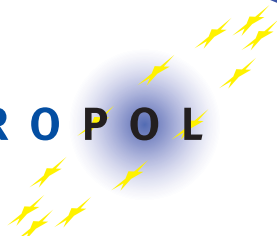


Comparison
of the relevant legislation on
Trafficking in Human Beings
(Penalties and aggravating circumstances)

Europol 2005

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¹ This compilation does not contain legislation from Luxembourg

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1. Austria

Penalties

Criminal law

Article 104 (1) and (2)

From 10 to 20 years imprisonment (any person trafficking in slaves; the same sentence shall apply to any person who causes another person to be enslaved or to be brought into a situation similar to slavery or who causes another person to place himself into slavery or into a situation similar to slavery)

Article 104a

(1) Up to three years imprisonment (any person who enlists, accommodates or enrolls in any other way, transports or offers or passes on to another person 1) a person under age or 2) a person of full age using unfair means (paragraph 2) against the person with the intention of that person being exploited sexually, through organ removal or as labour)

(2) Unfair means are the misrepresentation of facts, the abuse of a position of authority, of a position of constraint, of a mental illness or of a situation rendering the person defenceless, intimidation and the granting or acceptance of a gain for the transfer of control over the person.

(3) From 6 months up to 5 years imprisonment (any person who commits the crime using violence or the threat of violence)

Article 215

Up to two years imprisonment (any person who leads another person to prostitution)

Article 215a

(2) From 6 months up to 5 years (any person who commits the crime as part of a criminal association, using severe violence or in such a way that the crime endangers the life of the person intentionally or through gross negligence or the crime is particularly detrimental to the person.

Article 217

(1) From 6 months up to 5 years imprisonment (any person who leads or recruits another person, regardless of whether the latter is already engaged in prostitution, to prostitution in a country other than that of which he is a national or in which he is habitually resident or to a term of imprisonment of between one and 10 years if the crime is committed for financial gain.

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(2) From 1 up to 10 years imprisonment (any person who, with the intention of making another person (paragraph 1) engage in prostitution in a country other than that of which he is a national or in which he is habitually resident, through deception as to this intention entices or using violence or the threat of violence forces that person to go to another country or who transports this person to another country using violence or exploiting his confusion regarding this intention)

If the victim is a child/minor or has not reached the age of sexual consent

Article 104a

(1) Up to 3 years imprisonment (any person who enlists, accommodates or enrolls in any other way, transports or offers or passes on to another person 1) a person under age)

(4) From 1 up to 10 years imprisonment (any person who commits the crime against a minor as part of a criminal association, using severe violence or in such a way that the crime endangers the life of the person intentionally or through gross negligence or the crime is particularly detrimental to the person)

Article 215a

(1) Up to 3 years imprisonment (any person who recruits a minor, regardless of whether the minor is already engaged in prostitution, to perform prostitution or to participate in a pornographic performance or who offers or procures the minor to another person for that purpose; the same sentence shall apply to any person who exploits a minor who is engaged in prostitution or participating in a pornographic performance for financial gain for himself or a third party.

(2) From 1 up to 10 years imprisonment (any person who commits the crime against a minor below the age of 14)

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2. Belgium

Pursuant to the conclusions of the parliamentary committee on human trafficking in Belgium, the Parliament passed a new law (the law of 13 April 1995) with a view to combating human trafficking and child pornography. The 1995 Act inserted a new article 77bis in a law passed in 1980 with regard to the aliens' admittance to the Belgian territory. It imposes 1 to 5 years' imprisonment and a fine on anyone who assists an alien in entering or residing in Belgium and, in so doing, subjects the alien to "fraudulent practices, violence, threat or any form of coercion" or takes advantage of a position of vulnerability in which the alien is placed ("as a result of illegal or insecure administrative status, minority, pregnancy, illness, infirmity or a physical or mental disability").

Furthermore, the 1995 Act amended several articles of the Penal Code. The new article 380 (previous article 380bis) has several components. Its paragraphs 1, 2 and 3 group together a series of trafficking related offences that apply to trafficking in adults only. The scope ascribed to these offences encompasses a variety of means (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of a position of vulnerability, etc), regardless of any apparent, implied or express consent by the victim. The provision sets out a series of criminal acts (recruitment, harbouring or receipt of person, but no explicit mention of transportation or transfer) that all have in common an element of exploitation. The use of violent means constitutes aggravating circumstances, not constituent elements of the offences, which has the effect of widening the scope of the provision to encompass cases of procurement of accommodation (renting or selling a room or other premises) for the purpose of prostitution and the running of a brothel with the same penalties.

Special emphasis is placed on the sexual exploitation of minors. The new Article 379 carries severe penalties (up to 20 years' imprisonment if the minor is under 14 years of age; up to 15 years' imprisonment if the minor is under 16 years of age) on anyone who "incites, favors or provokes" the "sexual immorality, or are involved in corruption related to the minor's prostitution".²

Penalties:

Aliens (Entry, Residence, Establishment and Deportation) Act of 15 December 1980

Article 77bis (1)-(3):

Article 77bis (1)

A fine and between 1 year and 5 years imprisonment (whoever assists, by whatever means, directly or through an intermediary, an alien in entering or residing in the Kingdom and, in so doing: subjects the alien, directly or indirectly, to fraudulent practices, violence, threats or any form of coercion; or takes advantage of the particularly vulnerable position in which the alien is placed as a result of illegal or

² Legislationline, a free-of-charge online service provided by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) and the European Union.

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insecure administrative status, minority, pregnancy, illness, infirmity or a physical or mental disability)

Article 77bis (1)bis

A fine and between 1 year and 5 years imprisonment (whoever takes advantage, directly or through an intermediary, of the particularly vulnerable position in which the alien is placed as a result of illegal or insecure administrative status, by selling, renting or putting at his disposal a house or rooms or any other location with the intention of realising abnormal profit)

Article 77bis (2)

A fine and between 5 and 10 years imprisonment (if the offences referred to in (1) and (1)bis constitute a habitual activity)

Article 77bis (3)

A fine and between 10 and 15 years imprisonment (if the offences referred to in (2) constitute an act of complicity in the principal or consequential activity of an association, whether or not the offender is a leader of such association)

Penal Code

Article 380 §§ 1, 2, 3 Penal Code:

Article 380 §1 Penal Code

A fine and between 1 year and 5 years imprisonment (anyone who in order to satisfy the passion of others, hires, trains, seduces or detains for the purposes of debauchery or prostitution even with his/her consent a person who has reached the age of majority; runs a brothel; sells, rents out or puts at the disposal of other people for the purposes of prostitution rooms or any other premises with the aim of making an abnormal profit; exploits debauchery or prostitution of others in any manner)

Article 380 §2 Penal Code

A fine and between 6 months and 3 years imprisonment (any attempt to commit the offences referred to in para 1)

Article 380 §3 (1)-(2) Penal Code

A fine and between 10 and 15 years imprisonment (if the perpetrator employs towards the foreigner directly or indirectly deception, violence, threats or any other form of constraint (1); abuses a particularly vulnerable situation in which the foreigner finds himself/herself due to his/her illegal administrative or precarious situation, pregnancy, sickness, disability or physical or mental deficiency (2))

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If the victim is a child/minor or has not reached the age of sexual consent:

Article 379 Penal Code:

A fine and between 5 and 10 years imprisonment (whoever commits a sexual offence by provoking, encouraging or assisting in the debauchery, corruption or prostitution of a **minor** of one or another sex to satisfy the passions of others)

A fine and between 10 and 15 years imprisonment (if the minor is below the **age of sixteen**)

A fine and between 15 and 20 years imprisonment (if the minor is below the **age of fourteen**)

Article 380 §§ 4 (1)-(5), 5, 6 Penal Code:

Article 380 §4 (1)-(5) Penal Code

A fine and between 10 and 15 years imprisonment (anyone who in order to satisfy the passions of others, hires, trains, seduces or detains for the purposes of debauchery or prostitution even with his/her consent a **minor** (1); who runs directly or through an intermediary a brothel where **minors** indulge in prostitution or debauchery (2); who sells, rents out or puts at the disposal of **minors**, for the purposes of debauchery or prostitution, rooms and other premises with the aim of making abnormal profit (3); who exploits in any manner the debauchery or prostitution of **minors** (4); who obtains by giving, offering or promising material or financial benefits, the prostitution or debauchery of a **minor** (5))

Article 380 §5 Penal Code

A fine and between 15 and 20 years imprisonment (if the offence referred to in §4 is committed against a minor below the **age of sixteen**)

Article 380 §6 Penal Code

A fine and between 1 month and 2 years imprisonment (whoever abets the prostitution or debauchery of a **minor**)

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3. Cyprus

The national law on the “Combating of Trafficking in Persons and Sexual Exploitation of Children” (2000) uses the notion of “trafficking” (including transportation/movement), meaning any action or act that facilitates the entry into, transit through, residence in, or the exit from the Republic for the purposes of sexual exploitation.

The law stipulates that any person who transports/moves any other person or persons, with or without their initial consent or knowledge, for the purposes of their eventual sexual exploitation contrary to Sections 3 or 4 of this law or any other law or any prescribed treaty prohibiting similar exploitation, or who knowingly instigates, assists, suffers or allows, participates, or contributes to such trafficking of a person, is liable to a fine, imprisonment of ten years, or both.

Penalties:

Law on “Combating of Trafficking in Persons and Sexual Exploitation of Children”

Section 5 (1) (Trafficking of persons for purposes of sexual exploitation):

A fine, not exceeding £10,000 or 10 years imprisonment or both (if the victim is a child/minor or has not reached the age of sexual consent)

Law on “Combating of Trafficking in Persons and Sexual Exploitation of Children”

Section 5 (2) (Trafficking of persons for purposes of sexual exploitation):

A fine, not exceeding £15,000 or 15 years imprisonment or both (when the commission of an offence under subsection (1) has as a victim a child)

“child” means a person who has not completed the eighteenth year of his age.

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4. Czech Republic

On 13 December 2000, the Czech Republic signed the UN Convention against Transnational Organised Crime in Palermo, Italy.

