



consisted of focus group discussions in three workshops with diverse professionals that may encounter victims of trafficking in their practices. The researchers provided a scenario and the professionals debated core questions and dilemmas related to that scenario and their own practice (see [background paper](#)).

The focus groups were composed of 22 professionals, 14 females and 8 males, from 6 cities and towns<sup>4</sup> of North, Centre and South of Portugal. Ranging from different areas, the participants were: prosecutors (1), urban police (1), rural police officers (4), NGO representatives (4), Private Institutions for Social Solidarity (IPSS)<sup>5</sup> (3), health professionals - physicians (2), criminal police officers (2), Foreigners and Borders Police Officer (1), Social Security representative (1), Commission for Citizenship and Gender Equality representative (CIG) (1), Immigrant's Associations representatives (2).

In Portugal, the issue of human trafficking has only received some attention in recent years. After endorsing the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons<sup>6</sup> in 2004, the Portuguese government established a plan to combat human trafficking in 2007. It was also at this time that some legislation was introduced to punish the traffickers and protect the victims. Most of these changes were introduced in previous immigration legislation. The first intervention effort in this area in Portugal was the Project CAIM ("Cooperação Ação Investigação Mundivisão") funded by the Program Equal of the European Union, from 2004 to 2009. This project produced a guide for professionals (Varandas & Martins 2008).

The fact that human trafficking is a very recent concern in Portugal explains why some of the professionals stated that they lacked experience and knowledge in the issue, in particular in regards to sexual exploitation. Many of the professionals stated that they believe that some women they worked with were victims of sexual trafficking although they never confirmed it.

Besides the governmental initiatives to combat human trafficking, there are three kinds of institutions and associations that may encounter the victims of trafficking for sexual exploitation (TSE): NGOs, IPSSs (see footnote 5) and immigrant's associations. Some IPSSs have residential facilities or support centres for immigrants, which can help some victims of trafficking. One of the NGO's represented in the workshops runs the one of two shelters for women victims of trafficking for sexual exploitation<sup>7</sup> and their children. For the sake of confidentiality, the diversity of the agencies will be sorted in two groups: i. judicial/police/state institutions that include the representative of the Commission for Citizenship and Gender Equality; ii. NGOs/IPSS/health area, including a representative of the Social Security and the representatives of the Associations of Immigrants.

In the following sections we will describe: the scenario presented in the workshops; the intervention sequence proposed by the participants; the participants' answers to the core questions; the key frames that emerged; and the ethical issues and dilemmas that were expressed by the professionals. Finally, we finish the paper with a summary of the main conclusions taken from the workshops.

In the workshops, the narrative was unfolded in three moments (phases), as following:

### **1<sup>st</sup> PHASE OF THE STORY**

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<sup>4</sup> Vila Nova de Gaia, Porto, Gondomar, Coimbra, Évora, and Lisboa.

<sup>5</sup> As it is explained in DV working paper, "IPSS" represent what sometimes is called "the third sector". They have mixed status — between private and public —, that is, they have a statutory obligation to fulfil the social policies determined by the State in exchange of certain amount of money for that purpose and some 'privileges'. In these privileges it is included the exemption of paying some taxes or paying reduced ones, Social Security taxes and VAT."

<sup>6</sup> Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime of 2000.

<sup>7</sup> There is one more shelter for men victims of exploitation.

*Maria came from Africa about 3 months ago expecting that she would be able to work in a brothel/nightclub and send money home. She is in debt for the cost of her travel, and her family also took a loan to help pay for the cost, so they are in debt as well. On her arrival she was taken to a brothel and told that this would be her place of work. She does not speak the language, and the manager of the brothel has her papers. Seeing no alternative, she agrees to do this for a limited period of time until she has paid off her debts. During one of her shifts Maria collapses. The receptionist at the brothel has one of the other girls take her to a local health centre where her physical and mental health are assessed as poor, and she is found to have a sexually transmitted disease.*

## **2<sup>nd</sup> PHASE OF THE STORY**

*Maria was given antibiotics at the health centre and had no option but to return to the brothel. She has worked there 6 months now. She is exhausted and very unhappy, and has been looking for a way out of her situation, but she was told that her tourist visa is no longer valid and that she can be prosecuted as a criminal if she is found by the police, and also if she goes to any public office or agency. She has received practically no money and is now more in debt as she was charged for the medical treatment and fined for taking days off to recover. Now she is very much afraid: afraid of the owners/manager of the brothel, afraid of being sent to prison, and afraid of being and returning to her family empty-handed.*

## **3<sup>rd</sup> PHASE OF THE STORY**

*The question is now explicit that Maria may be a victim of TSE but she is reluctant to consent a referral to CIG or to Criminal Police (PJ). She is fearful of the authorities and unwilling to make a formal statement. She says she is afraid for her family back home and is likely to be in danger herself if she is sent back. She appears unstable and there are concerns for her mental health. It is also apparent that she has no money and says she owes a great deal of money.*

Using this narrative as a prompt, there were six core questions debated in the workshops, covering issues of intervention sequence, the specific role of the diverse professionals, as well as issues and dilemmas that are relevant for the participants. In the following section, the debates linked with the answers to the core questions will be described.

## **2 Intervention pathways from the perspective of professionals**

### **(1) As a professional what might lead you to try and discover whether this might be a trafficking situation? Or, on the other hand, what would keep you from getting involved?**

The great majority of the professionals agreed that the information available in the initial part of the story would be enough to indicate that they could be facing a potential case of TSE. They defended that it would be pertinent to collect further information or articulating with the police authorities in order to initiate an investigation. Even though there were no explicit references to the specific professional who should assume the responsibility at this phase of the story, the professionals from one of the IPSS/NGOs said they would make an effort to understand the case in more detail. The police officers explained that this story would only come to their knowledge if someone called the police or if they were conducting an inspection to the brothel.

Professionals stated that the indicators that would raise a red flag were: Maria's documents in the hands of the brothel's owner; the debt; and The STD.

For some representatives, even one of these indicators would be enough for them to get involved. With two, they would definitely be involved and look at this situation as trafficking.

However, this was not consensual: one representative of NGO/IPSS/Health stated that it was not sufficient to assume trafficking because the woman came by her choice and intended to come to prostitution (see also section 3.1, frame 1). Related with this, some professionals also disagreed that the STD was an indicator of TSE. They believed there should be no conflation between sexual

reproductive health and trafficking. Others added that many situations (like this incomplete story of Maria) might be disregarded because of stereotypes and prejudices about “sexual labor” and “sexual workers” in Portugal (see dilemma 5.3.1.). These stereotypes and prejudices could lead this short story of Maria to be disregarded and not carefully understood.

**(2) How might it come about that your institution or profession is the place to which the Maria turns for advice, intervention or support? Or how else might it happen that someone in your position would become involved?**

The main idea was the unlikelihood of Maria asking for help in an institution/NGO or going to the police. Police would be unlikely to be the place where Maria turned up for help, especially if she was living illegally in Portugal. Feelings of shame, insecurity and suspicion also seem to keep the victims far from the police.

The only possibility of the police being aware of a trafficking situation like the one in the story would be an inspection to the brothel, if it was open to the public. As one professional stated:

***Judicial/Police/State:** In regards to this situation, we, the police would only be able to detect this situation during an inspection to the brothel or if we were informed by the health professionals that would treat this person. (...) I have had this experience, numerous times, when we inspect brothels: when there is an inspection, we ask people to identify themselves and, in many cases, they are in an illegal situation. In this case it is easier; there are some procedures, namely with the Foreigners and Borders Police (SEF), that then notifies the person to go through a legalization process or abandon the country.*

Community centers and services for immigrants could be the most likely “entry point” where Maria could ask for help. However, some professionals stated that Maria would go to these services asking for help related with other problems, e.g., irregular documentation, financial support, etc., and not explicitly asking support regarding a TSE situation.

Concerning the health care system, the participants discussed how it could be a crucial “entry point” to detect a TSE situation such as the one in the story. However they also reached the conclusion that this would be unlikely to happen in Portugal due to the limited time that doctors have for each individual appointment and also due to the health professionals’ lack of awareness and training about this problem. Some participants also added the barriers that the health care system in Portugal presents to immigrants when they are undocumented (see section 3.2, frame 6).

