporteur lies in providing an objective analysis of how human trafficking is being addressed. The Rapporteur can expose bottlenecks and make recommendations for resolving them. The Rapporteur collects all the relevant information from the different agencies and explores ways of advancing the fight against human trafficking”.*

In addition to publishing reports, she stresses that it is important for the Rapporteur to build up a good network and to include the implementation of international legislation.

#### Independent position

In a similar vein the current Rapporteur likewise stresses independence as a necessity. As stated in her 2014 report:

*“Independence reinforces the confidentiality and credibility of the National Rapporteur and her capacity, as a party separate from the branch of government responsible for human trafficking policy, to analyse the current state of action against human trafficking and to submit proposals as to how that action might be improved” (p. 17).*

Also Ms. Venla Roth stresses in the interview the importance of independence and the need to separate the role of coordinator from the role of Rapporteur, along with several other preconditions which are discussed below.

#### Separate the function of National Rapporteur and coordination

Monitoring and coordination are different functions and should be separated, otherwise the National Rapporteur cannot be independent. It is not possible to critically analyse policies when you are also partly responsible for their implementation. It would mean that you have to criticise your own work. The Rapporteur should be able to look critically at the government and (the implementation of) policies. The task of the

Rapporteur is to monitor the National Coordinator, who is supposed to take on board the recommendations of the Rapporteur. The Rapporteur can participate in coordination meetings, but as independent expert, not as part of the executive branch.

At the other hand, Ms. Roth remarks, in many countries an independent position might be difficult to achieve, as it can be perceived as frightening that an institution is not under control of the government. It is also a difficult position to always be the one who criticises, puts difficult things on the table, raises critical questions. Moreover, human rights are not popular today. Perhaps, she notes, independence is not that cornerstone anymore that needs to be put forward, but it keeps being something we should strive for.

#### Right to get classified information

The authorities should be obliged to give information when requested, even if about individual victims. Although the Finnish Rapporteur does not structurally collect information on individual victims, they can intervene in individual cases. In that case access to personal data is necessary.



Venla Roth

#### Direct link to/access to the parliament

Reports need to be discussed in parliament and the parliamentary committees. According to the Finnish system, everything that is sent to the parliament is discussed there. This means that the Rapporteur does not have to convince the government, but the parliament. Consequently, the parliament can instruct the government. When the report and/or the recommendations of the National Rapporteur are discussed in parliament they will also ask the NGOs and other stakeholders for their opinion. They will also be heard in parliament. The parliament can ask the National Rapporteur for additional information, statements or memos.

#### Perspective on trafficking as a human rights issue: human rights as guiding principle and methodology

There are many competing perspectives on human trafficking: as a criminal justice problem, a migration problem etc. For the National Rapporteur it is key to look at trafficking from a human rights perspective. As stated by Ms. Roth:

*"This does not mean that you do not understand the police or other perspectives but that you systematically look at what kind of consequences a certain action or non-action has on the implementation of the rights of victims. Human rights are the benchmark. The legal basis is: Does the action meet the obligations under national and international law? It is our task to make visible the problems, drawbacks and deficiencies in the structure from the perspective of the victim. The leading question is: How can we better implement their rights? Human rights are also leading in selecting the problem you want to focus on: what is important for victims?".*

#### Close cooperation with different actors, including NGOs, police, etc.

Close cooperation with all other actors is needed to get the information you need. It is the task of the National Rapporteur to translate what happens on the ground to structural solutions: what those in power have to do to ease the problems on the ground; to create the conditions for them to do better. The Rapporteur has regular consultations with the most important NGOs on what they think is important. They try to take their opinion on board and give them a voice. The same applies to providing a voice to police and local prosecutors. As worded by Ms. Roth:

*"They too want to do better, so it is important to also give them a megaphone because they also work on the ground. They too are often not heard the higher you come in the hierarchy".*

#### Possibility to do evidence-based studies

Currently the Rapporteur can do this only in exceptional cases and when there is extra funding. This is considered as a serious shortcoming.