On 10 December 2002, the Czech Republic signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the above Convention. The Protocol signature was preceded by an amendment to the Czech Penal Code, which entered into force on 1 July 2002. It aligned the Czech legislation to the international commitments of the Czech Republic. Under the amendment, all acts connected with the recruitment and trafficking of persons abroad are punishable.

While prostitution as such is not criminalised, it can be punishable when it causes a “public nuisance”. The intention is to remove it from the streets and other public places.³

Penalties:

Article 204 (1), (2), (3)a,b - Penal Code:

Article 204 (1)

Imprisonment for a term of 3 years (whoever engages, forces or lures another person to carry out prostitution or profits from prostitution carried out by another person)

Article 204 (2)

From 2 to 8 years imprisonment (if the act defined in para 1 is committed by use of violence, threat, other violent means or if the person abused is in a dependent position in relation to him/her)

Article 204 (3)a, b

From 2 to 8 years imprisonment (if a person gains a substantial profit from the acts defined in para 1,2; commits the act as a member of an organised group)

Article 233 (1), (2) - Penal Code:

Article 233 (1)

From 3 to 8 years imprisonment (whoever entices a person abroad)

Article 233 (2)

From 5 to 12 years imprisonment (if the act defined in para 1 is committed as a member of an organised group; on a person suffering from a mental disease or disorder; if the act results in severe damage to the health of the victim, his death or another severe consequence)

³ United Nations Office on Drugs and Crime (UNODC) Report, “The Case of the Czech Republic”

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Article 246 (1), (2), (3) - Penal Code:

Article 246 (1)

From 1 to 5 years imprisonment (whoever entices, hires or transports a person to or from a foreign country, with the intention that this person be used for sexual relations)

Article 246 (2)

From 3 to 8 years imprisonment (if the act defined in para 1 is committed by a member of an organised gang; with the intention of gaining valuable benefit; with the intention that the victim be used for prostitution)

Article 246 (3)

From 5 to 12 years imprisonment (if through the act mentioned in para 1 serious harm to health, death or other particularly serious consequence is caused, or the act is committed with the intention of gaining benefit on a large scale)

If the victim is a child/minor or has not reached the age of sexual consent:

Article 204 (3)c, (4) - Penal Code:

Article 204 (3)c

From 2 to 8 years imprisonment (who commits the act on a person younger **than eighteen years**)

Article 204 (4)

From 5 to 12 years imprisonment (if the act defined in para 2 is committed on a person younger **than fifteen years**)

Article 233 (2)b - Penal Code:

From 5 to 12 years imprisonment (if the act is committed on a person younger **than eighteen years**)

Article 246 (2)c - Penal Code:

From 3 to 8 years imprisonment (if the act is committed on a person younger **than eighteen years**)

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5. Denmark

Until 2002, the Danish Penal Code did not explicitly contain rules expressly forbidding trafficking – neither trafficking for the purpose of commercial sexual exploitation/prostitution nor other forms of exploitation. In June 2002, a protocol on trafficking was added to Danish Criminal Law. §262a Penal Code was passed as a supplement to §§ 260, 216, 266 Penal Code, raising the maximum penalty for those who engage in trafficking in people to eight years imprisonment. Furthermore, the new legislation includes a concrete definition of trafficking in human beings which did not exist before.

Penalties:

Section 228 (1) Penal Code:

up to 4 years imprisonment (any person who induces another to seek a profit by sexual immorality with others, or for the purpose of gain induces another to indulge in sexual immorality with others or prevents another who engages in sexual immorality as a profession from giving it up, or keeps a brothel)

Section 229 Penal Code:

up to 3 years imprisonment (any person who, for the purpose of gain or in frequently repeated cases, promotes sexual immorality by acting as an intermediary, or who derives profit from the activities of any person engaging in sexual immorality as a profession)

A fine or to simple detention (in mitigating circumstances)

Section 262a (1) Penal Code:

up to 8 years imprisonment (any person who recruits, transports, transfers, harbours or subsequently receives a person by means, whether present or past, of unlawful coercion, deprivation of liberty, threats, unlawful creation, confirmation or exploitation of a mistake, or any other undue method for the purpose of exploitation of that person by sexual immorality, forced labour or services, slavery or practices similar to slavery, or the removal of organs)

If the victim is a child/minor or has not reached the age of sexual consent:

Section 223a Penal Code:

A fine, simple detention or up to 2 years imprisonment (any person who, as a client, pays or promises to pay for intercourse with a person **under the age of 18**)

Section 228 (2) Penal Code:

up to 4 years imprisonment (any person who incites or helps a person **under the age of 21** to engage in sexual immorality as a profession, or to any person who abets some other person to leave the country in order that the latter shall engage in sexual immorality as a profession abroad or shall be used for such immorality, where that

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person is **under the age of 21** or is at the time ignorant of the purpose)

Section 262a (2) Penal Code:

up to 8 years imprisonment (any person who, for the purposes of exploitation of the victim by sexual immorality, forced labour or services, slavery or practices similar to slavery, recruits, transports, transfers, harbours or subsequently receives a person **under the age of 18** years or gives payment or other benefit to achieve the consent for such exploitation from a person having control over the victim and, to the person receiving such payment or benefit)

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6. Estonia

There is no legislative distinction made between trafficking and smuggling in Estonia. Several new elements of an offence were introduced into the Penal Code on 1 September 2002 to combat trafficking in human beings and smuggling.

Enslaving and transportation to countries that restrict personal liberty are defined as offences against personal liberty.

Enslaving (Article 133) entails the use of violence or fraud to put a person in a position where he or she is forced to work for someone else involuntarily or perform other degrading obligations, or keeping a person in such a position. This crime encompasses slavery in the classical sense and acts similar to slavery - enslaving through debt, use of a person as a prostitute etc.

Transportation to a state restricting personal liberty (Articles 258 and 259) is an offence to some extent similar to enslaving. It entails the use of violence or fraud to transport a person to another state and leaving him or her there, whereas it becomes possible to harass or humiliate him or her for racial, gender or other reasons and he or she lacks legal protection against such treatment and has no possibility to leave such a state.

In addition to the above mentioned articles, 268 (Provision of opportunity to engage in unlawful activities or pimping), 136 (Unlawful deprivation of liberty), 173 (Sale or purchase of children), 175 (Disposing minors to engage in prostitution) and 202 (Pandering or pimping) should be mentioned.⁴

Penalties:

Enslaving - Penal Code, Article 133 (1), (2)¹:

Article 133 (1)

From 1 to 5 years imprisonment (placing a human being, through violence or deceit, in a situation where he or she is forced to work or perform other duties against his or her will for the benefit of another person, or keeping a person in such situation)

Article 133 (2)¹

From 3 to 12 years imprisonment (the same act, if committed against two or more persons)

Article 134 (1)

A fine or up to 5 years imprisonment (taking or leaving a person, through violence or deceit, in a state where it is possible to persecute or humiliate him or her on grounds of race or gender or for other reasons, and where he or she lacks legal protection against such treatment and does not have the possibility to leave the state)

Article 134 (2)

From 2 to 10 years imprisonment (the same act if committed against two or more

⁴ Estonia: Country Report on Trafficking in Human Beings, Ref: PC.DEL/558/02

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persons

Article 135 (1)

From 3 to 12 years imprisonment (imprisonment of a person in order to compel, under the threat to kill, detain or cause health damage to the person, a third person to commit or consent to an act)

Article 136 (1)

A fine or up to 5 years imprisonment (unlawful deprivation of liberty of another person)

Illegal crossing of state border or temporary border line of Republic of Estonia –
Penal Code, Article 258 (1), (2):

Article 258 (1)

A fine or up to 1 year imprisonment (illegal crossing of the state border or temporary border line of the Republic of Estonia, if committed in disregard of a stop signal or order given by a Border Guard official; by a group; by a means of transport in a location not intended for crossing; and a punishment for a misdemeanour has been imposed on the offender for the same act)

Article 258 (2)

From 4 to 12 years imprisonment (the same act, if committed by using violence or by causing serious damage to health)

Illegal transportation of aliens across state border or temporary border line of Republic of Estonia - Penal Code, Article 259 (1), (2), (3):

Article 259 (1)

A fine or up to 1 year imprisonment (illegal transportation of an alien across the state border line of the Republic of Estonia)

Article 259 (2)

A fine or up to 3 years imprisonment (the same act, if committed by a group or by using violence)

Article 259 (3)

From 4 to 12 years imprisonment (an act provided for in subsection (1) or (2) of this section, if serious health damage is thereby caused)

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If the victim is a child/minor or has not reached the age of sexual consent:

Enslaving - Penal Code, Article 133 (2)2:

From 3 to 12 years imprisonment (the same act, if committed against a person of **less than 18 years of age**)

Abduction – Penal Code, Article 134 (2)2:

From 2 to 10 years imprisonment (the same act, if committed against a person of **less than 18 years of age**)

Hostage taking – Penal Code, Article 135 (2)

From 5 to 15 years imprisonment (the same act, if committed against a person of **less than 18 years of age**)

Unlawful deprivation of liberty – Penal Code, Article 126 (2)

From 1 to five years imprisonment (the same act, if committed against a person of **less than 18 years of age**)

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7. Finland

New criminal provisions on trafficking in human beings and aggravated trafficking in human beings were incorporated into the Penal Code of Finland on 1 August 2004. New provisions also include aggravated forms of pandering, distribution of child pornography and arrangement of illegal immigration. In addition, the marketing of sexual services became a criminal offence.

Penalties:

Penal Code,

Chapter 25, Offences against liberty

Section 3

Human Trafficking:

From 4 months to 6 years imprisonment (anyone who by taking advantage of the dependent or unprotected situation of another person; by misleading or taking advantage of their mistake; by paying for persons within another person's power; by receiving such a payment takes another person into their power recruits or hands over, transports, receives or accommodates for the purpose of sexual exploitation or forced labour or for the removal of organs or tissue for financial gain)

An attempt is punishable.

Section 3a

Aggravated human trafficking:

From 2 to 10 years imprisonment (instead of or in addition to the means referred to in section 3, violence, threats or deception are used; serious bodily injury or illness or dangerous situation or particular distress are caused; the offence directed at a child under the age of eighteen; the offence was committed in the context of the activities of organised crime; who submits another person to slavery)

An attempt is punishable.