**(3) Would you consider asking Maria directly about being trafficked, or what reasons might there be not to do so? How important do you think this is?**

To ask Maria was considered important but, from a practical point of view, professionals mentioned the need to establish a plan to approach her. However, possible strategies to approach Maria were not developed.

**(4) When might you pass on information to relevant authorities or institutions without the consent of the victim? Or, on the other hand, what might keep you from doing so?**

The professionals stated that the information about a potential situation of human traffic would be shared with the police from the first moment of the intervention. The IPSS/NGO fills out a document called “Signaling Guide”. The police also has a form called the “Unique Registration Guide<sup>8</sup>” that is then sent to the Observatory of Human Traffic (OTSH). Sharing data among agencies is established by law in the III PNPCTSH, measure 43)<sup>9</sup>.

<sup>8</sup> “Guia Único de Registo”.

<sup>9</sup> In Portuguese: Medida 43) Reforçar a coordenação entre as estruturas nacionais de combate ao tráfico de seres humanos e partilha de informações. (RCM 101/2013, December 31).

In TSE, 'consent' is an ambiguous concept (see ethical dilemma 5.2.1.). Professionals mentioned it in two circumstances: a) the consent (the willingness) of the women to come to prostitution; b) the willingness to collaborate with police investigation (see also 3.2, frame 6).

The reporting of the situation to the authorities and the completion of the "Unique Registration Guide" do not require the victims' consent. As far as we understand, the woman's consent for the intervention or for the sharing of information among agencies is also not requested. Given the severity of this crime and the need for an immediate intervention, issues of data sharing among agencies are seen as crucial to the provision of adequate services and do not raise any tension among the professionals.

**(5) When could it be right / appropriate to initiate measures of protection from further violence even against the wishes of the victim? What concerns might prevent you from doing this, or cause you to hesitate?**

In regards to the initiation of protection measures, the professionals seemed to give more weight to the victims' opinion than in regards to sharing information without their consent. Whereas sharing information among the different agencies seems to be a standard practice that does not require the victims' consent, the initiation of protective measures involves a close collaboration between professionals and victims. Hence, the professionals considered it appropriate to intervene without the victims consent only after all the efforts to get it fail (see also ethical dilemma 5.2.1.). The professionals argued that most often than not people are not aware that they are being victims and/or lack knowledge about their rights. Thus, a great deal of effort is put on helping the victims understand what is happening. According to the professionals, situations like these may justify acting against the victims' wishes especially if they are high-risk victims, and usually *one* victim of trafficking for sexual exploitation means there are other victims as well (see section 3.2, frame 5).

One of the professionals expressed the opinion that the judicial system should be harsh on victims who do not wish to cooperate with authorities in order to help dismantling the traffic network.

Even though most professionals agreed to act without the victims' wishes in some situations, they also understand that the lack of cooperation is mostly due to the vulnerable situation of the person, to her feelings of insecurity or to past threats. The professionals defended that the victims must not be blamed for their hesitation to act. Proceeding with the investigation was regarded as the State's duty to dismantle traffic networks and to protect the victim and other people that may be at risk.

In regards to helping the victims, the "assisted return" to the country of origin was the solution most often referred to (see also practical dilemma 5.1.2).

**(6) Let us imagine that Maria is an EU citizen? What difference might this make?**

Professionals reacted with surprise and some awkwardness to this core question: "Why should we treat differently or discriminate women from the EU?!"

It was said that EU victims are more likely to ask for support to return to their home countries.

The discussions were characterized by disagreements about whether EU women were more privileged when compared to women from outside the EU. The representatives of police/judicial systems defended that perhaps EU women are less secure in Schengen space because they might be overlooked by the professionals in the field who might disregard European TSE situations because they connect the crime with women from poor countries. In connection to this idea, some professionals asked: "Is it so positive to be an European victim inside an European space?!" It was also raised the issue of the difficulty of controlling the mobility of people by land, mentioning that the privileged site of control is the airport: "How do we control this if these victims do not have to enter the countries through the airports?"

Besides difficulties of identifying the victims or control the traffickers, some professionals also stated that being a EU citizen facilitates the process of assisted return because it is easier to cooperate with an European NGO and international police agencies in general. Collaborating with the Europol and

other European criminal agencies was also mentioned as good practices/mechanisms/examples of devices that increase the success of assisted returns of European victims. Shared legislation and similar culture were viewed as positive aspects in the work developed with EU victims (see section 4, frame 1). In the following section, we will examine the main legal aspects as well as the crucial ideas which shape the understandings of the professionals and the social practices in the intervention for combatting and protecting in the field of TSE.

## Part 2: Framing of the Problem and the Intervention

### 3 Framing trafficking and intervention

Concerning human trafficking, as already mentioned, Portugal adopted the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>10</sup>, Supplementing the United Nations Convention Against Transnational Organized Crime” also known as the Palermo Convention, in 2000.

In 2013, the amendment of the Portuguese Criminal Code included trafficking (Art. 160<sup>th</sup>), adding the exploitation of forced begging, slavery, and still other criminal activities to the previously mentioned trafficking for sexual exploitation. Other forms of exploitation of children were also added and the article also states that the victim's consent does not diminish the unlawfulness of the act. In addition, also in 2007, some articles specific to human traffic were introduced in immigration law, foreseeing some benefits for victims of trafficking. The main legal frames about this issue will be explored in the following sections.

#### 3.1 Key frames in legal and institutional documents

##### (1) Legal definition of human traffic, victims of human traffic and victim of trafficking for sexual exploitation

Currently, the Article 160<sup>th</sup> of the Portuguese Penal Code defines the crime of trafficking. This article was made official in 2007 and had a recent change in 2013. It currently states that:

“1 - Anyone who offers, delivers, recruits, entices, accepts, transports, houses or receives a person for purposes of exploitation, including sexual exploitation, labour exploitation, begging, slavery, organ extraction or the exploitation of other criminal activities:

- a. By means of violence, kidnapping or severe threat;
- b. By ruse or fraudulent manoeuvres;
- c. With abuse of power resulting from a hierarchical, economical, working, or familial dependent relationship;
- d. Taking advantage from the psychiatric incapacity or situation of particular vulnerability of the victim; or
- e. By obtaining the consent from the person who controls the victim.

is punished with a prison sentence of three to ten years.”

This article also establishes the same punishment to anyone who victimizes minor victims in the same way as expressed above (#2). It also defines increases in the punishment of the traffickers in particular cases, for example, when the life of the victim was in danger (#4). Moreover, the article also foresees the punishment of those who utilize the services or organs of the victims when they

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<sup>10</sup> It is worth to notice that this protocol in Portuguese documents is, as far as we can notice, referred to without mentioning the second part of the title: “Especially Women and Children”.

know that the victims were recruited under the circumstances described under the numbers 1 and 2 mentioned above. Finally, the article also states that the victims' consent does not exclude the illicit nature of these actions.

Also in 2007, the Decree-Law 368/2007 of November 5 was written to "protect the victims of traffic of people and therefore, it creates, for that effect, a special regime of granting the authorization of residence [in Portugal]." In regards to the victims of traffic this Decree-Law states:

*"It is defined as victim of trafficking the person in relation to whom there have been acquired evidences of the practice of that crime by a judicial authority or criminal police agency, or when the coordinator of the National Plan against Traffic of Human Beings understands that there are sufficient weighty reasons to believe that the person is a victim of trafficking and it is determined that the need to protect is maintained as long as there is the risk that the person, his/her family, or people with whom he/she has a close relationship, are subject to threats or offenses to their personal integrity or their property, practiced by the agents of the traffic".*

The project CAIM defined victims of trafficking for sexual exploitation as follows:

*"The following must integrate the concept of victims: a) The women who gave their initial consent to work in prostitution, in the context of economical need and that end up in a situation of exploitation, and b) The women who are enticed with promises of a job in areas that have nothing to do with the sex industry." (Manual of the Project CAIM)*

The professionals shared that granting the status of the victim in cases of sexual exploitation is very difficult, involves a long waiting period, and many times it does not happen at all. Some professionals believed that this difficulty has to do with the fact that this decision has to go through a long hierarchical chain of command. Even though the labour exploitation follows a similar process, the professionals reported that the granting of the rights of the victim in cases of labour exploitation is easier.