#### Apply the model of National Rapporteur to gender-based violence?

Finally, it is an interesting question whether the model of National Rapporteur would also work for other crimes. The Rapporteur, e.g., recently proposed to establish a National Rapporteur for gender-based violence as

recommendation in their reporting to GREVIO, the supervisory committee for the CoE Convention on violence against women and domestic violence.

## 5. Belgium<sup>8</sup>

Since September 2014 Myria, Federal Migration Centre, is the independent component of the mechanism of the National Rapporteur on Human Trafficking, in addition to the Interdepartmental Coordination Unit for the fight against trafficking and smuggling in human beings (ICU), which reports on behalf of the Belgian State. Till 2014 Myria served *de facto* as National Rapporteur.

Myria inherited its powers from its predecessor, the Centre for Equal Opportunities and Opposition to Racism (CGK). In 2014 the Centre was split in the Inter-Federal Centre for Equal Opportunities (UNIA) and Myria, Federal Migration Centre. Both organisations still have close contacts and share joint members of the Board of Directors.

The history of the Centre for Equal Opportunities goes back to the 90-ties when a Parliamentary Commission recommended to build a special structure for victims of trafficking, reform legislation and establish an organisation to monitor and evaluate the fight against human trafficking. This led to the establishment of the Centre for Equal Opportunities in 1995. One of its tasks was to stimulate the fight against trafficking, coordinate activities against trafficking, and ensure good cooperation between the three specialised centres against trafficking in order to harmonise practices. Its main tool was to issue independent annual evaluation reports on the developments and the results of the fight against trafficking. In addition, they could initiate legal proceedings in the name of victims of trafficking or in their own name.

### **Myria, Federal Migration Centre, as National Rapporteur**

The institute of National Rapporteur in Belgium has a two-headed structure. The function is divided over two bodies which are complementary:

- The Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in human beings (ICU), which is responsible for the coordination and harmonisation of the activities of all involved departments and their evaluation.
- Myria, the Federal Migration Centre, which as Independent National Rapporteur evaluates the policies on human trafficking.

The ICP reports on behalf of the state and issues bi-annual reports on the implementation of the law and the activities of the responsible ministries. It meets twice a year. Within the ICP the federal public service of Justice, president of the Bureau, is responsible for the draft of the biannual report of the government. The main task of the ICP, however, is coordinating, presenting and introducing a policy.

Myria is an independent public institution established by Act of Parliament in 1993 (reviewed in 2013). It has three complementary legal tasks: the safeguarding of the fundamental rights of foreign nationals, providing information on the nature and scale of migration flows, and stimulating the fight against trafficking and smuggling in human beings. Myria was officially inaugurated on 15 March 2014. Since August 2014 it has had a Board of Directors, which is appointed by the Federal Parliament. Its first director was appointed on 15 March 2015. Myria is a member of ENNHRI, the European Network of national human rights institutions.

### **Mandate**

Myria was officially appointed as independent National Rapporteur per Royal Decree of 21 July 2014 (in force since September 2014), alongside the Interdepartmental Coordination Unit (ICU). It participates in the ICU, together with representatives of the Communities and Regions, the Agency for Financial Investigations/money laundering and representatives of the three specialised shelters for trafficked persons, Payoke, Sürya en PAG-ASA. Both Myria and the ICU are represented in the meetings of the European Network of National Rapporteurs on Human Trafficking.

Since 1996 Myria (and its predecessor the CGK) publishes annual independent evaluation reports on the policies

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<sup>8</sup> Sources: Interview with Ms. Patricia Le Cocq, National Rapporteur, 28 June 2018; Website Myria <http://www.myria.be/en>; website EC [https://ec.europa.eu/anti-trafficking/national-rapporteurs/belgium\\_en](https://ec.europa.eu/anti-trafficking/national-rapporteurs/belgium_en); Myria, 2017 Annual Report trafficking and smuggling of human beings, <http://www.myria.be/en/publications/2017-annual-report-trafficking-and-smuggling-of-human-beings-online>.

against trafficking and the results in the fight against trafficking. It works closely together with the three specialised reception centres for trafficking victims. It can give information to migrants about their rights and duties but can also be approached about possible victims of trafficking, whom they generally refer to one of the specialised centres.