Chapter 20, Sexual offences

Section 9 (1)-(5)

Pimping

A fine or up to three years imprisonment (anyone who for their own or another person's financial gain keeps premises where, for remuneration, sexual intercourse or other comparable sexual acts are offered or, in a flagrant way, for obscene sexual acts by

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a child under the age of 18; as a fixed part of their business accommodates the undertaking of such an act and consequently essentially promotes the act; by distributing contact details or in some other way markets the engagement in an act of this kind by another person, knowing that their action essentially promotes the performance of the act; otherwise takes advantage of the undertaking of such an act by another person or; entices or intimidates another to perform such an act

Section 9a

Aggravated pimping

From four months to six years imprisonment (if in pimping the aim is substantial financial gain; the offence is committed particularly deliberately; serious bodily injury, serious illness or a dangerous situation or particular distress are caused wilfully or through gross negligence to another person or; the act is directed at a person under the age of 18 and the offence is also aggravated when assessed as a whole.

Section 13

Corporate criminal liability

The provisions on corporate criminal liability shall apply to pimping and aggravated pimping.

If the victim is a child/minor or has not reached the age of sexual consent:

Chapter 20, Sexual offences

Section 8

Buying sexual services from a young person

A fine or imprisonment up to one year (a person who by promising or giving remuneration persuades a person younger than eighteen years of age to have sexual intercourse or to perform another sexual act)

An attempt is punishable.

Chapter 25, Offences against liberty

Section 3 (4:2)

Human Trafficking

From four months to six years imprisonment (anyone who takes into their control a

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person under the age of eighteen or who recruits, hands over, transports, receives or accommodates that person within the meaning of paragraph 1, even though none of the means referred to in points 1 to 4 of the first paragraph were used, shall also be sentenced for human trafficking.

Section 3a (3)

Aggravated human trafficking

From two to 10 years (if in human trafficking the offence is directed at a child under the age of eighteen or a person whose ability to defend him or herself is substantially diminished)

Chapter 17, Section 18

Dissemination of depictions of obscenity

A fine or up to two years imprisonment (any person who produces, offers for sale or for rent, exports, imports, carries through Finland to another country or otherwise distributes obscene pictures or visual recordings depicting: children, violence, or bestiality)

Attempts are punishable.

A child is considered to be a person under the age of eighteen or whose age cannot be determined, but who there is reason to assume is under the age of eighteen.

Chapter 17, Section 18 a

Dissemination of grossly obscene depictions of children

A fine or from four months to six years imprisonment (if in the dissemination of obscene depictions of children; the child is particularly young; the depiction also shows brutal violence or the child being treated in a particularly humiliating manner; the offence is committed in a particularly deliberate manner or the offence is committed by an organised criminal group within the meaning of Section 1 (4) and the offence is aggravated also when assessed as a whole)

Attempts are punishable.

Chapter 17, Section 18 b

Presenting or distributing illegal audiovisual material to minors

A fine or up to six months imprisonment (anyone who publicly exhibits or distributes; to a person under the age of eighteen an audiovisual programme which has not been approved under Section 8 of the Act on the Classification of Audiovisual Programmes for exhibition or distribution; an audiovisual programme to a person younger than the classification category required under Section 8 of the above Act, or to a person under

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the age of eighteen an unclassified audiovisual programme which, under Section 8 of the above Act, would have been prohibited or would have been classified for a higher age bracket than that of the person in question if the programme had been classified)

Chapter 17, Section 19

Possession of obscene pictures of children

A fine or up to one year imprisonment (anyone who unlawfully has possession of a photograph, video tape, film or any other virtual visual recording in which a child referred to in Section 18 (4) is shown to be having sexual intercourse or is engaged in sexual behaviour comparable thereto or in any other obviously indecent manner)

Chapter 17, Section 20

Marketing of indecent goods

A fine or up to six months imprisonment (anyone who, for the purposes of earning money; gives to a person under the age of fifteen; puts on public display; delivers unsolicited to another person or openly offers for sale or promotes by advertisement, brochure or poster or by other means, in a way causing public offence, an obscene picture, visual recording or object which is conducive to causing public offence)

A sentence for unlawful marketing of obscene material shall also be passed on a person who, in the manner referred to in paragraph (1) (4), offers for sale or promotes an obscene text or sound recording which is conducive to causing public offence.

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8. France

In March 2003, trafficking in human beings was integrated into the French Penal Code.⁵ It defined the offence of trafficking in accordance with Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime. The new Article 225-4-1 of the Penal Code contains the new definition of the offence of human trafficking, which is made punishable by seven years imprisonment and a fine of 150,000 Euros.

Furthermore, the penal code describes "procuring" as the fact "by anyone, by any way, of helping, assisting or protecting the prostitution of someone; of making profit from someone's prostitution; of sharing incomes or receiving allowance from a person prostituting oneself; of hiring, of leading, of taking off somebody to prostitution or exerting pressure over a person such as she goes to prostitution or goes on with prostitution." With regard to prostitution, it is not illegal in France. However, a fifth grade contravention can be applied to anyone who "by any way, is publicly soliciting someone in order to have sexual intercourse". Also, a new provision in a law, effective since 4 March 2002, introduced a specific penalty on anyone who appeals, agrees or gets "sexual intercourse with a prostitute under 18 years of age in return of payment or of the promise of payment". Aggravating circumstances are specified if the prostitute is under 15 years of age, if infringement is usual, if the author of the infringement is abusing of the authority due to his functions or if the prostitute was contacted through a communications network. These provisions apply even when the offence is committed abroad by a French citizen.⁶

Penalties:

Article 225-4-1 Penal Code:

A fine (150,000 Euros) and 7 years imprisonment (Trafficking in Human Beings)

Article 225-4-2 (2°-7°,9°) Penal Code:

A fine (1,500,000 Euros) and 10 years imprisonment (if the offence defined in article 225-4-1 is committed in respect of a person whose particular vulnerability, due to age, sickness, to a disability, a psychic or physical deficiency or to a state of pregnancy, is apparent or known to the offender; in respect of several persons; in respect of a person who stayed outside the territory of the French Republic or at arrival on the territory of the French Republic; where the person was put in contact with the offender by the use, for the dissemination of messages to an unrestricted public, of a telecommunication network; in circumstances in which the person is directly exposed to an immediate risk of death or wounding that could lead to mutilation or permanent disability; with the use of threats, coercion, violence or deception with regard to the individual, his/her family or a person usually related to him/her; by a person called upon to take part, by virtue of his functions, in the fight against trafficking or in the keeping of the public peace)

⁵ Law n.° 2003-239 of 18 March 2003, Art. 32 Journal (Official 19 mars 2003)

⁶ Legislationline, a free-of-charge online service provided by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) and the European Union.

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Article 225-4-3 Penal Code:

A fine (3,000,000 Euros) and 20 years imprisonment (if the offence defined in article 225-4-1 is committed by an organised gang)

Article 225-4-4 Penal Code:

A fine (4,500,000 Euros) and imprisonment for life (if the offence defined in article 225-4-1 is committed by resorting to torture or acts of barbarity)

Article 225-5 (1°-3°) Penal Code - Procuring:

A fine (150,000 Euros) and 5 years imprisonment (any person who helps, assist or protects the prostitution of others; makes a profit out of the prostitution of others, shares the products of it or receives income from a person engaging habitually in prostitution; hires, leads or attracts a person in view of prostitution or exercises on such a person pressure to practice prostitution or to continue doing so)

Article 225-7 (2°-4°, 6°-9°) Penal Code - Procuring:

A fine (1,500,000 Euros) and 10 years imprisonment (if the act is committed in respect of a person whose particular vulnerability, due to age, sickness, to a disability, a psychic or physical deficiency or to a state of pregnancy, is apparent or known to the offender; in respect of several persons; in respect of a person who was incited to engage in prostitution either outside the territory of the French Republic, or upon arrival on the territory of the French Republic; by a person called upon to take part, by virtue of his functions, in the fight against prostitution, in the protection of health or in the keeping of the public peace; by a person bearing a weapon; with the use of constraint, violence or fraudulent behaviour; by several persons acting as offenders or accomplices, although not constituting an organised gang)

Article 225-10 (1°-3°) Penal Code:

A fine (750,000 Euros) and 10 years imprisonment (anyone who holds, manages, exploits, directs, operates, finances or contributes to finance a place of prostitution; holding, managing, exploiting, directing, operating, financing or contributing to finance any given place open to the public or used by the public, accepts or habitually tolerates one or more persons to engage in prostitution within the premises or their annexes, or solicits clients in such premises with a view to prostitution; sells or makes available to one or more persons any premises or places not open to the public, in the knowledge that they will there engage in prostitution)

If the victim is a child/minor or has not reached the age of sexual consent:

Article 225-4-2 (1°, 8°) Penal Code:

A fine (1,500,000 Euros) and 10 years imprisonment (if the offence defined in Article 225-4-1 is committed in respect of **a minor**; by a legitimate, natural or adoptive ascendant of the person as a victim of the offence defined in Article 225-4-1 or by a person holding authority over him or who misuses the authority conferred by his functions)

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Article 225-7 (1°,5°) Penal Code - Procuring:

A fine (1,500,000 Euros) and 10 years imprisonment (if the act is committed in respect of **a minor**; by a legitimate, natural or adoptive ascendant of the person engaged in prostitution or by a person holding authority over him or who misuses the authority conferred by his functions)

Article 225-7-1 Penal Code:

A fine (3,000,000 Euros) and 15 years imprisonment (if the offence of procuring is committed against **a minor of fifteen years**)

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9. Germany

In Germany, trafficking in human beings for sexual exploitation is covered under Articles 180b and 181 of the Penal Code. Trafficking in children is punished under Article 236 of the Penal Code by a fine or up to 10 years imprisonment, depending on the circumstances of the case; Article 234 and 234a penalises kidnapping/abduction. Furthermore, Articles 92a and 92b of the Aliens Act deal with “Einschleusen” (infiltration of aliens), which can be seen as covering both trafficking and smuggling.