## **(2) Rights of the victim**

The rights of the victims of traffic are described in the Law 23/2007, of July 4, which regulates the entry, permanence, exit and expulsion of foreigners from national territory. A special regime was added later that year with the Decree-Law 368/2007 of November 5 mentioned in the previous section.

The 109<sup>th</sup> Article, of the Law 23/2007, of July 4, states that an authorization of residence is granted to victims of human trafficking or smuggling of illegal immigrants, even if they entered the country illegally or do not meet the criteria for an authorization of residence. This authorization is granted for 1 year renewable for equal periods of time (#5). However, according to the second point of the same article, this authorization will **only** be granted (after a reflection period of 30 to 60 days) **as long as**:

- a. It is necessary to extend the permanence of the applicant<sup>11</sup> in national territory, taking into account the interest that his/her presence represents to the judicial investigation and proceedings;
- b. The applicant demonstrates a clear intention to collaborate with the authorities in the investigation and repression of human trafficking or smuggling of illegal immigrants;
- c. The applicant has broken the relationship with the presumable authors of the infractions referred in #1 [infractions connected with human trafficking and smuggling of illegal immigrants.]

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<sup>11</sup> The original word used is "*interessado*" with a literal translation of "interested person". This refers to the interest of an immigrant in being granted an authorization of residence in the country. For clarity purposes we adopted the word "applicant".

In addition, the 109<sup>th</sup> article also foresees granting the authorization of residence before the end of the reflection period if the applicant meets unequivocally the point b. described above. However, in an opposite direction to the previous points, # 4 states that the residency might be granted “to a foreign citizen identified as a victim of traffic of people, according to a special legislation, being the conditions a. and b. [described above] exempted.” The special legislation this article refers to is the Decree-Law 368/2007 of November 5 described in the previous section. This Decree-Law states, in its first point, that the authorization of residence is granted with the exemption of the conditions a. and b. mentioned above “when the personal circumstances of the victim justify it.” The subsequent point states that these personal circumstances are evaluated case-by-case and may be related with: a) the safety of the victims, his/her family, or people with whom she/he has a close relationship; b) the health of the people mentioned in a); c) the familial situation; d) other vulnerable situations.

Besides the above mentioned conditions for obtaining a residence authorization, the victims are also entitled to:

1. The right to information. This is granted by the Article 110<sup>th</sup> of the Law 23/2007, of July 4, and establishes that if the agencies that work in victim protection believe that a foreign citizen might benefit from an authorization of residence given its victim status, they inform the person of their benefits.
2. A reflection period. This period is given to the victims in order for them to recover and escape the influence of the traffickers (Article 111<sup>th</sup> of the Law 23/2007, of July 4). This period has a minimum duration of 30 days and maximum duration of 60 days. During this time, the victim cannot be subject to any removal measure.

*Rights before the granting of the residence authorization (Article 112<sup>th</sup> of the Law 23/2007, of July 4). These include the right to obtain economical and medical assistance; psychological assistance; safety and protection; translation and interpretation services as well as legal protection.*

According to the Article 115<sup>th</sup> of the Law 23/2007, of July 4, the residence permit is cancelled if:

1. The victim actively and voluntarily, by her/his own will, re-establishes contacts with the alleged authors of the trafficking or smuggling of illegal immigrants;
2. If the authorities believe that the collaboration is fraudulent and the complaint is unfounded or fraudulent; or
3. If the victim stops cooperating. This does not apply to the victims under the special legislation explained above (Decree-Law 368/2007 of November 5).

The legislation described in this section seems to leave a lot of room for interpretation of the authorities responsible for granting the authorization of residence. If, on the one hand, the earlier legislation greatly emphasizes the requirement that the victims collaborate with the authorities to catch the traffickers, the subsequent legislation opens a window for the waiving of these conditions depending on the victims' “personal circumstances”. However, what might constitute a justifiable personal circumstance is quite vague. Thus, if the victims' presence in the country is not crucial to the judicial investigation or she, for some reason, is hesitant to collaborate with the authorities (for example, because she fears retaliation) she might run into serious difficulties in obtaining a residence permit.

Another observation is that the laws concerning human trafficking are limited to the issue of the residence authorization. Indeed, the immigrant status of the victims of traffic seems to be taken for granted in the Portuguese legislation. Consequently, there are no specific laws protecting national citizens or legal immigrants that might be victims of human trafficking and specifically those who are victims of sexual exploitation. These victims are invisible in the system and their rights are not established by law.

### (3) Sexual exploitation is not the main focus

In the III National Plan to Prevent and Combat the Traffic of Human Beings (PNPCTSH)<sup>12</sup>, in the introduction, the document cites the Global Report on Trafficking in Persons – 2012, of the United Nations Office on Drugs and Crime (UNODC) according to which “approximately 58% of the cases of trafficking in persons are for sexual exploitation, and 36% for labour exploitation” (III PNPCTSH, RCM 101/2013, p. 7008). The same report asserts that most of the victims of this criminality are women (55 – 60%). The number of female victims rises to 75% when girls are included (idem). Despite these global numbers from around the world, in Portugal, the National Human Traffic Observatory (OTSH) reveals that there are more flagged cases of labour exploitation than of sexual exploitation.

In the III PNPCTSH, among the 53 measures to prevent and combat all forms of human traffic, there are 3 measures explicitly referring to the traffic for sexual exploitation:

- #7: Raise the awareness of touristic agents for the issue of tourism for sexual purposes.
- #16: Conduct a study about the new forms of human traffic (...) namely for sexual exploitation purposes, labour exploitation, begging, slavery, organ extraction or the exploitation of other criminal activities.
- #26: Promote the initial and continuing professional development of the labour inspectors regarding the traffic for sexual and labour exploitation.

The references to “companies”, “labour organizations”, and the labour authorities are evidences of the higher focus and emphasis that the Portuguese policies put on traffic for labour exploitation rather than the traffic for sexual exploitation.

### (4) Recent Legal Measures and Tools

In order to combat the traffic of persons, the national plans were first established in 2007, and from the beginning, they were meant to establish conditions to protect the victims:

*... the adoption of a set of measures with the common ground of the best interests of the victim: the grant of a residence permit, the psychological and juridical support, the access to official programs for her/his integration in social life and the possibility of a voluntary and safe return to his/her country<sup>13</sup> (I PNCTSH, p. 6)*

The professionals from the criminal police that participated in the workshops stated that currently the law allows extra resources to prosecute traffickers. The implementation of the European Platform for statistical data<sup>14</sup> (PAN-EU MoSy) and the participation in the European Union Anti-Trafficking Website, the extension of the pre-trial detention, the expansion of the permission for wiretapping, the permission to breach the judicial secrecy and the improvements in the prosecution due to international police cooperation were some of the legal resources mentioned.

Professionals also mentioned the possibility of retrieving the monetary assets resulting from trafficking, known as GRA<sup>15</sup> as well as the investigation with “undercover agents” which can also be done by the victims.

<sup>12</sup> It is worth to notice that in the preamble of this law, the reference to the title of the Palermo Protocol is complete (that is with reference to the subtitle “especially women and children”, what do not happen in other legal documents.

<sup>13</sup> In Portuguese: “a adoção de um conjunto de medidas que tenham como denominador comum o interesse da vítima — a concessão de uma autorização de residência, o apoio psicológico e jurídico, o acesso a programas oficiais para a sua inserção na vida social e a possibilidade do retorno voluntário e securizante ao seu país” (I PNCTSH, 2007: 6).

<sup>14</sup> Also mentioned in the III PNPCTSH, measure #11.

<sup>15</sup> GRA – Gabinete de Recuperação de Ativos (created by the Law 45/2011, June 24, art. 17<sup>th</sup>, altered by the Law 60/2013, August 23).

Representatives of **IPSS/NGO/Health** also referred two shelters for women victims of trafficking for sexual exploitation (and possibly their children), referred to as CAP<sup>16</sup> in institutional documents, and one for men victims of exploitation.