Although officially its mandate concerns migrants, their work also covers Belgian victims of trafficking. This has never been a problem. They can also issue recommendations on national victims, e.g. in relation to 'loverboys'. They also issue recommendations directed towards the Communities, although they are a federal centre.

Next to its role as independent monitoring mechanism, Myria is authorised to take legal action and file civil charges in cases of human trafficking and human smuggling (Law of 13 April 1995). Myria can also interfere in the case of complaints or in ongoing cases of strategic interest in which fundamental rights are violated. An example is the case of exploitation of domestic workers by an Emirati princess and her daughters, in which 14 of the victims, the specialised centres and Myria acted as civil parties.<sup>9</sup> The princesses were convicted of human trafficking and degrading treatment of their servants by a Brussels court.



*UAE princesses go on trial in Belgium*

Myria can interfere to elicit caselaw, but also in cases where the victim did not join as civil party to represent the humanitarian aspect. The power to take legal action allows Myria to share its expertise with the judiciary and other stakeholders, collect examples of good and bad practices and support test cases. It also allows them access to confidential data they otherwise do not have and to acquire in-depth knowledge on how a case is handled and the victims treated. Often it concerns long-lasting and complicated cases. They used to handle around 20 cases per year. The last years, though, this number has decreased due to financial cuts. In 2016 Myria initiated civil proceedings in seven new cases, five of which involved human trafficking and two human smuggling. Both Myria and the specialised centres have the power to act as civil party either in the name of victims or in their own name.

### **Cooperation with NGOs**

Myria works closely together with the three specialised centres/shelters. Formally they are in charge of good cooperation between the three specialised shelters. Myria is also in the board of one of them. This is still a heritage of the Centre for Equal Opportunities (CGK), which was involved in the founding of the first two shelters.

One of the ongoing projects Myria works on with the shelters is the establishment of an (anonymised) database on victims which would make it possible to compare data. The specialised centres are also a source of information. They are, for example, asked to send verdicts and other judicial decisions to Myria for their case law analysis. Sometimes Myria is asked to act as civil party by one of the centres.

They meet twice a year to discuss the state of affairs and bottlenecks. The three centres on their turn have close contact with the other NGOs in the field, for example with NGOs that work with sex workers.

### **Staff & funding**

Myria has a staff of in total 15-20 persons, of which two work full-time on the issue of human trafficking. On occasion they are supported by two colleagues, e.g. for the purpose of the annual reports.

They are subsidised by the government and the national lottery. In order to secure their independence, they advocate for funding from the parliamentary budget line, like the College of Federal Ombudsmen. Since 2015, however, they are facing serious cutbacks, despite the law which is supposed to guarantee its independence by means of fixed funding. Myria considers this a serious problem as their role as an independent national rapporteur is directly related to their ability to act in complete financial independence (2016 Annual report, p. 6).

<sup>9</sup> See i.a.: <https://www.dw.com/en/eight-arab-princesses-go-on-trial-in-belgium/a-38796246>: BBC, 23 June 2017, UAE princesses guilty of servant abuse in Belgium <https://www.bbc.com/news/world-europe-40380071>; Myria (2017), Trafficking in human beings should not go unpunished, <http://www.myria.be/en/publications/dossier-of-emirati-princesses-trafficking-in-human-beings-should-not-go-unpunished>.

## **Reports**

Myria issues annual reports, providing an independent and critical overview of the results and developments in the fight against trafficking and smuggling. The reports are public and can be found at the website of Myria: <http://www.myria.be/en>. Fixed components are recent developments in the legal and policy framework; analysis of cases in which they acted as civil party; overview of jurisprudence; key figures & statistics; and recommendations.