Penalties:

Trafficking in Human Beings – Article 180b (1) Penal Code:

A fine or up to 5 years imprisonment (whoever, for his own material benefit, exerts influence on another person, with knowledge of a coercive situation, to induce the person to take up or continue in prostitution; whoever, for his own material benefit, exerts influence on another person, with knowledge of the helplessness associated with the person's stay in a foreign country, to get the person to engage in sexual acts, which the person commits on or in front of a third person or allows to be committed on the person by the third person)

Serious Trafficking in Human Beings – Article 181 (1)-(2) Penal Code:

From 1 year to 10 years imprisonment (whoever with force, threat of appreciable harm or trickery induces another person to take up or continue prostitution; recruits another person through trickery or abducts person against the person's will by threat of appreciable harm or trickery, with knowledge of the helplessness associated with the person's stay in a foreign country, in order to get the person to commit sexual acts on or in front of a third person, to allow them to be committed on the person by a third person; or on commercial bases recruits another person, with knowledge of the helplessness associated with the person's stay in a foreign country, in order to induce the person to take up or continue prostitution)

From 6 months to 5 years imprisonment (in less serious cases)

Pimping – Article 181a (1)-(3) Penal Code:

From 6 months to 5 years imprisonment (anyone who exploits another person engaging in prostitution, or for material benefit supervises another person's engagement in prostitution, or takes measures to prevent the person from giving up prostitution, and in that regard maintains a relationship with the person which goes beyond a particular case)

A fine or up to 3 years imprisonment (whoever impairs another person's personal or financial independence through promoting that person's engagement in prostitution by procuring sexual relations on a commercial basis, and in respect thereof maintains such relations with the person concerned as go beyond the individual case; whoever commits the acts named in subsection (1), numbers 1 and 2 or the promoting indicated in subsection (2) in relation to his spouse, shall also be punished pursuant to subsections

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(1) and (2).

Article 92a Aliens Act (excerpts):

A fine or up to 5 years imprisonment (whoever encourages or helps somebody to commit actions as meant in §92 Abs 1 n1, 2 or 6 or Abs 2 and does this for financial gain (...), or repeats these actions or acts in the benefit of several foreigners)

The mentioned Article 92 Abs 1 n1, 2 or 6 or Abs 2 concerns illegal stay and illegal entry.

If the victim is a child/minor or has not reached the age of sexual consent:

Trafficking in Human Beings – Article 180b (2) Penal Code:

From 6 months to 10 years imprisonment (whoever exerts influence on another person with knowledge of the helplessness associated with the person's stay in a foreign country; or on a person **under twenty-one years** of age, to induce the person to take up or continue prostitution or to get the person to take it up or continue it. In cases under subsection (2) an attempt shall be punishable.

Trafficking in Children – Article 236 (4) Penal Code (excerpts):

From 6 months to 10 years imprisonment (if the perpetrator acts for profit, on a commercial basis or as a member of a gang, which has combined for the continued commission of trafficking in children; or by the act places the child or the procured person in danger of a substantial impairment of his or her physical or emotional development)

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10. Greece

The Greek Parliament passed a new “Law to combat Trafficking in Human Beings, crimes against carnal freedom, pornography, economic exploitation of carnal freedom, and support to the victims” – wherein it is regulated that aliens who are in the country illegally and are victims of the crimes of trafficking in human beings, pimping, trading in humans and lewd acts against minors for payment are repatriated by safe means without their dignity being abused.

Penalties:

Trafficking in Human Beings – Article 323A Penal Code:

Article 323A (1)-(2) Penal Code

A fine and up to 10 years imprisonment (whoever with the use of violence, threat, power and abuse or with any other means, hires, transfers, promotes in the country or outside the country, detains, remands, harbours, encourages, delivers with or without compensation, or takes from another person a person on order to take organs from his body, or to exploit his labour; this sentence is also imposed on offenders who attain the same end misleading victims taking advantage of their situation by making false promises and commitments, offering gifts, presents or other benefits)

Article 323A (3) Penal Code

Imprisonment of 6 months minimum (those, who with full cognizance accept the work of persons under the situation described above)

Article 323A (4) Penal Code

A fine and imprisonment of 10 years minimum (if the act is committed by profession; by employees in the performance of their duties; have as consequence serious bodily injuries of the victims)

Trade in Humans – Article 351 (1)-(2) Penal Code:

Article 351 (1)-(2) Penal Code

A fine and up to 10 years imprisonment (whoever by use of force, threat, or any other coercive means, or through the exercise or abuse of authority, hires, transports inside or outside (Greek) territory, abets, surrenders with or without reward to another, or receives from another, a person with the purpose of sexually exploiting (this person) himself, or (allowing) someone else (to exploit this person); the offender, who in order to achieve this purpose, elicits the concurrence of a person who is in need through promises, gifts, payments, or provision of other benefits, or the use of deceptive methods)

Article 351 (3) Penal Code

Imprisonment of 6 months minimum (offenders who knowingly perform lewd acts with persons under the situation described in para 1 and 2)

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If the victim is a child/minor or has not reached the age of sexual consent:

Trafficking in Human Beings – Article 323A Penal Code:

A fine and imprisonment of 10 years minimum (if the act is committed against a person **under age**)

Pornography with minors – Article 348A (1)-(3) Penal Code:

Article 348A (1)-(2) Penal Code

A fine and imprisonment of one year minimum (those, who manufacture, offer, procure, circulate, provide, possess, or sell pornographic materials; pornographic material is any description, real or artificial depiction of sexual acts in any material format aiming at sexual arousal, and the recording or depicting in any material format a real or a virtual act involving an **under age person**)

Article 348A (3) Penal Code

A fine and up to 10 years imprisonment (if the act constitutes pornographic material related to the exploitation of need or mental incapacity, deafness, or inexperience of an **under age person**, or by the use of violence against him)

A fine and 10 years imprisonment at minimum (if the act resulted in bodily injuries of the victim)

Trade in Humans – Article 351 (4)a Penal Code:

A fine and imprisonment of at least 10 years (if the act is directed at a person **younger than 18 years**, or a person mentally or physically incapacitated)

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11. Hungary

Trafficking in human beings as a criminal offence was incorporated into the Penal Code (Section 175/B) in 1998 and came into force on 1 March 1999. According to this new section, any person who sells, purchases, gives or takes over someone else for payment as well as who swaps or for this purpose gets someone for another person, commits a crime punishable by imprisonment of up to three years.

Prostitution is legal, as Section 204 of the Penal Code was abrogated in 1993. The exploitation of others, however, remained a crime. Therefore it was necessary to give a definition of prostitution as “a person who has sexual intercourse or fornicates striving to make regular profit” (Penal Code, Section 210A).

The Penal Code punishes pandering and living on the earnings of prostitution and promoting prostitution, but there are no specific laws against the abuse of children.⁷

Penalties:

Section 175/B (1) – (6) Penal Code:

Section 175/B (1)

Up to 3 years imprisonment (Any person, who sells, purchases, conveys or receives another person or exchanges a person for another person, or appropriates one for such purpose for another party)

Section 175/B (2)a, c, d

From 1 year to 5 years imprisonment (if the act is committed against a person deprived of personal freedom, for the purpose of forced labour, for the purpose of sodomy or sexual intercourse, or to involuntarily engage in such with another person)

Section 175/B (3)

From 2 to 8 years imprisonment (if the act involves two of the cases described in para (2), or if the act is committed as part of a criminal organisation or against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator)

Section 175/B (4)

From 5 to 10 years imprisonment (if the act involves three of the cases described in para (2), or if the act is committed against a person deprived of personal freedom, as part of a criminal organisation or against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator, and deprived of personal freedom)

Section 175/B (5)

From 10 to 15 years imprisonment (if the criminal act is committed for the purpose of forced labour and sodomy or sexual intercourse, or to involuntarily engage in such with

⁷ IOM (International Organisation for Migration), “Protection schemes for victims of trafficking 2003”

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another person, against a person deprived of personal freedom, as part of a criminal organisation or against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator, and deprived of personal freedom)

Section 175/B (6)

Up to 2 years imprisonment (any person, making preparations to engage in Trafficking in Human Beings)

If the victim is a child/minor or has not reached the age of sexual consent:

Section 175/B (2)b Penal Code:

From 1 year to 5 years imprisonment (if the act is committed against a person **under the age of eighteen**)

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12. Ireland

Irish law makes no distinction between trafficking in human beings and smuggling. There are two main legal instruments to combat trafficking in human beings/smuggling: the Illegal Immigrants (Trafficking) Act 2000 and the Child Trafficking and Pornography Act 1998.

The Illegal Immigrants (Trafficking) Act came into force in September 2000 with the purpose of creating an offence of trafficking/smuggling illegal immigrants and asylum seekers.

The Child Trafficking and Pornography Act relates to trafficking in children for the purpose of sexual exploitation.

These are relatively new legal instruments and the first prosecutions and investigations came through in 2001.

In relation to the Illegal Immigrants (Trafficking) Act 2000, it is not an offence to traffic/smuggle persons out of Ireland, only into Ireland.

Child trafficking is illegal for forms of sex-related exploitation. The movement of children for child labour or domestic labour purposes is not included in the Child Trafficking and Pornography Act 1998.

Furthermore, the Employment Permits Act 2003 prohibits the employment of non-nationals who do not have an employment permit and the Immigration Act 2003 makes provisions in relation to the control of entry into the state of non-nationals. Currently, a new Immigration Bill is under preparation (Immigration Bill 2004).

Penalties:

Section 2, Illegal Immigration (Trafficking) Act 2000:

A person who organises or knowingly facilitates the entry into the State of a person whom he or she knows or has reasonable cause to believe to be an illegal immigrant or a person who intends to seek asylum shall be guilty of an offence and shall be liable to:

A fine not exceeding **£1,500** or to imprisonment for a term not exceeding **12 months** or to both (on summary conviction)

A **fine** or to imprisonment for a term not exceeding **10 years** or to both (on conviction on indictment)

Section 2, Employment Permits Act 2003:

A **fine** (not exceeding €250,000) or up to **10 years** imprisonment or both (on conviction on indictment, if the offence is an offence consisting of a contravention of subsection (2) (subsection (2): A person shall not employ a non-national in the State except in accordance with an employment permit))

Section 2 (Liability of carriers), Immigration Act 2003:

A **fine of €3000** (on summary conviction)

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If the victim is a child/minor or has not reached the age of sexual consent:

Section 3, Child Trafficking and Pornography Act 1998:

- "child" means a person under the age of 17 years

(1) Any person who organises or knowingly facilitates:

(a) the entry into, transit through or exit from the State of **a child** for the purpose of his or her sexual exploitation, or

(b) the provision of accommodation for **a child** for such a purpose while in the State, shall be guilty of an offence and shall be liable to-

imprisonment for life (on conviction on indictment).