The criminalization of the client, described in # 6 of the 160<sup>th</sup> Article of the Criminal Code, is also seen as part of the “evolution” in the legal framing of trafficking for sexual exploitation:

***Judicial/Police/State:** Until the last revision [of the law], the clients [of the services provided by the victims of human trafficking] were not punished and now they are. They are looked down upon. The clients (...) used to be protected. Now they aren't, they are made responsible (...) and therefore there is some progress here.*

Although not explicitly mentioned by the professionals, the National Plans also establish multidisciplinary teams and a network of cooperation among agencies, with the name of RAPVT<sup>17</sup> (see the III PNPCTSH).

### **(5) Prostitution regime(s)**

The Portuguese legislation in regards to prostitution suffered many changes over the past 40 years. Before 1962 the prostitutes had to be registered and were submitted to periodic inspections (Oliveira, 2004). After 1962, both prostitution and pimping become illegal (idem). In 1982, with the Decree-Law 400/82, which is still in effect today, prostitution is decriminalized (idem). Hence, currently, the Portuguese Penal Code does not criminalize nor legalize the professional activity of sex workers. It does punish:

*“#1: Whoever, professionally or with a lucrative purpose, promotes, favours or facilitates the exercise, by other person, of prostitution or the practice of relevant sexual acts, exploiting situations of abandonment or economical need, is punished with imprisonment from 6 months to 5 years.*

*#2: If the agent uses violence, severe threats, ruse or fraudulent manoeuvres, or if he/she takes advantage of the psychiatric incapacity of the victim, is punished with imprisonment from 1 to 8 years.” (Article 170<sup>th</sup> of the Criminal Code.)*

The legal vacuum regarding the activity of sex workers in the Portuguese legislation is complemented by strong polar opinions for and against the legalization of prostitution in the civil society. This legal *vacuum* may also leave some of the victims of TSE in a very vulnerable position, particularly the people who consented to work in prostitution in Portugal but who find themselves in a situation in which they are victims of exploitation. There are no measures foreseen in the Portuguese law to protect them.

In the following section, the main themes that emerged in the professionals’ discourses about their practice will be described in detail.

## **3.2 Key frames from the perspective of intervention professionals**

### **(1) “Presuming the worst scenario to protect” and “to avoid re-immersion in invisibility”**

One of the major concerns expressed by the professionals was the fear to unintentionally neglect a victim of traffic given the hidden nature of this crime. The professionals' solution to avoid this possibility is to assume a worst-case scenario and act accordingly (call an NGO, call the police, etc.) — even in case of doubt.

<sup>16</sup> CAP – Centro de Acolhimento e Proteção [Centre for Reception and Protection] (Varandas & Martins 2008).

<sup>17</sup> Network of Agencies to Support and Protect Victims of Trafficking.

**Judicial/Police/State(1):** *In those circumstances, we presume the worst scenario, which always brings more benefits. It offers more guarantees to the people involved and also to our work and to the efficacy of our action.*

This was also corroborated by another professional:

**Judicial/Police/State(2):** *I support 100% the opinion of Mr. X, that we should assume the worst. This way we have a notion that the phenomenon decreased and not the opposite where we might say: "How did we let this situation go?" or "We could have solved the situation and we couldn't or we did not realize".*

In this direction, another professional added that "it is better to suspect that someone is a victim, than not", due to the danger of overlooking a situation of traffic. The professionals' belief in their shared responsibility to protect the victims was present in many of the debates.

## **(2) Extending trafficking to labour exploitation means "evolution in the law"**

In Portuguese culture, it is highly valued to promote progressive measures that are at the same level or in the forefront of other European countries<sup>18</sup>. Some professionals, mainly judicial/police officers made reference to the advancement of the Portuguese Law in regards to Human Trafficking:

**Judicial/Police/State(1):** *(...) [The legislation concerning] human trafficking has been evolving in Portugal. Evolving in terms of approach, interpretation and even conceptualization of the issue. And in legal terms this is very important (...) Human trafficking, when emerges in Portugal, it is only seen in terms of Sexual Exploitation. Then, there is a change, that arises in 2007 and that mandatorily includes Labour Exploitation and then the removal. And you may say: "why does that matter?" It matters a lot. It means that the issue becomes broader and... there is the possibility to understand that there is a greater number of victims in other areas. The concept itself, what characterizes traffic, is common to all [types of trafficking]. The final goal is what differs. Why do I say this? Because the legal evolution was so very important that today, I think you may be aware of this, the Human Trafficking is at the top of the criminal hierarchy! (...) There are currently a variety of tools... since 2007, a variety of tools that enable the police to act beyond the criminal sphere.*

**Judicial/Police/State(2):** *(...) Regarding the criminal police we are taking steps, serious steps that take us to the European forefront. Now let's see if we can correspond with the rest.*

This issue relates to a previously held belief, that Portugal was only a transitory country especially concerning sexual exploitation, as opposed to a reception country. Some professionals stated that traffickers prefer to take the victims to Central European countries where the sex industry is a more profitable business. However, the inclusion of trafficking for labour exploitation in 2007 meant an improvement of the legal and institutional framework to help traffic victims in Portugal. Moreover, in spite of the previous social representation that Portugal is not an end country for sexual exploitation, the new legal mechanisms allowed the identification, or at least, flagging of victims of sexual exploitation in Portugal, and Portuguese victims flagged abroad, as well as internal trafficking.

## **(3) Portrayal of the TSE victims**

Although the professionals shared their feelings about their lack of experience with trafficking for sexual exploitation, the workshops were a place to picture a very nuanced and complex portrayal of its victims.

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<sup>18</sup> This issue can be linked with the perceived 'backwardness' of the country before democratic revolution, in 1974, when the previous regime used the isolation and the blocking advancements in industry as a means of political control (see also country context paper).

One of the most prevalent ideas was that women most likely are not aware of their victimization. This is partially due to the fact that, to many of these women, the current situation they face is an improvement when compared with the previous living conditions, in their country of origin.

On the other hand, the professionals stated that another obstacle the victims face in seeking help is fear. Not only fear for their safety, but also because of the threats against the relatives they left behind. A young mother leaving a child behind was another of the vivid portrayals of a trafficked woman for sexual exploitation.

The victims' expectations around emigration, especially the possibility to achieve better life conditions, is also associated to the vulnerability for seduction strategies of the traffickers, which can be complicated with the promises victims often make to their relatives of sending money back home.

The portrayal of victims also included the gratitude they have for their "employers", who, somehow, made possible the betterment of their living conditions. Some professionals added that this might create a "brutal" internal conflict in the women.

Another feature of the person trafficked is that of the lack of precision in their identity: scams around passports and identity cards are often associated with this kind of criminality.

Below are excerpts from the focus groups that illustrate the above-mentioned ideas:

#### *A Woman with lack of awareness of her victimization*

Some professionals raised the issue of the women's lack of awareness concerning their victimization. This lack of awareness can lead the women to not seek help for their situation:

**Judicial/Police/State(1):** (...) *I understand that a victim might not see herself as a victim but is a victim nonetheless.*

**Judicial/Police/State(2):** *If I may add (...) they don't have the notion that they are lying, they themselves do not recognize that they are being victims of traffic.*

**IPSS/NGO/Health:** *The perception of the victim is really very fragile, in my view. The understanding that she/he is a victim of traffic is really very fragile.*

#### **Fear**

Professionals mentioned the constant presence of the victims' fear during the process:

**Judicial/Police/State:** *Even because they are afraid of the consequences to themselves.*

**IPSS/NGO/Health:** (...) *There are real threats and, many times,... let me rephrase. There are strong suspicions or evidences that, in reality, the families are being threatened and many times these threats come from people who identify themselves as national authorities (...)*

**Judicial/Police/State:** *And as Dr. X mentioned before, there are pending questions, regarding the family that stayed [in the country of origin] and may be in danger... And, many times, the victim is not worried [with herself], this fear is not for her safety or her conditions, but the conditions of those whom she left behind. And the fear of the police, right?*

*Fear is also the fundamental reason to not collaborate with the police in the criminal investigations:*

**Judicial/Police/State:** *They don't usually collaborate because (...) because they are afraid. Yes. Mainly that.*

*The woman who defends the trafficker / who does not want to go back home:*

**Judicial/Police/State(1):** *[Recently a judge decided] that the victim had to go to the border immediately, go to the country of origin (...) and the victim was crying and she told the judge: "Don't send me away, I don't want to leave, I want to stay here!" [And the judge said:] "But you can't stay in these conditions." [And the victim responded:] "But I was ok!" She was always*

*defending her boss, so to speak. Defending. Until the end. [She said:] "He gave me work, he gave me money, I had a house, I had shelter, I had..."*

**Judicial/Police/State(2):** (...) ...[the victim] will always try to hide behind... say that she was lodged there, or was working there as a barista, or that it was a restaurant and she is there working (...) and the fact that they don't have their documents, happens a lot because, sometimes when we [do an inspection] we ask for the documents and the person who brings it is the [trafficker] so to speak.