Whereas the bi-annual reports of the ICU describe the activities undertaken by the various ministries in the area of prevention etc. and focus on quantitative data & statistics, Myria focusses more on a substantive, qualitative analysis of data. Each year the report addresses a specific issue. Its latest report, e.g., discussed the role of internet and social media in trafficking and smuggling (2017). Previous reports analysed, i.a. exploitation in begging (2016 Annual Report), early and forced marriages and victims of loverboys (2015 Annual Report), and the money and other benefits gained from the exploitation of victims of trafficking and smuggling of human beings (2011 Annual Report).

They formulate policy recommendations for policy makers and other stakeholders, aiming for their recommendations being adopted by the ICU. Their annual reports go to the government, but also to parliament and other stakeholders.

### **Data collection & the right to obtain information**

Myria can request all stakeholders to provide data, including the Ministries of Justice and Migration Affairs, the Inspectorates, specialised centres etc.

According to its 2016 Annual Report, much of its statistical and recommendation work is only possible thanks to the contacts and relations they maintain with numerous public authorities, in particular with the Immigration Office, the Office of the Commissioner-General for Refugees and Stateless Persons, Fedasil, the Federal Public Service of Home Affairs, Justice, Foreign Affairs and Employment, the Directorate-General for Statistics and the Council for Alien Law Litigation.

Myria does not have access to confidential data, except as civil party in court cases. This is felt as a shortcoming. They do not collect personal data of victims but do collect personal data of migrants who approach them with questions on their rights and duties.

### **Added value of a National Rapporteur on human trafficking, impact & preconditions**

Asked for the impact of the Annual Reports and the work of the National Rapporteur, Ms. Patricia Le Cocq, National Rapporteur from Myria, sees three main effects. In the first place, the recommendations of Myria find their way into the National Action Plan of the government. An example is the recommendation on the importance of financial investigations. Secondly, it raises awareness on specific issues, e.g. the application of the non-punishment provision and exploitation through begging. Thirdly, it influences the way in which trafficking is dealt with in practice. An example is the combat of labour exploitation, where the work of the National Rapporteur brought attention to the abuse of the system of posted workers and stimulated the use of social media as investigation tool.

#### Separation National Coordinator and National Rapporteur

As critical preconditions she mentions the separation between National Rapporteur and National Coordinator. Coordination is not the same as monitoring and evaluation. It is best to have these separated.

#### Independence

A second important precondition is independence, in the sense of space for independent monitoring and a critical approach. They noted, for example, that the Federal Prosecution Service failed to take up its responsibility for the coordination of international investigations into trafficking. Had they been part of the Ministry it would have been difficult to say this. Independence is also important to be able to communicate with all the stakeholders involved in its duties: public authorities, institutions, NGOs, interest groups, political parties, research centres, and citizens.

#### Access to relevant actors, broad mandate, authority, secure funding

Other preconditions are access to and contact with relevant actors on an equal basis; the possibility to evaluate policy at all levels; and having authority, both national and international. Moreover, funding should be secure, otherwise it is not possible to build up experience and status. A secure financial status is also important to ensure independence.

## 6. Portugal<sup>10</sup>

In January 2008 a National Coordinator was appointed under the Commission for Citizenship and Gender Equality (CIG) to coordinate actions on trafficking in human beings. In the same year the National Coordinator was appointed as National Rapporteur on Human Trafficking according to the first National Action Plan. In addition to the National Rapporteur, the Observatory on Trafficking in Human Beings is mandated to produce, collect, analyse and disseminate information on trafficking in persons and other kinds of gender violence.

### National Coordinator as National Rapporteur

The National Coordinator/Rapporteur is responsible for the coordination, monitoring and evaluation of the implementation of the National Action Plan. Monitoring and evaluation take place in close cooperation with all relevant governmental and non-governmental stakeholders. The Coordinator/ Rapporteur compiles annual reports on the implementation of the Action Plan, which are submitted to the Secretary of State. He can also make recommendations and propose new legislative measures for combating trafficking and the protection of its victims. At the end of a period covered by an Action Plan, the Coordinator/Rapporteur is responsible to organise an independent evaluation of its implementation by an external evaluator. The Rapporteur works closely together with the Observatory, which is responsible for the collection of data on human trafficking.