(2) Any person who:

(a) takes, detains or restricts the personal liberty of **a child** for the purpose of his or her sexual exploitation,

(b) uses **a child** for such a purpose or

(c) organises or knowingly facilitates such taking, detaining, restricting or use,

shall be guilty of an offence and shall be liable to:

imprisonment for a term not exceeding **14 years** (on conviction on indictment).

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13. Italy

A new law on combating Trafficking in Human Beings has very recently come into force in Italy. The law n. 228/03 entitled "Actions against trafficking in human beings" represents a 'compendium' of modifications to the Italian Penal Code to provide it with tighter penalties against the crimes of trafficking, slavery, forced labour etc. This new law provides penalties for traffickers from a minimum of 8 years to a maximum of 20 years.⁸ In the past, the Italian legal system did not provide a specific offence of trafficking in human beings as envisaged in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Other legal provisions were used in order to investigate and prosecute such a crime, especially Articles 600, 601 and 602 Penal Code.

Penalties:

Slavery – Article 600 Penal Code:

From 8 to 20 years imprisonment (whoever exerts on any other person powers and rights corresponding to ownership; places or holds any other person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging, or exploiting him/her in any other way)

penalties increase by 1/3 or 1/2 (if the offence is committed against a victim under 18 years of age, for sexual exploitation, prostitution or organ removal purposes).

Trafficking in human beings – Article 601 Penal Code:

From 8 to 20 years (whoever carries out trafficking in persons who are in the conditions referred to in Article 600)

penalties increase by 1/3 or 1/2 (if the offences referred to in this present article are perpetrated against minors under 18 years of age, or for sexual exploitation, prostitution or organ removal purposes)

Sale and purchase of slaves – Article 602 Penal Code

From 8 to 20 years (whoever, in cases other than the ones referred to in Article 601, purchases or sells or transfers any person who is in any of the conditions referred to in Article 600)

penalties increase by 1/3 or 1/2 (if the offences referred to in this present article are perpetrated against minors under 18 years of age, or for sexual exploitation, prostitution or organ removal purposes)

⁸ Italian ENU contribution, October 2003

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If the victim is a child/minor or has not reached the age of sexual consent:

Slavery – Article 600 Penal Code:

From 8 to 20 years imprisonment (whoever exerts on any other person powers and rights corresponding to ownership; places or holds any other person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging, or exploiting him/her in any other way)
)

penalties increase by 1/3 or 1/2 (if the offences referred to in this present article are perpetrated against minors under 18 years of age, or for sexual exploitation, prostitution or organ removal purposes)

Trafficking in Persons – Article 601 Penal Code:

From 8 to 20 years imprisonment (whoever carries out trafficking in persons who are in the conditions referred to in Article 600)

penalties increase 1/3 or 1/2 (if the offence is committed **against a victim under 18 years of age**, by forced prostitution or for the transplant of organs)

Child prostitution – Article 600-bis Penal Code:

A fine and between 6 and 12 years imprisonment (anyone inducing a person **under 18 years** of age to prostitute him/herself, namely anyone abetting or procuring prostitution involving a **minor**)

Child pornography - Article 600-ter Penal Code:

A fine and between 6 and 12 years imprisonment (whoever exploits a person **under 18 years** of age with the purpose of performing pornographic exhibitions or producing and/or selling pornographic material)

A fine and between 1 year and 5 years imprisonment (anyone distributing, spreading or advertising pornographic material by any means, including the Internet, in order to solicit or sexually exploit **minors**).

A fine and up to 3 years imprisonment (anyone deliberately providing free pornographic material, produced through the sexual exploitation of **minors**)

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14. Latvia

Latvia has made progress in adopting amendments to its criminal law regarding trafficking in human beings and organised criminal groups which bring Latvia's anti-trafficking legislation in line with the UN Protocol to "prevent, suppress and punish trafficking in persons, especially women and children".

The main sections of the Criminal Code related to trafficking in human beings are Section 154 (1) which criminalises trafficking and Section 165(1) which criminalises the "sending of a person with his or her consent to a foreign country for sexual exploitation".

Furthermore, several sections include elements of trafficking in persons (e.g. "Compelling Engaging in Prostitution" (Article 164) and "Living on the Avails of Prostitution" (Article 165)

The trafficking of children is penalised by Articles 2 and 3 of Section 154 (1).

Penalties:

Trafficking in Human Beings – Section 154 (1) of the Criminal Code

Article 1

From 3 to 8 years imprisonment with or without confiscation of property (whoever commits trafficking in human beings abroad)

Article 2

From 5 to 12 years imprisonment with confiscation of property (person who commits the same acts if commission is thereof on a minor; by a group of persons pursuant to prior agreement)

Article 3

From 10 to 15 years imprisonment with confiscation of property (whoever commits the same acts if commission is thereof on a juvenile; by an organised group)

Compelling engaging in prostitution - Section 164 of the Criminal Code

Article 1

A fine or up to 3 years imprisonment or custodial arrest with or without confiscation of property (person who commits the act of compelling the engaging in prostitution)

Article 2

A fine or up to 5 years imprisonment (for a person who commits procurement of persons for prostitution, using their trust in bad faith, or by means of fraud, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness)

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Living on the Avails of Prostitution - Section 165 of the Criminal Code

Article 1

Up to 4 years imprisonment (for a person who commits taking advantage, for purposes of enrichment, of a person who is engaged in prostitution)

Article 2

Up to 8 years imprisonment with or without the confiscation of property (person who commits the same acts if commission thereof is by a group of persons pursuant to prior agreement or with respect to minors)

Sending a Person for Sexual Exploitation - Section 165 (1)

Article 1

Up to 4 years imprisonment (for a person who commits sending a person with his or her consent to a foreign state for sexual exploitation)

Article 3

From 8 to 15 years imprisonment with or without confiscation of property (person who commits the acts provided for in paragraphs one or two of this section, if commission thereof is by an organised group or if commission thereof is with respect to a juvenile)

If the victim is a child/minor or has not reached the age of sexual consent:

Trafficking in Human Beings – Section 154 (1) of the Criminal Code

Article 2

From 5 to 12 years imprisonment with confiscation of property (person who commits the same acts if commission is thereof on a minor; by a group of persons pursuant to prior agreement)

Article 3

From 10 to 15 years imprisonment with confiscation of property (whoever commits the same acts if commission is thereof on a juvenile; by an organised group)

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Compelling Engaging in Prostitution - Section 164 of the Criminal Code:

Article 3

Up to 6 years imprisonment with or without confiscation of property (for a person who commits inducing or compelling **a minor** to engage in prostitution, or commits providing premises **to minors** for purposes of prostitution)

Article 4

From 5 to 12 years imprisonment with or without confiscation of property (for a person who commits inducing or compelling **a juvenile** to engage in prostitution)

Living on the Avails of Prostitution – Section 165 of the Criminal Code

Article 2

Up to 8 years imprisonment (for a person who commits the same acts if commission thereof is by a group of persons pursuant to prior agreement, or with respect **to minors**)

Article 3

From 5 to 12 years imprisonment (for a person, who commits the same acts if commission thereof is with respect **to juveniles**)

Sending a Person for Sexual Exploitation - Article 165 (1) of the Criminal Code:

Article 2

Up to 10 years imprisonment with or without confiscation of property (for a person who commits the same acts, if commission thereof is for purposes of enrichment or with respect to **a minor**)

Article 3

From 8 to 15 years imprisonment with confiscation of property (for a person who commits the acts provided for in paragraphs one or two of this Section, if commission thereof is by an organised group or if commission thereof is with respect to **a juvenile**)

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15. Lithuania

A new Penal Code came into force in Lithuania on 1 May 2003. According to the new law, the punishment for trafficking is only imprisonment for up to 10 years.

Penalties:

Illegal Deprivation of Liberty – Article 146 (1)-(2)

Detention or up to four years imprisonment (any person who abducts a human being and holds him illegally against his will, there being no indication of his being taken hostage; who committed the act specified in Paragraph 1 of this Article by using violence or endangering the victim's life or health, or holding the victim confined for more than 48 hours)

Trafficking in People. – Article 147

Up to eight years imprisonment (any person who sells or purchases or in any other way transfers or acquires a person with the intention to gain material or any other personal advantage)

Earning a Profit from Prostitution by Another Person - Article 307

- 1) A fine or restriction of liberty, or detention, or imprisonment for a term of up to 4 years imprisonment (any person, who earns a profit from prostitution by another person or procures persons for prostitution,
- 2) Up to six years imprisonment (any person, who organises and manages prostitution or traffics a person on his consent for the purposes of prostitution to/from the Republic of Lithuania)

Engagement into Prostitution - Article 308.

- 1) A fine or restriction of liberty, or detention, or up to three years imprisonment (any person who engages another person into prostitution)
2. From 2 to 7 years imprisonment (any person, who engages into prostitution another person who is dependent on him economically, through employment or in any other way, or engages another person into prostitution by using physical and psychological force or deceit, or who engages a juvenile into prostitution)

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If the victim is a child/minor or has not reached the age of sexual consent:

Sale or Purchase of a Child – Article 157

- 1) Up to 8 years imprisonment (any person, who purchases, sells or in any other way transfers or acquires a young child)
- 2) From 2 to 10 years imprisonment (any person who is engaged in trafficking in young children)

Earning a profit from prostitution by another person – Article 307 (3)

From 2 to 8 years imprisonment (any person, who earns a profit from prostitution by juveniles or organises and manages juvenile prostitution or traffics a juvenile on his consent to/from the Republic of Lithuania)

Engagement into Prostitution - Article 308 (2)

From 2 to 7 years imprisonment (any person, who engages into prostitution another person who is dependent on him economically, through employment or in any other way, or engages another person into prostitution by using physical and psychological force or deceit, or who engages a juvenile into prostitution)

Production and Dissemination of Pornographic Materials - Article 242 (2) Penal Code:

A fine and between 1 year and 4 years imprisonment (involvement of children **under eighteen years** old in the production of pornographic printed publications, images, video or other movies or other types of pornographic materials)

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16. Malta

The specific legislation which deals with trafficking in human beings can be found in the Criminal Code, Chapter 9 of the Laws of Malta, Book 1, Title VIII, Sub-title VIII bis. This legislation also refers to Articles 83A and 121D.