*Psychological consequences of the violence suffered:*

**IPSS/NGO/Health:** (...) [in response to the idea that the victims' response depends on their culture] But there are things that are not cultural, there are factors, psychological phenomena of protection and defence.

*A woman who comes to Europe with many expectations and who made promises to her family:*

**Judicial/Police/State:** I just wanted to raise a question in regards to the person who comes from another country: of course she comes with very high expectations (...) leaves her country and of course someone who leaves in a deprived situation, comes to Europe and talks about upward mobility social upward mobility, economic upward mobility. And makes promises to the family of things she will buy, send, and the amount of money she will send.

*A young mother, leaving a child behind*

**IPSS/NGO/Health:** Certainly is a woman, in economic need, has a child, which is typical right? She is a young mother who leaves [everything] behind and who is trying for a better life for the entire family, right?

*With a brutal internal conflict:*

**IPSS/NGO/Health:** From the moment they are inside [the traffic network], the dual game that they will go through, the internal conflict of those people is brutal, right?

*The ambiguous identity(ies) of the victims:*

The collusion of some agents of the authority in the countries of origin may make possible the altering of the identity cards and passports, opening space for false identities:

**Judicial/Police/State:** This raises a curious question: (...) trying to obtain (...) trying to understand the identity, [and] be rigorous is very hard. There is a permissiveness (...) in the acquisition of false identities...

Many of these traits account for the unwillingness to return back to the country of origin, which is seen by many professionals as the only "solution" offered by the system, as well as not wanting to collaborate with the criminal proceedings.

#### **(4) Cooperation among agencies "to facilitate the victims' trust in the police": bridging the functional divide**

In regards to Human Trafficking, we noticed very distinct intervention goals between the police vis-a-vis the social sector agencies'. On the one hand, the police action is focused on finding the traffickers, dismantling the traffic networks, and protecting victims and professionals. On the other hand, the role of the social sector agencies emphasizes immediate support and the betterment of the victims' life conditions. The cooperation between the agencies and law enforcement was also advocated for the safety of the professionals of the social area, due to some dangers they may face, for example, the risk of encountering traffickers. For this reason, the IPSS/NGO representatives stated that the first encounter with a victim is arranged in the police station.

*The “need to build a trust relationship with the victims”*

Gaining the victims' trust was seen as a very important step by all the professionals, who recognized that very often the victims do not trust the institutions in their country of origin, let alone the Portuguese agencies. The law enforcement agents viewed the creation of trust as instrumental to finding more victims and dismantling the traffic networks.

The social sector professionals viewed the victim's trust as fundamental for a successful collaborative relationship and the victims' ability to access further resources in the community, be able to overcome their situation and pursue a more satisfying lifestyle. These professionals also understood that their role is to inform the victims that they should have a say in their own lives. In this sense they try to promote the victims' autonomy and highlight the choices that they can make.

**(5) The magnitude of trafficking “mafia”: a large international network with “big money involved” and multiple victims**

An important dimension that crossed all the debates was the large magnitude of the criminality involved. The professionals expressed concerns regarding the characteristics of trafficking: usually a network that handles large amounts of money, and that has connections with other kinds of trafficking, for instance drug trafficking. *Mafia*, the word commonly associated with criminal organizations, is often used to label the groups of traffickers. This characterization also involves the transnational nature of this criminality — “it is an endless thing”; “it is extremely difficult” – are some of the expressions the professionals used to talk about this crime.

These associations often times shifted the debates to the priority of chasing, arresting, prosecuting and punishing the traffickers, as it is a priority in the legal documents.

As mentioned in the previous frame, the trust of the victim in the authorities will allow for a better protection, and a protected victim will be more *à l’aise* to talk about the traffickers and the traffic network. In the same direction, the woman’s awareness is also perceived as important to help the prosecution of the exploiters:

*IPSS/NGO/Health – This issue of the victims seeing themselves as victims is a really fundamental point, to me. And this is common (...) at least in what concerns to sexual and labour exploitation, this is, no doubt, common. This has an extraordinary importance, not only, and obviously, initially, to the future and immediate wellness of that person, but also to other issues, that have a lot to do with the criminal police and the courts, that... If the persons do not see themselves as victims, they are not going to understand why they have to wait, why they have to collaborate, why they have to testify, why it is important to collaborate with the police. If they see themselves as victims, it is the first step to collaborate, to agree to testify (...).”*

Some professionals highlighted the importance of traffic as a “business” in the countries of origin. For instance, a professional mentioned that in 2010, the amount of money sent by Brazilian victims of traffic back to their country was about 6 million dollars.

The magnitude of this crime also meant the priority of chasing and prosecuting the traffickers with the concomitant demand of the collaboration of the victim. It was stated by the professionals that if a sheltered woman withdraws her willingness to collaborate with criminal investigations, she has to leave the shelter. Assuming the victims are illegal immigrants, and considering that the maximum of the reflection period is of 60 days, the victims will be left with the only possibility to return to their country of origin if they chose not to collaborate with the police.

**(6) Health system as a largely inaccessible “fortress” for trafficking victims**

The health professionals’ difficulties in helping the victims were repeatedly stressed. The first barrier is the administrative procedures: to get medical assistance. The Portuguese citizens need to have a card to go to health centres, which requires national identity and a fixed residence. Despite the fact that in Portugal there is a universal health care system, for illegal and undocumented immigrants

there are increased difficulties accessing health care, unless they go to a private clinic, which often involves elevated costs. In emergency situations, people can go to public hospitals, but, as professionals argued, these facilities are so crowded that it will be unlikely that the professionals have the time to think of a possible trafficking victimization. Moreover, an undocumented person will be seen as a tourist, and required to pay as such, that is, the price of an equivalent appointment in a private clinic.

Some *committed* professionals have found ways to bend the rules of the Portuguese health system in order to fulfil what they think is their mission: to help people in need. Among persons in need, the undocumented immigrants are a significant group they try to attend to, but for that they need the alliance of the health centres' administration:

*IPSS/NGO/Health: If [the woman in the storyline] went to a place where there was more awareness and carefulness of the professionals... I say this because, for example, in my case, we have a walk-in appointment in the health centre where I work, so we are a bit more aware, not necessarily of traffic but, for example, vulnerable populations, immigrant populations, that might not have their documents in order, or be on the verge of expiring, and in those cases we would be more careful to understand the context of this woman. I don't think that we would suspect that she is a victim of traffic, but maybe we would suspect that she probably has an economic need, maybe she has a family, children, hasn't been followed by any provider (...) So I think, depending on where she was seen, there could be different visions [about her situation.]"*

One of the professionals mentioned the case of a Nigerian woman who had been hospitalized with a diagnosis of tuberculosis and to whom the health system was a "point of entry":

*IPSS/NGO/Health: She was in inpatient care for two months and after that period she was immediately admitted in a shelter.*

In brief, it can be said that the access to the health system depends on the awareness and sensibility of the physicians and other professionals as well as the centres' administration who can find ways to bend the increasingly restrictive regulations in Portugal. It is not by chance that a professional expressed the need for a change in this matter, namely the access to healthcare be made easier to everybody regardless of their immigration status (WS2, p. 11).

The following section will describe the main themes from the professionals' statements regarding culture and how their professional actions are different depending on the victims' cultures.