### Mandate

The National Rapporteur is part of the Commission for Citizenship and Gender Equality (CIG). The CIG belongs to the public administration. It is part of the Presidency of the Council of Ministers and falls under the authority of the Secretary of State of Citizenship and Equality. It has a wide mandate on gender-related violence and evaluates the implementation of several action plans, among which the National Action Plan on Trafficking in Human Beings. Trafficking, however, is the only issue for which it itself collects and analyses data. The CIG is responsible for coordinating the activities as laid down in the National Action Plan.

The National Coordinator/Rapporteur is responsible to

- follow-up and supervise the implementation of the Action Plan by the various responsible entities
- draft annual reports on the implementation of the National Action Plan and report accordingly to the Government
- ensure the final assessment of the Action Plan's implementation by an external entity
- promote research projects that may contribute to a better understanding of trafficking
- provide information, when requested, on legislative measures concerning the fight against trafficking in human beings and the protection of victims
- establish contact with foreign and international peer entities regarding human trafficking
- promote and participate in developing national and international information networks and structures.

An important part of the mandate is to build a comprehensive network and trust between all the relevant stakeholders. It is the task of the National Coordinator/Rapporteur to coordinate all the national network partners in regard to the implementation and evaluation of the Action Plan, including the implementation of international treaties (e.g. the CoE Trafficking Convention). To this aim there is an internal Working Group which consists of all governmental partners dealing with trafficking and three elected NGOs. The latter represent all involved NGOs and act as the link between the National Coordinator/Rapporteur and the NGO field. Next to the Working Group there is a Network of support services for victims of trafficking, which consists of all relevant NGOs and governmental departments.

Both bodies are involved in compiling the annual reports but also in developing and implementing campaigns and other actions. An example is the establishment of the National Referral Mechanism. The first document was drafted by the National Coordinator/Rapporteur, the Working Group and the Observatory. It was then discussed

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<sup>10</sup> Sources: Interview with Manuel Albano, National Coordinator and Rapporteur on Trafficking in Human Beings, 25 June 2018; EC website [https://ec.europa.eu/anti-trafficking/national-rapporteurs/portugal\\_en](https://ec.europa.eu/anti-trafficking/national-rapporteurs/portugal_en); website of the Commission for Citizenship and Gender Equality <https://www.cig.gov.pt/planos-nacionais-areas/trafico-de-seres-humanos/>; website of the Observatory on Trafficking in Human Beings <http://www.otsh.mai.gov.pt/en/Pages/default.aspx>.

by the Network, the police, the Public Prosecution Service, etc. Based on their comments the proposal was adapted, which improved the NRM but also created a feeling of joint ownership. The Working Group and Network are also asked for their opinion and experience when e.g. compiling reports for GRETA on the implementation of the CoE Trafficking Convention. Both governmental and non-governmental stakeholders can call upon the national Coordinator/ Rapporteur in case of problems or difficulties to help solving these, e.g. in regard to accessing data.

The collection of data on human trafficking is not the mandate of the National Rapporteur but of the Observatory on Trafficking in Human Beings (OTSH). The Observatory was also established in 2008 (Decree-Law nº 229/2008 of 27 November). It is placed under the Ministry of Interior and is part of the National Referral Mechanism. Its mission is to contribute to the analysis, knowledge and intervention in trafficking in human beings and other forms of gender violence. Its main tasks are to produce and collect information on human trafficking and other forms of gender violence; to promote the development of software applications to support information gathering; and to support political decisions in its intervention areas when requested.

#### **Staff & funding**

The National Coordinator/Rapporteur is supported by two staff members of the Commission for Citizenship and Gender Equality. However, they do not work exclusively on trafficking, as trafficking is part of a broader mandate of the CIG on gender issues. The Observatory has two staff members working on trafficking.

#### **Reports**

In his function of Rapporteur, the National Coordinator issues annual evaluation reports on the implementation of the National Action Plan. For the compilation of these reports he distributes questionnaires among all stakeholders, including NGOs, law enforcement, etc. He does not collect personal data of victims. Before the reports are sent out they are approved/accredited by all relevant GO and NGO partners.