Penalties:

Criminal Code

248A (1)-(2)

From 2 to 9 years imprisonment (whosoever, by any means mentioned in sub-article (2): violence or threats, including abduction, deceit or fraud; misuse of authority, influence or pressure; the giving or receiving of payments or benefits to achieve the consent of the person having control over another person.trafficks a person of age for the purpose of exploiting that person in the production of goods or provision of services
For the purposes of this sub-article, exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety).

248B

From 2 to 9 years imprisonment (whosoever, by any means mentioned in Article 248A(2), trafficks a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material)

248C

From 4 to 12 years imprisonment (whosoever, by any means mentioned in Article 248A(2), trafficks a person of age for the purpose of exploiting that person in the removal of any organ of the body)

If the victim is a child/minor or has not reached the age of sexual consent:

Criminal Code

Article 248D

From 2 to 12 years imprisonment (whosoever trafficks a minor for any of the purposes mentioned in Articles 248A to 248C, both inclusive, shall, on conviction be liable to the same punishment laid down in those articles, as the case may be, even if none of the means mentioned in Article 248A(2) has been used:

Provided that where any of the means mentioned in Article 248A(2) has been used in the commission of the offence under this article, the punishment for the offence shall be increased by one degree.

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83A. Promoting, etc., an organization of two or more persons with a view to committing criminal offences.

(1) From 3 to 7 years imprisonment (any person who promotes, constitutes, organises or finances an organisation of two or more persons with a view to committing criminal offences liable to the punishment of imprisonment for a term of four years or more)

(2) From 1 year to 5 years imprisonment (any person who belongs to an organisation referred to in sub-article (1)).

(3) Where the number of persons in the organisation is ten or more, the punishment in the preceding sub-articles shall be increased from one to two degrees.

(4) Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a corporate body or is a person having a power of representation of such a body or having the authority to take decisions on behalf of that body or having the authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that corporate body, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same corporate body which shall be liable as follows:

- (a) where the offence of which the person was found guilty is the offence in sub-article (1), to the payment of a fine (*multa*) of not less than 15,000 liri and not more than 50,000 liri;
- (b) where the offence of which the person was found guilty is the offence in sub-article (2), to the payment of a fine (*multa*) of not less than 10,000 liri and not more than 30,000 liri;
- (c) where the offence of which the person was found guilty is punishable as provided in sub-article (3) of this article -
 - (i) where the offence is that provided in sub-article (1), to the punishment of a fine (*multa*) of not less than 20,000 liri and not more than 500,000 liri;
 - (ii) where the offence is that provided in sub-article (1), to the punishment of a fine (*multa*) of not less than 15,000 liri and not more than 50,000 liri.

121D. Corporate liability for offences under this title.

Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a corporate body or is a person having a power of representation of such a body or having the authority to take decisions on behalf of that body or having the authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that corporate body, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same corporate body which shall be liable to the payment of a fine (*multa*) of not less than 500 liri and not more than 500,000 liri.

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17. The Netherlands

The previous Article 250a (Trafficking in Human Beings) of the Dutch Criminal Code has been replaced by a new Article 273a which came into force on 1 January 2005. The new article covers the Palermo definition, including sexual exploitation, forced labour and trading in organs. The sentences vary between a fine to a maximum of fifteen years imprisonment.

Other relevant articles of the Penal Code which may be used to prosecute traffickers include Article 242 (sexual violence/rape), Article 231 (forged travel documents), Article 140 (participation in a criminal organisation), Articles 282 and 283 (deprivation of freedom), Article 284 (coercion), Article 285a (threats/intimidation) and Article 300 (abuse).⁹

Penalties:

Article 273a Criminal Code,

Section 1 (1)-(-9):

A fine or up to 6 years imprisonment (who, through coercion, force or other act of violence or through the threat of force or other act, extortion, fraud, deception or who abuses a situation of dominance arising from given circumstances, through abuse of a vulnerable situation or through the giving or receiving of payments or benefits in order to obtain the consent of a person who possesses control over another, transports, delivers, accommodates or takes in another person with a view to exploiting said person or removing said person's organs; recruits, takes with him or kidnaps another person with a view to take said person to another country to be available for sexual services; through one of the means listed above coerces or induces another person to be available for work or service or would make his organs available; who intentionally profits from the exploitation of another, from the removal of organs if the organs have been removed under the circumstances listed in section one).

Section 3 (1)-(2)

A fine or up to 8 years imprisonment (if the offences listed in the first section were committed by two or more associated persons: if the person to whom the offences were committed has not reached the age of sixteen).

Section 5

A fine or up to 12 years imprisonment (if one of the above mentioned offences results in severe bodily injuries or it is feared that a person's life may be in jeopardy).

Section 6

A fine and up to 15 years imprisonment (if the offences described above results in death)

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⁹ IOM (International Organisation for Migration) Report , "Protection schemes for victims of trafficking 2003"

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If the victim is a child/minor or has not reached the age of sexual consent:

Article 273a, Criminal Code

Section 1:

A fine or up to 6 years imprisonment (enlists, transports, delivers, accommodates or takes in another person with a view to exploiting said person or removing said person's organs, causes another person to be available for sexual services with or on behalf of a third person in return for payment or to make his organs available in return for payment, or with respect to another undertakes activities about which he knows, or must reasonably suspect that the other person would thereby make himself available for sexual services or would make his organs available in return for payment; who intentionally profits from the exploitation of another, from the removal of organs of another or from the sexual services of another with or on behalf of a third person in return for payment, or the removal of said person's organs in return for payment while said person has not reached the age of eighteen).

Section 3/2:

A fine or up to 8 years imprisonment (the person with respect to whom the offences listed in the first section were committed, **has not reached the age of sixteen**

Section 4:

A fine or up to 10 years imprisonment (the offences described in the first section, which are committed by two or more associated persons in the circumstances referred to in the third section, paragraph 2.

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18. Poland

Trafficking in human beings is punishable under Polish law. A new Penal Code that took effect in 1998 covers enticing a person into prostitution abroad; trafficking in persons and organising adoptions for profit. The new law also applies to trafficking within Poland. Prostitution itself is not criminalised, although activities around it, such as pandering, are against the law. Poland is also bound by several international agreements which touch on aspects of Trafficking in Human Beings.

In cases of trafficking in human beings, the following criminal provisions apply:

- Articles 189 to 192 Penal Code
- Articles 197 to 200 Penal Code
- Articles 203 to 204 Penal Code
- Article 253 Penal Code
- Article 258 Penal Code
- Article 20 of the Act of 26 October 1995 on collecting and transplanting cells, tissues and organs¹⁰

Penalties:

Article 204 (1),(4) Penal Code:

Article 204 (1)

Up to 3 years imprisonment (whoever, in order to derive a material benefit, induces another person to practise prostitution or facilitates it)

Article 204 (4)

From 1 year to 10 years imprisonment (for anyone who entices or abducts another person with the aim of having him/her engage in prostitution abroad)

Article 253 (1) Penal Code:

3 years minimum imprisonment (whoever conducts white slavery (trade in humans) even with their consent)

¹⁰ Journal of Laws of 1995 No. 138, it. 682 with subsequent changes

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If the victim is a child/minor or has not reached the age of sexual consent:

Article 200 (1)-(2) Penal Code:

Article 200 (1)

From 1 year to 10 years imprisonment (whoever subjects a minor under **fifteen years** of age to sexual intercourse or makes him/her submit to another sexual act or to perform such an act)

Article 200 (2)

From 1 year to 10 years imprisonment (for anyone who records pornographic material with the participation of such a person)

Article 204 (3) Penal Code:

From 1 year to 10 years imprisonment (if the person specified in § 1 or 2 is **a minor**)

Article 253 (2) Penal Code:

From 3 months to 5 years imprisonment (whoever, with the purpose of obtaining a material benefit, organises **adoption of children** contrary to the provisions of the act)

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19. Portugal

There is no specific legislation dealing with trafficking in human beings in Portugal. The Penal Code contains a few provisions that may serve as legal grounds for the prosecution of traffickers, and other legal acts of relevance to the fight against organised crime provide investigative and prosecution tools that make it easier to punish crimes of trafficking in human beings for sexual purposes. Because of the loopholes and shortcomings in the overall legal framework governing these matters, new legislation is under preparation. The current state of the law with regard to the fight against trafficking in human beings can be summarised as follows:

Article 169 of the Penal Code, amended by the Act 99/2001 of 25 August 2001, has criminalised trafficking in human beings for sexual exploitation. Whoever by means of violence, serious threat, deception, fraud, or by the abuse of a position of particular vulnerability, recruits, transports, transfers, harbours, receives a person or creates the conditions for the practice, by a certain person, in a foreign country, of prostitution, shall be sentenced to a term of two to eight years imprisonment. The 2001 amendments have broadened the scope of Article 169 by including other forms of sexual exploitation.

Sexual exploitation of children is addressed separately in Article 176 of the Penal Code (also revised by Act 99/2001), according to which all those who recruit, transport, provide accommodation or receive a child under 16 years old, or make arrangements for the child to get into prostitution or the sex industry in general in a foreign country, are sentenced to a term of 1 to 8 years imprisonment. Likewise, the 2001 amendments have widened the scope of this provision, which applies, regardless of the use of violence, threat, fraud or deception, which may be considered as aggravating circumstances resulting in imprisonment terms of 2 to 10 years. Other aggravating circumstances include the victim being under 14 years of age or the perpetrator acting professionally or with the intent of making benefits.

Trafficking in human beings for other purposes than sexual exploitation are addressed in other provisions of the penal code, in particular those applying to the criminalisation of slavery and the slave trade (Article 159), which provide for 5 to 15 years imprisonment.