## 4 Framing culture and difference

The most important feature related to culture and difference mentioned in the workshops on trafficking for sexual exploitation was the idea of a "code of understanding". Cultural differences were also accountable for the differences in notions about rights, knowledge about legislation and victims' status in the countries of origin. Culture was also related to diverse ways of socialization, and social constructions of body, sexuality and ways of life. Finally and in a crucial manner, culture is viewed as the mechanism for shaping one's awareness.<sup>19</sup>

### (1) Culture as a shared code of understanding

Professionals highlighted that a EU victim is more likely to share the same "codes of understanding" when she's being supported by the police officers and by the specialized NGO's.

One professional added that frequently "codes of understanding are more important than language" while trying to illustrate the power that cultural diversity plays in these situations. In this professional's opinion, the commonalities between the country of origin and the host country in

<sup>19</sup> In Portuguese there are a few different words referring to this concept of awareness and the process of becoming/gaining awareness: "consciência", "consciencialização", "consciente".

terms of politics, societal patterns, and social codes, facilitates the success of the interventions. In this sense, victims from the EU were seen as having an advantage when compared to victims from an African country. Despite this, other professionals cautioned that at times the European victims' knowledge about the system and her rights might be taken for granted and therefore overlooked in an initial stage of the intervention.

Codes, here, are used with a wide range of meanings: mechanisms for a better communication, not necessarily equated with language; visions of the world; regulations of social life, including formal law. Underlying these concepts, there seems to be the assumption that "our codes" are more sophisticated and appropriate and that the professionals have to work harder in order to help people from outside the EU.

Being able to work collaboratively with other European agencies, reassures the professionals because there is some shared legislation and shared confidence in the national police forces in European countries. Some resources such as the Europol or the joint teams of police forces were mentioned as good examples of mechanisms to combat TSE.

"Shared codes" also mean the same assumptions about both the crime of trafficking and the procedures to combat it.

## **(2) Culture shapes awareness**

"Being aware", "becoming aware" and "awareness" are very common concepts in Portuguese social science and popular movements. Mostly related with awareness of social class, these are very widespread ways to express several things, ranging from political awareness, self-identity, self-determination, knowledge about the functioning of State institutions, including law and courts.

### *Culture influences the victims' lack of awareness of their victimization*

Professionals articulated ideas related to the lack of awareness (already mentioned in section 3.2, frame 3) when talking about Maria coming from African or Latin American countries. They believe that underlying this lack of awareness regarding their victimization is the perceived betterment of their living conditions when compared to the previous conditions in the country of origin. They expressed that for some, being in Europe, although in such harsh conditions, can be understood as social and economic mobility — "they think they are fine, despite all the efforts they have to make".

*"Victims from Eastern countries know very well their mafias" / are more aware of their rights*

The professionals considered that European victims, in contrast to the victims from Africa and Latin American, are more aware about their rights:

***IPSS/NGO/Health:*** (...) *The people from Eastern Europe have a much more refined knowledge about what is a traffic network.*

*"Different culture(s) due to different socialization of human values"*

Socialization into human values was referred to be a mechanism of cultural difference. According to some professionals, Portugal has been a country where the "human values are taken for granted since childhood and are gradually absorbed at school, in the kindergarten, and so on until adulthood" contrasting with sub-Saharan Africa and Brazil "where these values are residual or non-existent." The professionals consider that this is the reason why some of the victims are seduced by promises of more money and a better life.

For some professionals, "other's culture" is devoid of the fundamental values that are considered essential in our society and therefore people from these cultures are *completely* different, somehow rooted in a notion that we are living in different planets.

*Compared with 'their' culture, every trafficked situation is always better than what they left behind (acceptance of maltreatment)*

The "other's" culture is also linked with extremely bad/poor living conditions, associated with acceptance of maltreatment, as in the following excerpt:

**Judicial/Police/State:** (...) *The cultural questions are of extreme importance because any situation, whatever it is, is always better than what they have. And when we say that a girl or a boy, 15 years old, "come live with me in Europe where you will study", he, plain and simple, has found heaven: "I am getting out of here, I will have [better] conditions". And then he gets here, possibly [hears] "hey, you here have to wash the dishes, you have to..." and we are not talking about sexual exploitation (...) nor monetary compensation. What happens is that, when the boy realizes it, he is being exploited. But to him it is good. Why? Because if he was in his country of origin, [he had to deal with] disease, hunger, violence, because when all else is missing, normally the primary instincts are externalized and there is a lot of violence involved. And what is certain is that, to him, that wasn't slavery."*(...)

The picture of the countries of origin is painted with such negative features that the exploitation by trafficking is deemed better than any other circumstance. Although the professionals can be echoing histories of violence and exploitation experienced by people who were previously trafficked, this idea can lead to diminishing the seriousness of the situation in host countries, in this case, Portugal. Moreover, seeing victims of traffic as not knowing any better and unable to distinguish what constitutes exploitation from reasonable conditions, may lead the professionals to think that they know what the victims really need more than the victims themselves, which in turn may contribute further to their disempowerment.

### **(3) The "relation with the body" and with sexuality is also culturally shaped**

According to some professionals, African women have a different relationship with their bodies (a Nigerian woman was mentioned) — *"the cultural influence of the country of origin"*. Some professionals expressed that African people have less shame and pudency in regards to their body and their sexuality.

This view that African cultures are closer to nature echoes the debates around the "retornados" when African countries became independent from Portuguese colonial power. The climate and open manners (not so socially constrained) were often brought to the debates to justify the advantages of having lived in an African colony. Brazil was not so linked with this view, maybe the professionals who were present and were Brazilian were an unconscious barrier to this argument?

In a concomitant view, African people — especially, women — are seen as more 'naturally' sexualized, more open to sexual exploration, as opposed to the European restricted sexual identities and visions, and the constraints of the etiquette.

The cultural views expressed in the workshops suggest a very limited view of culture and its role in people's lives. On the one hand, culture is seen as an explanation for less sophisticated worldviews and life expectations. In addition, it is seen as an influence on those who come from "other" countries but not so much an influence on how one may see the world. That is, culture is something that "others" have and that explains their differences as compared to "us". Finally, the "other's" culture is always seen in opposition to "our" culture. The professionals focused on what other cultures lack. The "other" cultures are seen in very homogeneous way. The richness and complexity of "other" cultures is not mentioned, nor is how other cultures might enrich one's country and culture.

## Part 3: Ethical Issues and Dilemmas from the perspective of practitioners

### 5 Ethical issues in the workshops

#### 5.1 Practical and professional dilemmas

##### 5.1.1 Difficulty to confirm the TSE

The major difficulty faced by professionals working in trafficking for sexual exploitation is the “confirmation” of this crime. Most of the cases, the criminal framing of the acts is with other connected crimes, for instance, pimping.

The difficulties in confirming TSE lead professionals to find other ways to punish the alleged traffickers. Some professionals of the judicial, state and criminal fields said that despite several indications and evidence that point to a situation of TSE, they never worked on a case that was prosecuted as such.

This can be linked with what Santos et al. (2009) stated when reflecting upon the data of the Portuguese Observatory of Trafficking in Human Beings (OTSH):

*... Even though most of the flagged cases have to do with situations of sexual exploitation, the majority of the confirmed cases have to do with labour exploitation of male victims. This might reflect the reality but it might also be a product of a higher complexity in the detection and confirmation of the situations of sexual trafficking. (Santos et al. 2009: 81-2)*

Fortunately, as many professionals stated, all the legal mechanisms (e.g., the reflection period) can be applied even without the confirmation of a TSE situation. The problem is that the support to the victims is limited and is likely to cease at the end of the period of reflection. Some professionals of the “social sector” asked the providers of the Judicial/criminal/State fields why it takes so long to establish the “status of a victim” and mentioned examples of victims that waited more than one year for an answer from the Foreigners and Borders Police (SEF) and the answer didn’t come.

##### 5.1.2. How to help the women victims of sexual exploitation when “they don’t want to return”: how to bypass the “assisted return”?

Because most of the victims of TSE are assumed to be illegal immigrants who cannot stay in Portugal because of their illegal status, the centrality of the solution of the “assisted return” seems apparent in some professionals’ discourses.