The reports are submitted to the Secretary of State of Citizenship and Gender Equality, situated in the Presidium of the Council of Ministers. The reports are public and presented to the Parliament by the Secretary of State. In addition to the annual reports, there is a final evaluation at the end of the action period by an external evaluator. Next to annual evaluation reports, the Coordinator/Rapporteur can also issue thematic reports.

#### **Data collection**

The Rapporteur cooperates closely with the Observatory on Trafficking in Human Beings (OTSH), which is responsible for the collection of data on human trafficking. In addition, he maintains close contacts with the universities, which also provides opportunities for research.

The OTSH is the responsible entity for the national monitoring system. It collects and analyses quantitative and qualitative data from the different relevant bodies in order to generate knowledge on trafficking and its criminal and social dynamics. The results are made available to all interested parties, including law enforcement agencies and NGOs. Final aim is to contribute to better policies and practices for the prevention and prosecution of trafficking and the protection of victims.

The Observatory collects data on all stages of identification of possible victims. Data concern the recruitment process, forms of exploitation, statistics on the recruiters, etc. It also collects data on Portuguese victims abroad. It does not collect personal data of victims.

All stakeholders are obliged to send their data to the Observatory, for which aim it has MoUs with the police, NGOs, etc. The Observatory issues 3-monthly internal reports and yearly public reports.

The Observatory, for example, coordinated with the Directorate-General of Internal Affairs (Ministry of Internal Affairs) the European Project "Towards a Pan-European Monitoring of Trafficking in Human Beings". Aim was to create a common European Monitoring Model.

#### **Added value of a National Rapporteur on human trafficking, impact & preconditions**

Asked for the impact of his work, Mr. Albano notes that usually his recommendations are accepted by the government, also when they are controversial and no matter the political colour of the government. Examples are the recommendation for a special fund for NGOs to assist EU victims to return and to increase funding of the shelters. According to his view, one of the important causes is that they are not 'just' recommendations of the National Rapporteur, but that they are evidence-based and widely supported by all stakeholders.

### Political influence, multi sectoral, cooperation with NGOs

As preconditions for a National Rapporteur to be effective he mentions three principles:

- The Rapporteur should be positioned at a level where he or she has influence on policy decisions
- The Rapporteur should have a position that goes beyond a single sector or perspective. To be effective a multi-disciplinary and cross-sectoral vision is needed, including health, migration, crime, human rights, etc.
- The influence and cooperation of NGOs should be ensured. NGOs know the field, they work with the victims and know their needs.

### Human rights approach

The mandate should lie with the victims, to create the most favourable environment for victims:

*"The problem is not a migration problem. The problem is the victims. If you put borders first, you fail the victim".*

### The issue of independence

As to the need for an independent position of the National Rapporteur he remarks that in his view independency is also linked to the level of democracy and the way recommendations are developed. Reports and recommendations are developed in close cooperation with all relevant stakeholders. They are presented to Parliament and are open to critique from all. He, however, agrees with, e.g., the Dutch Rapporteur that it is important that the Rapporteur is not locked in a 'straight jacket', but can respond to the needs and developments in the field and is free to decide what issues he or she wants to investigate.

### Not one best model

Finally, he stresses that there is not 'one best model'. Each country is different, and you have to find the model that best fits the national context.



## 7. Conclusions and Recommendations

Only few EU countries have established a National Rapporteur in the strict sense. Most member states opted for an 'equivalent mechanism' rather than a National Rapporteur. In seven countries the National Coordinator fulfills the function of National Rapporteur (Croatia, Estonia, Greece, Hungary, Latvia, Portugal, Czech Republic). In eight countries the function of National Rapporteur is fulfilled by a governmental body (Italy, Lithuania, Malta, Poland, Romania, Slovakia, Spain, Sweden).

In the majority of countries, the (function of) National Rapporteur falls under the Ministry of Interior (9: Hungary; Latvia; Czech Republic; Lithuania; Malta; Poland; Romania; Slovakia; Spain). Other ministries are the Ministry of Foreign Affairs (Greece) and the Ministry of Justice/police (2: Estonia; Sweden).