Another aspect of the prosecution of trafficking is dealt with by the Decree Law 325/95 of 2 December 1995, which sets out the legal regime to prevent and combat money laundering. The Act 10/2002 of 11 February 2002 has extended the scope of this act to include the crime of trafficking in human beings.¹¹

Penalties:

Article 169 Penal Code:

From 2 to 8 years imprisonment (whoever by means of violence, serious threat, deception, fraud, or by the abuse of a position of particular vulnerability, recruits, transports, transfers, harbours, receives a person or creates the conditions for the practice, by a certain person, in a foreign country, of prostitution)

¹¹ Legislationline, a free-of-charge online service provided by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) and the European Union.

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Article 170 Penal Code:

From 6 months to 5 years imprisonment (enticing, favouring or facilitating prostitution or sexual exploitation for a profit)

From 1 year to 8 years imprisonment (if committed by violence, fraud or because of the diminished mental capacity of the victim)

If the victim is a child/minor or has not reached the age of sexual consent:

Article 176 Penal Code:

From 1 year to 8 years imprisonment (whoever recruits, transports, provides accommodation or receives a child under **16 years old**, or makes arrangement for the child to get into prostitution or the sex industry in general in a foreign country)

From 2 years to 10 years imprisonment (if committed by violence, fraud, with intention to profit or diminished mental capacity of a minor under the **age of 14 years**)

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20. Slovakia

In 2002, the Slovak Penal Code introduced the offence of Trafficking in Human Beings (Article 246 Penal Code).

Further Trafficking in Human Beings related criminal offences envisaged by the Slovak Penal Code and amended by the 2002 Penal Code Act are¹²:

- Pandering (Article 204 Penal Code)
- Trafficking in Children (Article 216a Penal Code)
- Production of Child Pornography (Article 205b)
- Sexual Abuse (Articles 242, 243 Penal Code)
- Illegal employment of children (Article 217a Penal Code)
- Jeopardy to moral upbringing of the youth (Article 217 Penal Code)

Penalties:

Pandering – Article 204 (1)-(4) Penal Code:

Article 204 (1)

Up to 3 years imprisonment (whoever hires, drives or seduces another person to engage in prostitution or whoever exploits the prostitution of another person)

Article 204 (2)

From 1 year to 5 years imprisonment (if the offender commits the crime defined in para 1 in a violent manner, threatens with violence or other severe damage or abuses an emergency situation or dependence of another person)

Article 204 (3) a, b, d

From 2 to 8 years imprisonment (if the offender, by committing the crime defined in para 1 or 2 generates considerable profit; is a member of an organised criminal group; commits such crime abroad)

Rape – Article 241 (1)-(3) Penal Code:

Article 241 (1)

From 2 to 8 years imprisonment (any person, who by violence, threat of violence or by use of the victim's defencelessness, compels a woman to have intercourse)

Article 241 (2)

From 5 to 12 years imprisonment (if he/she by an act defined in para 1 causes substantial damage to health)

¹² Slovak National Police Force, Trafficking in Human Beings in Slovakia, Situation Report (March 2003)

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Article 241 (3)

From 10 to 15 years imprisonment (if he/she, by the crime committed according to para 1, causes death)

Trafficking in Human Beings – Article 246 (1), (2) Penal Code:

Article 246 (1)

From 1 year to 5 years imprisonment (anyone who lures, transports or takes a human being abroad with a view to use him/her for sexual intercourse or other forms of sexual exploitation)

Article 246 (2)a, c

From 3 to 8 years imprisonment (if the offender commits the act defined in para 1 as a member of an organised criminal group; with the intention to have the victim used for prostitution)

If the victim is a child/minor or has not reached the age of sexual consent:

Pandering – Article 204 (3)c Penal Code:

From 2 to 8 years imprisonment (if the victim is a person younger than **eighteen years** of age)

Rape – Article 241 (2)b Penal Code:

From 5 to 12 years imprisonment (if he/she commits such an act with a woman younger than **fifteen years** of age)

Child Sexual abuse – Article 242 (1)-(4) Penal Code:

Article 242 (1)

From 1 year to 8 years imprisonment (anyone who engages in sexual intercourse, or by other means sexually abuses a person under the age of **fifteen years**)

Article 242 (2)

From 2 to 10 years imprisonment (anyone who commits the act defined in para 1 on a person under his/her supervision, abusing his/her dependency)

Article 242 (3)

From 5 to 12 years imprisonment (anyone who by an act defined in para 1, causes substantial damage to health)

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Article 242 (4)

From 10 to 15 years imprisonment (if the crime, committed according to para 1, causes death)

Trafficking in Human Beings – Article 246 (2)b Penal Code:

From 3 to 8 years imprisonment (if the offender commits such an act on a victim younger than **eighteen years** of age)

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21. Slovenia

Amendments to the Penal Code entered into force on 5 May 2004. Most important changes were made in the field of trafficking in human beings, smuggling of migrants and terrorism. Slovenia also ratified the UN Convention against Transnational Organised Crime and the Optional Protocols and these came into force on 21 May 2004 in Slovenia.

Penalties:

Exploitation through prostitution - Article 185 Penal Code:

- 1) From 3 months to 5 years imprisonment (whoever participates for exploitative purposes in the prostitution of another or instructs, obtains or encourages another to engage in prostitution with force, threats or deception)
- (2) From 1 year to 10 years imprisonment (if an offence from the preceding paragraph is committed against a minor, against more than one person or as part of a criminal association)

Article 387 Enslavement

- (1) From 1 year to 10 years imprisonment (whoever, in violation of international law, brings another person into slavery or a similar condition, or keeps another person in such a condition, or buys, sells or delivers another person to a third party, or brokers the buying, selling or delivery of another person, or urges another person to sell his freedom or the freedom of the person he supports or looks after)
- (2) From 6 months to 5 years imprisonment (whoever transports persons held in the condition of slavery or in a similar condition from one country to another)
- (3) Up to 3 years imprisonment (whoever commits the offence under the first and second paragraphs of the present article against a minor)

Article 387a Trafficking in human beings

- (1) From 1 year to 10 years imprisonment (whoever purchases another person, takes possession of them, accommodates them, transports them, sells them, delivers them or uses them in any other way, or acts as a broker in such operations, for the purpose of prostitution or another form of sexual exploitation, forced labour, enslavement, service or trafficking in organs, human tissue or blood)
- (2) At least 3 years imprisonment (if an offence from the preceding paragraph was committed against a minor or with force, threats, deception, kidnapping or exploitation of a subordinate or dependent position, or in order to force a victim to become pregnant or be artificially inseminated)

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(3) Whoever carries out an offence from the first or second paragraphs of this article as a member of a criminal association for the commission of such offences, or if a large pecuniary benefit was gained through commission of the offence, the perpetrator shall be subject to the same penalty as specified in the preceding paragraph.

Article 297 Criminal association

(1) From 3 months to 5 years imprisonment (whoever participates in a criminal association which has the purpose of committing criminal offences for which a prison sentence of more than 3 years may be passed)

(2) From 6 months to 8 years imprisonment (whoever sets up or manages an association from the preceding paragraph)

(3) A perpetrator of a criminal offence from the preceding paragraphs who prevents further commission of these offences or uncovers information which has a bearing on the investigation and production of evidence for criminal offences that have already been committed may have their penalty for these offences mitigated, in accordance with point 3 of Article 42 of this Code.

Illegal Transplant of Parts of Human Body - Article 191 (1)-(4) Penal Code:

Article 191 (1)

From 6 months to 5 years imprisonment (a doctor who, on not conforming with his code of professional conduct, removes a part of the human body from or transplants a part of the body to a patient and thereby causes a substantial impairment of the patient's health)

Article 191 (2)

From 6 months to 5 years imprisonment (a doctor who, for the purpose of performing a transplant, removes a part from the body of a patient prior to the death of that patient being established in the proper manner)

Article 191 (3)

Up to 3 years imprisonment (a doctor who, for the purpose of performing a transplant, removes a part from the body of a patient or who transplants a part of the body of a patient without having obtained prior consent from the donor or the recipient of the part of the body or from their statutory representatives)

Article 191 (4)

Up to 3 years imprisonment (for anyone who illegally or for payment serves as an agent for providing transplants of parts of the body of a living or a deceased person)

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If the victim is a child/minor or has not reached the age of sexual consent:

Presentation, manufacture, possession and distribution of pornographic material

Article 187

(1) A fine or up to 2 years imprisonment (whoever sells, presents or publicly exhibits documents, pictures or audiovisual or other items of a pornographic nature to a person **under 14 years of age**, enables them to gain access to these in any other way or shows them a pornographic performance).

(2) From 6 months to 5 years imprisonment (whoever abuses **a minor** in order to produce pictures or audiovisual or other items of a pornographic nature, or uses them in a pornographic performance)

(3) Whoever produces, distributes, sells, imports or exports pornographic material **depicting minors**, supplies it in any other way, or possesses such material with the intention of producing, distributing, selling, importing, exporting it or supplying it in any other way, shall be subject to the same sentence)

(4) From 1 year to 8 years imprisonment (if an offence from the second or third paragraphs was committed within a criminal association for the commission of such criminal offences)

(5) Pornographic material from the second, third and fourth paragraphs of this article shall be seized or its use disabled in some other manner.

Enslavement - Article 387 (3) Penal Code:

Up to 3 years imprisonment (whoever commits the offence under the first and second paragraphs of the present article against **a minor**)

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22. Spain

Spain was the first Member State of the European Union to ratify (on 1 March 2002) the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The main articles of the Spanish legislation in the field of trafficking in human beings are:¹³

- Articles 311, 312, 313, 318 bis, 515 Penal Code

Penalties:

Article 311 Penal Code:

A fine and between 6 months and 3 years imprisonment (whoever, by deceit or abuse of a state of need, imposes or maintains working or social security conditions that are in violation of legal rights. If this is carried out with violence or intimidation, stricter penalties apply)

Article 312 Penal Code – Trafficking for the purpose of labour exploitation:

A fine and between 2 and 5 years imprisonment

Article 313 Penal Code:

A fine and between 2 and 5 years imprisonment (any person promoting or encouraging, by whatever means, the clandestine immigration of workers into Spain .or by faking a contract or job offer causing the encouragement of immigration of any person to another country).