#### 5.2 Ethical dilemmas

##### 5.2.1 Unstable imbalance between respecting victims’ choices and professionals’ desires: the complexity and ambiguity of consent

Professionals seem to be at a crossroads concerning human trafficking, especially for sexual exploitation. The ambiguous nature of the process of victimization is apparent in the vacillation between empowering women to make their own choices and pushing them to functioning in ways the professionals deem more desirable.

It is in this hesitation that we heard the same professionals state, on the one hand, that “a woman is victim even though she doesn’t think she is”, and “is better to suspect that she is a victim than not”, and on the other hand, questioning themselves about “to what extent are we invading the personal space for decision of the woman who wants to engage in prostitution?”, or that “the woman won’t accept to collaborate because she wants to keep engaging in prostitution, because she needs the money for living and for sending to the family”.

***What is the result of our intervention?: The woman [with so many expectations] will feel frustrated when confronted with the idea of being a 'victim'***

*IPSS/NGO/Health: (...) Of course we realize that identifying the woman as a victim of a crime will frustrate her more than it will support her because it will crumble the [self-] image, all those expectations that she created.*

So, although it is clear for the professionals that there is a situation of traffic when “there is a deprivation of freedom, of autonomy (...) and there is profit for a third party” (IPSS/NGO/Health representative) this does not mean that they anticipate that their work will be well received by the woman.

***The willingness of the victim to come to prostitution can be a reason to restrict the access to the victim's rights***

One professional raised the issue of the willingness of the woman to come to prostitution, adding that in this case it is not a trafficking situation:

*IPSS/NGO/Health: “The first sentence here is... is amazing: “the experience of working in a brothel”. The experience of working in a brothel... meaning that she already has the will to work in a brothel. I am not seeing traffic here. The person comes, by herself, her own feet, her own head, to work at a brothel. The other issue of the document, or whatever, that's a diversion, variety, variation, whatever you prefer. But if the person comes to pursue this kind of service in a conscious manner...*

Another professional added that for her a “sex worker may not be a victim”, which will be developed in the next dilemma around the structural contradiction between trafficking and “sex work”.

Simultaneously, professionals expressed the idea of the crucial importance to act in favour of the victim, and this was a slippery terrain, where each professional gave examples to demonstrate their efforts to combat this crime and to protect the victims:

*IPSS/NGO/Health: “Saving the world... I think it is important that we continue to believe that we can save the world. But one day at a time.”*

However, this line of action that does not consider as victims some women because they knowingly and willingly come to Portugal to work in prostitution leaves many victims out of attention. As Shelly Cavalieri (2011) states, “[q]uestions about the definition of consent and the extent of coercion in situations that are not clear-cut; simply identifying a victim of trafficking based on a framework of consent and coercion can be a challenge.” (Cavalieri, 2011: 1434) In Portuguese workshops, professionals seemed concerned with the women who may want to get money from prostitution, and who may have come knowing what kind of services they would perform, and at the same time being victims of trafficking without being aware of that (as described above in section 3.2, frame 3).

## **5.3 Tensions and contradictions in the intervention system that can have ethical implications:**

### **5.3.1 Structural contradictions around prostitution, “sex work” and illegal immigration:**

To identify victims of trafficking for sexual exploitation can be linked with the contention around prostitution, “sex work” and illegal immigration. Although well known to Portuguese social scientists the professionals' arguments echoed the debate “sex work” vs. “moral panic” associated with prostitution (see, for instance, Santos et al. 2009; Silva et al. 2011; Oliveira 2004, to cite only some). In fact, the controversy around prostitution *versus* “sex work” is far from being solved, as feminist organizations are divided and our perception is that the great majority of the Portuguese population

will not endorse the idea of legalizing prostitution, or “sex work”, as the major Federation of unions (the CGTP) has already publicly defended (2011<sup>20</sup>). As previously mentioned (see section 3.1, frame 5), the legalization of prostitution recalls the dictatorship’s policy and “moral arrangements” to reconcile the dichotomic view of women either as pure, saints and mothers or perverse and sexualized creatures (Pimentel 2011).

Nevertheless, some voices heard in the workshops advocated the regulation of prostitution as “sex work”, although at the same time mentioning that there are professionals who would disregard trafficked women because of prejudices about prostitution.

**“Victims or sex workers: the need to distinguish”**

Some professionals argued that there is a fine line to define the boundaries between TSE and “sex work”:

*IPSS/NGO/Health (1): Taking into account that we also work in the area of human trafficking, there is here a very blurry line. So it is a big concern of our team to understand to which point people are victims of traffic or other close crimes, for example illegal immigration, other connected crimes, right? Or to which extent these are not victims but people who work in this line of work. So we need to distinguish. And therefore, not all people who are sex workers are victims, and some are victims not only of Human Trafficking but possibly other crimes.”*

According to some professionals, a victim might be overlooked by some institutions due to the way they stand in regards to prostitution:

*IPSS/NGO/Health (1): [I don't think that] the institutions are very sensitive and informed about (...) human trafficking, when it is not associated with (...) prostitution (...) And then [it depends on] the position that each person has, for example about what is prostitution.*

*IPSS/NGO/Health (2): Looking [at this situation] I would say this is a typical case [of traffic]. Now probably other people might deny it “when she came here, she knew what she was coming to do and now she got what she deserved.” It's an interpretation...*

In this sense, these professionals argued for the need to distinguish from “sex work” and trafficking, which appears to be a difficult task in Portugal, insofar there is no such a thing as “sex work”.

**The woman will not leave prostitution because it is her way of earning her living**

In the workshops, the situation in the country was also compared with Brazil, where sex work is legalized and regulated:

*Judicial/Police/State: I would like to introduce a cultural issue, since we are here to [discuss] that as well, right? In Brazil, prostitution is a legalized profession, for a few years now, and prostitutes have a work license and pay tax for that work. And we have, despite the legalization of prostitution, we also have, in parallel, internal human trafficking for sexual exploitation.*

*IPSS/NGO/Health: (...) Since here there isn't the option to pay tax in prostitution (...)*

**Illegal immigration - more difficult for women in prostitution | trafficking**

One professional voiced some of the difficulties a woman in prostitution can face in Portuguese society: to get a resident permit she needs to have a job, or be married to a Portuguese citizen. However, prostitution is not considered a job because it is not legal and therefore a prostitute cannot pay taxes, which is how she would be able to prove that she has a job. Therefore, prostitutes have to find a shadow job and continue to work in prostitution because it's their main way to survive and support their children. On the other hand, if a woman is flagged by the Foreigners and Borders Police

<sup>20</sup> Ver, por ex., <https://mdmevora.wordpress.com/2011/05/09/o-trabalho-digno-versus-a-prostituicao/>

(SEF) as a prostitute, she will not be credible to have found a legal job. Therefore, she runs into serious difficulties to gather the necessary paperwork and to be taken seriously.

***“They were removed from trafficking, why do they return to prostitution?”***

*IPSS/NGO/Health: In our professional seminars we always raise this problem, right? And in fact it is not easy for people to understand why, right? If they were removed [from traffic], why do they go back? And this shows the conflict that exists in their heads in regards to sexual work and sexual exploitation, right?*

***Manipulation of the system to obtain the visa***

*Judicial/Police/State: “At this moment there are situations, from what I have been told, of people that take advantage of the status of the victim to try to get a visa.*

In brief, professionals seem to echo the unstable reconciliation of the incompatible discursive regimes (Aradau, 2004) — the State security against illegal immigration and organized crime versus the human rights of trafficked persons.

## 6 Summary

In Portugal, in recent years, flagged victims of trafficking have increased enormously (more than 250%), but victims for sexual exploitation are rarely confirmed; the majority of the victims are for labour exploitation and these are more easily confirmed. The reports to the authorities and to the Observatory of Human Trafficking do not require the informed consent of the victims.

During most of the twentieth century, Portugal has been an emigration country. Paradoxically, the Portuguese legislation on trafficking is under the paradigm of border control with the exception of the Decree-Law 368/2007, November 5. Traffic is addressed mostly under immigration legislation and the rights of the victims depend largely on their collaboration in the investigations.