Looking at the positioning of the National Rapporteur the major focus seems to lie on cross-border trafficking and human trafficking as a security/criminal offence, and less on domestic trafficking and trafficking as a human rights violation. Only in three countries the National Rapporteur is situated within a human rights and/or equal opportunities body, resp. the Government Office for Human Rights and Rights of National Minorities (Croatia); the Commission for Citizenship and Gender Equality (Portugal); and the Department of Equal Opportunities (Italy).

In four countries the function of National Rapporteur is assigned to an independent body. In all cases this concerns a human rights-based body, varying from the National Human Rights Institute (France, Luxembourg) to the Federal Migration Centre (Belgium) and the Non-Discrimination Ombudsman (Finland). Only one country established a separate independent Office of the Rapporteur (Netherlands).

Eight countries did not appoint a National Rapporteur (Austria, Bulgaria, Cyprus, Denmark, Germany, Ireland, Slovenia, UK).

## **Preconditions for the effective functioning of a National Rapporteur**

For this study the National Rapporteurs of The Netherlands Finland, Belgium and Portugal were interviewed. All four countries opted for a different model. In the Netherlands the National Rapporteur has her/his own office. In Finland the National Rapporteur is part of the Ombudsman for Minorities. In Belgium the function of Rapporteur is fulfilled by Myria, Federal Migration Centre. In Portugal the National Coordinator fulfils the role of National Rapporteur under the Commission on Citizenship and Gender Equality.

One of the questions all four Rapporteurs were asked is what they considered to be preconditions for the effective functioning of a National Rapporteur. They largely agreed on the following characteristics.

**Independent position:** Independence is mentioned in different meanings. In the first place, it refers to the need for a National Rapporteur to have the freedom to independently decide about the issues she/he wants to investigate. This is an important condition to be able to respond to developments in the field and the needs of stakeholders.

Secondly, it means that the Rapporteur should be able to critically examine government policies and their implementation. According to three of the interviewed Rapporteurs, this implies that the function of National Rapporteur should be separated from that of National Coordinator, as it is not possible to critically analyse government policies when you are partly responsible for their implementation. This would mean you have to criticise your own work. The Portuguese Rapporteur, however, does not agree with this point of view. According to him independence has predominantly to do with the way recommendations are developed and the fact that reports and recommendations are presented to parliament, open to critique from all. He agrees, however, that the Rapporteur should not be put in a straitjacket and must have the flexibility and freedom to develop her or his own research depending on developments and needs.

Thirdly it was mentioned that independence is important to be able to communicate to diverse stakeholders: public authorities, institutions, research institutes, political parties, interest groups, NGOs, citizens, etc. Independence contributes to the confidentiality, credibility and reliability of the Rapporteur.

Though most agreed that the National Rapporteur by preference should be an independent body, at the same time they agreed that this also depends on the national context and what is feasible. In addition, it was mentioned that being part of a ministry might also have advantages, e.g. in terms of facilitating access to data.

**Access to the authorities/ political influence:** The Rapporteur should have a certain distance from the government, but at the same time be in a position where he or she can exert influence on policy decisions. This means that the Rapporteur should have well-established contacts with the authorities and/or access to persons high in the governmental hierarchy on an equal basis.

**Personal authority:** The Rapporteur should be someone with sufficient personal authority to be able to be critical (without endangering her or his own position) and to be listened to.

**Legal basis & broad mandate:** The position of the Rapporteur should be laid down in law, including regulation of access to data and the authority to evaluate policies on all levels. The latter should include assessing compliance with international legislation. Best is to have a broad mandate that allows for flexibility and responding to new developments.

**Right to obtain information/access to data:** The Rapporteur should have access to data, including classified and personal/sensitive data under certain conditions and for specific aims. The provision of data by the relevant stakeholders should be regulated by law.

**Position that goes beyond a single sector or perspective:** The Rapporteur should have a position which enables a multi-disciplinary and cross-sectoral approach. This allows looking at trafficking from different perspectives, human rights, crime, migration, health, etc.