Article 318 bis Penal Code:

Article 318 bis (1)

From 4 to 8 years imprisonment (any persons who, directly or indirectly, promote, encourage or facilitate the illegal trafficking or clandestine immigration of persons from, in transit or destined for Spain)

Article 318 bis (2)

From 5 to 10 years imprisonment (if the purpose of trafficking or illegal immigration is sexual exploitation)

Article 318 bis (3)

Stricter penalties apply if the above is carried out for financial gain, the use of violence, intimidation, deceit or abuse of authority or the victim's vulnerability or if the victim is a

¹³ IOM (International Organisation for Migration) Report, "Protection schemes for victims of trafficking 2003"

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minor or disabled, or endangering the life, health or integrity of such persons)

Article 318 bis (4)

Stricter penalties apply and absolute disqualification from public office for 6 to 12 years (for any person found guilty of offences through abuse of their authority, as an agent of authority or civil servant)

Article 318 bis (5)

Stricter penalties apply if the offender belongs to an organisation or association, including a temporary organisation or association, which carried out such activities .

Article 515 Penal Code:

Penalises unlawful associations that promote the illegal trafficking in persons.

If the victim is a child/minor or has not reached the age of sexual consent:

Article 187 Penal Code:

A fine and between 1 year and 4 years imprisonment (any person, inducing, promoting, favouring or facilitating the prostitution of a **minor** or incompetent person)

Upper half of the prison sentence and absolute disqualification from public office for 6 to 12 years (for any person performing such act whilst availing themselves of their position of authority, agent of the authority or public functionary)

Penalties of the next highest degree above the penalties provided in the subparagraphs above (when the guilty party belongs to an organisation or association, albeit temporary, that indulges in the performance of such activities)

Article 198 Penal Code:

From 1 year to 3 years imprisonment (any person who uses **minors** or the disabled with the purpose of or in exhibitionist or pornographic shows, be they public or private, or to prepare any type of pornographic material or finance any of these activities; any person who by any means produces, sells, distributes, displays or facilitates the production, sale, dissemination or exhibition of pornographic material in whose preparation **minors** or an incompetent have been used, even should the material be from another country or of unknown origin)

Upper half of the penalty (for any person possessing such material for the performance of any of these types of conduct)

penalty of the next highest degree (when the guilty party belongs to an organisation or association, albeit temporary, that indulges in the performance of such activities)

Article 318 bis (3) Penal Code:

Stricter penalties apply if the victim **is a minor**

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23. Sweden

In June 2002, the Swedish Parliament passed a law which specifically criminalises trafficking in human beings for sexual purposes. The "Prohibiting Trafficking in Human Beings for Sexual Purposes Act" entered into force on 1 July 2002. The new law concentrated on trafficking in human beings for sexual purposes, but the new provision can be seen as a first step towards future extended penal legislation covering all forms of trafficking, such as trafficking for other forms of exploitation. The new law was introduced in the Swedish Penal Code in section 1a of chapter 4 on Crimes against Liberty and Peace. It covers all cross-border trafficking for sexual exploitation in which the perpetrator exploits the vulnerability of another person. The amendment will extend criminalisation to all forms of trafficking in persons, including trafficking within national borders and trafficking for other forms of exploitation, such as forced labour and exploitation for the removal of human organs. The new legislation entered into force in July 2004.¹⁴

Attempts, preparations and conspiracy to traffick as well as failure to reveal knowledge of such activity has also been criminalised (e.g. Chapter 23, Section 6). In the past, trafficking in human beings was penalised under different penal provisions. Depending on the individual case, provisions on kidnapping, unlawful deprivation of liberty, placing a person in a distressful situation, coercion, sexual exploitation and procuring have been applicable. It was already possible to take legal proceedings against trafficking before the new law came into being. Now, it will be possible to deal with all the different stages in trafficking as one crime. Another reason for the adoption of a specific law was to highlight the present increase in trafficking in human beings. Swedish penal legislation is directed not only against the traffickers that are offering human beings to others for sexual exploitation, but also against the demand for such exploitation (e.g. according to Chapter 6, Section 8 of the Swedish Penal Code, a person who promotes or improperly financially exploits casual sexual relations for payment of another person shall be sentenced for "procuring" to imprisonment for a maximum of four years).¹⁵

Penalties:

Chapter 4, Section 1a Penal Code:

From 2 to 10 years imprisonment (a person who, in other cases than those stated in Section 1, by unlawful coercion or deceit, exploiting someone's distressful situation or by any other such improper means recruits, transports, accommodates, receives or takes any other such measure with a person and thus takes control over this person, with the intent that this person shall be exposed to crime according to Chapter 6, sections 1,2,3 or 4, exploited for casual sexual relations or is otherwise used for sexual purposes)

up to 4 years imprisonment (if the crime is of a less serious nature)

¹⁴ Ministry of Industry, Employment and Communications in Sweden, Fact sheet, October 2004

¹⁵ Legislationline, a free-of-charge online service provided by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) and the European Union.

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Chapter 6, Section 8 Penal Code:

Up to 4 years imprisonment (a person, who promotes or improperly financially exploits casual sexual relations for payment of another person; a person who, holding the right to the use of premises, grants the right to use them to another in the knowledge that the premises are wholly or to a substantial extent used for casual sexual relations for payment and omits to do what can reasonably be expected to terminate the granted right)

If the victim is a child/minor or has not reached the age of sexual consent:

Chapter 4, Section 1 Penal Code:

From 4 to 10 years imprisonment, or imprisonment for life (a person who seizes and carries off or confines **a child** or some other person with intent to injure him or her in body or health or to force him or her into service, or to practise extortion)

Up to 6 years imprisonment (if the crime is of a less serious nature)

Chapter 4, Section 1a Penal Code:

From 2 to 10 years imprisonment (the person that commits an act that is intended in the first or second paragraph against a person that has not reached **the age of 18 years** shall be convicted of trafficking in human beings for sexual purposes even if unlawful coercion, misleading or some other such improper means has not been used)

Up to 4 years imprisonment (if the crime is of a less serious nature)

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24. The United Kingdom

The Nationality, Immigration and Asylum Act 2002 recognised the seriousness of both people smuggling (often termed facilitation) and human trafficking. The Act made trafficking for the purposes of prostitution a specific offence for the first time and provided for a maximum 14 years sentence (and/or unlimited fine) for serious cases of either facilitation or trafficking.

The Sexual Offences Act 2003, which came into force on 1 May 2004, sets out wider ranging offences of trafficking into, within and out of the UK for sexual exploitation to replace the earlier trafficking offence in the Nationality, Immigration and Asylum Act 2002.

A new offence of trafficking for other forms of exploitation, including, for example, for forced labour, removal of organs and the trafficking of vulnerable people, including children, is included in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This offence and the trafficking offences in the Sexual Offences Act continue to carry a robust maximum sentence of 14 years imprisonment.

It is a criminal offence under Section 8 of the Asylum and Immigration Act 1996 to employ someone over the age of 16 subject to control who is not entitled to work in the UK or whose immigration status precludes them from the employment in question. Section 8 has been in force since January 1997.

The Gangmasters (Licensing) Act 2004¹⁶ introduced a statutory licensing regime to regulate agricultural labour providers, ensuring that growers and retailers deal only with reputable operators, and creating heavy criminal sanctions for unlicensed operators. The new Licensing Authority will start licensing in 2005.

¹⁶ www.uk-legislation.hmso.gov.uk/acts/acts2004/20040011.htm

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Penalties

Sexual Offences Act 2003

Section 61-63 – Trafficking into/within/out of the UK for sexual exploitation:

Up to 14 years imprisonment (on conviction on indictment)

A fine, up to 6 months imprisonment or both (on summary conviction)

Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

Section 4 (1)-(5) – Trafficking people for exploitation:

A fine, up to 14 years imprisonment or both (on conviction on indictment)

A fine, up to 6 months imprisonment or both (on summary conviction)

If the victim is a child/minor or has not reached the age of sexual consent:

Sexual Offences Act 2003

Section 2 – Rape of a child under 13:

Imprisonment for life (on conviction on indictment)

if a person intentionally penetrates the vagina, anus or mouth of another person with his penis, and the other person **is under 13**.

Section 4 – Assault of a child under 13 by penetration:

Imprisonment for life (on conviction on indictment)

if a person intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else; the penetration is sexual and B is **under 13**.

Section 59 – Arranging or facilitating child prostitution or pornography:

Up to 14 years imprisonment (on conviction on indictment)

A fine, up to 6 months imprisonment or both (on summary conviction)

if a person intentionally arranges or facilitates the prostitution or involvement in pornography of another person (B); does so for or in expectation of gain for himself or a third person, and either B is **under 18**, and A does not reasonably believe that B is 18 or over, or B is **under 13**.

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Asylum and Immigration Act 1996

Section 8

Restrictions on employment: 8. - (1) Subject to subsection (2) below, if any person ("the employer") employs a person subject to immigration control ("the employee") who has attained the age of 16, the employer shall be guilty of an offence if-

(a) the employee has not been granted leave to enter or remain in the United Kingdom; **or**

(b) the employee's leave is not valid and subsisting, or is subject to a condition precluding him from taking up the employment, **and**

(in either case) the employee does not satisfy such conditions as may be specified in an order made by the Secretary of State.

(2) Subject to subsection (3) below, in proceedings under this section, it shall be a defence to prove that-

(a) before the employment began, there was produced to the employer a document which appeared to him to relate to the employee and to be of a description specified in an order made by the Secretary of State; **and**

(b) either the document was retained by the employer, or a copy or other record of it was made by the employer in a manner specified in the order in relation to documents of that description.

(3) The defence afforded by subsection (2) above shall not be available in any case where the employer knew that his employment of the employee would constitute an offence under this section.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Where an offence under this section committed by a corporate body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part **of-**

(a) any director, manager, secretary or other similar officer of the corporate body; **or**
(b) any person who was purporting to act in any such capacity,

he as well as the corporate body shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(6) Where the affairs of a corporate body are managed by its members, subsection (5) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporate body.

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(7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) In this section-

"contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing;

"employ" means employ under a contract of employment and "employment" shall be construed accordingly.