From the debates, it can be summarized that the main routes of entrance into the intervention system are complaints/phone reports that are made to the police or to NGOs by individuals or organizations concerned about situations they come across in their professional activity. Social services working with migrants such as Immigrant centers, community centers or associations of immigrants are sometimes the ones who first flag a suspected TSE situation and report it to the authorities, to the Commission for Citizenship and Gender Equality (CIG) or to an NGO, specialized in working with trafficking victims. A victim of TSE asking for help, although very unlikely, may happen through the help lines.

In spite of the lack of experience, the professionals advocated a professional attitude of presuming the worst scenario so that the victims are not overlooked.

Usually, the social services mentioned above ask for the advice of the specialized NGO in several ways: how to understand the situation; how to maintain the contact with the potential victim; how to identify the national resources available; how to refer the person to more specific and adequate services; and what rights and precautions must be developed on behalf of the victim and the professionals.

During the workshops it was very visible that the law enforcement agencies (criminal police and Foreigners and Borders Police - SEF) and the “social sector” (NGO, IPSS, Associations of Immigrants...) have clearly distinctive missions. The former focus on targeting, chasing and prosecuting the traffickers, the latter concentrates on helping the victims. The bridge between the two types of agencies is established so that each part fulfils its mission with more efficiency. This divide was also a gendered one in the sense that all the participants working in the former were male and all of the latter were female. It also echoed a division between emotional work and professional rationality.

The health care system seems to present many barriers to the access of immigrants (especially when undocumented). This system, supposedly national and accessible to all the population, seems to be

organized, in recent years, as an inaccessible fortress for both illegal immigrants and disadvantaged people. In order to help these populations, committed professionals have to form alliances with other professionals in health settings to bend the obstacles of the system.

The solution for the victims emphasized on the debates was the “return” of the trafficked person to the country of origin; a supported return, but a return nonetheless. It was not mentioned the possibility of integrating the woman in Portuguese society, either in educational system or professional / work system.

At many points in the workshops the attention quickly shifted to chasing and prosecuting the traffickers. The protection of the victims seems to be seen in an instrumental perspective and some social sector professionals discussed with the representatives of State organizations about this solution: the “assisted return”.

The portrayal of the victim was a very complex one, where fear appear as the stronger deterrent to women reporting trafficking situations. It presented some paradoxical features leading to the dilemma of how to help the victims. The perceived refusal of the victims to accept help, for a cluster of reasons, such as the shame to go back to their countries and their families, or the compromise to send money back home. The family ties of the women victims of TSE seem to differ from those of men victims of labour exploitation, in that those want to go back home as quickly as possible, and the women do not want to return to their countries.

Debt and the confiscation of the documents were two consensual indicators; the sexually transmitted disease was a matter of contention: some professionals argued that this might indicate “sex work” and not necessarily trafficking victimization.

The *consent* appears as a contentious terrain as well as a matter of intense internal ethical dilemmas: professionals intensely want to respect the women’s choice although they might have strong feelings against sex work, and also although to the professionals the women might be victims, many women do not see themselves as such because of the living conditions that they left behind in their countries of origin. This dilemma appears to be restricted to the victims outside the European space.

For European women, shared codes of understanding as well as good cooperation with EU agencies enhance the possibilities of an easier and safer “assisted return”. Shared codes of understanding” do not always relate to language – they refer to similar ways of understanding rights and social norms (including the role of the police and other statutory agencies).

Culture was seen as a factor that shapes the victims' awareness about the situation. For the most part, the “other” cultures were seen as very homogeneous, less sophisticated and developed. The women's conditions in the countries of origin were seen as extremely poor and the desire for social and economic mobility was seen as a reason for being vulnerable to the influence of traffickers.

The permanent shadow of the big business of the transnational organized crime and the centrality to implement counter-trafficking and counter illegal immigration strategies and the idea of searching for other victims seem to obscure the response to the needs of that victim in particular.

The ethical dilemma that stood out is the difficult balance between the respect for the victims’ choice and the desire of rescuing them, mostly when they do not think of themselves as victims and when they are in terrible human conditions. This ethical dilemma links with the structural contradiction in the overlaps of the prostitution/sex work contentious polemic and the illegal immigration and organized crime dimension of the problem. Prostitution was decriminalized in 1982 but its eventual legalization recalls the politics of the Estado Novo (dictatorship).

Finally, the centrality of the “counter-trafficking strategies” (Turner 2013) and the intent of prosecuting the exploiters and controlling illegal immigration seems to put many victims of trafficking for sexual exploitation out of the sight of the professionals. The absent issue in the workshops was trafficking for sexual exploitation as a form of violence against women.

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## APPENDIX

### Abbreviations

[nsp] – we couldn't understand

ACIDI – Alto Comissariado para a Imigração e Diálogo Intercultural

CAP – TSH – Centro de Acolhimento e Proteção de vítimas de Tráfico de Seres Humanos - Centre for Reception and Protection]

CIG – Commission for Citizenship and Gender Equality.

GRA – Gabinete de Recuperação de Ativos [Office for Retrieving the Income (Law 45/2011, art. 17, changed by the Law 60/2013, August 23).

OIM – International Organization for Migrations

OPC – Órgão de Polícia Criminal

OTSH – Observatory of Trafficking in Human Beings

Projeto CAIM – “Cooperação-Ação-Integração-Mundivisão” – “CAIM - Project Cooperation-Action-Integração-World vision”

RAPVT – Rede de Apoio e Proteção às Vítimas de Tráfico

### Legislation cited, in the original in Portuguese:

*Código Penal – Lei 59/2007 Art. 160.º Tráfico de pessoas*

1. Quem oferecer, entregar, aliciar, aceitar, transportar, alojar ou acolher pessoa para fins de exploração sexual, exploração do trabalho ou extração de órgãos:

a) Por meio de violência, rapto ou ameaça grave;

b) Através de ardil ou manobra fraudulenta;

c) Com abuso de autoridade resultante de uma relação de dependência hierárquica, económica, de trabalho ou familiar;

d) Aproveitando-se de incapacidade psíquica ou de situação de especial vulnerabilidade da vítima; ou

e) Mediante a obtenção do consentimento da pessoa que tem o controlo sobre a vítima;

é punido com pena de prisão de três a dez anos.

2. A mesma pena é aplicada a quem, por qualquer meio, aliciar, transportar, proceder ao alojamento ou acolhimento de menor, ou o entregar, oferecer ou aceitar, para fins de exploração sexual, exploração do trabalho ou extração de órgãos.

3. No caso previsto no número anterior, se o agente utilizar qualquer dos meios previstos nas alíneas do nº 1 ou actuar profissionalmente ou com intenção lucrativa, é punido com pena de prisão de três a doze anos.

4. Quem, mediante pagamento ou outra contrapartida, oferecer, entregar, solicitar ou aceitar menor, ou obtiver ou prestar consentimento na sua adopção, é punido com pena de prisão de um a cinco anos.
5. Quem, tendo conhecimento da prática de crime previsto nos nºs 1 e 2, utilizar os serviços ou órgãos da vítima é punido com pena de prisão de um a cinco anos, se pena mais grave lhe não couber por força de outra disposição legal.
6. Quem retiver, ocultar, danificar ou destruir documentos de identificação ou de viagem de pessoa vítima de crime previsto nos nºs 1 e 2 é punido com pena de prisão até três anos, se pena mais grave lhe não couber por força de outra disposição legal.

*Lei 23/2007, de 4 de julho*

*Artº 111º - Prazo de reflexão*

1. Antes da emissão da autorização de residência prevista no artigo 109º, o SEF dá à pessoa interessada um prazo de reflexão que lhe permita recuperar e escapar à influência dos autores das infracções em causa.
2. O prazo de reflexão referido no número anterior tem uma duração mínima de 30 dias e máxima de 60 dias, contados a partir do momento em que as autoridades competentes solicitam a colaboração, do momento em que a pessoa interessada manifesta a sua vontade de colaborar com as autoridades encarregadas da investigação ou do momento em que a pessoa em causa é sinalizada como vítima de tráfico de pessoas nos termos da legislação especial aplicável.
3. Durante o prazo de reflexão, o interessado tem direito ao tratamento previsto no artigo 112º, não podendo contra ele ser executada qualquer medida de afastamento.
4. O prazo de reflexão não confere ao interessado direito de residência ao abrigo do disposto na presente secção.