**Human rights as guiding principle:** All four rapporteurs, in different degrees, stress the need of taking a human rights approach and putting victims in the centre. As expressed by Ms. Roth, this does not mean that you do not understand the police or other perspectives, but that you systematically look at the consequences of a certain action or non-action for the implementation of the rights of victims.

**Close cooperation with all stakeholders, incl. NGOs, police, ministries, etc.:** The Rapporteur should have access to all relevant stakeholders. She or he should also act as linking pin between the relevant departments and between governmental bodies and the NGO field/civil society. In the same vein, the need for building a

strong network was stressed. Close cooperation is needed to get information, to know what happens on the ground, and to give those working on the ground a voice. This applies to NGOs and service providers, but also to, e.g., the police.

**Cooperation with NGOs:** All four rapporteurs stress the importance of cooperation with NGOs as they are the ones that know the field, work with the victims and know their needs. As stated by the Finnish Rapporteur: “*...to really know what happens on the ground in relation to victims and in the system, information from grassroots level is crucial...*”. The Rapporteurs stay in close contact with NGOs through meetings, discussions, regular consultations and joint working groups. Cooperation might take different forms. In Finland, the Rapporteur might support NGOs (and officials) engaged in providing assistance to victims. In Portugal, the Rapporteur works closely together with NGO in the development of national campaigns and the compilation of the annual reports, while in the Netherlands the NGO CoMensha plays a key role in the data collection in regard to (possible) victims. In Belgium, the Rapporteur works closely together with the three specialised centres/ shelters for trafficked persons, which on their turn are in close contact with the wider NGO field. The Dutch Rapporteur also stresses the importance of a well-developed civil society for her work because otherwise the Rapporteur is just an extension of the government.

**Sufficient and secure funding:** The Rapporteur should, by preference, be funded from a fixed and ‘independent’ budget line to secure its financial independency and continuity. Funding should be secure in order to be able build up experience and status, and sufficient for the Rapporteur to be able to conduct her/his own research.

**Accountable to the government or the parliament?** Both options are possible and are dependent on the national context. However, it is important that reports and recommendations are discussed in parliament, so they participate in the monitoring and can adopt measures when necessary. It is recommended that NGOs are also be involved in parliamentary discussions on the recommendations of the Rapporteur.

**Not one ‘best’ model:** Finally, all four Rapporteurs stress that there is not one ‘best model’. The conditions mentioned can act as guidelines based on their experience, but every country is different and has to choose the model that best fits their national context.

#### **Additional powers**

In addition to the monitoring and evaluation tasks, the mandate of the Finnish and Belgium Rapporteur allows them to intervene in individual cases. Both consider this as an important part of their mandate.

The Finnish Rapporteur may provide or obtain legal assistance to victims and, in exceptional cases, assist the victim in court. This includes the right to issue expert opinions on specific individual cases on request. The Rapporteur may give legal advice to the victim, the parties assisting victims and the authorities. She also has the right to intervene in individual cases, for example if a victim is refused the assistance he or she is entitled to. She may address on her own initiative any shortcomings in the investigation or the treatment of the victim. A discussion is ongoing to expand the mandate of the National Rapporteur to taking up individual complaints.

The Belgian Rapporteur/Myria is authorised to initiate legal action and act as civil party on behalf of the victim or in their own name. They can also interfere in the case of complaints or in ongoing cases of strategic interest in which fundamental rights are violated. This makes it possible to elicit case law but also allows them to acquire in-depth knowledge on how a case is handled and to share knowledge with the judiciary, the Public Prosecution Service and lawyers.

#### **A model to be followed for other forms of violence?**

An interesting question, put forward by both the Finnish and the Dutch Rapporteur, is whether the model of a National Rapporteur as developed in the framework of human trafficking would also be useful in the field of gender violence in general. In the Netherlands the mandate of the National Rapporteur has already been expanded to include sexual violence against children. In Finland, the establishment of a National Rapporteur on violence against women was one of the recommendations of the Rapporteur to GRETA, the supervisory committee of the CoE Convention on Violence against Women and Domestic Violence.

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